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# Bearing False Witness: The Clinton Impeachment and the Future of Academic Freedom

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## POINT / COUNTERPOINT

### BEARING FALSE WITNESS: THE CLINTON IMPEACHMENT AND THE FUTURE OF ACADEMIC FREEDOM

NEAL DEVINS<sup>†</sup>

Academic freedom may prove to be one of the casualties of the Clinton impeachment.<sup>1</sup> By signing letters about the constitutional standards governing impeachment, an issue most of them know very little about, many academics placed partisanship and self-interest above all else. The logic of academic freedom, however, cannot be squared with academics who see celebrity and power as more important than the pursuit of truth. Grounded in the belief that academics searching for knowledge in free universities will strengthen a free society, academic freedom insulates the academy from political attack.<sup>2</sup> It also gives credibility to the writings, testimony, court filings, talk show appearances, and other activities of academics who seek to influence public policy. At the least, academic freedom conveys the message that scholars who speak out on public issues know something about those issues. When academics join forces to send a purely political message, their reputation as truth-seekers will diminish and, with it, their credibility. While that day has not yet arrived, it is rapidly approaching. Accusations of political correctness run amok and goofiness<sup>3</sup> are becoming increasingly mainstream.<sup>4</sup> Unless academics

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<sup>1</sup> Another casualty, of course, is the independent counsel statute, the Ethics in Government Act, which expired on June 30, 1999. See David Johnston, *Attorney General Taking Control as Independent Counsel Law Dies*, N.Y. TIMES, June 30, 1999, at A1 (noting that support for the statute eroded because of accusations by both parties that it was being used as a "political weapon against incumbents").

<sup>2</sup> See *infra* notes 15-19, 83-85 and accompanying text (arguing that society accords academics, and perhaps judges, privileges it accords no one else).

<sup>3</sup> See Ray Suarez, *Too Many in Academe Stayed Grandly Above the Fray*, CHRON. OF HIGHER EDUC., Mar. 6, 1998, at B8 (saying that in the academy, "[e]very example of

can answer these charges, they risk becoming irrelevant. Consequently, when a significant number of law professors and historians hold themselves out as experts when they are not, they mislead, and *all* academics pay a price. For this very reason, academics can ill afford another nail to be placed in the coffin of the dispassionate academic expert. Rather, they must hold politically motivated professors accountable for abusing academic freedom.

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The practice of bolstering a political argument with the help of an academic expert was on full display during the Clinton impeachment. In explaining why he could not have committed a "high crime and misdemeanor," the President asked rhetorically: "[W]hy did nearly 900 constitutional experts say that they strongly felt that this matter was not the subject of impeachment?"<sup>5</sup> The President, of course, was referring to two open letters sent on his behalf—one from 400 historians; the other from more than 430 law professors.<sup>6</sup>

The President was hardly alone in referring to these letters. His lawyers entitled a section of their House Judiciary Committee submission "Recent Statements by Historians and Constitutional Scholars Confirm that No Impeachable Offense is Present Here."<sup>7</sup> Along the same lines, Democrats contended that the "scholarly support for the [President] . . . is overwhelming, and it cannot be ignored"<sup>8</sup> while Republicans complained that the letters "substitute[d] political opinion for scholarly analysis."<sup>9</sup>

A decade earlier, 2,000 legal academics banded together in an-

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freaky marginality, youthful goofiness, and faculty softheadedness was defined as the norm").

<sup>4</sup> See *infra* notes 97-106 and accompanying text (calling attention to accusations that "political correctness, like-minded thinking, and intolerance have corrupted the academic ethic").

<sup>5</sup> Remarks Prior to a Meeting with Labor Leaders and an Exchange with Reporters, 35 WEEKLY COMP. PRES. DOC. 46, 47 (Jan. 13, 1999).

<sup>6</sup> See *Background and History of Impeachment: Hearing before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong. 334-39, 374-83 (1999) [hereinafter *Hearings*] (recording the historians' and law professors' letters).

<sup>7</sup> The White House, Office of the Press Secretary, *Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives* (Dec. 8, 1998) <<http://www.pub.whitehouse.gov/uri-res/L2R?urn:pd://oma.eop.gov.us/1998/12/11/12.text.1>>.

<sup>8</sup> 145 CONG. REC. S1567 (daily ed. Feb. 12, 1999) (statement of Sen. Kennedy).

<sup>9</sup> 145 CONG. REC. S294 (daily ed. Jan. 16, 1999) (statement of Rep. Canady).

other letter-writing campaign. The subject: Robert Bork. The objective: to communicate that Bork's thinking was outside the constitutional mainstream. This campaign also hit pay dirt. Finding Judge Bork "[o]utside the [t]radition of Supreme Court [j]urisprudence," the Senate Judiciary Committee Report highlighted this "unprecedented" opposition to the nomination.<sup>10</sup>

Beyond Bork and impeachment, academics have written joint letters on abortion, affirmative action, bankruptcy reform, campaign finance, copyright reform, gun control, international human rights, supermajority requirements, the nomination of federal court judges, and much more.<sup>11</sup> Portraying their signatories as "concerned legal scholars," "constitutional scholars," "professors of law," and "professors of bankruptcy and commercial law,"<sup>12</sup> these letters are intended to communicate the consensus opinion of academic experts.<sup>13</sup> While these letters have not overtaken expert testimony and individual letters to Congress, letter-writing campaigns have become an increas-

<sup>10</sup> SENATE COMM. ON THE JUDICIARY, NOMINATION OF ROBERT H. BORK TO BE AN ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT, Exec. Rep. No. 100-7, at 6-7, 13 (1987). By highlighting the attention these letters received, I am not suggesting that academic letter writing changes votes in Congress. Rather, academic letter writing provides rhetorical cover to members of Congress who have already made up their minds. See *infra* notes 63-68 and accompanying text (discussing the prominent role played by congressional staffers in organizing academic letter-writing campaigns).

<sup>11</sup> See, e.g., *Hearings on S. 158 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 97th Cong. 255 (1981) (statement of Laurence Tribe) (describing joint letter writing in opposition to human life legislation as "an unprecedented unison of voices"); Constitutional Scholars' Conference, Joint Statement, *Constitutional Scholars' Statement on Affirmative Action After City of Richmond v. J.A. Croson Co.*, 98 YALE L.J. 1711, 1712 (1989) [hereinafter *Scholars' Statement*] (examining how *Croson* should affect municipal governments' affirmative action programs throughout the nation); Richard B. Lillich, *Introduction: The Growing Importance of Customary International Human Rights Law*, 25 GA. J. INT'L & COMP. L. 1, 23-24 (1995) (discussing the "ubiquitous . . . 'Affidavit of International Law Scholars' that has become the norm in recent human rights cases"); Statement of Copyright and Intellectual Property Law Professors in Opposition to HR 604, HR 2589, and S 505, "The Copyright Term Extension Act" (on file with author and the *University of Pennsylvania Law Review*) (available at <<http://www.public.asu.edu/~dkarjala/letters.html>>). See also *infra* notes 22, 45, 50, 58 and accompanying text (discussing gun control, supermajority requirements, federal court nominee Daniel Manion, and campaign finance reform).

<sup>12</sup> See *Hearings*, *supra* note 6, at 374 (referring to "professors of law"); *Scholars' Statement*, *supra* note 11, at 1711 (referring to "constitutional scholars"); *infra* note 63 (noting that the signatories were "concerned legal scholars"); see also Draft Letter to Senators Orrin Hatch and Patrick Leahy (referring to "professors of bankruptcy and commercial law") (on file with the *University of Pennsylvania Law Review*).

<sup>13</sup> The fact that only academics can sign these letters also signals that letter signers are speaking as experts, not concerned citizens. For further discussion, see *infra* notes 88-91 and accompanying text.

ingly important mechanism for academics to send a message to Congress. Why, though, do people pay attention to these letters? Why treat these letters with more deference than, say, a petition from the ACLU or the NRA? The answer, of course, is that academics have a reputation for placing the search for truth ahead of partisanship. Unlike movie stars, interest groups, or the person on the street, the credibility of academics is tied to their purported willingness to speak "[t]ruth to [p]ower."<sup>14</sup>

Society, acting on this vision, accords academics certain privileges that it accords no one else (except perhaps judges).<sup>15</sup> Academic freedom, tenure, sabbaticals, and the like encourage academics to think independently and to challenge prevailing norms through their scholarship.<sup>16</sup> At the same time, the trust that society has placed in academics, as well as the resources it has provided them, are grounded in certain assumptions about academic conduct. Academics, for example, have an obligation "to speak truthfully about the issue at hand, because they have a detached cast of mind as well as a large stock of relevant and reliable knowledge on the subject at issue."<sup>17</sup> Correspondingly, before speaking as experts, academics have an obligation to read and to think about arguments on both sides of an issue. The ways of the scholar, as Alexander Bickel put it, "appeal to men's better natures" because they are about the leisure of thinking, training, and insulation, not "the moment's hue and cry."<sup>18</sup> Whether or not academics live up to this obligation, Bickel's vision still resonates with much of the public.<sup>19</sup> For this very reason, policy

<sup>14</sup> Arthur Schlesinger, Jr., *Intellectuals' Role: Truth to Power?*, WALL ST. J., Oct 12, 1983, at A28. Whether Schlesinger, an organizer of the historian's anti-impeachment letter, lived by this creed is another matter. See *infra* notes 57-60 (referring to instances of academics' involvement in political causes).

<sup>15</sup> Like academics, judges have a reputation for dispassionate expertise and can ill afford for that reputation to give way to the view that judicial decision-making is simply another form of politics. See THURMAN W. ARNOLD, *THE SYMBOLS OF GOVERNMENT* 199-206 (Yale Univ. Press 1935) (expressing the view that society accepts the judgment of judges so long as they think that judges are acting like lawyers—reading law and applying it—instead of politicians).

<sup>16</sup> See David M. Rabban, *Academic Freedom*, in *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION* 12-13 (Leonard W. Levy et al. eds., 1986) (exploring the theoretical underpinnings of academic freedom). For further discussion, see *infra* notes 70-72 and accompanying text (arguing that an assumption of dispassionate truth-seeking is the "first obligation" of academics).

<sup>17</sup> Edward Shils, *The Academic Ethic*, in *THE CALLING OF EDUCATION* 3, 107 (Steven Grosby ed., 1997).

<sup>18</sup> ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH* 26 (2d ed. 1986).

<sup>19</sup> In a 1997 Gallup Poll, college teachers were ranked fourth highest for honesty



makers and media outlets seek out academics on many of the issues that divide the nation. Academic letter-writing campaigns likewise capitalize on the academic's reputation for dispassionate expertise. Consider, for example, the anti-impeachment letters. Writing "neither as Democrats nor as Republicans" (but as "professors of law"), these citizen scholars saw the drive to impeach the President as a threat to "our constitutional order."<sup>20</sup> Signed by many of the nation's most prominent law professors and historians, it is no wonder that these letters were taken seriously by the President's supporters as well as his foes. Upon closer inspection, however, these letter-writing campaigns are little more than a testament to the willingness of many academics to pawn off fake knowledge.

Of the 900 signers of the anti-impeachment letters, for example, it is doubtful that many had thought seriously about the constitutional standards governing impeachment.<sup>21</sup> Impeachment, at least until this past year, is a subject that is rarely written about and rarely taught.<sup>22</sup> Indeed, nearly all of the legal academics who testified before the House Judiciary Committee were better known for their allegiance to either liberal or conservative causes than for their scholarship about impeachment.<sup>23</sup> For this very reason, these academics have been

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and ethics among 26 major occupations. See Leslie McAneny & Lydia Saad, *Honesty and Ethics Poll*, GALLUP NEWS SERVICE, Dec. 13, 1997 <<http://www.gallup.com/poll/releases/pr971213.asp>>.

<sup>20</sup> *Hearings*, *supra* note 6, at 334, 374.

<sup>21</sup> How many of the letter signers had, in fact, read the 200-page Starr Report is another matter altogether. Since the theory of the letter was that whatever had taken place was private (even the alleged perjury) and not a threat to the separation of powers, many letter signers may have found the Starr Report beside the point. It is possible, however, that some letter signers paid no mind to the letter's reasoning or disagreed with the reasoning. These letter writers may have focused instead on the conclusion. For these letter signers, the allegations contained in the Starr Report may well have been pivotal.

<sup>22</sup> See *infra* notes 27-30 and accompanying text (arguing that there is no reason to assume that constitutional scholars necessarily have expertise regarding impeachment). Much the same can be said of the Second Amendment. Nevertheless, through postings on a criminal law and a constitutional law list serve, law professors were invited to sign onto a "legal scholar" amicus brief in a recent Second Amendment case. For a full discussion of this brief with the author, see Interview with David Yassky, Assistant Professor of Law at Brooklyn Law School (Sept. 8, 1999). See also *Legal Scholars Debate Second Amendment Case* (visited Sept. 7, 1999) <[http://abcnews.go.com/wire/us/ap19990907\\_758.html](http://abcnews.go.com/wire/us/ap19990907_758.html)> (on file with the *University of Pennsylvania Law Review*) (discussing the disagreement among academics about the brief).

<sup>23</sup> Only one witness, Mike Gerhardt, was found acceptable to both Democrats and Republicans. Not surprisingly, Republican witnesses testified that the President's conduct might well be impeachable. For their part, Democratic witnesses argued that the President's conduct could not be impeachable. More telling, many (roughly one-half) of the law professor witnesses had not written anything about impeachment before the

roundly criticized both for the quality of their constitutional analysis and for "conducting a transparently political debate in constitutional terms."<sup>24</sup> Far more significant, most of the historians who signed the letter were not constitutional specialists.<sup>25</sup> Among the law professors, only one-third of the signatories teach constitutional law.<sup>26</sup>

Even among professors of constitutional law, moreover, there is no reason to think that these individuals have "some expertise on the topic of impeachment."<sup>27</sup> Consider, for example, professors (such as myself) who have used Cass Sunstein's constitutional law casebook. Just over one page of this 1800-page tome considers the constitutional standards governing impeachment.<sup>28</sup> And that one page provides ab-

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Clinton scandal.

<sup>24</sup> Michael J. Klarman, *Constitutional Fetishism and the Clinton Impeachment Debate*, 85 VA. L. REV. 631, 631 (1999); see also John O. McGinnis, *Impeachable Defenses*, POL'Y REV., June & July 1999, at 27, 27-29 (criticizing the reasoning and methodology of law professors' positions on Clinton's impeachment). It is also noteworthy that scholars who argued against the appropriateness of originalism at the Bork hearings made use of originalism (and little else) in arguing against the Clinton impeachment. See Philip Elman, *Shame on the Partisan Professors*, LEGAL TIMES, Nov. 16, 1998, at 21 (noting this reversal of position).

<sup>25</sup> See Jesse Lemisch, *Anti-Impeachment Historians and the Politics of History*, CHRON. OF HIGHER EDUC., Dec. 4, 1998, at B6 (discussing the advertisement taken out by scholars opposing the impeachment of President Clinton).

<sup>26</sup> According to the biographical data contained in the 1998-99 AMERICAN ASSOCIATION OF LAW SCHOOLS' DIRECTORY OF LAW TEACHERS, 130 of the 452 signers of the law professor letter list constitutional law as among the subjects that they teach. For this very reason, the anti-impeachment letter is cut from a different cloth than, say, letters on bankruptcy or copyright reform. In those cases, only individuals familiar with the letter's subject matter were allowed to sign and, consequently, some mechanism was in place to screen the bona fides of letter signers.

<sup>27</sup> Cass R. Sunstein, *Professors and Politics*, 148 U. PA. L. REV. 191 n.6 (1999). Sunstein "assume[s]" that anyone who teaches "some aspect of constitutional law as part of their curricular responsibilities" has impeachment-related "expertise." *Id.* Whether or not corporations professors who teach about corporate free speech would qualify, Sunstein's list of assumed experts certainly includes faculty who teach courses on church and state, freedom of speech, or state constitutional law. Sunstein also assumes that, in the wake of Watergate, many law professors "developed genuine, if fairly general, views on the appropriate meaning of 'high crimes and misdemeanors.'" *Id.* at text accompanying notes 12-13. But this assumption is implausible. For some law professors (myself included), Watergate is a distant prepubescent memory. And for those who do remember, there is little reason to think that their undoubtedly "genuine" views measure up to the standard of expert academic opinion (especially since perjury on a private matter was not a critical part of the Watergate drama). See also *infra* notes 95-96 and accompanying text (detailing the paucity of impeachment-related expertise).

<sup>28</sup> See GEOFFREY R. STONE ET AL., CONSTITUTIONAL LAW 423-24 (3d ed. 1996) (discussing constitutional standards governing impeachment). As to why so little space is given to impeachment: Casebooks focus on case law. The substantive standards governing impeachment are a nonjusticiable political question and, consequently, there is no case law on the subject.

solutely no guidance in assessing the appropriateness of the Clinton impeachment.<sup>29</sup> Consequently, whether or not the question raised in the Clinton impeachment was "close," it is doubtful that professors of constitutional law—let alone all law professors—were well positioned to render an expert opinion on the subject.<sup>30</sup>

At one level, the lesson here is simple. Many of the law professor and historian signatories were animated by partisanship and self-interest, not scholarship.<sup>31</sup> Needless to say, there is a real temptation for academics who want to be part of the fray, who want to see their names in print, who want to tell their families that they did something that mattered, to sign a mass letter. Other academic letter signers may not care at all about celebrity. They may, however, care a great deal about the President's ability to pursue his agenda. In particular, partisan Democrats who voted for the President and support his policies may sign the letter for political reasons.<sup>32</sup> As it turns out (surprise),

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<sup>29</sup> Instead, the focus of this entry is that "there is no clear answer to the central question: What is the meaning of the phrase 'high Crimes and Misdemeanors'?" *Id.* at 423. More striking, the Teacher's Manual accompanying this casebook asks: "Why has the House used the impeachment route so rarely? One might explore the possibility that impeachment for quasi-political reasons might be a good idea . . ." GEOFFREY R. STONE ET AL., *TEACHER'S MANUAL TO CONSTITUTIONAL LAW* 71 (3d ed. 1996). The Sunstein casebook is hardly unique. Some casebooks do not mention impeachment at all. See, e.g., DANIEL A. FARBER ET AL., *CONSTITUTIONAL LAW: THEMES FOR THE CONSTITUTION'S THIRD CENTURY* (2d ed. 1998). Other casebooks dedicate only a page or two to the topic. See, e.g., GERALD GUNTHER & KATHLEEN M. SULLIVAN, *CONSTITUTIONAL LAW* 411-13 (13th ed. 1997).

<sup>30</sup> Sunstein, *supra* note 27, at text accompanying note 4. For arguments that the constitutional question was anything but obvious, see Klarman, *supra* note 24, at 657-58, and RICHARD A. POSNER, *AN AFFAIR OF STATE* (1999). See also Symposium, *Background and History of Impeachment*, 67 GEO. WASH. L. REV. 601, 601 (1999) (Foreword by Representative Henry Hyde, Chairman, House Committee on the Judiciary) (highlighting divergent thinking among "academic experts" on this question). If something is truly debatable, moreover, it is especially important that letter signers are truly experts. Otherwise, there is great risk that their conclusions simply will be a reflection of their personal preferences. More significant, the fact that some experts do not think the constitutional question is close does not mean that those who are not experts can sign on as experts. For further discussion, see *infra* notes 95-96 and accompanying text (arguing that law professors are not experts on all legal issues merely by virtue of their status as law professors).

<sup>31</sup> Sunstein recognizes that "[f]or some of the signatories, perhaps this is true." Sunstein, *supra* note 27, at text accompanying notes 12-13. Sunstein does not consider the possibility that mass letters may register bias and, consequently, are a poor device for communicating scholarly expertise.

<sup>32</sup> The fact that the academy's "A" team signed onto these letters made it easier to join the chorus. After all, if Arthur Schlesinger, Laurence Tribe, and others are willing to put their stamps of approval on these letters, there is reason to think that the letter's argument is at least plausible.



the academy is overwhelmingly left-liberal, overwhelmingly Democratic.<sup>33</sup> Take the case of the law professors.<sup>34</sup> "Only [ten] percent of [them] characterize themselves as conservative to some degree,"<sup>35</sup> while more than eighty percent of them are registered Democrats.<sup>36</sup> Therefore, many legal academics see Kenneth Starr—who argued against abortion rights and affirmative action as the Bush administration's Solicitor General—as their nemesis. At a panel on impeachment at the 1999 American Association of Law Schools convention, for example, law professors loudly booed when it was revealed that one of the panelists, John McGinnis, clerked for then-D.C. Circuit Judge Starr. For these professors, signing a letter that would place Starr's views on impeachment "outside the legal mainstream" would be manna from heaven.

This is not to deny that some letter signers signed on for reasons other than partisanship.<sup>37</sup> But it simply begs the question to "assum[e]" (as do defenders of the letter-writing campaign) that dispass-

<sup>33</sup> A 1989 survey by the Carnegie Foundation for the Advancement of Teaching found that, at research universities, 67% of faculty identify themselves as liberal, and 17% identify themselves as conservative. See Seymour Martin Lipset, *The Sources of Political Correctness on American Campuses*, in *THE IMPERILED ACADEMY* 71, 79 (Howard Dickman ed., 1993) (arguing that political opinions on American campuses are shifting to the left). In the humanities and social sciences, less than five percent of faculty identify themselves as conservative. See RICHARD PIPES, *PROPERTY AND FREEDOM* 272 (1999) (discussing political diversity in university faculty).

<sup>34</sup> Historians too have a reputation for left-leaning partisanship. See Thomas Haskell & Sanford Levinson, *Academic Freedom and Expert Witnessing: Historians and the Sears Case*, 66 TEX. L. REV. 1629, 1630 (1988) (describing and analyzing "vilification" of award-winning historian Rosalind Rosenberg for providing expert testimony for Sears, Roebuck in a sex discrimination lawsuit).

<sup>35</sup> Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 780 n.54 (1998).

<sup>36</sup> James Lindgren, *Measuring Diversity*, Speech to the National Association of Scholars (Jan. 5, 1997). More striking, although 14.9% of full-time working women are Republicans, 0.5% of women law faculty are Republicans. *Id.* For Pierre Schlag, it is "[o]nly because legal scholars speak within a stratified and homogeneous community can they present their views as the 'work of reason itself.'" Book Note, *Let Us Reason Together*, 112 HARV. L. REV. 958, 959 (1999) (quoting PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* 38 (1998)).

<sup>37</sup> Of the 452 letter signers, Cass Sunstein identifies three who are "not normally characterized as 'left-liberal . . .'" Sunstein, *supra* note 27, at note 21 and accompanying text. No doubt, there are others (non-left liberals) in addition to these three. I am equally confident, however, that the overwhelming majority of signatories are—like the academy itself—left-liberal. Furthermore, for some letter signers, the anti-impeachment effort served their self-interest. Specifically, since (mostly liberal) academics embrace both "judicial activism" and "big government," the scholarship and advocacy of academics is taken more seriously by Clinton appointees than by Republicans in Congress.

sionate expertise animated law professor signatories.<sup>38</sup> With no evidence of preexisting expertise on impeachment and with ample evidence that most law professors are left-liberal Democrats, the possibility of partisanship seeping into the anti-impeachment campaign is anything but remote.<sup>39</sup> For this reason, letter organizers cannot rely on assumptions; instead, they must explain why it is that letter signers were qualified experts. Otherwise, accusations of partisan bias (like the one levied in this article) may well stick.<sup>40</sup>

For their part, organizers of the letter-writing campaign paid far more attention to increasing their ranks than to screening the bona fides of letter signers. At my law school, for example, a professor of civil procedure (and signer of the letter) sent a faculty-wide e-mail distributing the letter and explaining how to sign on to it.<sup>41</sup> Through an e-mail<sup>42</sup> sent to me (and most other professors of constitutional law) by Cass Sunstein, I was also invited to sign on to a companion letter. Although telling me that "[e]very signature really counts,"<sup>43</sup> this invita-

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<sup>38</sup> This, of course, is what Cass Sunstein does in his response. For Sunstein, we should "assume that those with whom we disagree are acting in good faith on the basis of evidence that they honestly believe to be sufficient." Sunstein, *supra* note 27, at text accompanying note 24.

<sup>39</sup> See *supra* notes 33-37 and accompanying text (discussing political views of legal academics, including evidence that partisanship may have figured into law professor opposition to the Starr Report); *infra* notes 47, 50 and accompanying text (discussing the role played by People for the American Way in both the historians' anti-impeachment campaign and the law professors' campaign against Bork); *infra* notes 63-66 (noting the critical role played by members of Congress in spurring on academic letter-writing campaigns).

<sup>40</sup> And, the easier it is to typecast the academy this way, the more vulnerable the academy is to attack. See *infra* notes 97-106 and accompanying text (arguing that "[o]ver time, the academic ethic may give way to the view that self-interest and partisanship are the coins of the academic realm").

<sup>41</sup> The historian letter-writing campaign used e-mail. The letter's author, Sean Wilentz of Princeton, sent the letter to 30 or 40 like-minded historians who then distributed it to their colleagues. See Mike Feinsilber, *400 Historians, Rodino Resist Impeachment*, BUFFALO NEWS, Oct. 29, 1998, at A8 (noting that Wilentz e-mailed 30 or 40 historians he thought might be dismayed at the implications of an attempt to impeach Clinton, and within three days, 300 historians agreed to sign a statement against such an attempt).

<sup>42</sup> A not-so-random survey of constitutional law professors suggests that individuals disinclined to sign the e-mail were kept off the distribution list. For example, only one of the four conservative law professors whom I contacted (Steve Calabresi, John McGinnis, Mike Paulsen, and Eugene Volokh) had received the e-mail. Also, Mike Gerhardt, an impeachment scholar who refused to take sides, did not receive the e-mail.

<sup>43</sup> E-mail from Cass Sunstein to Neal Devins (Oct. 29, 1998) (on file with the *University of Pennsylvania Law Review*). The text of the letter reads as follows:

The undersigned professors of law come from different political parties and

tion did not contain any analysis to support its one-sentence recommendation. Finally, through a posting on the JURIST web page, the organizers of the law professor letter circulated a follow-up letter (that any law professor or historian could sign) which called upon the President to resist calls for his resignation rather than give in and allow his resignation to "fundamentally transform the impeachment device."<sup>44</sup>

None of these open letters made expertise a prerequisite for signing. The reason, of course, was that impeachment was too politically charged for a letter signed by, say, twelve leading academics to make a difference.<sup>45</sup> And making a difference is what letter organizers cared most about. Along the same lines, recognizing that their individual views on impeachment were of little consequence, letter organizers decided that they had to act like an interest group. For this very reason, letter organizers did more than gather names. They worked hard at publicizing their efforts. Anti-impeachment historians, for example, made effective use of a press conference to release their letter.<sup>46</sup> Also, with the assistance of People for the American Way, the histori-

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disagree on many political and legal issues; but we agree that the possible grounds for impeachment recently identified by Kenneth Starr and David Schippers are not an appropriate basis for impeaching a President under Article II, section 4 of the Constitution.

*Id.*

<sup>44</sup> Bernard J. Hibbitts, *Law Professors Solicit Signatures for Anti-Resignation Letter*, (visited May 21, 1999) <<http://www.jurist.law.pitt.edu/resig.htm>> (quoting the letter dated Dec. 19, 1998 from Cass Sunstein and Susan Low Bloch to teachers of history and constitutional law).

<sup>45</sup> In sharp contrast, some letter campaigns care most about names, not numbers. Far from mass mailings, these letters are the province of the academy's glitterati. Some of these letters, moreover, are published in law reviews in an effort to shape academic opinion. While the signers of these letters are technically coauthors of these publications, many of them have no involvement in their drafting. Witness, for example, *An Open Letter to Congressman Gingrich*, a statement by 17 well known scholars opposed to proposed supermajority requirements. See *An Open Letter to Congressman Gingrich*, 104 YALE L.J. 1539 (1995) (urging Congressman Gingrich to reconsider his proposal to amend the House Rules to require a three-fifths vote for enactment of laws that increase income taxes). One of the letter's signers, Jed Rubenfeld, in responding to criticisms of (but refusing to defend) the *Open Letter*, explained that he was a "signatory, but not an author" of the letter. Jed Rubenfeld, *Rights of Passage: Majority Rule in Congress*, 46 DUKE L.J. 73, 73 (1996).

<sup>46</sup> See John F. Harris, *400 Historians Denounce Impeachment: Case Against Clinton Departs From Framers' Intent for Presidency, Letter Argues*, WASH. POST, Oct. 29, 1998, at A4 (discussing a press conference at which Arthur M. Schlesinger, Jr. and C. Vann Woodward presented an informal coalition of historians who came to Clinton's defense with an open letter complaining that successful proceedings against Clinton would leave the presidency "permanently disfigured").

ans took out a full page advertisement in *The New York Times*.<sup>47</sup> Mincing no words, the advertisement argued that, if the President were convicted, the presidency would be "permanently disfigured" and the Constitution "undermine[d]."<sup>48</sup>

While organizers of the anti-impeachment campaign made greater use of hyperbole and technology than previous lobbying efforts had, they sought inspiration and guidance from the highly successful academic campaign against Robert Bork. The anti-Bork campaign revealed what grass roots lobbyists have long known, namely, that there is strength in numbers. How better to communicate that Robert Bork was outside the constitutional mainstream than for 2,000 law professors openly to oppose the nomination? At first, organizers approached law school deans and professors who had taught constitutional law for five years or more ("except those who were known to be supporting Bork"<sup>49</sup>) to join the anti-Bork campaign. This effort proved so successful that it was expanded to all law professors. A contact person at most law schools was identified and that contact person solicited signatures from her colleagues. I was contacted this way, as were most of my colleagues.

Partisanship, of course, figured prominently in the campaign against Bork. To begin with, the academic campaign was spearheaded by Ricki Seidman of People for the American Way and William Taylor of the Leadership Conference on Civil Rights.<sup>50</sup> The key to the anti-Bork letter-writing campaign, however, was the disdain in which the legal academy held Bork. Unlike the standards governing impeach-

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<sup>47</sup> See Nat Hentoff, *An Entirely New Impeachment Case*, WASH. POST, Mar. 6, 1999, at A21 (noting that People for American Way assisted Historians in Defense of the Constitution by enabling the list price of the New York Times advertisement to be reduced from \$75,948 to \$56,000).

<sup>48</sup> Historians in Defense of the Constitution, Advertisement, N.Y. TIMES, Oct. 30, 1998, at A17.

<sup>49</sup> NORMAN VIEIRA & LEONARD GROSS, SUPREME COURT APPOINTMENTS: JUDGE BORK AND THE POLITICIZATION OF SENATE CONFIRMATIONS 143-44 (1998). For further discussion, see *infra* note 109 (discussing Sunstein's view that people should only sign petitions if they can defend the relevant position publicly but that they need not necessarily defend their positions as academics).

<sup>50</sup> See MARK GITENSTEIN, MATTERS OF PRINCIPLE: AN INSIDER'S ACCOUNT OF AMERICA'S REJECTION OF ROBERT BORK'S NOMINATION TO THE SUPREME COURT 160 (1992) (noting that Seidman and Taylor led the "effort among the anti-Bork forces to recruit academics"). These two had previously coordinated a similar (but unsuccessful) campaign against Daniel Manion, a conservative nominated to the Seventh Circuit Court of Appeals. See *id.* (indicating that, while Seidman and Taylor had "little trouble drumming up opposition" to Manion's nomination in academic circles, Manion's nomination was ultimately approved with a one-vote margin).



ment, Bork's theories were well known to many academics.<sup>51</sup> Nevertheless, it is doubtful that experts in commercial law, evidence, tax, securities, and the like were well versed in Bork's theories. Rather, many academics unfamiliar with Bork's writings opposed him because of where he would take the Court and because they feared that Bork's confirmation would strengthen the then burgeoning Federalist Society and, with it, the power of conservatives in the legal academy.<sup>52</sup> In other words, left-leaning academics saw Bork as a threat to their status and influence. In particular, his confirmation would make their scholarship and advocacy less relevant because his views did not mesh with their own. Bork, moreover, antagonized many legal academics during his tour of duty in the Nixon Justice Department, which included the firing of Watergate special prosecutor Archibald Cox and the pursuit of Nixon's vendetta against Warren Court liberalism.<sup>53</sup>

Partisan letter-writing campaigns are likely to continue, especially among legal academics. Not only are these letters highly visible and somewhat influential, but they also allow the rank and file of the academy to join forces with the academy's glitterati in a common cause. What better way to make oneself part of the "A" team than to sign off on the constitutional analysis of Ackerman, Sunstein, Tribe,

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<sup>51</sup> For this reason, many of the people who signed letters opposing the nomination did so, in part, because they thought Bork's writings were too rigid and too self-righteous for him to succeed on the Court. An excellent treatment of this subject (which does not pass judgment on whether or not Bork should have been confirmed) can be found in ROBERT F. NAGEL, *JUDICIAL POWER AND AMERICAN CHARACTER* 27-43 (1994), which discusses Bork's relationship with what his critics defined as the mainstream, and more specifically, how Bork's "critics define the mainstream in terms of principle and accuse Bork of standing outside it as a covert practitioner of conservative politics through judicial power." *Id.* at 30.

<sup>52</sup> See GITENSTEIN, *supra* note 50, at 161 (noting that professors were concerned about the possibility of Bork's appointment because they saw him as a symbol of the unraveling of the civil rights and civil liberties the Supreme Court had expanded over the previous 30 years). For Bork, that battle over his confirmation pitted "left-liberal" "intellectual class values" against populists (like him?) who believe in the primacy of elections. See ROBERT H. BORK, *THE TEMPTING OF AMERICA* 337 (1990) ("The battle was ultimately about whether intellectual class values, which are far more egalitarian and socially permissive, which is to say left-liberal, than those of the public at large and so cannot carry elections, were to continue to be enacted into law by the Supreme Court.") (footnote omitted).

<sup>53</sup> For a provocative argument that anti-Bork academics had a moral duty to oppose the nomination of Anthony Kennedy (but did not do so because they held a grudge against Bork and only Bork), see George Kannar, *Citizenship and Scholarship*, 90 COLUM. L. REV. 2060-61 (1990) (book review) (arguing that the American public's interest in making fully informed decisions—even wrong ones—required legal scholars who had opposed Bork's nomination to take what was a nonconformist stand and publicly oppose Kennedy's nomination).



and the like? Along these lines, Richard Posner described the law professor anti-impeachment letter as "a form of herd behavior (the 'herd of independent minds') by the animal that likes to see its name in print."<sup>54</sup> The appeal of letter writing, moreover, is fueled by the proliferation of media outlets and, with it, the opportunity for many academics to achieve their fifteen minutes of fame. Today, academics seek fame through talk show appearances, op-ed pieces, and trade press books.<sup>55</sup> In this era of sound bite scholarship, it is little wonder that being part of the story is far more appealing than writing about it some years later.

In contrast, there is a growing perception among academics that court-ordered social reform is a hollow hope.<sup>56</sup> Relatedly, the continuing conservatism of the Supreme Court and of many federal courts of appeal suggests that law review scholarship calling for novel judicial solutions to social problems will fall on deaf ears.<sup>57</sup> Perhaps for this

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<sup>54</sup> POSNER, *supra* note 30, at 242. Some of the letter's signatories, of course, signed on because their analysis of both the constitutional standards governing impeachment and the Starr Report convinced them that the President's conduct did not warrant removal from office. Many academics did not sign on to the letter because they thought it unduly partisan. Nevertheless, Judge Posner is correct in referring to the herd mentality of the legal academy. A significant portion of the legal academic community signed on to these letters without independent knowledge of the constitutional standards governing impeachment. See *supra* notes 20-38 and accompanying text (discussing the possible political motivations and constitutional expertise of academics who signed letters about impeaching Clinton). Rather than stand as a roadblock to such partisanship, cultural norms within the academy encouraged these letter signers to see themselves as an interest group, not as free thinkers committed to the pursuit of truth. See *supra* notes 41-45 and accompanying text (discussing how letter organizers cared only about increasing the number of signatories); *infra* notes 87-94 and accompanying text (discussing the strong incentives of hegemony within the academy).

<sup>55</sup> I agree with Cass Sunstein that none of these things is inappropriate. See Sunstein, *supra* note 27, at text accompanying notes 4-11. Like Sunstein, I also think it is perfectly fine for academics (through testimony, letter writing, whatever) to speak as experts before Congress. But academics should only speak as experts about matters on which they have invested the time and energy necessary to hold themselves out as experts. See *infra* notes 95-104 and accompanying text (contrasting Sunstein's definition of academic experience from my own).

<sup>56</sup> See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 338 (1991) ("U.S. courts can *almost never* be effective producers of significant social reform. At best, they can second the social reform acts of the other branches of government").

<sup>57</sup> For left-leaning academics, populist constitutional discourse is now preferred to Court-centered social policymaking. See CASS R. SUNSTEIN, *ONE CASE AT A TIME: JUDICIAL MINIMALISM ON THE SUPREME COURT* 3-6 (1999) (identifying and advocating the current Court's "judicial minimalism"); MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* 181-82 (1999) (explaining constitutional law as a populist narrative and advocating a populist constitutional legal system based on

reason, a 1998 report of the Twentieth Century Fund deemed letter-writing an essential ingredient of its social reform agenda.<sup>58</sup> For the most part, these campaigns, like the academy itself, advance liberal causes.<sup>59</sup> Indeed, conservatives are best off not going head-to-head against liberal letter writers. Why gather 100 signatures in support of Bork, as did the right of center Ad Hoc Committee for Principled Discussion of Constitutional Issues?<sup>60</sup> A twenty-to-one disparity, rather than serve as effective counter-speech, will simply prove an embarrassment.<sup>61</sup> With that said, right-of-center interests are still likely to

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the Constitution and Declaration of Independence); Robin West, *The Aspirational Constitution*, 88 NW. U. L. REV. 241, 245-46 (1993) (acknowledging that while such a shift is unlikely to occur, it would constitute a shift from a judicially-enforced Constitution of limits to a congressionally-enforced Constitution of aspirations and would help modern progressive causes). For conservatives the legal academy has only itself to blame: "it has become a heavily normative body of advocacy scholarship targeted at the federal courts with the goal of influencing them to do things that they are extremely unlikely to do in the current political and social climate." Steven G. Calabresi, *The Crisis in Constitutional Theory*, 83 VA. L. REV. 247, 266 (1997) (reviewing LOUIS MICHAEL SEIDMAN & MARK V. TUSHNET, *REMNANTS OF BELIEF* (1996)).

<sup>58</sup> TWENTIETH CENTURY FUND WORKING GROUP ON CAMPAIGN FINANCE LITIGATION, *BUCKLEY STOPS HERE: LOOSENING THE JUDICIAL STRANGLEHOLD ON CAMPAIGN FINANCE REFORM*, 100-01 (1998) (referring to a letter sent by more than 200 legal academics on campaign finance reform and contending that legal scholars could play a critical role in campaign finance reform by signing on to such statements).

<sup>59</sup> Up until now, the most visible letters have all advanced left of center causes: affirmative action, abortion rights, international human rights, the defeat of conservative judicial nominees, the defeat of supermajority rules, and the defeat of the Clinton impeachment. No doubt, as Sunstein argues in his response, the principles enunciated in the anti-impeachment letter would apply to a future Republican president. See generally Sunstein, *supra* note 27, at note 5 (contending that the academics involved in congressional discussions of the possibility of impeaching Clinton were not working "for" or "with" the White House). But would Cass Sunstein organize a letter-writing campaign to save, say, Ronald Reagan? And if he did, would the same 452 law professors sign on? See Sunstein, *supra* note 27, at note 19 (recognizing that it is possible but speculative that personal opinion would affect letter-writing campaigns).

<sup>60</sup> This letter, sent to Senators Robert C. Byrd and Robert Dole, is reprinted in 133 CONG. REC. S28853 (daily ed. Oct. 22, 1987). With respect to impeachment, a coalition of 96 academics and former government officials, including Bork, William Bennett, and Edwin Meese, wrote to Congress that the Starr Report did, in fact, support the President's impeachment. See *Don't Let the President Lie With Impunity*, WALL ST. J., Dec. 10, 1998, at A22 (reprinting a letter signed by academics, lawyers, and former government officials which was distributed to the House Judiciary Committee and urged the House of Representatives to impeach Clinton). Needless to say, my criticism of the anti-Bork and anti-impeachment letter-writing campaigns might well apply to the pro-Bork and pro-impeachment campaigns. In particular, if signatories signed on as non-expert partisans, those signatories (and quite possibly the organizers of these campaigns) would have violated the academic ethic.

<sup>61</sup> Indeed, the 100 or so pro-Bork, pro-impeachment letter signers were so outnumbered that they appeared well outside of the mainstream and, consequently,

launch some letter-writing campaigns. Like anti-Bork and anti-impeachment academics, conservative activists may well seek strength in numbers, not academic expertise. For example, in June 1999, a letter opposing proposed gun control legislation was distributed to law professors and other academics over e-mail. Recipients of this e-mail were told: "If everyone who we are sending this to can get even a couple other people in your department to sign this, we will end up with well over a few hundred signatures."<sup>62</sup> It did not matter whether possible signatories were well versed in the particulars of proposed legislation, in the "real costs" of waiting periods, or anything else. Like the anti-Bork and anti-impeachment letters, expertise played second fiddle to the bottom line, that is, to sending an effective political message.

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The question remains: Why are these letters taken seriously? While it never referred to the lobbying efforts of People for the American Way, the NAACP, or pro-choice activists, the Senate Judiciary Committee's report on Robert Bork trumpeted the views of legal academics. Likewise, the President and his supporters singled out the historian and law professor letters. Is the myth of academic expertise a drug that somehow blinds policymakers to the partisanship of (at least some) academic letter signers?

Not at all. Politicians and their staffers know full well that the citizen scholars who send these letters often have a political ax to grind. In fact, rather than being duped by make-believe academic experts, elected officials sometimes sponsor these missives! Two years ago, Congressman John Conyers's office asked me to join a "community of concerned legal scholars" in writing to Congress about intelligence spending.<sup>63</sup> The draft letter was addressed to none other than Congressman Conyers. Equally striking (and far more significant), Senate

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looked especially politically motivated.

<sup>62</sup> E-mail from John R. Lott, Jr. to James Lindgren (June 3, 1999) (on file with the *University of Pennsylvania Law Review*).

<sup>63</sup> Draft Letter to Congressman Conyers, United States House of Representatives (June 1997) (on file with the *University of Pennsylvania Law Review*). I was asked to sign on because a friend suggested my name to Conyers's office. Although Conyers's office was coordinating this letter-signing campaign, potential signatories were directed to contact the Center for International Policy. I do not know whether the Center for International Policy's involvement was a subterfuge, intended to conceal Conyers's involvement.

Judiciary Committee chair and Bork foe Joseph Biden asked Chris Schroeder, a law professor working for the committee, to help drum up law professor opposition to Bork.<sup>64</sup> Three other law professors working with Biden—Walter Dellinger, Philip Kurland, and Laurence Tribe—negotiated with People for the American Way over the text of the law professor letter.<sup>65</sup> Along the same lines, members of Congress were actively involved in at least one of the law professors' anti-impeachment letters. The invitation to join the ranks of letter signers made clear that the letter was consequential because "[s]ome members of the House of Representatives have suggested that it would be very valuable for the House to hear from a large group of teachers of constitutional law on the impeachment issue."<sup>66</sup>

For anti-impeachment House members and anti-Bork Senators, academic letters were a kind of salve. Rather than appear overly ideological and overly partisan, lawmakers can take cover in a letter signed by a thousand or more academics.<sup>67</sup> In contrast, a letter submitted by the AFL-CIO, the National Abortion Rights Action League, or (for that matter) the Family Research Council would call attention to, not cloak, possible biases.<sup>68</sup> In other words, rather than affect the thinking

<sup>64</sup> See GITENSTEIN, *supra* note 50, at 161 ("Chris Schroeder, at Biden's direction, spent much of the late summer and early fall of 1987 on the phone with scores of law professors.").

<sup>65</sup> See *id.* at 161 ("By late August, Seidman had negotiated the text of a letter acceptable to Kurland, Tribe, and Dellinger, and began to circulate it.").

<sup>66</sup> Sunstein, *supra* note 43 (quoting one of the letters signed by anti-impeachment law professors and sent to Congress). Sunstein never says who these members of Congress are, if he responded to the requests of both Democratic and Republican leadership, or, alternatively, if the letter-writing campaign was the brainchild of one or the other side.

<sup>67</sup> Lawmakers likewise can take cover behind academics who testify at hearings. These academics often are contacted because they can be counted on to state a position that supports the person who invited them to testify, usually the ranking majority or minority member of a committee or subcommittee. For example, before I was asked to testify about line-item veto legislation, a Senate Judiciary staff member called me to confirm that I still subscribed to a position articulated in an article of mine. Along the same lines, it was no accident that Republican witnesses at the House impeachment hearings testified that the President's conduct was impeachable whereas Democratic witnesses testified that it was not. See *Hearings*, *supra* note 6 (suggesting that the split on whether the President's conduct was impeachable was primarily along party lines).

<sup>68</sup> For this very reason, interest group representatives were not called on to testify at the Bork confirmation hearings. Rather, "numerous witnesses from the legal academy presented the Senators with the same critique of Bork that the interest groups would have offered, but from a more 'disinterested' perspective . . ." Kannar, *supra* note 53, at 2041. See also Mary McGrory, *The Supreme Sacrifice*, WASH. POST, Oct. 6, 1987, at A2 (recounting the Democrats' strategy of not calling upon members of inter-



of politicians, academic letter-writing enables politicians to offer high-minded reasons for saying and doing what they otherwise would have said and done. Consider, for example, the anti-impeachment letters. The votes in the House and the Senate were on largely partisan lines.<sup>69</sup> It simply strains credibility to believe that the law professors' and historians' letters moved fence sitters one or the other way. What these letters did do, however, was to enable the President's defenders to tell the public that their votes were cast for nonpartisan reasons (the Starr Report did not state sufficient grounds for impeachment), not for partisan reasons (Democrats need to stick together).

Here, I think, is where the true significance of these letters lies. Politicians feed off of these letters because of the so-called academic ethic, that is, the notion that "the first obligation of the university teacher is to the truth."<sup>70</sup> Academics, likewise, feed off of this reputation in justifying these letter-writing campaigns. "We law professors are free from a client's interest, free from a place in a hierarchy, free to say exactly what we think," explained Barbara Babcock, a former Carter Administration Justice Department official and signer of both the Bork and impeachment letters.<sup>71</sup> For Sean Wilentz, principal drafter of the historians' letter, "[t]his is not a political effort at all. . . . [It is] historians speaking as historians."<sup>72</sup> Likewise, Susan Bloch and Jed Rubenfeld, two of the organizers of the law professors' letter, spoke of their efforts as "nonpartisan"<sup>73</sup> and of the need for legal academics "to come out of our comfortable law review role to make a point."<sup>74</sup>

Letter organizers, whether or not they believe their own rhetoric, have no choice but to perpetuate this myth. Otherwise, their missives

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est groups to testify against Bork's confirmation).

<sup>69</sup> See Peter Baker & Helen Dewar, *Clinton Acquitted*, WASH. POST, Feb. 13, 1999, at A1 (noting the partisanship present in the vote on the perjury and obstruction of justice charges); Peter Baker & Juliet Eilperin, *Clinton Impeached*, WASH. POST, Dec. 20, 1998, at A1 (noting that vote on the first article of impeachment was "largely along party lines").

<sup>70</sup> SHLS, *supra* note 17, at 49.

<sup>71</sup> Ronald J. Ostrow & James Gerstenzang, *Bork's Shifting Views on Law Worry Senators*, L.A. TIMES, Sept. 26, 1987, at A1.

<sup>72</sup> Deb Price, *Historians Seek an End of Drive to Impeach*, DETROIT NEWS, Oct. 29, 1998, at A12.

<sup>73</sup> Interview by Kristin Abramson with Professor Susan Bloch, Georgetown University Law Center, *Law Professors Send Letter Opposing Impeachment: A Conversation with Letter Sponsor Professor Susan Bloch* (visited Nov. 4, 1999) <<http://www.jurist.law.pitt.edu/bloch.htm>>.

<sup>74</sup> Janet Hook, *Pro-Impeachment Chorus Hopes to Change Tune of Lawmakers*, L.A. TIMES, Dec. 9, 1998, at A5.



would be no different than those of interest groups who wear their partisanship on their sleeves. But there is good reason to doubt whether academics still think of themselves as truth seekers. In particular, the traditional image of the academic has given way to "post-modernism, multiculturalism, and political correctness."<sup>75</sup> Consequently, rather than see these letter-writing campaigns as a departure from their scholarly endeavors, many academics increasingly see scholarship and partisanship as inextricably linked.<sup>76</sup> In this way, the willingness of academics (who know next to nothing about impeachment) to sign on to an anti-impeachment letter is understandable. For similar reasons, tax and commercial law experts did not blink when signing a letter condemning Judge Bork's interpretive theories.<sup>77</sup> Specifically, if non-self-interested knowledge does not exist, it is unavoidable that academics will embrace one partisan position or an-

<sup>75</sup> David M. Rabban, *Can Academic Freedom Survive Postmodernism?*, 86 CAL. L. REV. 1377, 1378 (1998) (reviewing *THE FUTURE OF ACADEMIC FREEDOM* (Louis Menand ed., 1996)). For this very reason, defenders of academic freedom no longer speak of impartial scholars discovering objective truths; instead, as Ronald Dworkin puts it, academic freedom concerns the fundamental ethical "responsibility of [academics] to find and tell and teach the truth as they see it." Ronald Dworkin, *We Need a New Interpretation of Academic Freedom*, in *THE FUTURE OF ACADEMIC FREEDOM* 181, 190 (Louis Menand ed., 1996); see also Rebecca S. Eisenberg, *Academic Freedom and Academic Values in Sponsored Research*, 66 TEX. L. REV. 1363, 1363 (1988) (contending that academic truth seeking is compromised by corporate and government funding of research).

<sup>76</sup> Before postmodernism, of course, legal realists argued that constitutional interpretation is inescapably value-laden and, as such, that constitutional analysis would always be driven by "a particular set of policy preferences that cannot be distinguished from the preferences expressed in other political forums." LOUIS MICHAEL SEIDMAN & MARK V. TUSHNET, *REMNANTS OF BELIEF* 42 (1996); see also James O. Freedman, *The Bully Lectern*, HARV. MAG., Jan.-Feb. 1999, at 36, 36-37 (discussing some of the ways that early twentieth-century college presidents involved themselves in the world of politics). Perhaps more significant, many academics who sign letters do so for reasons that have nothing to do with post-modernism. See *infra* notes 86-91 and accompanying text (detailing some of the reasons, other than agreement with the letters' underlying reasoning, why academics signed onto the anti-impeachment letter).

<sup>77</sup> It is true, however, that tax and commercial law scholars (if they inquired) could spot substantial deviations between Bork's constitutional views and those of their liberal constitutional law colleagues. For this reason, tax and commercial law scholars could place Bork outside of the constitutional mainstream within the academy. But the claim of the anti-Bork campaign was that Bork was outside of the constitutional mainstream as defined not just by the academy, but as defined by the Supreme Court. Here, some expertise about differences between Bork's writings (including his decisions as a D.C. Circuit judge) and Supreme Court decision making would be required. More to the point, anti-Bork letter signers would need to be able to explain why it is that White House claims that Bork's writings were within the mainstream were incorrect. See *The White House Report: Information on Judge Bork's Qualifications, Judicial Record & Related Subjects*, reprinted in 9 CARDOZO L. REV. 187, 188 (1987) (describing why Bork should be considered in the "mainstream of American jurisprudence").

other.

This postmodernist dilemma is especially acute in the legal academy. Compare, for example, the academy's reaction to conflicting arguments over the attainability of truth through legal scholarship. When Michael Seidman and Mark Tushnet wrote that it is "apparent to everyone [that all constitutional] arguments can [and will] be manipulated to advance the particular policy goal of the advocate who makes them," no one rose up to complain.<sup>78</sup> In contrast, Paul Carrington prompted a near crisis in the academy by arguing that law professors should believe that law and legal texts matter.<sup>79</sup>

This discomfort with truth-seeking is easily explained. Unlike chemistry or psychology, law is not a science.<sup>80</sup> Instead, lawyers translate the knowledge, experience, and expertise of other professionals.<sup>81</sup>

<sup>78</sup> SEIDMAN & TUSHNET, *supra* note 76, at 90. In assessing this claim, Steve Calabresi suggested that the cause of the problem was not the unattainability of truth but the desire of legal academics to use their scholarship to advance normative objectives. See Calabresi, *supra* note 57, at 266 ("[T]he real explanation for the loss in prestige of constitutional scholarship is that it has become a heavily normative body of advocacy scholarship targeted at the federal courts . . .").

<sup>79</sup> See "Of Law and the River," and of Nihilism and Academic Freedom, 35 J. LEGAL EDUC. 1 (1985) (reprinting the correspondences among legal academics in response to Paul D. Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222 (1984)). A similar uproar was caused by the publication of DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997), a book which assails critical race theory and other "outsider scholarship." For representative reviews of Farber and Sherry's book, see Kathryn Abrams, *How to Have a Culture War*, 65 U. CHI. L. REV. 1091, 1126 (1998) (book review) (judging the work to be "flawed and inflammatory"); Richard Delgado, *Rodrigo's Book of Manners: How to Conduct a Conversation on Race—Standing, Imperial Scholarship, and Beyond*, 86 GEO. L.J. 1051, 1054-72 (1998) (book review) (criticizing the attack by Farber and Sherry on critical race theory and suggesting ways to hold discussions on these issues); and Richard A. Posner, *The Skin Trade*, NEW REPUB., Oct. 13, 1997, at 40, 43 (praising the work as "a fine book, a work of intelligence and courage that will alter the terms of debate in academic law"). See generally, Symposium, *Essays in Response to Beyond All Reason*, 83 MINN. L. REV. 1589 (1999).

<sup>80</sup> During the late nineteenth century, Christopher Langdell and others sought to make law a science through the categorization of decisional law. See C.C. LANGDELL, *A SELECTION OF CASES ON THE LAW OF CONTRACTS* vi (1871) ("Law, considered as a science, consists of certain principles or doctrines."). This effort, of course, proved unsuccessful. See Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1, 45-46 (1983) (describing the practical problems judges and lawyers encountered with Langdell's method).

<sup>81</sup> See E. Donald Elliott, *The Evolutionary Tradition in Jurisprudence*, 85 COLUM. L. REV. 38, 38 (1985) ("[Law] grows by feeding on ideas from outside, not by inventing new ones of its own."). But see Charles Fried, *The Artificial Reason of the Law or: What Lawyers Know*, 60 TEX. L. REV. 35, 38 (1981) ("[L]aw is a relatively autonomous subject, and . . . rights will be best and most reasonably respected if reasoning about them goes forward within its special discipline.").

Thanks to the adversary system, moreover, partisanship figures prominently in that translation. Legal academics then have good reason to see themselves as being in the business of making arguments. That is what they were trained to do, and that is what they teach their students to do. That their scholarship also would be argumentative comes as no surprise.<sup>82</sup> The surprise, instead, is that the academic ethic is sufficiently strong to provide them with cover for such endeavors.

Whether or not traditional notions of truth exist, academics should still understand that pretending to have an expert opinion on something they know next to nothing about is a deception. Postmodernism helps explain but does not excuse this deceit. Another source of this deceit, ironically, is the special place of academics in our constitutional order. Linked to the academics' reputation as truth seekers, academic freedom empowers academics to speak out on public issues without sanction. For this reason, academics sometimes see themselves as supercitizens, entitled to speak out on issues by virtue of their status.

Membership in the academy, however, has its responsibilities as well as its rewards.<sup>83</sup> Advocacy for advocacy's sake, while certainly enti-

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<sup>82</sup> Anthony Kronman, in an effort to combat the confluence of scholarship and advocacy, argued that "law teachers have a moral responsibility" to pursue truth in their scholarship. Anthony T. Kronman, *Foreword: Legal Scholarship and Moral Education*, 90 YALE L.J. 955, 967 (1981). Otherwise, their students will see all law as advocacy "which in turn encourages a cynical carelessness about the truth, thus undermining the important good of community." *Id.* For this very reason, I disagree with Cass Sunstein's attempt to portray all legal academics as potential experts on any (law-related) subject. Instead, speaking (as a "scholar" or "professor") on a politically hot issue requires particular expertise beyond being a lawyer or law professor. See *infra* notes 95-96 and accompanying text (questioning Sunstein's definition of academic expertise).

<sup>83</sup> One of the responsibilities of the academic, according to Edward Shils, is "the obligation not to betray the trust which is given to him when laymen look to him for objective knowledge and responsible judgment." SHILS, *supra* note 17, at 106. This traditional view is echoed by the American Association of University Professors (AAUP), which argues that academics "should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, [and] should show respect for the opinion of others." ACADEMIC FREEDOM AND TENURE: A HANDBOOK OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 132 (Louis Joughin ed., 1969) (quoting American Ass'n of Univ. Professors, *1940 Statement of Principles on Academic Freedom and Tenure*, available in American Ass'n of Univ. Professors, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments* (visited Oct. 26, 1999) <<http://www.aaup.org/1940stat.htm>>). Along the same lines, the AAUP Statement on Professors and Political Activity specifies that faculty members "should be free to engage in political activities so far as they are able to do so consistently with their obligations as teachers and scholars." AMERICAN ASS'N OF UNIV. PROFESSORS, POLICY

tled to constitutional protection, is not entitled to the special protections of academic freedom. More precisely, the Supreme Court's willingness to treat academic free speech as more important than other free speech claims is linked to an academic's fiduciary duty to maintain "standard[s] of professional integrity."<sup>84</sup> Put another way, academic freedom is a quid pro quo. On the one hand, it protects academics from outside political pressures. On the other hand, it is a "contingent privilege" justified by an academic's willingness to be held accountable at a "professional level for the ethical integrity of his work."<sup>85</sup>

But do the responsibilities of academic freedom attach to joint letters? After all, no one expects that each and every signatory has played a hand in the letter's drafting. For similar reasons, it is to be expected that many signatories agree with the conclusions but not the reasoning of the letters they sign.<sup>86</sup> Moreover, with the academy's glitterati spearheading these letter-writing campaigns, it is to be expected that some signatories (who care that the letter's reasoning be well thought out but know nothing about impeachment, gun control, or whatever) sign on because they assume that these leading lights would not lead them astray.<sup>87</sup> Finally, some signatories consider the letter's reasoning beside the point. Their signature, instead, is about partisanship and nothing else. Being able to explain why academics (who cannot defend the reasoning of these letters) sign these missives does not justify this practice. Rather, these letters go out of their way to

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DOCUMENTS AND REPORTS 33 (7th ed. 1990).

<sup>84</sup> William Van Alstyne, *The Specific Theory of Academic Freedom and the General Issue of Civil Liberty*, in *THE CONCEPT OF ACADEMIC FREEDOM* 59, 71 (Edmund L. Pincoffs ed., 1972); see also *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (distinguishing academic freedom from political expression); Glenn R. Morrow, *Academic Freedom*, in 1 *THE INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 4, 6 (David L. Sills ed., 1968) ("The justification of academic freedom cannot be based merely on the right to freedom of thought . . . . The justification of academic freedom must therefore be sought in the peculiar character and function of the university scholar."). For an update of Supreme Court academic freedom decisions, see David M. Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom Under the First Amendment*, *LAW & CONTEMP. PROBS.*, Summer 1990, at 227 (analyzing recent Supreme Court decisions concerning different forms of academic freedom).

<sup>85</sup> Van Alstyne, *supra* note 84, at 76. In his response, Sunstein claims that I do not discuss what academic freedom is for. I respectfully disagree. See *supra* notes 15-18, 82-83 and accompanying text (arguing that academic freedom encourages academics to think independently and to seek truth).

<sup>86</sup> See *supra* note 45 and accompanying text (illustrating that signatories do not necessarily agree with the texts of the letters they sign).

<sup>87</sup> See *supra* note 32 (noting that it is easier to sign a letter written by someone you admire).



make clear that they are sending a professional, not a political, message. Writing as "scholars,"<sup>88</sup> "historians,"<sup>89</sup> "law professors,"<sup>90</sup> and "teachers of constitutional law,"<sup>91</sup> these letters tout the self-described academic expertise of their signatories. While it is to be expected that the academics signing these letters support the outcomes they advocate, it is not to be expected that many of them cannot defend (and may well not support) the letters' reasoning. Indeed, it is the reasoning of academics—not the conclusions they reach—which justifies academic freedom. It is therefore a perversion of academic freedom to treat professional expressions of expert opinion as nothing more than a plebiscite of personal preferences.

Widespread abuses of academic freedom, unfortunately, now seem to be a fixture of the modern academy. Most tellingly, academics are likely to do a poor job of checking their own excesses. Peer review—the mechanism by which the academy polices itself—requires an openness to different ways of thinking. But with more than three-fourths of the legal academy "characteriz[ing] themselves as 'moderately' or 'strongly' liberal or left,"<sup>92</sup> there are strong incentives to agree with prevailing norms. In part, the hegemony within the academy ensures that like-thinking individuals will validate the arguments of other like-thinking individuals (no matter how sound or silly they may be).<sup>93</sup> This is especially true among academics who think that power, not truth, holds the key to governmental reform. For these individuals, what matters most is that the right result is reached. In other words, rather than encourage counterspeech, the academy and, with it, peer

<sup>88</sup> *Scholars' Statement*, *supra* note 11, at 1712.

<sup>89</sup> *Hearings*, *supra* note 6, at 334-39.

<sup>90</sup> *Id.* at 374-83.

<sup>91</sup> Sunstein, *supra* note 43.

<sup>92</sup> Merritt, *supra* note 35, at 780 n.54.

<sup>93</sup> For Pierre Schlag, the sameness of viewpoints and methodologies among legal academics explains why law professors all agree that flag burning laws are unconstitutional. But outside the legal academy, say, before an American Legion in Des Moines, the "deployment of the scam will probably not work very well." PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* 35 (1998). Within the academy, moreover, there is a real risk of opprobrium for those who do not toe the company line. For example, after publishing articles that questioned the efficacy of critical race scholarship and the purported arrival of the "Asian American Moment" in legal scholarship, the Harvard and Iowa law reviews published symposia filled with condemnatory essays. See generally Colloquy, *Responses to Randall Kennedy's Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1844 (1990); Colloquy, 81 IOWA L. REV. 1467 (1996). I must confess that, as I write these words, I feel the pressure of nonconformity bearing down on me. By taking to task a significant chunk of the legal academy for their behavior in advancing (within the academy) politically popular causes, I too may find myself in a hornets' nest.



review may well impose "sharp limits on the range of respectable opinion within its ranks."<sup>94</sup>

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What does it mean to speak as an academic expert? Is it enough, as defenders of the anti-impeachment letter argue, that an academic "believed that they knew enough" by speaking with other academics who "probably believed that they knew enough . . . ?"<sup>95</sup> If this is true, every law professor can speak as an expert on any issue. Take the recent Microsoft antitrust case. Based on my watching of television news, my conversations with colleagues, and my fuzzy (almost two decades old) recollection of an antitrust class, I might believe that I know enough to develop "genuine, if fairly general, views"<sup>96</sup> on the legality of Microsoft's practices. Ditto the decisions of the Securities and Exchange Commission, the Internal Revenue Service, the Environmental Protection Agency, and the National Labor Relations Board. According to this view, by reading the newspaper and hanging out in the faculty lounge, I can hold myself out as an expert on all these things.

This recalibration of what it means to be an academic expert comes at a price. Over time, the academic ethic may give way to the view that self-interest and partisanship are the coins of the academic realm. Conservative critics of the academy have worked hard at portraying it "as a taxpayer-financed bunker inhabited by an army of Birkenstock-shod Marxists."<sup>97</sup> And these critics have achieved more than a modicum of success. A recent crop of books (including *Illiberal Education*,<sup>98</sup> *The Closing of the American Mind*,<sup>99</sup> *Impostors in the Temple*,<sup>100</sup>

<sup>94</sup> GEORGE J. STIGLER, *THE INTELLECTUAL AND THE MARKETPLACE* 68 (enlarged ed. 1984). For this reason, Stigler argues that academic freedom must look "inward," so that the academy is protected from its own corrupting influences as well as those of outsiders. See also Arthur O. Lovejoy, *Academic Freedom*, in 1 *ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 384 (Edwin R. A. Seligman ed., 1930) (stating that academic freedom is "rendered impossible if the work of the investigator is shackled by the requirement that his conclusions" conform to prevailing norms); David M. Rabban, *Does Academic Freedom Limit Faculty Autonomy?*, 66 TEX. L. REV. 1405, 1407-08 (1988) (arguing that peer review should limit faculty autonomy).

<sup>95</sup> Sunstein, *supra* note 27, at text accompanying note 13.

<sup>96</sup> *Id.* at text accompanying notes 12-13.

<sup>97</sup> Suarez, *supra* note 3, at B8.

<sup>98</sup> DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991).

<sup>99</sup> ALAN BLOOM, *THE CLOSING OF THE AMERICAN MIND: HOW HIGHER EDUCATION*

*Telling the Truth*,<sup>101</sup> and *ProfScam*<sup>102</sup>) have argued that political correctness, like-minded thinking, and intolerance have corrupted the academic ethic. Columnists David Broder and Nat Hentoff, as well as Judge Richard Posner, condemned the impeachment letter-writing campaign for this very reason.<sup>103</sup> Whether this criticism will undercut the saliency of future letter-writing campaigns remains to be seen. Nevertheless, the academy has good reason to fear the perception that it is filled with citizen partisans, not citizen scholars. Not only will academic freedom suffer a body blow, professors will be handicapped in their efforts to affect public discourse through their scholarship.<sup>104</sup>

Aside from becoming irrelevant, the academy runs another risk. Over the past few years, social conservatives have urged donors and university trustees to play more active roles in the life of the academy. Among other things, trustees and donors have been urged to combat political correctness and moral relativism.<sup>105</sup> And some trustees and donors are listening to this message. At Virginia's George Mason University, for example, faculty have castigated the school's board of trustees for trying to impose a conservative political agenda. Specifically, by shifting funds to programs with a conservative reputation and by dissolving a nontraditional educational program, these trustees (all

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HAS FAILED DEMOCRACY AND IMPOVERISHED THE SOULS OF TODAY'S STUDENTS (1987).

<sup>100</sup> MARTIN ANDERSON, *IMPOSTORS IN THE TEMPLE* (1992).

<sup>101</sup> LYNNE V. CHENEY, *TELLING THE TRUTH: WHY OUR CULTURE AND OUR COUNTRY HAVE STOPPED MAKING SENSE—AND WHAT WE CAN DO ABOUT IT* (1995).

<sup>102</sup> CHARLES J. SYKES, *PROFSCAM: PROFESSORS AND THE DEMISE OF HIGHER EDUCATION* (1988).

<sup>103</sup> See Posner, *supra* note 30, at 240-42 (likening the law professors' campaign to "a form of herd behavior"); David S. Broder, *The Historians' Complaint*, WASH. POST, Nov. 1, 1998, at C7 (arguing that some activist academics, including organizers of the historians' letter, risk looking "ridiculous" by "heedlessly" plunging into political debate); Nat Hentoff, *Breeding Contempt for the Law*, WASH. POST, Nov. 21, 1998, at A21 (depicting the signers of the historians' letter as a "herd" who employed "embarrassingly contorted reasoning").

<sup>104</sup> For those who see elitist discourse as harmful to the commonwealth, of course, this changing image of the academy will be salutary. See BORK, *supra* note 52, at 337 (arguing that the public explosion at Bork's nomination was driven by liberals at issue with a more conservative general public); NAGEL, *supra* note 51, at 27-43 (arguing that the legal culture is properly concerned with ideas, but the political culture is concerned with the consequences of ideas, as seen within the Bork Supreme Court nomination hearings); SCHLAG, *supra* note 93, at 35-38 (arguing that legal thinkers tend to be almost entirely center-left democrats and it is not surprising when they all agree).

<sup>105</sup> See ANDERSON, *supra* note 100, at 194-206 (arguing that university trustees seldom use their potential power and leadership effectively); NATIONAL ENDOWMENT FOR THE HUMANITIES, *TELLING THE TRUTH* 49-51 (1992) (arguing that although trustees of universities seldom use their authority to exercise leadership, they should exert more influence on colleges and universities).

but one of whom were appointed by conservative Republican governors) have broken ranks with university administrators.<sup>106</sup> Will other trustees follow George Mason's lead? Perhaps not. But the more political the academy is perceived, the more likely it is that governors will appoint political trustees.

It may be that this is the fate the academy deserves. After all, the partisanship and misdirection of some academic letter-writing campaigns contradicts some of the most basic tenets of academic freedom. More fundamentally, the willingness of so many academics to pawn off fake knowledge suggests that the conditions supporting academic freedom have dissipated. Among other things, it is difficult to square academic freedom with ideological conformity, the advent of post-modernism, the rise of sound bite scholarship, and, especially at law schools, the nexus between celebrity status and partisanship. What is truly amazing here is that the academy is risking so much to accomplish so little. In the cases of Bork and impeachment, for example, the battle lines were drawn before the academics entered the fray. More than anything, the academic participants in these wars were stage props—brought into the drama to demonstrate that politicians take the Constitution seriously.

What then can the academy do to rescue itself? To start, academics ought not to remove themselves from the world of politics. The very reason that academics possess tenure, academic freedom, and the like is so they may speak "truth to power."<sup>107</sup> Academics, however, must be cautious in their utterances. It is not enough, for example, that some of their colleagues might "indulge a principle of charity" that would allow them to express an expert opinion without toiling with research, writing, and the like.<sup>108</sup> The price of academic freedom is that scholars must use reason, thought, and care in defending their positions, whether political or not. Devices that allow academics to register positions without doing the necessary work undermine academic freedom for all. When it comes to letter writing, for example, academics should only sign letters that they could (if asked to) defend in public.<sup>109</sup> Beyond letter writing, academics should embrace both

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<sup>106</sup> See Victoria Benning, *Faculty, Board Clash at George Mason*, WASH. POST, May 21, 1999, at B1 (reporting that the George Mason University faculty is battling with the university trustees over the trustees' conservative political agenda).

<sup>107</sup> Schlesinger, *supra* note 14, at 28. Moreover, with the Supreme Court signaling its disinclination to reshape society through sweeping judicial edicts, it is sensible that legal academics would pay more attention to elected government reforms.

<sup>108</sup> Sunstein, *supra* note 27, at text accompanying note 24.

<sup>109</sup> In his response, Sunstein claims that he "emphatically" agrees with me that

ideological diversity and dialectic reasoning (where each thesis is challenged by a counter-thesis).<sup>110</sup> That way the academy can better live up to its marketplace-of-ideas reputation.

Politically motivated academics must come to grips with a grim reality, that "[i]n a world where there are no rules of scholarship or journalism or evidence, where everything is opinion and all opinions are alike, the market wins."<sup>111</sup> That market, of course, is far more conservative than the academy. For this very reason, politically motivated academics should see academic freedom as a bunker from which to fight battles, not as a relic of times past. But to preserve academic freedom, politically motivated academics must honor it, not abuse it. For their part, academics who steer clear of partisan causes—that is, most academics—must hold their politically active colleagues accountable for abusing academic freedom. Otherwise, they too will pay the price of membership in a once-revered profession increasingly held in disrepute.<sup>112</sup>

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"academics should not sign letters that they could not defend publicly." Sunstein, *supra* note 27, at text accompanying note 32. For Sunstein, however, it is not necessary that they could defend these positions as academics—i.e., defend the substance of the letter with a commanding knowledge of the relevant sources. See *supra* notes 94-96, 108 and accompanying text (discussing what it means to be an academic expert).

<sup>110</sup> One way of encouraging such diversity, of course, is to hire professors who—because of academic training or ideology—see the world differently from one another. At the least, academics should share their work (in draft) with individuals who may well disagree with them. For this reason, the screening out of likely naysayers from letter writers' distribution lists is inappropriate. See *supra* notes 42, 49 and accompanying text (suggesting that organizers of the anti-Bork and anti-impeachment letters did not circulate those letters to likely naysayers).

<sup>111</sup> Mary Schweitzer, *Letter to the Editor*, CHRON. OF HIGHER EDUC., Apr. 17, 1998, at B3.

<sup>112</sup> For this very reason, the academics who suffer the greatest harm from purely political letter-writing campaigns are those who only sign letters on subjects on which they are experts (and organizers of mass letters who limit signatories to individuals who have subject matter expertise).