

# *Shockfreude* and the Very Democratic Teachings of “Professor Fuck”

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Of the many facets of Chris Fairman, a number have been singled out for observation and praise in the outpouring of tributes remembering him after his terribly-too-soon, unexpected death.<sup>1</sup> Chris, who valued service to those around him, and who appreciated the mirroring of sincere, thankful recognition for what he had done, would have been deeply moved by all the adulation—as intensely uncomfortable as it certainly also would have made him. One of Chris’s many gifts was that he could and did give without condition, including expectation of return. More remarkably, he offered his talents in a democratic spirit of humility and egoless service. As he navigated the waters of institutional power, including in the last period of years as an Associate Dean, Chris never sought power’s accumulation, much less the gratifications attendant upon its possession. He never aimed to build a mound on which to stand above others. All he ever asked, when he asked for anything at all, was his due share of respect. If it is difficult to agree with Dean Alan

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\* Copyright © 2016 by Marc Spindelman. All rights reserved. Isadore and Ida Topper Professor of Law, The Ohio State University Moritz College of Law. For distinctively productive engagements, thanks to Cinnamon Carlarne, Sarah Cole, Ellen Deason, Peter Debelak, Brookes Hammock, Andrew Mikac, and Robin West. Thanks also to Matt Cooper and Molly Werhan for help with sources, and to Sabrina Brown for very helpful research assistance.

<sup>1</sup> Alan C. Michaels, In Memoriam, *Our Better Angel: Dean Fairman*, 77 OHIO ST. L.J. 509 (2016); Daniel Markovits, In Memoriam, *Remembering Mr. Fairman*, 77 OHIO ST. L.J. 513 (2016); Rishi Batra, *Chris Fairman: A Remembrance*, MAYHEW-HITE REP. ON DISP. RESOL. & COURTS (Sept. 14, 2015), <http://moritzlaw.osu.edu/mayhew-hite-report/2015/09/14/chris-fairman-a-remembrance/> [<https://perma.cc/2ZEC-UDRB>]; Sara Cole, *Chris Fairman—Friend, Teacher, Scholar*, MAYHEW-HITE REP. ON DISP. RESOL. & COURTS (Sept. 14, 2015), <http://moritzlaw.osu.edu/mayhew-hite-report/2015/09/14/chris-fairman-friend-teacher-scholar/> [<https://perma.cc/D4C5-CG8J>]; Ellen E. Deason, *The Missing Piece*, MAYHEW-HITE REP. ON DISP. RESOL. & COURTS (Sept. 14, 2015), <http://moritzlaw.osu.edu/mayhew-hite-report/2015/09/14/the-missing-piece/> [<https://perma.cc/FT8E-TPQ7>]; James K. Lawrence, *Reflections on Professor Chris Fairman*, MAYHEW-HITE REP. ON DISP. RESOL. & COURTS (Sept. 14, 2015), <http://moritzlaw.osu.edu/mayhew-hite-report/2015/09/14/professor-lawrence-contribution/> [<https://perma.cc/36QZ-G6FS>]; Nancy H. Rogers, *A Legacy of Value “Hats” for “New Heads”: The Scholarly Tenets Implicit in Professor Fairman’s Collaborative Law and Ethics Scholarship*, MAYHEW-HITE REP. ON DISP. RESOL. & COURTS (Sept. 14, 2015), <http://moritzlaw.osu.edu/mayhew-hite-report/2015/09/14/a-legacy-of-value-hats-for-new-heads-the-scholarly-tenets-implicit-in-professor-fairmans-collaborative-law-and-ethics-scholarship/> [<https://perma.cc/ZKE2-2X9Z>]; Joseph B. Stulberg, *Professor Fairman and ADR: Roads to Yet Explore*, MAYHEW-HITE REP. ON DISP. RESOL. & COURTS (Sept. 14, 2015), <http://moritzlaw.osu.edu/mayhew-hite-report/2015/09/14/professor-fairman-and-adr-roads-yet-to-explore/> [<https://perma.cc/6YVT-QTET>]; *College Mourns Loss of Associate Dean Fairman*, OHIO ST. U. MORITZ C.L.: BRIEFING ROOM (July 22, 2015), <http://moritzlaw.osu.edu/briefing-room/faculty/college-mourns-loss-of-professor-associate-dean-fairman/> [<https://perma.cc/2X27-CSKM>].

Michaels that Chris's sum was that of an angel,<sup>2</sup> the impulse to cast Chris in those terms is understandable. Chris elevated ordinary dedication to the law teacher's mission to a virtue, showing, to borrow and modify a thought from Karl Jaspers, just how extraordinary serious, ordinary dedication can be.<sup>3</sup>

Of the many facets of Chris Fairman that have not been discussed enough, one in particular—not, as so many of the others, a standard virtue—calls out for more sustained attention. Ellen Deason's tribute to Chris's memory,<sup>4</sup> written with the exquisite sensitivity that is her way, puts its finger on the pulse of this distinctive feature of Chris's makeup. Writing of the "many things" Chris collected, which included "his magnificent collection of silk pocket squares," Ellen remarks that Chris "also had an interest in strange anthropological artifacts."<sup>5</sup> She continues: "I remember [Chris's] great glee as he once showed me a picture of a shrunken head he had purchased to display in his house."<sup>6</sup> It is easy to imagine Ellen smiling recalling Chris and "his great glee" at seeing her reaction to this totem. I confess thinking of Ellen smiling about Chris's great glee makes me smile greatly. Not because Ellen's unusual story is idiosyncratic in demonstrating Chris's capacity for wonderful weirdness when so many of his professional interactions, including as Associate Dean, were so basically normal.<sup>7</sup> The smiling is because, uncannily, in this tiny little example, offered nearly as an aside, lies a bigger and more significant, and widely uncommented-on aspect of Chris that was an important part of his life's work, on display here in his interpersonal interactions with a valued colleague and friend.

As succinctly as it can be characterized: Mischievously, fantastically, Chris took immense, life-affirming delight in certain forms of what may be termed *Shockfreude*: in this setting, the anticipated or real-time pleasure experienced from bearing witness to others experiencing certain moments of shock. In Chris's case, there was nothing sinister or wound-producing in this. Interpersonally, as with Ellen, the shocks Chris would administer and then stand back and watch with pleasure could and did regularly unfold in intimate and ultimately positive ways. Perhaps it elevates life's fun too much, but I like to think, and think there's reason to think Chris thought, that the playful zaps

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<sup>2</sup>Michaels, *supra* note 1.

<sup>3</sup>See Letter from Hannah Arendt to Gertrud and Karl Jaspers (Mar. 21, 1967), in HANNAH ARENDT & KARL JASPERS, CORRESPONDENCE 1926–1969, at 668, 669 (Lotte Kohler & Hans Saner eds., Robert Kimber & Rita Kimber trans., 1992) ("You write about the 'American sentence' that says: 'An extraordinary person is an ordinary person.' That sentence isn't from any American; it's from you. You said that during a conversation last year, and I was so struck by it that I wrote it down right away upstairs. We were talking about our normalcy, and you said that as a closing word.")

<sup>4</sup>Deason, *supra* note 1.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>Accord Markovits, *supra* note 1, at 513 ("He taught a deeply progressive, almost subversive, course in American history in a manner and style that nevertheless welcomed the mainstream of Reagan-era American culture.")

he administered and enjoyed were subtended by a very serious pedagogical structure. As Chris playfully played this way, he was modeling a pedagogy of authentic experience.<sup>8</sup> In the moments of shock he orchestrated, Chris invited us to join with him in a sense of marvel at how, under the right conditions, being taken aback can itself be an occasion on which deeply engrained, uncontrolled, and sometimes previously unknown, but still fully embodied dimensions of our individual selves, bubble up from the depths of some unknown somewhere inside of us to erupt into an authentic and immediate experience and expression. When this happens, there is an opportunity—like a flash of lightning illuminating a moments-before-unseen landscape—to learn about how profoundly we are shaped by our shared world and its countless mysterious and unknown forces.<sup>9</sup> Apprehended from the right angle of vision, experiences of shock, with their momentary losses of self-possession and dignity, don't only deliver world-knowledge and aren't only great levelers. They also deliver us modes of self-understanding that, if accepted with the kind of smile Chris showed us on his face when witnessing them, can be used as material to reflect on who we are and how we think and inhabit the world, or what our egos tell us about all those things anyway. Curious as this may sound, a shocking experience, though formally an experience of the temporary loss of the self, can sometimes provide a lesson in the experience of freedom. In helping us to see ourselves more humbly and more clearly in terms of our own mysteries, Chris's shocks, as well as the delights they gave him, supplied

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<sup>8</sup> Cf. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 1970).

<sup>9</sup> Being taken aback in the sense described here is not the same as being triggered, on which, see Mason Stokes, *In Defense of Trigger Warnings*, CHRON. HIGHER EDUC.: CONVERSATION (May 29, 2014), <http://chronicle.com/blogs/conversation/2014/05/29/in-defense-of-trigger-warnings/> [<https://perma.cc/B7JF-ZDJW>]; and Kate Manne, *Opinion, Why I Use Trigger Warnings*, N.Y. TIMES (Sept. 19, 2015), <http://www.nytimes.com/2015/09/20/opinion/sunday/why-i-use-trigger-warnings.html> [<https://perma.cc/SY7N-G895>] (explaining some of Manne's thinking on, and experience with, using trigger warnings, and responding to Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, ATLANTIC MAG. (Sept. 2015), <http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/> [<https://perma.cc/992R-2KEQ>]). For additional thoughts on the topic of trigger warnings and the law school classroom, see Jeannie Suk, *The Trouble with Teaching Rape Law*, NEW YORKER (Dec. 15, 2014), <http://www.newyorker.com/news/news-desk/trouble-teaching-rape-law> [<https://perma.cc/NVG5-UAPC>], but then see Conor Friedersdorf, *At Law School, Is Insensitivity Grounds for an Objection?*, ATLANTIC (Dec. 19, 2014), <http://www.theatlantic.com/education/archive/2014/12/at-law-school-is-insensitivity-grounds-for-an-objection/383882/> [<https://perma.cc/G7TL-MMSR>]; Colleen Flaherty, *Law School Trigger Warnings?*, INSIDE HIGHER ED (Dec. 17, 2014), <https://www.insidehighered.com/news/2014/12/17/harvard-law-professor-asks-requests-trigger-warnings-limit-education-about-rape-law> [<https://perma.cc/6A5B-JKDS>]; and Margaret Drew, *Response to Jeannie Suk: Missing the Point on Teaching Rape*, HUM. RTS. HOME BLOG (Dec. 23, 2014), [http://lawprofessors.typepad.com/human\\_rights/2014/12/jeannie-suk-missing-the-point-on-teaching-rape.html](http://lawprofessors.typepad.com/human_rights/2014/12/jeannie-suk-missing-the-point-on-teaching-rape.html) [<https://perma.cc/6TW2-3796>].

us an enhanced capacity for choosing who and what we wish to make of ourselves. That was the offering, if we choose to see it, of the staged moments of forced authenticity Chris so liked to bring about.

Of course, there is no better, more enduring, and publicly available exemplar of Chris's *Shockfreude* and its teachings than his own scholarly work on the legal treatment of the word "fuck": first his article, *Fuck*,<sup>10</sup> and then his monograph, *Fuck: Word Taboo and Protecting Our First Amendment Liberties*,<sup>11</sup> published later on. Taken together, these writings are most conventionally read as an engaged and extended study of many of the ways the legal system has treated the word "fuck,"<sup>12</sup> accompanied by a prescriptive set of recommendations for reform grounded in the free-speech and free-thought values of our Constitution's First Amendment. At the same time, though, the works are also an intense condensation of the energies Chris sought quite deliberately to prepare as part of the broad and diffuse, and ideally, productive, jolt that he hoped these strange anthropological artifacts of his own making would deliver on a large scale. When they did just that, just as Chris hoped they would, he smiled broadly, with a very "great glee."

Some of Chris's experiences of delight at the some of the shocked reactions to his "fuck" work are presented in self-portrait in the Prologue to his monograph, which introduces this version of the effort partly by sharing some of the choicer reactions to his article *Fuck* that he perceived, along with his own responses to them.<sup>13</sup> There is, for instance, the reaction from the poor student editor of the *Kansas Law Review* who, some mere twenty-five minutes after receiving a draft of Chris's *Fuck* article and a polite bid for publication, politely, if tersely, rejected it.<sup>14</sup> Chris indicates that the editor's rejection sent him—Chris—"reeling,"<sup>15</sup> but this seems as much as anything else like Chris's own way of capturing what he actually figured was the *Kansas Law Review* editor's own immediate reaction upon coming face-to-face with Chris's work. After all, if Chris was sent reeling, it didn't last very long. The initial notation is quickly followed by wry commentary noting the humor Chris found in the editor's intensely aversive response. Chris literally makes a joke of it: The "*Kansas Law Review* prides itself on being prompt, but this was ridiculous. You couldn't . . . read the article in twenty-five minutes."<sup>16</sup> A bit later, Chris more directly registers the point that he found the speedy rejection funny: "I

<sup>10</sup> Christopher M. Fairman, *Fuck*, 28 CARDOZO L. REV. 1711 (2007).

<sup>11</sup> CHRISTOPHER M. FAIRMAN, *FUCK: WORD TABOO AND PROTECTING OUR FIRST AMENDMENT LIBERTIES* (2009).

<sup>12</sup> Of course, the work also engages how others outside of law have seen and understood the power of this word. See, e.g., *id.* at 10–11 (outlining Fairman's multidisciplinary approach to exploring the word "fuck").

<sup>13</sup> *Id.* at vii–xxii.

<sup>14</sup> *Id.* at xii ("Thank you for submitting your article to the *Kansas Law Review*. We are unable to extend an offer for publication.").

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at xii–xiii.

saw the humor of this instant rejection[.]”<sup>17</sup> Indeed, Chris reports, not only did he see the humor of it, but he also found himself compelled to share it with others,<sup>18</sup> including with his friend Brian Leiter, who soon reported on the *Kansas Law Review*’s rejection in his legal scholarship blog.<sup>19</sup> Happily, from Chris’s perspective anyway, Leiter’s post on the rejection and his decision to supply a link to the article itself, sent out, according to Chris, “ripples at first, followed by waves” in the “Internet pond.”<sup>20</sup> Formally, the image here is of a pebble being cast into the waters of a great pond, but in this context it seems more than coincidental that the image can also be thought of as a different way of noticing the shockwaves produced by Chris’s own work, furthered by Leiter’s account. Either way, the waves produced their own reactions—and more and more shock. With pride, Chris remarks on the reception of his work that, “one day after Leiter’s blurb, [and] three days after its rejection by *Kansas*, ‘Fuck’ was number one on the bepress list of ‘The 10 Most Popular Articles.’”<sup>21</sup> This “popularity” grew exponentially. “Within two months of publication, the article had been downloaded at least 18,000 times.”<sup>22</sup> Originally posted in mid-April 2006, “as of February 20, 2009, the total number of downloads [of the article] on SSRN was 24,147 and over 332,557 had viewed the abstract of the article; an additional 12,622 downloads were on bepress.”<sup>23</sup>

Now, Chris’s Prologue doesn’t put the point this way, but at some point, it suggests, the *Fuck* article’s popularity itself started to become what was shocking about the piece. Perhaps nowhere were the work’s effects more dramatic or pronounced than the way its popularity hurled a disruptive wrench into the machinery of a public metric of scholarly standing among law schools. As Chris tells the story, one of the measures for law faculty stature found in Brian Leiter’s important law school ranking system, a ranking of the “Most Downloaded Law Faculties” for the year 2006, contained a list of “the fifteen most downloaded schools” during that year.<sup>24</sup> This list, Chris writes, contained “a curious omission.”<sup>25</sup> In compiling these rankings, Leiter, in his own words, which Chris quotes, found it

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<sup>17</sup> FAIRMAN, *supra* note 11, at xiii.

<sup>18</sup> *Id.* at xiii–xiv.

<sup>19</sup> Brian Leiter, *World’s Fastest Article Rejection by a Law Review*, BRIAN LEITER’S L. SCH. REP. (Apr. 13, 2006), [http://leiterlawschool.typepad.com/leiter/2006/04/worlds\\_fastest\\_.html](http://leiterlawschool.typepad.com/leiter/2006/04/worlds_fastest_.html) [<https://perma.cc/48ME-ZSJH>].

<sup>20</sup> FAIRMAN, *supra* note 11, at xiv.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at xv (quoting Dan Subotnik, “*Hands Off*”: *Sex, Feminism, Affirmative Consent, and the Law of Foreplay*, 16 S. CAL. REV. L. & SOC. JUST. 249, 265 n.98 (2007)).

<sup>23</sup> *Id.* at xviii. As of May 12, 2016, the article had been downloaded 34,960 times from SSRN, and the abstract had been viewed 492,813 times. Christopher M. Fairman, *Fuck* (Ohio State Pub. Law Working Paper No. 59, 2006), <http://ssrn.com/abstract=896790> [<https://perma.cc/TS5Y-542N>].

<sup>24</sup> FAIRMAN, *supra* note 11, at xviii.

<sup>25</sup> *Id.*

necessary to exclude Ohio State [ranked 10th] and Emory [ranked 8th] whose presence in the top 15 was due entirely to one provocatively titled article by Christopher Fairman, who teaches at Ohio State and is visiting at Emory; without Fairman's paper, neither Ohio State nor Emory would be close to the top 15.<sup>26</sup>

In recounting Leiter's decision to exclude his *Fuck* paper—a decision that fully engages Chris's attention—Chris points to the article's shock value as Leiter characterized it: "Why was this exclusion necessary? Leiter states that it's the 'provocative title.'" <sup>27</sup> Presumably, the reason that existed for excluding the article from Leiter's metric was that it was not its content, hence its quality, that garnered the work the attention of downloading publics it received, but rather its title and in turn its title's provocations. What Leiter's tally was after, after all, was a very loose proxy for the collective legal academic regard for scholarship quality, measured by how often people download different faculties' scholarly work online.<sup>28</sup>

Recognizing this, Chris engages this exclusion of his work from the scholarly tally.<sup>29</sup> He chalks it up in no small measure to what he saw as "word

<sup>26</sup>*Id.* at xix (alteration in original) (quoting *Brian Leiter's Most Downloaded Law Faculties, 2006*, BRIAN LEITER'S L. SCH. RANKINGS (Mar. 6, 2007), [http://leiterrankings.com/faculty/2007faculty\\_downloads.shtml](http://leiterrankings.com/faculty/2007faculty_downloads.shtml) [<https://perma.cc/7NDS-F854>]).

<sup>27</sup>*Id.*

<sup>28</sup>Clarifying his views, Leiter explained that "SSRN downloads are not . . . very good measures of scholarly impact, but they seem to attract interest, and so in the catholic spirit of my law school ranking site I posted a list of the 15 most downloaded law faculties for 2006," Brian Leiter, *No Ranking Is Too Trivial to Spark Commentary from Folks with Time to Burn...*, BRIAN LEITER'S L. SCH. REP. (Mar. 24, 2007), [http://leiterlawschool.typepad.com/leiter/2007/03/no\\_ranking\\_is\\_t.html](http://leiterlawschool.typepad.com/leiter/2007/03/no_ranking_is_t.html) [<https://perma.cc/Q6C2-WBWR>], a point which he repeats when he describes "SSRN [as] a pretty weak measure of scholarly performance." *Id.*; see also *Brian Leiter's Most Downloaded Law Faculties, 2006*, *supra* note 26 (expressing "skepticism about SSRN downloads as a measure of scholarly impact"); Brian Leiter, *Problems with the SSRN Rankings*, BRIAN LEITER'S L. SCH. REP. (Aug. 17, 2005), [http://leiterlawschool.typepad.com/leiter/2005/08/problems\\_with\\_t.html](http://leiterlawschool.typepad.com/leiter/2005/08/problems_with_t.html) [<https://perma.cc/V4XG-M6QV>] (same, elaborating the case). Particularly as downloads rankings have increasingly been treated in different contexts, including hiring and promotion decisions, as a measure of scholarly quality, it bears noting that, in this respect, Leiter does seem exactly right.

<sup>29</sup>Some of Chris's colleagues, both at Ohio State and elsewhere, also weighed in on this. See, e.g., Douglas A. Berman, *SSRN Rankings and Leiter's (Rank?) Omission*, LAW SCH. INNOVATION BLOG (Mar. 15, 2007), [http://lsi.typepad.com/lsi/2007/03/ssrn\\_rankings\\_a.html](http://lsi.typepad.com/lsi/2007/03/ssrn_rankings_a.html) [<https://perma.cc/E3RW-D2KP>] (noting some of the responses from Chris's colleagues, including Ruth Colker and Ann Bartow, and being one itself); Douglas A. Berman, *Debating SSRN Downloads and Exclusions*, LAW SCH. INNOVATION BLOG (Mar. 25, 2007), [http://lsi.typepad.com/lsi/2007/03/debating\\_ssrn\\_d.html](http://lsi.typepad.com/lsi/2007/03/debating_ssrn_d.html) [<https://perma.cc/4TC5-ARJR>]; Deborah Merritt, Comment to *Debating SSRN Downloads and Exclusions* (Mar. 26, 2007, 5:35 AM), *supra*; Ann Bartow, "*Fuck*" the Law Review Article, FEMINIST L. PROFESSORS BLOG (Apr. 13, 2006), <http://feministlawprofessors.com/2006/04/fuck-the-law-review-article/> [<https://perma.cc/8CQE-U5X9>]; see also Paul Horwitz, "*Fuck*," *Fairman, Leiter, and SSRN Rankings*, PRAWFSBLAWG (Mar. 26, 2007),

taboo against *fuck* [that] grips the subconscious and often overpowers the ability of some to calmly and rationally react.”<sup>30</sup> What Chris can be understood to be saying in this, in part, is that while it might be easy to dismiss his article as “shock scholarship,” he understood and meant it to contain an important teaching. Chris intended its shock to be pedagogical in its ends. On one level, I think Chris saw something in what he chalked up to Brian Leiter’s reactions to his *Fuck* article that looks in its formal properties to be like Ellen Deason’s apparent reactions to the picture of Chris’s creepy shrunken head.<sup>31</sup> In both cases, Chris was authoring a reaction of shock and bearing witness to how it revealed the operations of “the subconscious” and how the subconscious can erupt to “overpower[] the ability . . . to calmly and rationally react” and to maintain one’s self-composure.<sup>32</sup>

At this point, though, the parallels end, and Chris reveals the seriousness of purpose beneath what might otherwise seem simply like a playful encounter with Leiter in the form of academic tumble. Having noted the ways in which he saw the subconscious in action and how it was overcoming “the ability . . . to calmly and rationally react,” Chris’s Prologue veers sharply away from its lightheartedness to rhetoric in which he openly worries about how subconscious reactions have the capacity not only to overwhelm an individual, but also to unleash in individuals a “compulsion”<sup>33</sup> that can arc in authoritarian directions.<sup>34</sup> The subconscious, Chris explains, “can also compel some individuals to impose their language standards on others,”<sup>35</sup> leading them to try to “censor our words” and “our ideas.”<sup>36</sup> By pointing to the frankly dangerous and authoritarian possibilities of not taking a serious, hard look at

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[http://prawfsblawg.blogs.com/prawfsblawg/2007/03/fuck\\_fairman\\_le.html](http://prawfsblawg.blogs.com/prawfsblawg/2007/03/fuck_fairman_le.html) [<https://perma.cc/A5L2-GLBT>]. Chris’s own initial response to Leiter’s exclusion of his *Fuck* article was published as Christopher M. Fairman, *Fuck and Law Faculty Rankings* (Ohio State Pub. Law Working Paper No. 91, 2007) [hereinafter Fairman, *Fuck and Law Faculty Rankings*], <http://ssrn.com/abstract=971103> [<https://perma.cc/6WZY-LY97>].

<sup>30</sup> FAIRMAN, *supra* note 11, at xx.

<sup>31</sup> See *supra* note 6 and accompanying text.

<sup>32</sup> FAIRMAN, *supra* note 11, at xx. There may be a convergence and not simply a disagreement with Leiter’s thinking about Chris’s article on this front. It is hard to imagine Chris denying that at least some of those who downloaded his *Fuck* article were, in fact, “overpowered” by their unconscious in a way that rendered them unable “to calmly and rationally react” to the work. *Id.*

<sup>33</sup> The actual word in context is “compel”: “It can also compel some individuals to impose their language standards on others.” *Id.*

<sup>34</sup> Chris makes a related point when he characterizes the exclusion of his *Fuck* article in terms of “blacklisting.” Fairman, *Fuck and Law Review Rankings*, *supra* note 29, at 4 (“As I see it, both schools [Ohio State’s and Emory’s law schools] have been blacklisted.”).

<sup>35</sup> FAIRMAN, *supra* note 11, at xx.

<sup>36</sup> *Id.*; accord Fairman, *Fuck and Law Review Rankings*, *supra* note 29, at 3–4 (“Why then did Brian Leiter decide it was necessary to purge his list of Ohio State and Emory based upon their association with me? I’m unwilling to assign dark motives of academic protectionism to this censorship. . . . As I see it, both schools have been blacklisted.”).

ourselves in our moments of shock, Chris reveals his playful *Shockfreude* could be dead serious teaching. What Chris registers in reaction to Brian Leiter's exclusion of his work—and here I must say: this is only to report, not weigh in—was elitism and hierarchy:

Why was the article punished for its popularity? From what I can tell, the thinking was this: Legal academics, the “right people,” thousands of them, downloaded the articles of Brian Leiter and the rest of the academic community who offered their thoughts to the downloading public. It was a common horde that downloaded “Fuck.” They saw a dirty word and clicked away, unknowingly inflating the download count.<sup>37</sup>

The “‘they’ doing the downloading [of Chris’s article: “the common horde”] is different”<sup>38</sup> than the “they” who downloaded the work by the professors whose work was not excluded from Leiter’s count. Comments Chris: “I fear that there’s some type of undemocratic intellectual snobbery at play here.”<sup>39</sup>

Anyone who knew Chris knew Chris was not quick to judgment. He was extraordinarily slow to pick up, much less throw, stones. The same democratic impulses that serve as the point of reference for his criticism in this setting informed Chris’s broadly egalitarian sentiments. Human, so human, Chris knew that we were and are all highly imperfect creatures. We are never very far from the mud.<sup>40</sup> As demanding of himself as Chris could be, he could be unfailingly generous with others. That all has to be said in order to understand and underscore the harshness and intensity of Chris’s criticism. His *Shockfreude* was secondary to its pedagogical purposes, which were themselves in service of democratic ideals, as he understood them. His pleasure in others’ shock was not unbounded, and while it typically had about it a lighthearted nature, it could rouse Chris under the right circumstances to a level of warranted response. When the forces from the deep that Chris’s shocks summoned cracked masks of self-possession in anti-egalitarian, undemocratic, even authoritarian ways, Chris wasn’t afraid to call them out.

Even when Chris did that, he did so only to insist that nobody, including he, was any better than anyone else.<sup>41</sup> So, no sooner does he register his disapproval of “undemocratic intellectual snobbery,” than he lets it drop,

<sup>37</sup> FAIRMAN, *supra* note 11, at xx.

<sup>38</sup> *Id.* at xx–xxi.

<sup>39</sup> *Id.* In saying this, Chris rewrites and strengthens his earlier observation that “I can only hope that there is not some type of undemocratic intellectual snobbery at play here.” Fairman, *Fuck and Law Review Rankings*, *supra* note 29, at 10–11.

<sup>40</sup> There is something of the spirit of Michael Warner’s important, elegant thoughts on shame that should be registered here. See generally MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999).

<sup>41</sup> *Cf.* FAIRMAN, *supra* note 11, at 5 (“I could see with clarity the overreactions by others to the word *fuck*. But when it came to myself, I didn’t recognize my own behavior as a form of self-censoring. The subconscious force of taboo that ultimately becomes central to my thesis is part of me, too.”).



moving on to how moved he was that others were so obviously moved—appreciatively, productively shocked—by his “fuck” work.<sup>42</sup> He begins drawing his Prologue to a close in a very catholic spirit. The shockwaves the work sent out, partly, he did not forget, with Brian Leiter’s help, literally circled the world, like Chris’s ideas themselves. Chris knew this, because he had heard back about his work from “law professors, linguists, lawyers, and librarians from the United States, Canada, Great Britain, Germany, Croatia, Australia, and China.”<sup>43</sup> He had received lines of return “from students with an interest in the subject at all levels: law, graduate, undergraduate, and high school,” from “former students,” “from judges and journalists, and from wrestlers and weirdoes.”<sup>44</sup> He liked them all equally, but it’s a little tempting, given their placement in his tally, to think that hearing from “wrestlers and weirdoes” gave him a distinctive tickle. Either way, when he writes about their diversity, Chris is affirming that he is seeing them all as equally valuable. It was not only when navigating the halls of institutional power that Chris never sought to put himself above anyone else.

This was—and is—the lesson. This was—and is—the teaching. We are all in this together, equally.<sup>45</sup> We can all teach and learn from one another—if we can get past the masks of our egos and their “undemocratic intellectual snobbery.” We are all part of the “common horde.” This lesson—powerfully on display in the Prologue to his “fuck” monograph—suffuses the entirety of Chris’s scholarly work,<sup>46</sup> as it animated the institutional and interpersonal

<sup>42</sup> *Id.* at xxi.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Cf.* David L. Chambers, *Gay Men, AIDS, and the Code of the Condom*, 29 HARV. C.R.-C.L. L. REV. 353, 383 (1994) (“[A]ll of us are in this together . . .”).

<sup>46</sup> Christopher M. Fairman, *Institutionalized Word Taboo: The Continuing Saga of FCC Indecency Regulation*, 2013 MICH. ST. L. REV. 567; Edward F. Sherman & Christopher M. Fairman, *Interplay Between Mediation and Offer of Judgment Rule Sanctions*, 26 OHIO ST. J. ON DISP. RESOL. 327 (2011); Christopher M. Fairman, *Growing Pains: Changes in Collaborative Law and the Challenge of Legal Ethics*, 30 CAMPBELL L. REV. 237 (2008); Christopher M. Fairman, *Why We Still Need a Model Rule for Collaborative Law: A Reply to Professor Lande*, 22 OHIO ST. J. ON DISP. RESOL. 707 (2007); Christopher M. Fairman, *Protecting Consumers: Attorney Ethics and the Law Governing Lawyers*, 60 CONSUMER FIN. L.Q. REP. 529 (2006); Christopher M. Fairman, *A Proposed Model Rule for Collaborative Law*, 21 OHIO ST. J. ON DISP. RESOL. 73 (2005); Christopher M. Fairman, *An Invitation to the Rulemakers—Strike Rule 9(b)*, 38 U.C. DAVIS L. REV. 281 (2004); Christopher M. Fairman, *Ethics and Collaborative Lawyering: Why Put Old Hats on New Heads?*, 18 OHIO ST. J. ON DISP. RESOL. 505 (2003); Christopher M. Fairman, *The Myth of Notice Pleading*, 45 ARIZ. L. REV. 987 (2003); Christopher M. Fairman, *Heightened Pleading*, 81 TEX. L. REV. 551 (2002); Glenn D. West & Christopher M. Fairman, *Corporations*, 53 SMU L. REV. 773 (2000); J. Woodfin Jones & Christopher M. Fairman, *Cash or Clients: The Ethics of Financial Disincentives in Attorney Noncompetition Agreements*, 59 TEX. B.J. 516 (1996); Stephen Cormac Carlin & Christopher M. Fairman, *Squeeze Play: Workers’ Compensation and the Professional Athlete*, 12 U. MIAMI ENT. & SPORTS L. REV. 95 (1995); Christopher M. Fairman,

interactions of Chris's professional life. Sadly, while I doubt Chris learned this lesson in or from law school, he surely taught it there. We are all the better for it.

In shock, there is teaching. This is the final lesson that Chris taught us in his terribly-too-soon, unexpected death that has shocked me as it has shocked everyone else. He taught us a lot, this guy, Chris Fairman, *Der Jäger des F-Worts*, as one "German news magazine labeled" him,<sup>47</sup> or, as he seemed to prefer being dubbed by another reporter, "Professor Fuck."<sup>48</sup> He was a colleague, he was a friend, but he was, most of all, a teacher, in both big and obvious and ordinary and in small and funny and personal and extraordinary ways. In sharing himself with us, at times from the depths, Chris asked us, dared us, to reveal ourselves back, if mainly only for ourselves. Chris sometimes nudged us gently, with a smile, when we acted like we didn't want to, but he thought we needed to, let go a bit. I'm sorry I won't get to see him again. I already miss him greatly. I don't know why, but it's a little hard not to imagine Chris smiling and laughing and saying, "It's not 'Professor Fuck' any more, it's 'Dean Fuck' to you."

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*Abdication to Academia: The Case of the Supplemental Jurisdiction Statute*, 28 U.S.C. § 1367, 19 SETON HALL LEGIS. J. 157 (1994).

<sup>47</sup> FAIRMAN, *supra* note 11, at xxi (citing Stefan Schmitt, 'Fuck'-Aufsatz: Der Jäger des F-Worts, SPIEGEL ONLINE (Sept. 12, 2006), <http://www.spiegel.de/wissenschaft/mensch/0,1518,436457,00.html> [<https://perma.cc/JPH4-6H3J>]) (translating the German label as "Hunter of the F-Word").

<sup>48</sup> *Id.* (citing Margaret Lyons, 5 Minutes with Christopher M. Fairman: "Professor Fuck," TIME OUT CHICAGO, July 13, 2006) ("It hasn't been my ambition to become *Der Jäger des F-Worts*—Hunter of the F-Word—as a German news magazine labeled me, or even better, 'Professor Fuck,' as another reporter did. But if I must don the four scarlet letters so that my daughter retains the right to tell the government to 'leave me the fuck alone,' I will." (endnote omitted)).