"LOL I will never be fired": Campus Free Speech in the Era of Social Media

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Note to Kadish seminar participants: This is a first draft. It is surely unfinished in ways big and small. I look forward to discussing it with you. Sigal

On the day Barbara Bush died, Associate Professor Randa Jarrar of California State University Fresno tweeted, "I am glad the witch is dead!" Numerous responses, often using personal and aggressive language, called for her to be dismissed from her job. Similar campaigns have been successful in the recent past in getting individuals fired from academic and other jobs in response to views – right and left – expressed online and in person. Jarrar got back on Twitter to declare "I will never be fired" and challenging angry respondents "LOL let me help you. You should tag my president @JosephlCastro. What I love about being an American professor is my right to free speech, and what I love about Fresno State is that I always feel protected and at home here," she wrote (Wootson and Svrluga 2018).

Despite criticism from campus leadership, Jarrar was correct in her initial assessment: she was not fired. What are the relevant differences between universities and other places of employment that explain, or justify, why Jarrar fared better than certain engineers, fast food workers and others who lost their jobs after expressing controversial political views?[1]

[1] https://www.propublica.org/article/northrop-grumman-defense-contractor-to-investigate-michael-miselis https://www.independent.co.uk/news/world/americas/nazi-sympathiser-tony-hovater-new-york-times-profile-loses-job-home-ohio-white-supremacist-a8084361.html
This is not to suggest that the white supremacist views expressed by the men who lost their jobs in these cases are comparable to those Jarrar expressed. The demands for her removal seem to suggest that she was an extremist left-wing speaker equivalent to the extremism of right-wing speakers who lost their jobs, and build on their

The growing influence of digital communication, including social media, has given rise to competing interpretations about its role in democratic life. Some, like Habermas, have described the 'disintegration of the public sphere,'[2] a sadly fragmented set of debates separated by filter bubbles and tribal domains. Others see digital communication as democratizing, and specifically as making space for a thoughtful attentive media where public intellectuals can profess their views to a reading audience, and where people of diverse backgrounds and views can develop a following. To the extent that one of the goals of the university is to disseminate knowledge to the public, not only through classroom teaching and specialized journals but also to a wider audience and through more public venues, the very mission of the university is redefined by the rise of connected communication.

Universities can have various roles in this process, as large employers, as educational institutions, and as purveyors of various types of expertise. In this paper I focus on one aspect of this varied role, which is the relation between the university as an educational institution and its role in attending to campus members' speech on social media platforms. My argument here is an extension of my (2017) discussion of inclusive freedom and my recent work on digital civility (Dishon and Ben-Porath 2018) to the use of social media by campus members.

In my recent book I argued that campuses should frame their response to free speech tensions based on principles of inclusive freedom. This approach takes seriously the importance of a free and open exchange as a necessary condition for the pursuit of knowledge and as a contributing condition to the development of civic and democratic capacities, — that's the "freedom" part — while lending similar weight to the related demand that all members of the campus community be able to participate in this free and open exchange if it is to accomplish the goals of free inquiry, open-minded research, and equal access to learning and to civic development — that's the "inclusive" part.[3]

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removal to demand the same for her. It is noteworthy that her position threatens no one in particular, even if it is was described by Fresno's president as "insensitive, inappropriate and an embarrassment to the university"

[2] https://www.ft.com/content/eda3bcd8-5327-11df-813e-00144feab49a
[3] Free Speech on Campus (Penn Press 2017)

In this paper I interrogate some challenges to the implementation of this framework to the case of online expression, focusing on the hard cases when the party creating the stir is a member of the campus community, and especially when they are tenured faculty members. These cases bring into sharp relief the tensions between protecting free expression and maintaining an inclusive environment on campus, tensions that are more often discussed in the context of outside visitors who propagate inflammatory ideas. Looking at cases involving faculty online speech clarifies the issues campuses face and suggests some ways of addressing them using the inclusive freedom framework.[4] I attempt to align higher education institutions' responses to campus members' social media use with the overall mission of the campus, namely, to expand knowledge and to prepare the next generation of students to their roles in democracy and on the job market.

Inclusive Freedom on Campus

Inclusive freedom may sound like an effort to fit a round peg into a square hole. How can the goals of inclusion, which may require offensive, excluding, hurtful and bigoted speech to be censored or punished, fit with the goals of freedom of speech, which reject the necessity and permissibility of such actions? This tension does not vanish when we look at campuses through the lens of inclusive freedom, but it becomes clear that its effect on actual cases and decisions that campuses face is in fact more limited than the debate on campus free speech assumes. The current debate on campus free speech is overly focused on the legal boundaries of censorship and other modes of speech regulation. It thus over-emphasizes the requirements

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[4] Part of the argument I develop hinges on determining what specific utterances are biased, hurtful or otherwise inappropriate to the extent that it disrupts the mission of the university, or makes some students reasonably feel that they cannot participate equally. Clearly, drawing a clear line about this matter is difficult, and probably depends on context, motivation, and other matters. While I cannot offer a full argument on this matter (again, I do some more in this regard in my 2017 book, though there too I do not have a definitive answer). The matter is pressing today because of an apparent move, in practice and in some theoretical accounts, from a more objective definitions to one that focuses on impact and therefore on a subjective account of harm. This move reflects changing norms around hate speech. I suggest that this matter is best resolved neither by reference only to objective legal guidelines (or other objective tools, like speech codes), nor by unqualified acceptance of any claim of harm or hurt feelings. Rather a determination should be based on an assessment of the circumstances, by conversation with the speaker and the harmed party as appropriate. The norms that should guide such shared investigation relate to the ways in which the relevant speech serves to reinforce power dynamics and social inequalities. See Popa-Wyatt and Wyatt (2017).

to which public colleges and universities have to abide (and which private ones may mimic but are not required to fully follow). Of course, abiding by the law is imperative. However, this is far from enough when discussing campus free speech issues, including those arising in social media. The current focus on legal requirements causes campuses to lose sight of other important tools they can and should use when addressing matters of speech on campus. Colleges and universities are educational institutions, and as such many of their members – faculty, students and alumni – tend to remain affiliated with them for years (sometimes many years). Therefore, and given its mission, the campus can utilize relational, educational, and other softer tools in discussing free speech and responding to it, rather than focusing merely on what is legal and on punitive responses to the breaching of laws or guidelines.

In addition, those participating in the debate about digital free speech by campus members should keep in mind that over-reliance on legal frameworks limits the current debate in its focus on harm and offense. While legal doctrine offers are significant considerations, the campus as an educational institution can and should additionally focus on the responsibility of its campus members to each other and to the general values that underlie the academic endeavor, as well as on the development of civic agency through the opportunity to practice civic roles, such as participating in decisions about controversial speech.[5] This will require campus leadership to share aspects of the decision-making process about controversial speech with other relevant members of campus, including students, thus allowing them to develop their voice and vision about these matters, and to experience the power and responsibility that come with participating in these processes.

In the context of social media usage by campus members, some commentators argue that there are clear and simple legal or administrative ways for campuses to relate to social media use. Specifically, that they should not relate to it at all. By this view, campus members can use their social media accounts and other forms of online expression to voice their personal and professional views freely. Should any controversy erupt as a result of their social media statements, the university should do no more than issue a form statement noting that

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[5] *Refer to Brian Hutler's new paper

'professor so-and-so's statement does not represent our views, and we support each campus member's right to voice their views online (and elsewhere) freely.'

This is a helpful rule of thumb, but it often does not work in practice, nor does it apply to the diverse challenges that arise from social media use by campus members, as I illustrate below. Generally speaking, this type of rule or guideline equates social media expression with private expression, such that one's statements on Twitter should be seen as similar to their private conversation with friends or family, and as such should not be subject to any regulation or response from the campus (whether one is a student or an employee). However, social media interactions and statements are a new, hybrid kind of speech, which is both public and private in nature, and campuses (along with platforms, regulators, and users) need to think about this type of speech anew, rather than merely apply existing regulations, practices and approaches.

Existing legal principles cannot serve as the main or only tool campuses employ when they deal with tensions raised by social media use. This is so because these legal principles are often too blunt to offer guidance to campuses about proper responses to controversial speech. A form of speech may be legally protected, but does that mean the campus should not respond at all? Can it, as a matter of practice, avoid a response? What are its responsibilities as a place of business, as a community of research, as an educational institution? Campuses need subtler, quicker and more flexible tools than mere adherence to legal guidance. In addition, rapid shifts in social media platforms' availability and common usage call for reliance on a set of general norms and principles that can be nimbly implemented. [6] As in earlier eras characterized by substantial shifts in communication practices (such as the rise of newspapers, radio, or TV), the ascendance of digital media might not lead to the full democratization of access , as those with greater clout are likely to, over time, manipulate the system to their own needs (Buckingham, 2010), thus creating a need for norms and responses that account for power differential. It is

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[6] Consider the intense discussion about permitting or blocking a social media smartphone discussion application Yik Yak on college campuses, a case that was made moot by the app's collapse while it was making its way through the courts in regards to abusive posts about specific students at University of Mary Washington. Court rejects Feminist Majority Foundation's demand that public university block access to Yik Yak

thus important to consider at this time the norms and practices that should inform campus responses to social media speech.

The expansion of 'extramural speech' via social media

Inciting an online mob? The McAdams/Marquette case

Marquette University political science professor John McAdams was suspended following a blog post he wrote on November 9, 2014 on his personal blog Marquette Warrior in which he criticized Cheryl Abbate, a philosophy instructor and PhD candidate at Marquette, by name and included a link to her website and email. In his post, McAdams claimed that Abbate had stifled intellectual debate in her classroom by telling one outspoken conservative student that she would not allow him to question the right to gay marriage on grounds that such questioning is homophobic and therefore hostile toward LGBTQ students. The student recorded his conversation with Abbate who also told him he could drop the class if he disagreed with her.

Following McAdams's blog post, Abbate received a number of hostile and threatening emails from anonymous sources that caused her to fear for her safety. One messenger was so persistent Abbate feared she was being stalked. Campus security was installed outside her classroom. Eventually, she transferred to another university and had to repeat some coursework due to the transfer.

In response to professor McAdams, Marquette University considered consequences including firing him, or revoking his tenure, but eventually settled on a paid suspension for up to two semesters following deliberations by a Faculty Hearing Committee. University President Michael Lovell approved the two-semester suspension and added that Dr. McAdams must write a private apology letter acknowledging that his blog post was "reckless and incompatible with the mission and values of Marquette University" (see McAdams v. Marquette University 2017). McAdams refused and filed a lawsuit against the university, alleging that the institution had violated his right to academic freedom. Following a lower court's ruling that sided with Marquette University, he appealed to the State Supreme Court where in a 4-to-2 decision the court sided with McAdams.[7]

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[7] The issue of whether individual faculty members indeed have a right to academic freedom, or whether this freedom belongs to the institution that employs them, is currently the subject of another interesting case at the University of Texas. In this case some faculty members claimed that the right of students to carry weapons on

The incident between McAdams and Abbate is complicated by the fact that the Faculty Hearing
Committee (FHC) documented a pattern of McAdams threatening others on campus with his blog. In a
123-page report, the committee documented numerous cases involving turmoil between McAdams and
his colleagues, where on "at least three occasions [McAdams] used the prospect of being named in [his
blog] Marquette Warrior as a threat" (Herzog 2016 para. 5). For instance, in March 2008 he published a
blog post asking why the student newspaper had rejected an advertisement discouraging use of the
"morning-after pill." McAdams originally identified the student advertising director by name. In
November 2011, he blogged about a complaint that a student filed alleging that McAdams, in casting
doubt on commonly cited rape statistics, had made comments belittling rape victims. McAdams referred
in his blog to the complainant as a "prissy little feminist." In September 2014, he was called to a meeting
with his college dean over a confrontation with a student group called "Students for Justice in Palestine."
McAdams warned the dean to be careful what he put in the letter that would follow because "you don't
want to be in my blog."[8]

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campus threatens the instructors' academic freedom as it can stifle speech, especially discussions about controversial topics. In rejecting this claim, the university argued that it is the institution rather than the instructors to whom academic freedom belongs.

> See also the controversial efforts in Kansas to limit public institution employees' online speech, Schmidt, P. (2013, December 27). Unfettered academic speech: Not in Kansas anymore. *The Chronicle of Higher Education*. Retrieved from: https://www.chronicle.com/article/Unfettered-Academic-Speech-/143697. The article outlines Kansas Board of Regents policy that allows "public colleges' chief executive officers the authority to discipline their institutions' employees for a wide range of controversial statements aired online," including social media.

[8] Summary of the case based on the following sources:

https://graphics.jsonline.com/jsi_news/documents/mcadams_ruling.pdf

http://archive.jsonline.com/news/education/mu-report-suggests-pattern-of-bullying-by-suspended-mcadams-b99719701z1-378518555.html/

McAdams, John. "Marquette Warrior." Marquette Philosophy Instructor: "Gay Rights" Can't Be Discussed in Class Since Any Disagreement Would Offend Gay Students. November 9, 2014. Accessed September 12, 2018. http://mu-warrior.blogspot.com/2014/11/marquette-philosophy-instructor-gay.html.

https://www.jsonline.com/story/news/education/2018/07/06/marquette-professor-john-mcadams-prevails-academic-freedom-case/759800002/

Social media expression is currently largely unregulated or sporadically regulated. It takes places via privately owned and operated platforms, with very limited norms organizing acceptable behavior. There is a glaring lack of consistency in applying even the limited norms (or 'acceptable use') that each platform develops, due to either limited AI capabilities at this time or inconsistent human decisions.[9] It is also a rapidly changing environment with new players rising and falling, and platform goals and related algorithms adjusted changing regularly to reflect company vision or priorities, sometimes in response to public or regulatory pressures.

Scholars, researchers and other academics use platforms for both personal and professional purposes. Some surveys suggest that many distinguish purpose by platform, where Facebook may be used more regularly for personal relations and updates (including with colleagues, and therefore sometime mixing personal and professional), while Twitter may be used for various professional purposes such as publicizing one's work, requesting advice, or public mentoring, to name a few.[10] These represent trends and tendencies rather than general rules; they continuously morph, and therefore cannot be a reliable source for norms and regulations. Some institutions present policies related to social media use, but it is unclear to what extent those are declaratory or aspirational vs. enforceable. Given that social media expression is a new and evolving mode of public/private speech in its style, its uses, and its perceived role by its users, it is not surprising that institutions have a hard time developing clear guidelines and applying them equitably. In the Marquette case it was evident that the professor was using his platform in a semi-professional context, but also as a mode of private speech. The

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[9] The recent case of InfoWars / Alex Jones, who was banned from some platforms for rules violations, but permitted on others or on the same platforms at other times illustrates this difficulty, especially when applying rules to more powerful users like Jones who has a significant (and thus lucrative for the platform) following.

[10] LaPoe, V.L., Olson, C.C., and Eckert, S. (2017). LinkedIn is my office; Facebook my living room, Twitter the neighborhood bar: Media scholars' liminal use of social media for peer and public communication. *Journal of Community Inquiry. 41*(3), 185-206.

university, as well as the court, struggled to conclude whether his expression was professional or extramural.

One of the issues that create tensions is that on many platforms it is easiest to get 'engagement' (attention, clicks, followers) by using speech that is less nuanced and more personal, extreme or otherwise stands out through content or presentation (Jane 2014; Lampe et al. 2014; Fung and Shkabatur 2015). Individuals thus have an incentive that is in many ways contradictory to common academic expectations. This seems to stand in opposition to declared statements from some policies that set expectations for civil and respectful expression, but in fact is aligned in some ways with some of the institutional goals of the current university. 'Public intellectuals', understood as academics whose reach goes beyond their discipline and academic circles more broadly, often become established through building a following on YouTube, Twitter or other platforms, and engaging with their followers in oftentimes blunt and less-careful ways. Higher education institutions benefit from the public status of faculty members, and thus beyond their concern for free expression which leads them to avoid censoring their extramural speech, these institutions might also relish in the attention and recognition generated by engaged faculty members. The university's image is at stake – its ambition to disseminate knowledge to the wider public and have a greater reach and visibility. Therefore campus leadership - including administrative leadership, faculty, elected leadership and others who hold positions of authority – may at times look for ways to mitigate or enhance social media expression by faculty, while maintaining to the extent possible a coherence of values endorsed by the campus (or its leadership), and their expression by employees. They might also use social media presence of the campus or its members as a means of differentiating the 'company' from others in the market.

Why should social media speech have its own rules (especially on campus)?

Excitable Twitter and Facebook Speech by Professors: Drexel and Trinity

Associate professor of sociology Johnny Eric Williams at Trinity College of Connecticut was placed on leave June 26, 2017, following several comments he made on social media that resulted in calls for his dismissal, alongside death threats that caused Trinity College to close for one day due to safety concerns. Williams, who teaches about race and racism at Trinity, posted several politically charged comments on his personal Twitter and Facebook accounts. In one post he linked to a piece on Medium entitled "Let Them Fucking Die" that argues racially oppressed people should let bigots die if they are faced with the choice of saving them in an emergency. Significantly, the piece was published on June 16, 2017, two days after Republican Representative Steve Scalise and several others were shot while practicing for a charity baseball game in Alexandria, Virginia. Shortly after posting a link to the inflammatory piece, Williams wrote "[it is] past time for the racially oppressed to do what people who believe themselves to be 'white' will not do, put end [sic] to the vectors of their destructive mythology of whiteness and their white supremacy system" and included the hashtag "Let them fucking die (#LetThemFuckingDie)" (quote from Flaherty 2017, para. 4).

A public backlash quickly ensued after the posts went viral on social media. Williams's posts were shared on social media and sites including Campus Reform and Professor Watchlist, leading users to send anonymous threats to professor Williams and leading him to leave the state with his family (Inside Higher Ed). In a letter to the college community published on June 21, 2017, President of Trinity College Joanne Berger-Sweeney criticized Williams's posts while simultaneously denouncing the violent threats he received. On June 26, 2017, Trinity College suspended Williams and stated that it would be conducting a review to see whether Professor Williams would continue to serve on the faculty. Professor Williams later said that his post was referring to systemic racism, not white people in general as many of his critics suggested. Speaking with the Hartford Courant, professor Williams apologized and said, "I regret that the hashtag that I quoted from the title of an article was misinterpreted and mis-perceived as inciting violence and calling for the death of 'white' people… I never intended to invite or incite violence. My only aim was to bring awareness to white supremacy and to inspire others to address these kinds of injustices" (Megan 2017, para. 8).

Ultimately, President Berger-Sweeney announced that Williams's posts were protected by academic freedom and that he would be allowed to return to his position following a voluntary period of leave; however, she personally condemned his statement as offensive. In a statement to the college on July 14, 2017, Berger-Sweeney wrote, "the words used in that hashtag [by Williams] not only offend me personally, they also contradict our fundamental institutional values and run counter to our efforts to

bridge divides and to promote understanding, both among members of our College community and between us and members of communities beyond our own." She added that Williams was not alone in stirring the controversy, but that it had been stoked by others intent on intimidating free speech.

At Drexel, associate professor George Ciccariello-Maher was not as lucky. He resigned from his tenured position in December, 2017, following months of online harassment and death threats from anonymous sources. The threats started the previous year, after Ciccariello-Maher's tweet ""All I Want for Christmas is White Genocide," which went viral. The statement, said Ciccariello-Maher, was intended as satire, because "white genocide" is a term that is frequently used by the far-right and white supremacists to stir up controversy and hysteria about the growing minority population in the United States and in opposition to relations across racial groups. However, the professor's tweet attracted a large amount of criticism, particularly from conservative platforms, which called on Drexel's administration to fire Ciccariello-Maher.

Ciccariello-Maher, a politics and global studies professor, continued to teach at Drexel and drew another wave of criticism with a social media post that appeared to criticize a passenger for giving his first class seat to a soldier on a plane. He wrote, "Some guy gave up his first class seat for a uniformed soldier. People are thanking him. I'm trying not to vomit or yell about Mosul." His comment about Mosul was made in reference to <u>a U.S. airstrike in the Iraqi city that may have caused the worst loss of civilian lives by an American bombing in over two decades</u> (Gibbons-Neff 2017). He again sparked controversy in October 2017 after he tweeted that the Las Vegas shooter who killed 59 people was motivated by a "narrative of white victimization" and masculinity when he committed the horrific attack.

Following Ciccariello-Maher's October tweet about the Las Vegas shooting, far-right social media groups, bloggers, and websites (including Breitbart and The Daily Caller) shared his post and again called on Drexel to fire him. The media backlash again spurred death threats and Ciccariello-Maher began to receive voicemails threatening to kill him and his family. Drexel placed Ciccariello-Maher on paid administrative leave, claiming safety reasons. The AAUP criticized the move, calling it a suspension and stating that "[the AAUP] regards suspensions to be severely adverse personnel actions both because of what they imply about the faculty member's professional fitness and because of the potential effect on the faculty member's reputation" (<u>AAUP 2017</u>). <u>Cicacariello-Maher told CNN</u> that he had received over 800 voicemails since his tweets went viral, drawing the attention of internet trolls and far-right activists

(Lieberman 2017). He resigned in December 2017, stating on Facebook that "Staying at Drexel in the eye of this storm has become detrimental to my own writing, speaking, and organizing."

When developing open expression positions and policies, should campuses think about social media expression separately from their general principles? For instance, if inclusive freedom is a useful framework for campus open expression policies, is there a way to directly apply it to social media expression, or should it be extended to online communication, and especially to social media engagement by campus members, in a specified way? Some staunch advocates of the First Amendment suggest that the same protective guidelines that inform campus leadership in addressing in-person free speech tensions should apply similarly to online expression(Chemerinsky and Gillman 2017). A university can indeed develop a coherent fully hands-off approach, which forbids any intervention regarding campus members' speech by campus leadership, faculty governing bodies, student leadership and other elected and appointed campus members. Stating that all legally protected speech is permissible and washing their hands of any additional intervention, referring any disagreement to legal authorities when the question of the legal permissibility of specific utterances arises, the campus can remain consistent in its approach, and rest on its First Amendment laurels. However, this approach fails to recognize the campus as an association with an (educational, research, social) mission, which requires attention beyond abiding by the law and maintaining neutrality about the content of speech. The applicability of these simple principles of non-intervention is even more limited in the case of social media expression by campus members, as a result of the unique features of online speech. Some of those were already discussed or alluded to, but it might be useful to summarize them here before returning to the way campuses can address the issues that they raise.

What is unique about online expression? A short summary

First, as noted, its *public/private hybridity*: it is hard to classify social media expression as either public speech, such as a lecture or a televised statement, or private speech such as a conversation with family and friends at one's dinner table. Online platforms enable free-form, spontaneous, unbridled political expression, which blur separations between the public and

private, the written and spoken, and the norms of formal and casual speech (Bennett and Segerberg 2012; Papacharissi 2010). In addition, social media expression allows for anonymity, and as a result elicits for some a more extreme form of expression under the assumption of untraceability. Social media expression is always capable of virality, and therefore some statements go further than others, and sometimes further than the speaker may have assumed or intended. Legally speaking, social media expression is made possible by and through privately-owned platforms[11] which makes its regulation or even response to it more tenuous.

Digital platforms offer *an increase in individual control* over forms, modes, and contexts of communication which can be empowering in that it increases access and allows for greater diversity of participants, as the barriers to expression and audience-making are lowered (Papacharissi 2010). This is significant for faculty who are looking to develop an audience for their research. Prior to the widespread use of digital technologies, production and circulation of initiatives were almost exclusively in the hands of groups and associations, from political parties, through interest groups and businesses to local community groups (Fung and Shkabatur 2015). Online platforms are not as dependent on traditional and institutional modes of gatekeeping, and are therefore more accessible to diverse individuals and groups, at least in terms of the latter's access to speaking publicly (Boynton and Richardson 2016). All those who have digital access – a growing majority in the Western world – can (theoretically) voice their interests and are exposed to a larger quantity and variety of other voices. This growing and diverse audience is attractive to faculty and their institutions to the extent that the dissemination of knowledge becomes more diffuse, less onerous, and can have a wider reach.

Of course, *increased access should not be conflated with democratization*. When previously marginalized individuals and groups take advantage of digital media to better organize and participate, gain access to knowledge and provide access to new research, the results can be democratizing; however, this can also support individuals and groups that openly harbor anti-democratic visions, as exhibited by the rise of populist movements in the US and

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[11] Universities can and do exert more control when either platforms or even groups within the platforms, or servers on which the speech is taking place, are owned or provided by the university. Some relevant cases are the admitted students Harvard-sponsored Facebook group [*cite], chats in athletic groups where the group is either created by or moderated by coaches (*cite).

across Europe (Engesser et al 2017). In the current environment of growing polarization, accusations about misuse of platforms are regularly lobbed at users for various reasons, both justified and unjustified (as when users are cited for misuse because of their identity or innocuous political positions). .

Technological platforms allow individuals to *collaborate or communicate with diverse populations* in ways that were previously impossible, thus facilitating new social connections, but simultaneously destabilizing existing relationships. As the cost of organizing and sharing ideas is reduced, individuals can more readily participate in contexts where the shared goal is more limited (Bennett and Segerberg 2012). This is the case because digital platforms "perform at their best for cases of precise, goal-oriented, and time-constrained actions, such as political campaigns or protests." (Fung et al. 2013, 40). When used for knowledge dissemination and related goals that faculty members have when they turn professionally to social media, these platforms can provide opportunities to have a wider reach for one's new publication or research project, provide general mentorship or receive ad-hoc advice or guidance, publicize various opportunities and create a network of diverse people with a shared interest in a specific topic. Previously, such relations had to be stable, ongoing and face-to-face, making them dependent on physical proximity and the coordination of meetings.Today – while these obstacles persist – there are additional possibilities to organize in more limited and less personal ways (Loader and Mercea 2011).

Though digital communication can connect people across geographical and social boundaries, it often concurrently *accentuates contentious group relations by limiting communication to like-minded individuals*. The low barriers for online engagement and the widespread access to digital spaces do not mean that individuals' networks represent an ideal open forum of diversity and difference. For many, online life mirrors the homogeneous realities in which they live (Stevens et al. 2016). This results from the fact that digital communication currently operates on two distinct but related spheres: first, it strengthens and allows controlled interaction with known contacts (through social networks); second, it affords greater opportunities for communication with strangers who share a limited interest. In both of these contexts, increased individual control has led to a growing tendency to communicate online

with like-minded individuals, allowing many to operate within echo chambers in which their views are amplified and sometimes caricatured, or evolved into their own extreme form (Mercea, Lekakis, and Nixon 2013; Quattrociocchi, Scala, and Sunstein 2016). Though the extent to which digital media facilitate the creation of filter bubbles is a matter of debate (Flaxman, Goel, and Rao 2016), it is evident that many people curate an online presence in which they are connected to others who share their key identity features, such as geographic location, native language, ethnic/racial identity, and especially ideological leaning.[12] This tendency is further accentuated in light of the algorithmic curation currently characteristic of social networks; Facebook, for example, is well known to curate users' newsfeeds according to analyses that show what they are most likely to be interested in. In such cases, the convergence of technological capabilities and economic interests leads to an even narrower variety of views to which individuals are exposed (Tufekci 2015). Thus, individuals often are more likely to interact with those who may be physically remote yet still ideologically similar, which creates the risk of Balkanization in which various like-minded networks focus narrowly on achieving self-interested aims in contentious political environments (Levine 2016).

Along with the unique forms of informality, access, control, and networking, online communications permit individuals to undertake various types of actions simultaneously. Thus, actions that could be considered social (sharing personal pictures), commercial (recommending a product), or civic (posting or sharing a post concerning social injustice), are increasingly being conducted at the same time, on the same platforms, and with overlapping networks of individuals (Davis and Jurgenson 2014; Marwick and Boyd 2011). This phenomenon of *context collapse* has important implications: online interactions are not as strongly regulated through social norms on the one hand, and are harder to navigate according to context on the other. Therefore, along with greater access, digital communication provides ample possibilities for miscommunication and offense. The private, professional and mixed uses of online platforms

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[12] Written in summer 2018, while news of platforms reconsidering their algorithms abound. Will revisit as needed. See https://t.co/lYUomRmZsa Note that the decision about algorithmic balkanization is in the hands of a private person who owns the platform, and while clearly his (and his few peers') approach is somewhat sensitive to public pressures, he still can operate based on personal views, business interests and other considerations.

by faculty members exemplify the collapse of contexts, as illustrated by the cases from Trinity, Drexel and Marquette.

Finally, the structural characteristics of digital platforms often serve to accentuate *unproductive communication*. Digital platforms allow and encourage rapid, multiple-user statements, which in many cases can be anonymous or include fleeting interactions with strangers. With the cluttered ongoing exchange typical of many platforms, extreme and offensive statements are more visible and thus regularly prioritized (Jane 2014; Lampe et al. 2014). This might lead to shaming, flaming, trolling, and other aggressive modes of communication (Hannan 2018; Middaugh, Bowyer, and Kahne 2016). Moreover, though these interactions are public, they are only minimally regulated by the digital platforms which facilitate them, in contrast to more traditional media outlets such as newspapers or television where some editorial scrutiny is common.

Taken together, the shifts in the role of individuals, the patterns of social groupings, and the modes of civic communication, generate a need for new norms in the digital sphere. Higher education can play a role in developing these norms.

Digital inclusive freedom on campus – what would that look like?

What contributions can higher education institutions make to the development of norms for social media use, and – focusing on the context of the current paper – what specific norms are required to address the unique issues raised by campus members' social media usage, and how can these principles be developed and applied?

In 2018, the Electronic Frontier Foundation put out a framework (reflected in the Santa Clara Principles[13]), that advances transparency in the ways platforms moderate content. EFF focuses on numbers (companies should publish the number of posts removed and accounts suspended); notice (companies should provide notice and an explanation to each user whose content is removed); and appeal (companies should provide a meaningful opportunity for timely appeal of any content removal or account suspension).

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[13] https://newamericadotorg.s3.amazonaws.com/documents/Santa_Clara_Principles.pdf

The rules may be different in the case of institutions of higher education's responses to extramural online speech by faculty and other members of the campus community, but the principles of fairness require similar attention to transparency and consistency as a way of ensuring fairness in this context as well. It is unfair for cases to rise to the attention of campus leadership and elicit a punitive response as a result of an online mob forming against one faculty member (see a brief illustration below), where others may have expressed similar views; it is ineffective as well as unjust to have no clear rules and then respond to specific utterances in an inconsistent and seemingly random fashion.

Campuses face free speech tensions in a number of ways:

First, campuses operate as employers, and similar to other businesses, universities are faced with an unclear legal terrain, which keeps shifting as both technologies and the way we use them evolve. What kind of protections are universities required to provide their students in their online life? What kind of regulation can they legally place on their students and employees' behaviors? What norms should guide such regulation, and how do they relate to the institution both as a company, which can face questions about brand protection or similar general concerns, as well as in its role as an educational institution? How do these regulations interact with academic freedom?

Second, campuses operate as educational institutions, which calls for a unique application of the general principles of freedom of expression. In this area I argue for applying inclusive freedom principles to the online sphere, which requires some adaptations. Specifically, campuses are responsible for educating students for citizenship, both as metaphoric citizens of the institution, and as actual citizens or members of their communities, both national and other (local community, global community, scholarly community etc.). Universities can develop norms and advise their members about their expectations, even as they cannot – and should not – monitor social media use, or enforce specific modes of behavior. The norms would be built around an understanding of the role of the university or college as an educational institution, as well as on the basic relational online practices (Dishon and Ben-Porath 2018). While campus members use the internet for a variety of activities, not

all of them properly captured or organized through civic lenses, they should develop the tools of digital citizenship, which requires the capacity for coordinated action towards shared goals, as well as the broader ability to interact with others as equal peers. Inasmuch as higher education institutions encourage the development of habits and skills of good citizenship, those should be adapted and applied to the relevant aspects of online interactions as well.

Lastly, campuses research and develop new types of knowledge or new applications for existing knowledge, and as such the higher education sector can contribute not only to the conversation about digital democracy but also – possibly together with the private sector – work to improve its functioning. Colleges and universities can promote the implementation of certain practices that promote and sustain democratic aims, on the basis of shared norms regarding the centrality of open expression to democratic sustainability, the shared public sphere, and the commitment to truth and knowledge.

The centrality of the campus in the current culture wars, and particularly the ongoing political-ideological tensions around campus free speech, heighten the scrutiny that faculty members experience online, and while it provides greater audiences to some savvy speakers, it also creates the conditions for chilling and suppressing online speech through the use of online mobs and other tools.

Judith Butler (2018, para. 5) has argued that "the rights of academic freedom and extramural political expression require institutional structures and support within the university, and they require an explicit and enduring commitment from universities." It is not clear, however, that extramural political speech is more protected by universities as employers (even in relation to tenured professors) than it is by other employers who can choose to respond punitively to extramural political speech by their employees. Universities are becoming more corporatized in a variety of ways, and the kind of protections that characterized a unionized, self-governing body of professors have eroded by decades of administrative growth and dwindling protections to most instructors (given the rapid expansion of the ranks of adjuncts and non-tenured instructors). Of course there are strong and convincing concerns raised regarding these changes. Given the current governance structure of the university, I am

not sure that there is a clear argument to be made for protecting extramural political expression that would single out this form of expression by this group of people within the context of the corporate university.

The argument that universities should be permitted to punish employees - including tenured faculty members as in the illustrative cases here - who participate in controversial extramural political speech is based on a perception of the university as any other employer or business. Universities can protect their brand or public standing from the negative backlash that can arise as a result of an employee's extreme expression online, and can therefore focus on those cases in which a backlash to someone's statements indeed took place. In this regard they do not need to be consistent and respond to every inappropriate utterance in the same way. For instance, when Kenneth Storey, a visiting assistant professor of sociology at the University of Tampa, wrote an insensitive tweet about the victims of Hurricane Harvey: "I dont believe in instant karma but this kinda feels like it for Texas. Hopefully this will help them realize the GOP doesnt care about them." Storey deleted the tweet, but screenshots of it circulated on Twitter; a hashtag, #FireKenStorey, sprang up. Storey apologized (McNeill 2017), and explained that he'd been thinking about the Republican Party's stance on climate change, but, two days after posting the tweet, he was fired. In an official statement, the university wrote that Storey's tweet did not reflect its "community views or values."[14] Firing Storey is permissible by the rules that govern the university as a business, if we assume that businesses can hire and fire at will (according to legal practice, union rules etc.), as long as the employee in question is not a tenured professor. However, these principles do not seem to be appropriate for a university, because they fail to recognize its mission.

Seeing the university as a mere business argument is only disrupted by the academic freedom that is presumably afforded to the fraction of the employees who enjoy the protection

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[14]From a discussion of Elizabeth Anderson's excellent book Private Government. Rothman, J. (2017). Are Bosses Dictators? The New Yorker. Retrieved from https://www.newyorker.com/books/page-turner/are-bosses-dictators

of tenure, as the Jarrar incident at Fresno illustrates. While tenure protections are important and should be preserved and defended, it is unclear why her Twitter statements in this case deserve greater protection than those made by Kenneth Storey.

It seems that what is guiding campus responses to extramural speech on social media is the university's role as a business and as an employer, and thus is informed by considerations related to brand protection and public visibility, along with relevant protections for employees where those apply. The latter, and particularly academic freedom and related tenure protections, are informed by the role of the university as research institutions, and meant to protect professors as they pursue their research agenda and, possibly, push the boundaries of current acceptable knowledge where it takes them.

I suggest that universities' response to extramural speech could be more consistent and justified if they were to take into account their role as teaching institutions, and its educational and related public goals. Because social media is often used as part of one's professional activities, and may sometimes be part of professional expectations or serve professional functions, the rationale for the university to have norms for usage is more persuasive. Not everyone participates or wants to take part in social media, and not everyone participates on the same platform or in the same conversation, but to the extent that individual campus members increasingly choose to use social media in professional ways it is reasonable for the campus to develop shared norms and expectations guiding social media use.

While the unpredictable nature of online discussion as well as the possibility of anonymity makes the enforcement of any general rules very difficult, it does not mean that universities should not be one of the institutions that take the lead in developing usage norms relevant to their role. Prioritizing the role of the university as an institution with an educational mission would allow some of the norms related to social media use clearer. It might be more obvious that criticizing students by name or as a group, as well as doxing them, is inappropriate. At Stanford, a professor got involved (to his own eventual regret) with supporting a student group he was advising in online targeting of students who lead an opposing political group.[15] It

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[15] https://www.vox.com/policy-and-politics/2018/6/1/17417042/niall-ferguson-stanford-emails

is clear that in their diverse roles as instructors, advisors, and mentors , faculty members require guidance and clear norms regarding the ways in which they professionally use online platforms.

Universities have many different aspects that can inform their policies, including their role as research outfits (which is relevant to part of the higher education sector), their operation as a unique type of non-profit and business (in varying ways across private and public institutions), and their role as employers. The two aspects of their operation that are most relevant to their open expression policies, and specifically to the policies regarding online expression by campus members, I argue, is their role as educational institutions serving young adults and adults; and their role as thought leaders in a democratic context.

The first is more tangible and direct: one key purpose of universities and colleges is to serve their students. Whether one sees their role as preparing students for professional lives or training them to be active citizens or open-minded members of society (Nussbaum 2014), it is imperative for this purpose that students can take part in the education afforded them. If some students sense that the university, or some of their professors – with the university's blessing or silent acceptance – sees them as unworthy, as less than capable, or otherwise depicted in negative ways either personally or as members of identity groups, then their ability to benefit from their education may be undermined. I suggest that this is a sufficient reason for universities to respond to instructors' online expression, particularly when it pertains to depictions of students and negative assessments of their belonging and abilities.

This is not an overarching argument about censorship, as I do not suggest universities monitor faculty and others' social media use. It is not an argument about hate speech and harm,[16] as my concern is not focused on the general harm caused to students by biased or related speech uttered by their instructors. I am rather concerned with the ability of the university to pursue its educational mission when some students can reasonably see themselves as rejected, ridiculed, hated and the like by certain instructors. And while the issue

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[16] As in Waldron's work discussed above, where the utterance of hate-based statements, such as racist views, can be seen as causing harm and therefore should be subject to libel or other protective laws, justifying censorship or punitive measures against the speaker.

is most complex when tenured professors are the speakers – because others, whether they are untenured or adjuncts, tend to be unceremoniously dismissed when such issues are raised – this is not a general argument about tenure and academic freedom. Rather, it is an argument about the need to mitigate online expression by instructors that stands a clear and expressed risk of undermining the university's ability to fulfil its educational mission.

How, then, should universities respond when an instructor – especially a tenured professor – expresses views that can reasonably be seen as biased against a group of people, or when they directly expressed biased, negative, critical opinions against some of their students? What to do when a professor criticizes a student by name, or when Professor Livingston of Rutgers University declares "officially, I now hate white people"[17] ([Whitford 2018](#)) or when Professor Amy Wax of The University of Pennsylvania says: "I don't think I've ever seen a black student graduate in the top quarter of the class, and rarely, rarely, in the top half" (quoted in Chasmar 2018, para. 4)[18]? This question is complicated by the protections of tenure –non-tenured staff, like employees in other sectors, regularly lose their jobs when they use offensive (if protected) speech. Higher education institutions need to develop and use a broad set of tools in responding to online expression by campus members, because campus members are so diverse in their age, positioning, and job protections, and because the mission of the university calls for broad protections for speech but also for creating an inclusive climate on campus, one that is conducive to learning and living.

To mitigate the damage to the university's ability to pursue and fulfil its educational role, some universities turn to termination as their main tool of responding to problematic online speech. Rutgers terminated Livingston, noting "Professor Livingston's inflammatory social media activity has generated widespread media attention, with headlines that describe his words as "racist," a "racist rant," "profanity laced," and an example of "white privilege." These reports have "inflicted reputational damage on the university, and the Department of

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[17] As in the case of James Livingston, a professor of history at Rutgers, see the university's memo at https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2018/08/20161824/Investigation-Report-University-Action-_-J.-Livingston-2.pdf
[18] As in the Amy Wax case at Penn

History and SAS in particular, which could realistically impact recruitment and fundraising in the future" (Dellatore 2018). Ciccariello-Maher was put on leave due to stated safety concerns, and ended up resigning. Like Trinity, Fresno too declared that Jarrar would indeed not be fired, thus validating her statement used in the title of the current paper. I suggest that termination should not be the first or main response a university employs in response to controversial online speech, even if it decides that the speech merits a response. Terminating is not only potentially unjust to the employee because it tends to be unevenly applied, and addresses outside attention to online speech rather than the speech itself; it also stands the risk of chilling speech by others, and thus creating an atmosphere of silence and conformity, which is not conducive to research or to teaching and learning.

The question of what speech merits an institutional response should be the first to be discussed. In many of these cases the university cites the public backlash to professors' speech, enhanced by various media outlets, both traditional and online, as an additional reason for their concern regarding the speech in question. This is not an auxiliary matter, but rather one of the current features of online speech, which can take a life of its own and generate a larger response, a feature that often is taken into account when statements are made online, incentivizing more radical or extreme speech that draws greater attention and 'engagement' (likes, shares, retweets, views, etc.). But public outrage should not be the leading justification for administrative responses to online speech, because it gives too much power to online mobs, and opens the door to inconsistencies and inequities that are bad in themselves, and would likely be made worse when a group that has greater social power decides to target members of groups with fewer connections, lesser power or that are otherwise more vulnerable to attacks.

Therefore, the first and primary response of the university to online speech would be to step back, and to prefer not responding over other options. In the case that a public statement is made necessary by press requests, oftentimes in response to some form of public backlash, a statement of the type mentioned above – "Professor Livingston expressed his personal opinions online…" – may be appropriate.

However, in cases where the content of online expression can reasonably be seen as disruptive to the educational mission of the university, the university should consider additional and prior types of responses rather than focus on the question of termination. The specific tools would vary across institutions and types of appointment, but they should focus on considering the specific disruption to the educational mission, and the relevant responses available. Some responses to faculty members' speech can include instituting changes to their teaching assignments or changing their administrative responsibilities towards students – advising, sole responsibility for grading, selecting students for various honors – to the extent that they are relevant to the kinds of concerns reasonably raised by the specific case of online expression. Such responses can express an effort to hold on to both commitments on the part of the university – its commitment to defending free speech and open expression, along with its commitment to creating an inclusive atmosphere in which its educational mission can be pursued to the benefit of all students (and society) – and indeed of creating a framework for envisioning democratic institutions that are accountable in both regards.

This in turn leads to the second purpose of the university that should inform its responses to online speech controversies, namely, its public role as an institution advancing knowledge. Universities are homes to experts in a diverse array of relevant disciplines, and they can, and do, help push the conversation about online open expression through, for instance, helping develop internal policies that clarify expectations in broad terms, which commit to free speech and note its boundaries for the institution, based on seeing the university not solely as an employer or a research facility, but also as a teaching institution with a related public role. Universities can support the development of both norms and tools for platforms, as well as the technical tools that will help implement them. They can advance the education of students and the public as to the importance of free expression in a democracy and the complications it can create, and offer directions as to how these can be discussed and addressed. All of these are contributions that universities already make, and they can continue to support and highlight them as a way of participating in the public debate about online open expression.

For universities operating within democracies, whose charters inevitably and inherently tie back to their role in advancing truth, science, social progress, and related quaint-sounding,

but still central democratic values, the current phase of the culture wars can be disconcerting. Berkeley, which is often at the forefront of public pressures pushing in competing directions on the issue of speech, has seen itself turn yet again into a battleground for reinterpreting the meaning of free speech for our current age, with its version of digital democracy playing out both online and in campus appearances of public figures. The pressures generated for colleges and universities are significant, especially as they rely on remaining in the public's good graces, whether in terms of depending on public funding from their legislatures, attracting applications and support from parents of prospective students,[19] securing donations, and similar good faith relations. Universities therefore cannot only treat concerns about controversial online expression as administrative matters, and they should not resort to treating it as a purely PR matter either. Preparing for such controversies and creating a set of guidelines and policies appropriate for the specific college is important, but it starts with an affirmation of the democratic and educational role of colleges and universities, and a commitment to maintaining inclusive freedom on campus: ensuring the broadest possible set of protections to free speech for all members of campus, compatible with maintaining an environment of learning that is welcoming to all.

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[19] Note some concerns regarding some trends towards negative views of colleges, especially among Republicans (Fingerhut 2017).

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