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FOCAL ARTICLE

Regulating rude: Tensions between free speech and civility in academic employment

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Abstract
This article addresses the tensions between calls for civility and rights to free speech in public academic employment. We begin by summarizing relevant organizational science on workplace incivility. Next come critical perspectives from other fields, asserting that civility appeals infringe on rights to freedom of expression. Following this is a review of key court decisions within the jurisprudence of free speech in the workplace, especially as it applies to academics. We also address the protections afforded by tenure and (at some institutions) unions. Bringing these streams of scholarship together, we expose predicaments faced by public universities seeking to cultivate safe and civil work environments while, at the same time, respecting faculty rights to free speech. We conclude by suggesting compromises between these conflicting aims that would allow organizations (in academia and beyond) to protect workforce dignity without infringing on the rights of reasonable people.

Keywords: respect; rudeness; free speech; educational personnel; organizational behavior

> *Congress shall make no law . . . abridging the freedom of speech.*
> —The First Amendment to the United States Constitution

> *The effects of assholes are so devastating because they sap people of their energy and esteem mostly through the accumulated effects of small, demeaning acts . . . tiny indignities take their toll as we travel through our days.*—Robert Sutton, *The No Asshole Rule: Building a Civilized Workplace and Surviving One That Isn't* (2007)

In August 2014, the University of Illinois at Urbana-Champaign (UIUC) blocked an academic job offer to American studies scholar Steven Salaita following his profane posts about Israel on social media. Defending the decision, UIUC Chancellor Phyllis Wise explained that, "What we cannot and will not tolerate at the University of Illinois are personal and disrespectful words or actions that demean and abuse either viewpoints themselves or those who express them." These events ignited heated debate that continues today about incivility in academic employment. In one camp, university executives frame civility and respect as necessary preconditions for free speech in the academy; for instance, according to UC Berkeley Chancellor Nicholas

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Dirks, "We can only exercise our right to free speech insofar as we feel safe and respected in doing so, and this in turn requires that people treat each other with civility" (Scott, 2015). In another camp, academics condemn calls for civility as regressive tools of censorship; civility, they argue, is a "problem" that is "incompatible with academic freedom" (e.g., Flaherty, 2014). This raises intriguing questions: Do calls for civility clash with faculty rights to freedom of expression? Is one professor's right to free (but potentially uncivil) speech in conflict with another's right to a healthy and safe work environment? Should civility be used as a criterion in faculty selection and promotion decisions; if so, how should we go about doing that, and if not, why not? More generally, this debate exposes a potentially ominous side to civility.

Our article elaborates on the tensions between calls for civility and rights to free speech in public university employment (focusing on faculty). We begin by summarizing relevant organizational science on workplace incivility. Next come critical perspectives from other fields, asserting that civility appeals infringe on rights to freedom of expression. Following this is a review of key court decisions within the jurisprudence of free speech in the workplace, especially as it applies to academics. We also address the protections afforded by tenure and (at some institutions) unions. Bringing these streams of scholarship together, we expose predicaments faced by institutions seeking to cultivate safe and civil work environments while, at the same time, respecting faculty rights to free speech. We conclude by suggesting compromises between these conflicting aims that would allow universities to protect workforce dignity without infringing on the rights of reasonable people.

Incivility at work

What is incivility?

Incivility is a wide-ranging concept, including everything "from breaches of etiquette to professional misconduct, from general civil unrest to moral decay" (Andersson & Pearson, 1999, p. 455). Within the workplace, incivility refers to acts that are rude but subdued, carrying ambiguous intent to harm. This ambiguity invites varied interpretations and allows instigators to deny malice. Examples include condescension, interruption, omission of common courtesies, and unprofessional terms of address. Many corners of academia are rife with incivility, with some faculty belittling graduate students, berating staff, cutting colleagues off in meetings, flaming each other on email, and making job candidates run a gauntlet of hostile or humiliating questions at their talks (all in the name of "excellence"). Unfortunately, in academic life as elsewhere, assholery abounds.

Pearson, Porath, and colleagues laid important groundwork on the topic of workplace incivility (summarized in Pearson & Porath, 2009), detailing three key features: *norm violation*, *ambiguous intent*, and *low intensity*. First, business ethicists contend that every organization has norms of interpersonal respect, reflecting shared understandings of morality and community. Uncivil conduct contravenes those norms. As Andersson and Pearson (1999, p. 455) explained, "What is considered to be uncivil in one organization may not be universally considered uncivil, yet we can still hold a common understanding of workplace incivility as behavior that disrupts mutual respect in the workplace." This makes incivility a specific variety of *workplace deviance*, defined by Robinson and Bennett (1995, p. 556) as "voluntary behavior that violates significant organizational norms and, in so doing, threatens the well-being of an organization, its members, or both."

A second key characteristic of workplace incivility, according to Pearson and colleagues, is ambiguous intent—an attribute that is, well, ambiguous. As Pearson, Andersson, and Wegner (2001, p. 1400) observed, "One may behave uncivilly as a reflection of desire to harm the organization, to harm the target, or to benefit oneself, or one may behave uncivilly without intent." The ambiguity of the concept of "ambiguous intent" stems from the fact that, where the

instigator *does* act with deliberate plans to harm (unbeknownst to the target or bystanders), incivility bleeds into the category of *workplace aggression*, defined by Baron (2004, p. 27) as "any form of behavior directed by one or more persons in a workplace toward the goal of harming one or more others in that workplace (or the entire organization) in ways the intended targets are motivated to avoid." To further complicate matters, the intent of the actor cannot be observed. If the target, for whatever reason, perceives harmful intentions, then the target will believe him/herself to be the victim of aggression. If not, then the victim may merely perceive incivility. If the behavior is sufficiently egregious, then the victim might attribute it to malice regardless of the actor's actual motives. According to Pearson and colleagues' definition, however, the conduct is still considered incivility when these malevolent goals are not transparent to at least one of the parties involved (Andersson & Pearson, 1999; Pearson et al., 2001; Pearson & Porath, 2009).

A third distinguishing characteristic of workplace incivility is its "low intensity" (Andersson & Pearson, 1999). Incivility does not entail physical assault, making it completely distinct from *workplace violence* (Baron, 2004). Elaborating on the concept of low intensity, Pearson et al. (2001, p. 1401) characterized incivility as having "lower magnitude of force, lower negative charge." Cortina and Magley (2009) operationalized this low-intensity criterion in terms of emotional appraisal: Incivility engenders mildly negative appraisals in targets. That is, targets might evaluate the behavior as insensitive, annoying, or bothersome, but they typically do not find it threatening; they do not fear for their physical safety. These appraisals, like the behaviors themselves, are low level but negative.

Importantly, characteristics such as "low intensity" and "low level" describe uncivil behaviors in isolation; over time these small individual acts can accumulate to trigger large effects. For example, research has demonstrated connections between uncivil experiences and employee distress, distraction, and dissatisfaction; substance use and abuse; and decrements in creativity, cooperation, commitment, and performance (for a recent review, see Cortina, Kabat-Farr, Magley, & Nelson, 2017; see also Schilpzand, DePater, & Erez, 2016). Many employee targets of incivility ultimately throw in the towel and seek employment elsewhere (Hollis, 2018). Uncivil conduct can also take a toll on third-party witnesses and workgroups (Lim, Cortina, & Magley, 2008; Miner-Rubino & Cortina, 2004, 2007). As Cortina (2008, p. 57) noted, "These adverse individual and collective consequences have financial implications for employers, who must absorb the costs of employee distraction and discontentment, job accidents, substance abuse, sick leave, work team conflict, productivity decline, and turnover."

In short, incivility comes with costs, for individuals and organizations alike. Some companies therefore take active steps to curb uncivil actions and promote *civil* ones, for example through civility statements, codes of conduct, civility language in policy manuals, or respectful workplace training programs. A prime example can be found in the respectful workplace training programs developed by the U.S. Equal Employment Opportunity Commission (EEOC): *Leading for Respect* (2017a; for supervisors) and *Respect in the Workplace* (2017b; for all employees). These programs focus on "respect, acceptable workplace conduct, and the types of behaviors that contribute to a respectful and inclusive, and therefore ultimately more profitable, workplace" (EEOC, 2017a, 2017b). Another example is the Civility Among Healthcare Professionals (CAHP) project, which aims to enhance the quality of the social environment at work by focusing on themes of community, engagement, and empowerment (Walsh & Magley, 2013). A third example is the Civility, Respect, and Engagement in the Workplace (CREW) program (Osatuke, Moore, Ward, Dyrenforth, & Belton, 2009). This intervention involves workgroup members collectively generating lists of strengths, areas needing improvement, and plans of action that then get implemented, evaluated, and modified as needed over time. Note that all of these examples have a special focus on respectful, civil behaviors (not just *un*civil ones)—a point we return to at the end of this article.

The dangers of civility

Interventions such as Leading for Respect and CREW assume that civility is a good thing for organizational life. Its inverse, *incivility*, can derail work and well-being, as noted earlier. Experts in workplace mistreatment (not only incivility but also harassment, bullying, abusive supervision, and the like) advocate civility and respect as progressive goals to strive for—essential components of a healthy, hostility-free work environment (e.g., Feldblum & Lipnic, 2016; Osatuke et al., 2009; Yamada, 2010). Cortina (2008; see also Cortina, Kabat-Farr, Leskinen, Huerta, & Magley, 2013; Kabat-Farr & Cortina, 2012) adds that cultures of respect can help protect against discrimination aimed at women, people of color, and other undervalued minorities. Respectful conduct is also an element of all statements and declarations regarding academic freedom and tenure issued by the American Association of University Professors (AAUP[1]) over the past century (Wilson, 2015). From this perspective, calls for civility serve the purpose of protecting the health and well-being of the academic workforce; the objective is to create dignified working conditions for all faculty, no matter their gender, race, age, or tenure status.

Some scholars, however, see a dangerous side to civility, especially when applied to academic behavior. Take, for instance, Wilson's (2015) account of the firing of biologist Leo Koch from UIUC in 1960; although the uncivil tone of Koch's campus newspaper editorial was invoked as the primary motivation for his dismissal, the real reason according to many was that Koch's views were distasteful to prominent members of the community. Incivility was merely a pretense to silence a faculty member with unpopular opinions.

Recent years have seen a number of critical essays on civility surface in the humanities. According to historian Michael Meranze (2014), "The repetitive invocation of 'civil' and 'civility' to set limits to acceptable speech bespeaks a broader and deeper challenge to intellectual freedom." Another historian, Joan Scott (2015), posits, "The notion of civility consistently establishes relations of power whenever it is invoked. Moreover, it is always the powerful who determine its meaning—one that, whatever its specific content, demeans and delegitimizes those who do not meet its test." In other words, those in power get to dictate what counts as *civil* and then use that to discredit dissident voices. Also gesturing to issues of power, media studies scholar Andrew Calabrese (2015, p. 540) argues that civility can be "wielded as a weapon to limit, silence or otherwise control the free expression of the weak." Once people are labeled *uncivil*, they lose credibility in the eyes of others, and their ideas lose purchase (Scott, 2015). In short, these scholars argue that insidious agendas sometimes lurk beneath seemingly benign appeals to civility in the academy. They also point to the possibility that civility expectations violate First Amendment rights to free speech (more on this below).

Research on employee voice behaviors may also be relevant here. Van Dyne, Ang, and Botero (2003) suggest that fear of negative consequences for oneself may lead someone to engage in "defensive silence." If an attempt at prosocial voice might merely lead to the label "uncivil," then one might choose to remain silent. Along these same lines, psychological safety has been linked to voice such that those who perceive there to be low safety are less likely to speak up (Detert & Burris, 2007). A strong climate for civility should have many benefits, but it might also decrease psychological safety, even among those with no intent to harm others, possibly resulting in fewer voice behaviors. Efforts to reduce uncivil speech might therefore achieve their goals but at the expense of other, valued forms of speech.

It is also worth remembering that one can do harm to another even while behaving with great civility. Winston Churchill once famously said, "When you have to kill a man, it costs nothing to be polite." So it is entirely possible to take someone down (or send them up, for that matter) but to do so with a respectful demeanor. As a less dramatic example, we have an entire literature

[1]A nonprofit membership association of faculty and other academic professionals, the AAUP's mission is to protect academic freedom and define core professional values and standards in higher education. Its statements have shaped policy at American colleges and universities for decades.

on social undermining, which Duffy, Ganster, and Pagon (2002) define as "behavior intended to hinder, over time, the ability to establish and maintain positive interpersonal relationships, work-related success, and favorable reputation" (p. 332). There are many ways to accomplish this without any loss of decorum. In short, incivility has a host of negative effects, but there are many ways to generate those same effects while maintaining a façade of respect.

In a nutshell, there are many lenses through which we can view (in)civility in employment. Though sometimes framed in binary terms (good–civility versus bad–incivility), the issue is anything but simple. Some view pro-civility efforts in public employment as a threat to constitutionally protected free speech, a topic we turn to next.

The jurisprudence of free speech in the workplace

A common argument *against* civility appeals in the academy is that such appeals (and resulting policies and practices) infringe on First Amendment rights to freedom of expression. An analysis of that viewpoint requires an accurate understanding of First Amendment jurisprudence, especially as it applies to faculty in higher education. Before reviewing relevant case law, let us delve into a bit of legal mechanics.

Stare decisis is a phrase that is uttered in legal circles, often during confirmation hearings for United States Supreme Court justices. It encapsulates the Common Law principle that prior decisions, though not exactly binding, curb any tendency of courts to make a different one. If the courts failed to abide by this doctrine, the law would be in constant flux with judges not having to even consider, much less follow, previously decided cases. This principle allows lawyers and litigants alike to have a bit of certainty in the law and tailor their actions accordingly.

One thing that s*tare decisis* does not do is prevent future courts from distinguishing facts from one case to the next. It is rare for two cases to have the same facts, so precedential cases may not always be applied in the same, mechanical fashion. The ability to interpret the law and distinguish facts helps courts avoid having to force the proverbial square peg into a round hole.

The cases revolving around First Amendment rights in the workplace often rise to the level of the federal courts because the First Amendment is part of the United States Constitution (federal, not state, law). The United States Supreme Court, being the body with the final say on the interpretation of the law, is the primary court where we find the evolution of constitutional jurisprudence, so many precedential cases involving the First Amendment are borne from there.

In the following pages, we discuss several federal court decisions regarding freedom of speech in employment, in order from oldest to newest. These cases were chosen because they show the evolution of how courts have interpreted free speech in the workplace, and they also demonstrate that "uncivil" behavior to one person may, to another, be an assertion of constitutional rights. This method of reviewing precedential case law will illustrate the ever-changing legal landscape and the way that different facts in different cases produce varied results, but sometimes allow for the creation of new law. Table 1 summarizes the key conclusions of each case reviewed below.

Pickering

We begin with *Pickering v. Bd. Of Education of Township H.S. Dist.* (1968). In *Pickering*, the plaintiff was a teacher who was fired from his position for sending a letter to the newspaper in connection with a proposed tax increase. The letter was critical of how the Board and the district superintendent of schools had handled past proposals to raise new revenue for the schools. The U.S. Supreme Court held that the plaintiff's rights to freedom of speech were violated with the termination and reversed all of the lower courts that had upheld his firing.

In this case, the school board held a hearing about Pickering's letter and found that it was detrimental to the efficient operation and administration of the schools of the district, and that

Table 1. Summary of key court decisions on free speech protections in the public academic workplace

Case	Key conclusion(s)
Pickering v. Bd. Of Education of Township H.S. Dist. (1968)	A public employee's speech may be protected by the First Amendment if it meets two criteria:
	(1) the speech regards a matter of public concern;
	(2) the employee's right to speak on matters of public concern outweighs the interests of the institution in efficiently maintaining the workplace.
Connick v. Myers (1983)	A public employee's speech may be protected if it addresses a matter of public (not private) concern.
Garcetti v. Ceballos (2006)	A public employee's speech may be protected if the employee is speaking as a citizen, not an employee (i.e., the expression was *not* pursuant to the employee's official job duties).
	Note: Justice Souter submitted an important dissent, hoping that "today's majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to . . . official duties.'"
Gorum v. Sessoms (2009)	Elaborating on the *Pickering* analysis: Held that speech is about a "public" concern when it addresses a social or political concern of the community.
	Elaborating on the *Garcetti* analysis: Held that expected job duties often go beyond those laid out in formal job descriptions. Added that speech might be part of job duties if it relates to "special knowledge" or "experience" acquired on the job.
Demers v. Austin (2014)	Held that *Garcetti* does not apply to academic "teaching and academic writing." Also that "academic writing" includes not only scholarship but also "memoranda, reports, and other documents addressed to such things as budgets, curricula, departmental structures, and faculty hiring."

such a finding warranted his dismissal. The Supreme Court, however, found that subjects such as the funding of school systems were so important that

> free and open debate is vital to informed decision-making by the electorate. Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operations of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal. (*Pickering v. Bd. Of Education of Township H.S. Dist.*, 1968, pp. 571–572)

Pickering was a *case of first impression* for the high court, meaning that questions of interpretation arose that had not appeared in prior cases. As a result, for the first time, the court fashioned a test for lower courts to follow. Under this case, the Court held that a balancing test must be used to determine if a public employee's speech was protected by the First Amendment. The test was in two parts. First, the speech must be regarding a matter of public interest. If it is, then the interests of the public body in efficiently maintaining the workplace[2] must be weighed against the employee's right to speak on matters of public concern. It is in this second *Pickering* test that civility becomes relevant. Assuming that a statement is made regarding a matter of public interest, the less civilly the statement is made, the more likely it is to compromise the efficient maintenance of the workplace. If one addresses a matter of public concern but does it in a way that makes the

[2]Wondering how to operationalize "efficient maintenance of the workplace"? Each situation is different and therefore must be taken on a case by case basis. Because of this, there is no rigid definition of the phrase.

workplace noticeably more acrimonious, then the result of the second *Pickering* test may supersede the result of the first. In any case, if the balance falls in favor of the employee, as it did in this case, then the speech was protected; if not, then it was not protected.

Connick

After *Pickering*, the U.S. Supreme Court did not have an occasion to take up this topic again until *Connick v. Myers* (1983). In *Connick*, a former assistant district attorney in New Orleans, Louisiana, claimed that her employment was terminated because she exercised her constitutionally guaranteed right of free speech. The U.S. Supreme Court disagreed and held that her discharge did not violate her constitutional rights.

In this case, Sheila Myers, an assistant district attorney, was informed that she would be transferred to prosecute cases in a different section of the criminal court, and she was opposed to the transfer. ADA Myers's opposition was directly shared with several of her supervisors, including the district attorney, Harry Connick.[3] Despite her objections, Myers was still set to be transferred, so she again voiced her objections with one of her supervisors. The supervisor discussed the topic with her, along with other issues Myers raised. At the end of the conversation, Myers was informed that her views were not shared by others in the office.

After this latest discussion with her supervisor, Myers prepared a questionnaire seeking views of her fellow staff members concerning office transfer policy, office morale, the need for a grievance committee, the level of confidence in supervisors, and employee perceptions of pressure to work in political campaigns. The next morning, Myers distributed the survey to several other assistant district attorneys. When a supervisor learned of the distribution, he phoned Connick and told him that Myers was creating a "mini-insurrection" in the office. Connick returned to the office and told Myers that she was being terminated for refusing to accept the transfer, and she was also told that her distribution of the survey was considered an act of insubordination.

Myers sued, claiming that her First Amendment rights were violated by the termination, and the case eventually made it to the U.S. Supreme Court. The Court began its analysis by citing *Pickering* and noting the issues that it resolved and the test that was formed in its decision. In this case, the Court noted that the emphasis in *Pickering* on the right of a public employee "as a citizen, in commenting upon matters of public concern" was not accidental. In particular, the Court stated that while public employees have rights, there must also be a "common sense realization that government offices could not function if every employment decision became a constitutional matter."

After reviewing the facts of the case, the Court held that when a public employee speaks not as a citizen upon matters of public concern but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.

Although the court in *Connick* performed a *Pickering* analysis to determine if Myers's rights were violated, it found itself needing to create a new test to determine if speech was public or private. Here, the Court found that whether an employee's speech addresses a matter of public concern must be determined by the "content, form, and context of a given statement, as revealed by the whole record" (*Connick v. Myers*, pp. 147–148). In reviewing the survey distributed by Myers, the Court found that only one of the questions posed by Myers dealt with matters of public concern. The Court stated that the "questions reflect one employee's dissatisfaction with a transfer and an attempt to turn that displeasure into a cause celebre" (p. 148).

[3]No, not that Harry Connick, but his father, Harry Connick, Sr.

Garcetti

After *Connick*, the Supreme Court did not revisit this topic again until 2006, in *Garcetti v. Ceballos* (2006). Coincidentally, *Garcetti* also pertained to an assistant prosecutor, but this time it was in California not Louisiana. Ceballos, the respondent in this case, was a deputy district attorney who was terminated for writing a memorandum, which was part of his job, that recommended dismissal of a case due to governmental misconduct. The question presented to the Court was whether the First Amendment protects a government employee from discipline based on speech made pursuant to the employee's official duties.

Before reaching the U.S. Supreme Court, the Court of Appeals for the Ninth Circuit ruled on the case and found that the Ceballos memo, which recited what he thought to be governmental misconduct, was inherently a matter of public concern and reversed the lower court; that court had ruled against Ceballos by holding that the memo was part of his official duties and was therefore not public speech entitled to constitutional protection. The Supreme Court, however, reversed the Court of Appeals and noted that the appellate court did not consider whether the speech was made in Ceballos's capacity as a citizen.

In the *Garcetti* case, the Court found that the controlling factor was the fact that his expressions were made pursuant to his duties, which made his speech not one of a citizen but one of an employee. The Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline" (*Garcetti v. Ceballos*, 2006, p. 421). It seems, therefore, that the *Garcetti* decision set a new precedent. Statements pursuant to official duties are not protected regardless of their civility, their effect on the workplace, and so on.

What is also important about this case is found in the dissent by Justice Souter. In his dissent, Justice Souter showed great concern about how the majority's opinion could be used to infringe upon the teaching or publishing activities of academics. He stated: "This ostensible domain beyond the pale of the First Amendment is spacious enough to include even the teaching of a public university professor, and I have to hope that today's majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to . . . official duties'" (*Garcetti v. Ceballos*, 2006, p. 438).

Justice Souter's dissent shows a real concern for academic freedom. If a university professor's speech is never protected while teaching or publishing because such actions are inherently part of the professor's employment, then a professor could be terminated for anything said in the classroom or anything written in a scholarly article (even an *IOP* piece!). The majority opinion in *Garcetti* recognized that their analysis could have negative implications for academic speech, but the majority chose not to address the issue because that was not a question that was before them. They saved the discussion for another day.

Gorum

Two cases, *Gorum v. Sessoms* (2009) and *Demers v. Austin* (2014), illustrate the application of the *Pickering* and *Garcetti* analyses to public academic employment; they also expand on elements those analyses. In *Gorum*, a tenured professor sued, claiming that he was terminated for views that he expressed in three instances and that the reason stated by the university for his termination—an audit of his submitted grade changes found that he had improperly changed grades for 48 different students—was merely a pretense.

Dr. Gorum claimed that three acts of speech were the reasons for his dismissal: his objection to the Faculty Senate of the selection of Dr. Sessoms as university president; his advising of a student-athlete who violated the University's zero-tolerance policy against the possession of weapons; and Gorum's rescission of an invitation to Sessoms to speak at a student group's prayer breakfast.

Although it is clear that the court found Gorum's arguments to be mere pretexts that had little to no merit, it still engaged in an analysis of each of Gorum's arguments.

The court began by looking to the test set forth in *Garcetti*. In order for his speech to be protected under the First Amendment, Gorum's speech must have been made as a citizen not an employee, it must have involved a matter of public concern, and the government must not have had an adequate justification for treating the speaker differently than other employees. Gorum was unable to meet this test.

Under *Garcetti*, a public employee does not speak as a citizen when he makes a statement pursuant to his official duties. Simply put, the First Amendment does not shield employees from the consequences of expressions that they make pursuant to their professional duties. To determine whether Gorum's speech was related to his official duties, Gorum claimed that he was speaking as a citizen, not as a professor, when he assisted the student-athlete because such assistance went beyond the duties specified in the collective bargaining agreement with the university. The court, however, noted that the determination of whether speech is part of an official duty or not is a practical one and that "formal job descriptions often bear little resemblance to the duties an employee actually is expected to perform" (*Gorum v. Sessoms*, 2009, p. 185). The court continued by noting its previous decision that a claimant's speech might be a part of his official duties if it relates to "special knowledge" or "experience" acquired through the job (*Gorum v. Sessoms*, 2009, p. 185, citing *Foraker v. Chaffinch*, 2007). Under this analysis, the court ruled unanimously that Gorum, being the *de facto* advisor to all students with disciplinary problems, made his speech in support of the student-athlete as part of his official duties. Further, his revocation of the invitation to Sessoms to speak at a prayer breakfast was also part of his official duties because the Faculty Senate bylaws included faculty involvement with and advising of student organizations and clubs as part of every faculty member's duties.

The court also found that Gorum's speech was not speech about a public concern because it did not generally address a social or political concern of the community. Finally, the court held that Gorum failed to prove that his speech, even if it was protected speech, was a substantial factor in Sessom's decision to terminate his employment.

The court briefly touched on the fact that the Supreme Court in *Garcetti* did not determine whether the "official duty" analysis would apply to speech related to teaching or scholarship. Citing *Garcetti*, the court recognized that "there is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by . . . customary employee-speech jurisprudence" (*Gorum v. Sessoms*, 2009, p. 186, citing *Garcetti v. Ceballos*, 2006). Although the court mentioned this concern, it found that Gorum's speech was clearly not related to scholarship or teaching, which alleviated further analysis in the case.

Demers

Then, in 2014, a court finally decided the issue of how the First Amendment applied to teaching and writing on academic matters. With this issue never having been decided before, the Court of Appeals for the Ninth Circuit, in *Demers v. Austin* (2014), held as a matter of first impression that the *Pickering* test, rather than the *Garcetti* test, applied to academics regarding their teaching and writing on academic matters.[4]

[4]*Demers* is a case from the Court of Appeals for the Ninth Circuit, so it is "binding authority" for that appellate court and all district courts within the Ninth Circuit (i.e., district courts in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands). In other words, those courts *must* follow that precedent. Outside the Ninth Circuit, *Demers* is considered "persuasive authority," which is authority that a court should consider though is not required to do so.

In the case, Demers contended that Washington State University (WSU) retaliated against him by giving him negative performance reviews that contained falsehoods, by conducting two internal audits, and by entering a formal notice of discipline. He claims that he essentially went from being a popular professor to one marked for termination. His argument was that the university retaliated against him because of his publication of a seven-step plan, which was a plan to divide the Edward R. Murrow College of Communication ("Murrow School") into two schools, and his distribution of draft chapters of his book online that contained some negative commentaries about WSU.

The court noted that Dr. Demers was a member of the Structure Committee of the Murrow School, so part of his job as a professor was to help determine whether to keep the school as a single college or to divide it into two schools—one for Mass Communications, with professional and practical applications, and one for Communication Studies. Demers supported the idea of dividing the Murrow School into two schools and strengthening the Mass Communications faculty by appointing a director with a strong professional background. Although the court does not specifically state this, it is clear that Demers, a former professional reporter, was angling for the director position because he not only supported the idea, but, in a letter to the Provost, he offered to donate $100,000 to the university to achieve this goal. The letter also noted how he sent his seven-step plan to members of the print and broadcast media, administrators, some colleagues, and others. In addition, he posted his plan on his private company's website. He did not, however, submit the seven-step plan to the Structure Committee.

The university defended against the First Amendment claim by arguing that under *Garcetti*, Demers's speech was part of his job as a professor, which therefore meant that it was not "private speech" that was entitled to First Amendment protections. Under this argument, it did not matter whether Demers's allegations were true or not, because if his speech was not private speech, there was no protection for it. Demers argued that his seven-step plan and the draft chapters of his book were not pursuant to his official duties at the university and therefore constituted "private speech" entitled to protection. He also argued in the alternative that *Garcetti* did not extend to speech and academic writing of a publicly employed teacher. The court agreed with his second argument.

The *Demers* court noted that "teaching and academic writing are at the core of the official duties of teachers and professors. Such teaching and writing are 'a special concern of the First Amendment'" (*Demers v. Austin*, 2014, p. 411, quoting *Keyishian v. Bd. of Regents of the Univ. of the State of NY*, 1967). The court concluded that if it applied *Garcetti* to teaching and academic writing, such an application would directly conflict with the important First Amendment values noted by the U.S. Supreme Court, which is deeply committed to safeguarding academic freedom. In quoting *Shelton v. Tucker*, a Supreme Court case from 1960, the court stated that "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools" (*Demers v. Austin*, 2014, p. 411).

The court concluded that *Garcetti* did not and could not apply to teaching and academic writing performed pursuant to official duties. Such speech is protected under the analysis first provided in *Pickering*. Under *Pickering*, a two-part test was promulgated for other sorts of speech. First, the employee must show that the speech covered matters of "public concern" and second that the employee's interest in commenting on such matters must outweigh the interest of the State in promoting the efficiency of the public services it performs through its employees.

In determining if Demers's speech related to matters of public concern, the essential question was whether the speech addressed matters of public as opposed to personal interest. In its analysis, the court took great care to state that *(Demers v. Austin*, 2014, p. 416) "protected academic writing is not confined to scholarship. Much academic writing is, of course, scholarship. But academics, in the course of their academic duties, also write memoranda, reports, and other documents addressed to such things as budgets, curricula, departmental structures, and faculty hiring."

The court reviewed the seven-step plan and easily concluded that this plan, although not submitted to the Structure Committee, was part of Demers's official duties as an academic at a public university and clearly related to matters of public concern. The plan contained serious suggestions about the future course of an important department of WSU, allowing the court to conclude that Demers's speech was of public concern.

Unfortunately, the court did not apply the second part of the *Pickering* test in this case, because such an analysis was not conducted by the trial court. The trial court had applied *Garcetti*, not *Pickering*, and did not make any findings of fact relating to whether the university had a sufficient interest in controlling or sanctioning Demers's circulation of his seven-step plan. The case was remanded back to the trial court for further findings in line with the holding of the Court of Appeals for the Ninth Circuit and has since been settled under undisclosed terms.

Understanding the progression of case law from *Pickering* to today only allows us to scratch the surface on the regulation of speech in the public academic workplace. Take, for example, a professor at a public university who refers to a student of Jewish descent by using an anti-Semitic slur while teaching a class. Is that speech protected by the First Amendment? Does the fact that the professor believed that the student thought it was funny make a difference? Another example would be one faculty member yelling obscenities at another during a meeting. Would that be protected under the First Amendment, or is that outside of its protective shield? It is not clear how the high court would or should rule on these matters. Before we tackle these issues, however, let us return to the case of Professor Steven Salaita that began our article (*Salaita v. Kennedy*, 2015).

Salaita

Salaita had been offered an associate professorship at the University of Illinois, so he quit his position at Virginia Polytechnic Institute and State University and moved his family to Illinois. After he resigned from Virginia Tech, a skirmish broke out between Palestine and Israel that resulted in the death of approximately 2,100 Palestinians, including more than 500 children. Salaita took to his personal Twitter account and was highly critical of Israel's actions, using profanity-laden rhetoric in his criticism. In response to these tweets, the University of Illinois initially supported his right to speak on topics of public importance but eventually changed its mind after students complained and alumni threatened to pull donations. One missive to the university by a "multiple six-figure donor" stated that monetary support would cease due to Salaita and his tweets (*Salaita v. Kennedy*, 2015). Eventually, the university's Board of Trustees met and voted 8–1 to deny his appointment as a professor, despite the fact that he had already quit his previous post and relocated to Illinois. Were Salaita's posts on social media protected speech? His litigation against the University of Illinois eventually settled privately, so no court had an opportunity to flesh out all of the facts in the case and make a final ruling.

First Amendment cases are highly fact specific, so it is difficult to determine whether or not certain conduct has protections without delving into the myriad facts emerging from every situation. All of the cases reviewed above pertained to employees in the public sector—prosecutors, professors at state institutions, and so on. The reason for this is simple yet often overlooked. Absent contractual or other concessions given by private institutions to the professors they employ, the First Amendment only protects people from actions of the government and has no ability to limit or regulate purely private conduct. In other words, the First Amendment does not generally protect professors from employer discipline at private colleges and universities. If conduct appears "private" but is in actuality a "state action," then First Amendment protections may apply. Such situations must be reviewed on a case-by-case basis in order for such a determination to be made, because exceptions to the law are sometimes more abundant than the law itself.

Other legal mechanisms that protect academic speech

Beyond the First Amendment, academic speech can also be protected (or threatened) by university policies and principles, especially those surrounding tenure. Some faculty are also unionized, entering into collective bargaining agreements that could be relevant to uncivil speech and disciplinary actions. We discuss these issues next.

University policies, principles, and tenure

Again we return to the AAUP and its statements, which have long shaped policy in American higher education. Over the years, civility has waxed and waned in importance in AAUP codes of faculty conduct. As Wilson (2015) explains, the hubbub over the firing of University of Illinois professor Leo Koch in 1960 led to important changes in the AAUP Statement of Principles on Academic Freedom and Tenure. At the time, UIUC claimed that Koch was fired not because of *what* he said in the campus newspaper, but rather *how* he said it. In a nutshell, Koch was fired for incivility (or so it was claimed). In a way, this was consistent with the AAUP Principles that existed at the time. The 1940 version of the Principles "imposes special obligations" on faculty regarding not only accuracy but also tone. In the wake of the Koch affair, the 1964 version of the Principles merely "calls attention to special obligations." As Wilson puts it, in the 1964 version, the obligation "rests on the conscience of individual faculty members rather than being imposed by the institution" (p. 9). Put another way, one could square the Koch firing with the 1940 Principles but not with the 1964 Principles.

In response to its censure over the Koch firing, UIUC put in place some of the strongest academic freedom protections in the country (Wilson, 2015). These statutes do state that professors "should be mindful" of the need to act with dignity befitting the institution, and it can certainly be argued that Salaita was not mindful of this need in his tweets about Israel. However, the statutes go on to say that if the university president feels that a professor had failed to exhibit the appropriate level of dignity, then he or she can "publicly dissociate the Board of Trustees and the University from and express their disapproval of such objectionable expressions." In other words, the president can scold uncivil faculty and denounce them publicly, but not fire them.

This leads us to the related topic of tenure. University statutes are often guided by language in various AAUP documents. As a result, local protections afforded by tenure create an additional layer of insulation for any foul-mouthed faculty member. It is difficult enough to fire or even sanction a tenured faculty member who engages in acts of aggression or abuse because tenure stipulations, understandably, tend to err on the side of academic freedom. If more severe behaviors with less ambiguous intent are protected by tenure, then incivility seems utterly beyond the long arm of the university law.

Collective bargaining

Public university professors sometimes unionize and engage in collective bargaining with the institution.[5] Such collective bargaining agreements (CBAs) often deal with many aspects of employment, including the procedures for when the institution seeks to suspend, terminate, or otherwise discipline a professor. CBAs could limit the free speech rights of the faculty and also provide them with due process so that they have an opportunity to contest any attempts to curtail their speech.

This idea then begs the question of whether people are able sign away their constitutional rights in a contract. What may surprise many is that constitutional rights can be contracted away so long

[5]Note that unionization is not limited to public institutions; private university professors can also unionize and obtain the protections of a CBA.

as certain criteria are met. Speech rights are not absolute (*Tennessee Secondary Sch. Athletic Ass'n v. Brentwood*, 2007). Constitutional rights may be contractually waived where the facts and circumstances surrounding the waiver make it clear that the party foregoing its rights has done so of its own volition, with full understanding of the consequences of its waiver (*Erie Telecomm., Inc. v. City of Erie*, 1988). It is the facts and circumstances of each particular case, including the background, experience, and conduct of the waiving party, that determine whether a waiver of constitutional rights was done voluntarily, knowingly, and intelligently (*Johnson v. Zerbst*, 1938). In a criminal case, the accused may have the "right to remain silent," but that does not mean that she or he has the absolute obligation to do so.

Knowing that a professor's free speech rights can be waived, an institution could seek to include in its CBA with the faculty a limitation or waiver of such rights. Professors that are subject to the CBA would have their rights limited in whatever way the CBA states. With such a contract, an institution could discipline or even terminate a professor due to that professor's speech. The union, through the CBA, would almost certainly require that the institution give its members due process and an opportunity to challenge any such discipline. Further, the CBA could limit the type of discipline that can occur due to a professor's speech. Discipline for speaking could be limited by the CBA to prevent the institution from wielding too much power over the professors. Such discipline could range from proverbial slaps on the wrist (e.g., statements in a professor's employment file) to substantially harsher punishment (e.g., removal from a position of leadership).

Although it is possible for a public institution to seek to limit faculty speech through a CBA, it is extremely unlikely that a union representing professors would ever grant such a concession to a university; it is also unlikely that a university would desire to stifle academic debate or participation in the marketplace of ideas (or at least to appear to do so). The more realistic scenario is that a union would seek to buttress its members' speech rights through the CBA. Contracts are between two or more entities, and each side must give something up in order for an agreement to have consideration and be legal and enforceable. A CBA could include protections for professors in the form of absolute proscriptions from employee discipline due to an employee's exercise of freedom of speech. Further, the CBA could (and almost certainly would) include provisions that require any disciplinary action against a professor be subject to due process in order to allow the union to challenge any adverse actions through a grievance process.

The many sides of civility

Our journey through law and policy has hopefully made clear that academic rights to free speech are neither simple nor static. Now, what has all this got to do with workplace incivility? Glad you asked. Our point is that one can view academic incivility from a variety of vantage points: workforce wellness, censorship, voice, and the law to name a few. The differing perspectives give rise to different, sometimes conflicting, conclusions about acceptable versus unacceptable conduct in the academic workplace. How can industrial and organizational (I-O) psychology help us to navigate this morass?

It seems that the courts have drifted toward the following regarding the conduct of professors. First, in the interest of protecting academic freedom, the courts lean toward the notion that teaching- or scholarship-related speech is, *ipso facto*, of public concern and therefore passes the first *Pickering* test. Second, speech within the context of administrative duties, committee work, and even student advising probably falls into the first *Pickering* category and is therefore likely protected as is noted in *Demers*. Third, we can perhaps judge from the absence of case law that universities are reluctant to punish faculty for questionable, scholarship-related speech. This reluctance can even be seen in the initial (i.e., prior to the threats of wealthy donors) response of UIUC Chancellor Phyllis Wise to Salaita's tweets. In any case, if a university were to attempt

to punish a faculty member for uncivil, scholarship-related speech, it seems likely that such speech would pass the first *Pickering* test (matter of public concern) for the same reasons as teaching-related speech.

This leaves us with the second *Pickering* test as it relates to teaching- and scholarship-related speech: Does the employee's right to speak on matters of public concern outweigh the interests of the institution in efficiently maintaining the workplace? Incivility is, by definition, low intensity (Andersson & Pearson, 1999). One might therefore assume that it cannot do a great deal to harm the university as a workplace. Although it cannot do much for the public good either, the teaching- or scholarship-related context within which it occurs *can*. So, at first blush, it seems that incivility in this context must be protected, whereas more overt forms of interpersonal deviance such as bullying and threats, because of their effects on the workplace, are not.

As pointed out earlier, however, research shows that serial incivility has serious consequences, not only for targets but also for witnesses and workgroups (e.g., Cortina et al., 2017; Hershcovis et al., 2017). Especially when recurring, incivility can spread like second-hand smoke, harming everyone who shares the same environment. Put another way, a single instance of threatening behavior is no worse than ongoing acts of rude, demeaning, dehumanizing conduct. If threatening a student in class fails the second *Pickering* test because of its damage to the university, then so should repeated expressions of condescension and contempt.

Through the lens of the law

Let us consider a few possible scenarios, all based on experiences of one or more of the authors. What would the law have to say about these scenarios, especially if the person in question were fired for this behavior, and then sued the university about this disciplinary action? And for that matter, what would I-O psychology say?

1. *A faculty member is in the audience of a conference panel discussion. Another member of the audience directs a question to the panel. The first faculty member cuts off the questioner, saying to the room, "That's ridiculous" and then asks his own question of the panel. This is a reoccurring behavior, though the target is always different.*
2. *In one division of a department, faculty are in the habit of being openly patronizing and dismissive of the conclusions drawn by job candidates during their job talks.*
3. *In faculty meetings, a faculty member repeatedly singles out another faculty member for public criticism regarding grade inflation. The criticism is delivered with a contemptuous tone and insulting words—sometimes including profanity.*
4. *In a comment to an* IOP *focal article authored by three siblings, a dissenter muses about the hereditary twists and turns that would have resulted in three people being of the same misguided mind on the topic of the article.*

From a legal perspective, the behaviors in each of these scenarios might or might not be construed as conduct protected by the First Amendment. But they might also be seen in such a way that they pass both parts of the *Pickering* test. If so, then they may be protected by the First Amendment, and therefore not "fireable offenses" (or even punishable ones). Let us consider them one at a time.

The uncivil audience member

A panel discussion is an interactive sort of thing. Audience participation is part of the point. So technically, this is scholarship-related behavior, and as a result, *Pickering* applies. Because they are part of the scholarship process, comments during the panel discussion constitute public matters/speech. But there is still a need to apply the second part of the *Pickering* test. The culprit did not

make any sort of argument. He was merely embarrassing to his institution. As a result, it is not clear that this passes the second part of the *Pickering* test (balance between efficient maintenance of the workplace against the employee's right to speak). Had the culprit said, "That's ridiculous because . . . " then it would have been easier to tie the behavior to the public good because it would have represented an attempt to shift opinion from a less to a more rational position. As it is, the contribution of the outburst does not seem to clearly outweigh the damage to the reputation of the institution. That said, it seems likely that the court would err on the side of academic freedom.

The uncivil job talk attendee

Although this is not teaching, it is related to the duties of being an academic, as we saw in the *Demers* decision. So, again, *Pickering* applies. The point of being on an institution's hiring committee and participating in faculty job talks is not only to discern the depth and breadth of job candidates' knowledge but (some would argue) also to challenge their conclusions and ensure that they have the academic fortitude to defend their positions. That being said, being openly hostile to job candidates simply for the sake of being hostile could cause a court to tip the scales in favor of the institution trying to efficiently maintain the workplace over the hostile professor's right to speak, should the institution attempt to curtail such behavior with formal discipline.

The uncivil critic of grade inflation

Though not in the classroom, this does seem to be teaching related, so it should pass the first part of the *Pickering* test. Whether it passes the second *Pickering* test would depend on a variety of facts. Does the target actually dish out more As than other faculty? If so, can it be demonstrated that the As are undeserved? If the critic has no answers to these questions, and cannot be bothered to obtain them, then it is difficult to distinguish the criticism from invective. Baseless public attacks can do a great deal of damage to the climate of an academic workplace, so it may not be clear that the criticism does any public good. If true, then the behavior may not pass the second prong of a *Pickering* analysis. If, instead, evidence were presented, then the connection of the behavior to the public good would be much more apparent, and the *Pickering* analysis may result in the scales being tipped in favor of protecting the speech.

The uncivil IOP commenter

This comment is clearly scholarship related, so it passes the first part of the *Pickering* test. Because it is purely ad hominem, it cannot contribute much to the public good. On the other hand, it only happened once. Thus, it may not do enough harm to fail the second part of *Pickering*. If it happened repeatedly, then the harm to the targets and to the reputation of the culprit might outweigh any benefits.

Through the lens of I-O psychology

What conclusions would we arrive at if, instead of a legal lens, we viewed these situations from I-O perspectives, such as employee well-being or turnover? It might be entirely legal for faculty to insult job candidates or interrupt incessantly in meetings, but that makes the behavior no less rude. Everyday disrespect can poison the institutional environment for not only the target but also witnesses (Hershcovis et al., 2017), workgroups (Lim et al., 2008), and even students (Caza & Cortina, 2007). Well-being suffers. Work suffers. Education and learning suffer. As a result, valuable faculty and staff leave to find employment elsewhere (Cortina et al., 2013, 2017); they do not stick around to see their students and colleagues disparaged, and they certainly

do not want to become the next target. The law should not be our only guide post, and perhaps not even our primary guide post, when deciding what behavioral ideals to embrace in university life.

Public institutions may be legally prohibited from *mandating* respectful conduct on campus, but they can certainly *encourage* it. They can also discourage disrespect and do so in ways that do not silence critical speech. Many faculty members set ground rules in their classrooms, teaching students how to disagree respectfully, debate without insult, and levy challenges without launching into venomous attacks on their peers. Why not set similar ground rules in faculty colloquia and committee meetings? Why not make clear to colleagues that mockery is *verboten* in thesis defenses—that one can press students to defend their ideas without ridiculing them or raking them over the coals? Disrespect in the academic context can be deeply counterproductive, failing to advance the teaching, research, or service mission of the public university (assuming assholery is not part of that mission).

It is also important to recognize that academic leaders can take many steps to discourage disrespectful behavior without engaging in the formal actions that can trigger litigation. Although it is true that the threat of dismissal is a lever for behavior change, we know from I-O psychology that there are others. There are perks that can be withheld from those who are relentlessly rude. There are mission statements and goal statements that can establish norms of respect. There are performance appraisals that can include assessments of interpersonal citizenship. There is search committee training, teaching how job candidates can be evaluated for excellence without resorting to rudeness. There is coaching to help faculty learn new ways of communicating and resolving conflicts. Our point is that academic leaders need not resort to termination, demotion, or other formal discipline when seeking to confront and curtail rude conduct. I-O psychology offers many practical strategies that can be deployed to cultivate a culture of dignity in academic work.

Rather than solely dwelling on prohibition of bad behavior, interventions in academic (and other) workplaces can also promote the positive. Supplement the "do not be naughty" admonishments with accolades for people who stand out for being exceptionally kind. Universities routinely recognize faculty for excellence in research and teaching; why not add awards for outstanding acts of altruism or humanity? Attach a cash prize to show that the institution places a premium on respect. Let faculty and staff at all levels determine who wins such awards so that it is not just those "at the top" who decide what counts as kind. As mentioned earlier, there are also training programs (e.g., the EEOC's *Respect in the Workplace* and *Leading with Respect*, 2017a, 2017b) that foster shared understandings of respect and inclusivity. In short, it is important that organizations (in academia and beyond) tend to the social side of work: Define it, promote it, reward it.

Research it as well: Apply the tools of I-O psychology to study respectful workplace interventions in higher education. We need to know more about what works, what does not, and why. We also need to know this for the academy—a somewhat unique organizational context. As noted earlier, some academic venues are known for being contests of condescension and interruption. In addition, faculty tend to be fiercely protective of their own autonomy (Keashly & Neuman, 2010). Many do not hesitate to impose a "code of conduct" on students, but they bristle at the suggestion that such codes be applied to themselves. Is it possible to reign in the rudeness of such an independent breed of employee without stomping on their free speech rights? This is an empirical question and one that is ripe for I-O research.

Another dynamic deserving empirical attention is the "star culture" found in many institutions, where some faculty are just so brilliant, so celebrated, or so successful at securing grant dollars that they feel above the rules—entitled to behave badly if they so choose (National Academies of Sciences, 2018). Because stars can and do boost departmental reputations and rankings, should we tolerate their dickishness? Look the other way when their insults undermine colleagues' work and well-being? Complicating matters further, star-perpetrated incivility may pack a larger punch than incivility enacted by others. We see hints of this in research on top-down hostility. For example, Hershcovis and Barling (2010) meta-analyzed 55 independent studies to compare effects of

workplace aggression perpetrated by higher ups (i.e., supervisors) versus coworkers. They found that, compared to coworker aggression, supervisor aggression has a significantly stronger relationship to the targeted employee's job satisfaction, job performance, commitment to the organization, thoughts and intentions of leaving the organization, and general health. From this, we might surmise that incivility from academic superstars, who tend to have a lot of clout, is especially problematic in interfering with "efficient maintenance of the workplace." Such conduct may therefore fail the second prong of a *Pickering* analysis. This illustrates how I-O research may be brought to bear on legal questions surrounding civility and free speech in employment. As one anonymous reviewer noted, legal considerations often shape individual and institutional responses to such matters, even in the absence of actual litigation. I-O psychology can help.

Closing thoughts

The diverging perspectives and laws surrounding civility surface some thorny questions: Is one academic's legal right to free (but potentially rude) speech in conflict with another's right to dignity at work? Should we defend faculty jackassery in the name of academic freedom? Do free speech concerns lead some to overcorrect, turning a blind eye to faculty speech that is unkind and even damaging to the institution (e.g., driving away excellent faculty)? This debate reveals the many sides of civility. Calls for civility sometimes have a sinister side, such as when deployed by those in power to suppress employee voice, criticism, or anger over social ills. There is a fine line between, "Don't be rude" and "Don't be critical." A climate that supports open, civil, constructive debate is a good thing, but it is all too easy to sacrifice candor at the altar of politeness. Any intervention designed to inhibit incivility therefore should be paired with efforts to protect and promote voice. We should also remember that incivility can have upsides, for example when used to draw attention to social injustice. All of these possibilities, we suggest, deserve the attention of I-O psychology. The challenge here is that "once we destabilize the binary of good–civility versus bad–incivility, we must contend with a much more elusive set of demons" (Calabrese, 2015, p. 541). Ay, there's the rub.

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