

Academic Freedom: New, Narrow, and Fragile

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Academic freedom is central to the character and contributions of the modern college and university in the United States. It protects the essential mission of higher education—the discovery and dissemination of truth. Faculty protected in their research, teaching, and public speaking can contribute new knowledge and insights that benefit all of society.

I will argue in this paper that academic freedom as we understand it in the United States today is new, narrow, and fragile. It is not an ancient right, but something new upon which we can improve. One reason for wishing to improve it is that it is too limited. Academic freedom in this century has been limited by academic disciplines and the tenure system. Perhaps because of its newness, academic freedom has also been fragile, repeatedly floundering or failing under the pressure of national events and political movements. Academic freedom needs to be expanded and strengthened so that it may better serve faculty, universities, and society. I will conclude the paper by suggesting steps which can be taken to strengthen academic freedom in the coming century.

Academic Freedom Is New

The most common definition of academic freedom today in the United States is the one adopted by the American Association of University Professors (AAUP) and the Association of American Colleges in the 1940 Statement of Principles on Academic Freedom and Tenure

(hereafter “the 1940 Statement”). The three elements of the definition are (1) freedom to conduct research and publish the results; (2) freedom in the classroom to teach one’s subject; and (3) freedom to speak and write as other citizens do (AAUP, 1940/1990). This definition of academic freedom differs significantly from the institutional academic freedom of medieval European universities and early American colleges, and the academic freedom of the faculty in nineteenth century German universities. The purpose of this section of the paper is to review the historical development of academic freedom to highlight the newness and uniqueness of the current American definition. The two major forms of academic freedom which will be discussed are institutional academic freedom and the academic freedom of faculty.

Institutional academic freedom

The oldest form of academic freedom is institutional academic freedom, which has its roots in the autonomy of the medieval European university. The conflict between church and state often created niches of institutional independence for medieval universities, which were commonly self-governing guilds of masters with sufficient autonomy to appoint professors, teach, and grant degrees. These prerogatives of the medieval professor were managerial, not intellectual (Slaughter, 1981). Medieval scholars were members of the church, and did not think they had the right to teach the truth as they saw it, since the truth was already revealed by faith and the church. As Haskins (1957) said: “If. . . truth is something which has already been revealed to us by authority, then it has only to be expounded, and the expositor must be faithful to the authoritative doctrine” (p.51).

Early American colleges resembled medieval universities in two ways. First, they achieved a degree of independence from governmental authority, most notably as a result of Trustees of Dartmouth College v. Woodward (1819), in which the U. S. Supreme Court protected Dartmouth College from interference by the state legislature of New Hampshire (Finkin, 1983). Second, like medieval universities, early American colleges sought to transmit the revealed truth, not to discover and teach new truths (Rudolph, 1962/1990). Lucas (1994) observed that in the American colonial period, “anything much resembling academic freedom in its modern sense was either nonexistent or severely limited in its scope” (p. 304). Colleges were founded by religious sects which were competing to save souls, and were not tolerant of free thinking or new truths.

Thus, both the medieval European university and the early American college had institutional academic freedom, and both were sponsored by religious organizations which influenced what would be taught. A difference between medieval European universities and early American colleges was their mode of governance. In Europe, faculty guilds founded most of the universities, electing their own rectors and managing their own affairs. This was not the case in the United States. The American colonies did not have concentrations of faculty who could establish and run universities. When colonists sought to establish colleges, they formed governing boards, and the boards appointed presidents, who often served as the first instructors (Hofstadter & Metzger, 1955). Thus, the prerogatives of institutional academic freedom were exercised by the faculty in Europe, but by boards and presidents in the United States.

The ability of American faculty to manage their own affairs has grown during this century, notwithstanding the prerogatives of boards and presidents. The exponential growth in the number of faculty and their specializations has given the faculty a new role in governance similar to that

once enjoyed by medieval scholars. Boards and presidents do not and can not understand the vast array of academic specialities sufficiently well to decide what the university should teach, who should teach it, and how it should be taught. Faculty expertise is needed, and is appropriate, in making those decisions.

In 1966 the AAUP, the American Council on Education, and the Association of Governing Boards adopted a “Joint Statement on Government of Colleges and Universities” which made recommendations on the respective roles of governing boards, faculties, and administrations. The Joint Statement assigned to faculty “the primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process” (AAUP, 1966/1990, p. 123). While the AAUP supports this faculty role in governance, it does not recognize institutional academic freedom, possibly because institutional academic freedom is legally in the hands of boards and presidents, not faculty.

Institutional academic freedom has been recognized by the U. S. Supreme Court. In Sweezy v. New Hampshire (1957), Justice Frankfurter defined academic freedom as the freedom of universities to decide “who may teach, what may be taught, how it shall be taught, and who may be admitted to study” (Sweezy v. New Hampshire, 1957, p. 263). This definition has protected the First Amendment right of the university, as an institution, “to be free from government interference in the performance of core educational functions” (Byrne, 1989, p. 311). The Supreme Court has recognized institutional academic freedom in regard to both public and private universities (Rabban, 1990).

Faculty academic freedom

The environment of religious and political orthodoxy in American colleges did not support the development of the academic freedom of faculty members. The modern American concept of academic freedom for faculty was imported from the German universities which emerged in the nineteenth century as research institutions. Rather than transmitting revealed truth, the German research university set out to discover truth. This process was characterized by the ideals of *lernfreiheit* and *lehrfreiheit*. *Lernfreiheit* was the student's freedom to learn, and *lehrfreiheit* was the professor's freedom to teach. Metzger (1988) explained the German faculty member's freedom to teach:

In its native habitat, it referred to the statutory right of full and associate professors, who were salaried civil servants, to discharge their professional duties outside the chain of command that encompassed other government officials. It allowed them to decide on the content of their lectures and to publish the findings of their research without seeking prior ministerial or ecclesiastical approval or fearing state or church reproof; it protected the restiveness of academic intellect from the obedience norms of hierarchy. (p. 1269)

However, academic freedom existed only within the German university, not external to it (Hofstadter & Metzger, 1955). There was no freedom of extramural speech for German faculty (Fuchs, 1963/1967, p. 250). The original concept of *lehrfreiheit* "did not include the right of the professor to engage in active politics" (Searle, 1972, p. 90).

During the nineteenth century, more than 9,000 Americans studied at German universities (Hofstadter & Metzger, 1955). They brought back to America the idea that academic freedom was essential to the definition of a university. American colleges had sought to pass on accepted truths; now, universities were needed to discover new truths. In 1876, Johns Hopkins University

was established using the German model. Of the 53 lecturers and professors teaching at Johns Hopkins in 1884, nearly all had studied at German universities.

In the 1890's the idea of academic freedom first received "a self-conscious emphasis" in American higher education, although "the ideal of academic freedom was often notable for its vagueness" (Veysey, 1965, pp. 384-385). Whatever it was, it soon came into conflict with business and community leaders on a number of campuses. The AAUP was founded in 1915 primarily to define and protect the academic freedom of faculty members. Many of the original AAUP members had studied at German universities; eight of the thirteen signers of the AAUP's 1915 "General Report of the Committee on Academic Freedom and Academic Tenure" had studied in Germany. The report included a "Declaration of Principles" (hereafter "1915 Declaration") which identified the German connection clearly, and went on to define academic freedom as "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action" (AAUP, 1915/1990, p. 393).

The 1915 Declaration can be distinguished from nineteenth century German academic freedom in two ways: (1) the Declaration did not include the academic freedom of students; and (2) the Declaration added extramural speech and action to the freedom of teaching and research. The American addition of extramural freedom was "an unconscious and significant deviation from the German theory" (Veysey, 1965, p. 384). One reason the deviation was significant was that "overwhelmingly. . . the AAUP's academic freedom docket has been dominated by extramural freedom cases" (Metzger, 1988, p. 1276).

The 1915 Declaration asserted that academic freedom belongs to the academic profession, not individual faculty members. The 1915 Declaration said that if disciplinary action had to be

taken against a faculty member, it should be taken by bodies composed of faculty. “It is, in short, not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion and of teaching, of the academic profession, that is asserted by this declaration of principles” (AAUP, 1915/1990, pp. 404-405).

The freedom of speech of faculty members has been protected by the United States Supreme Court. The watershed case was Keyishian v. Board of Regents (1967), the first Supreme Court decision in which the majority opinion made an important reference to academic freedom. In Keyishian, the court dealt with regulations which were designed to prevent subversive individuals from being hired by the New York state government. Faculty members of the State University of New York were fired when they refused to sign a certificate affirming that they were not, and had never been, communists. The court, in holding for the faculty, said:

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. . . (Keyishian v. Board of Regents, 1967, p. 603).

The Supreme Court thus made academic freedom a special concern of the First Amendment, and protected individual faculty members at public universities on that basis. Since the First Amendment protects citizens from their government, not their private employers, the First Amendment does not protect the academic freedom of faculty at private universities (Hobbs, 1994, Byrne, 1997). The academic freedom of faculty at private universities can be protected by contract (Kaplin & Lee, 1995).

In summary, the oldest tradition of academic freedom is the tradition of institutional academic freedom, which began with medieval European universities and typified early American

colleges. Faculty academic freedom emerged in nineteenth century German universities, and was imported into America at the turn of the century. The AAUP, in defining academic freedom in 1915, dropped *lernfreiheit*, the academic freedom of students; kept *lehrfreiheit*, the academic freedom of faculty to teach and research; and added the extramural speech and action of faculty. These concepts, asserted in 1915, did not gain wide acceptance in the United States until after World War II. They were formalized in the 1940 Statement, which is the most widely used definition of academic freedom in America today (Poch, 1993).

The currently accepted definition of faculty academic freedom in the United States is therefore unique, and has been generally accepted for only 50 years. The academic freedom of faculty at public universities has been protected by the U. S. Supreme Court for only 30 years. The academic freedom of faculty in our country is therefore “not an ancient prerogative but an acquisition of relatively recent date” (Hofstadter & Metzger, 1955, p. xii). It is a new idea; it is still an experiment. We can make changes as we gain experience with it. I will argue in the next section that changes are needed.

Academic Freedom is Narrow

Academic freedom has been valued because it gives faculty the freedom to follow truth wherever it leads, to make new discoveries, think new thoughts, and develop new paradigms. During the twentieth century, however, academic freedom has been limited. In this section I will discuss two of those limits, academic disciplines and tenure systems.

Academic disciplines as a limit

In 1900, William Rainey Harper, president of the University of Chicago, gave a convocation address which included his views on academic freedom, views which subsequently had great influence on the policies and positions of the AAUP. Harper said that complete freedom of speech on all subjects was fundamental, and could not be called into question. No one outside the university should be allowed to interfere with its practice. Each professor had the absolute right to express his opinion. If the professor abused his privileges as a professor, the university had to suffer, because it was the university's fault--the university should have exercised more foresight and wisdom in appointing the faculty member in the first place.

John Dewey, who was a faculty member at the University of Chicago when Harper gave his convocation address, later became the first president of the AAUP. Dewey quoted Harper's statements with approval and even enthusiasm (Dewey, 1902/1977; Marsden, 1994). Nearly all of Harper's ideas can be found in subsequent AAUP documents and policies.

According to Harper, academic freedom is limited by scientific methods and acceptance by colleagues in the discipline. Harper said:

A professor is guilty of abuse of his privilege who promulgates as truth ideas or opinions which have not been tested scientifically by his colleagues in the same department of research or investigation. A professor has no right to proclaim to the public a truth discovered which is yet unsettled and uncertain. (Harper, 1902/1961, p. 782)

The AAUP 1915 Declaration took a similar position, stating:

The claim to freedom of teaching is made in the interest of the integrity and of the progress of scientific inquiry; it is, therefore, only those who carry on their work in the temper of the scientific inquirer who may justly assert this claim. The liberty of the scholar within the university to set forth his conclusions, be they what they may be, is conditioned by their being conclusions gained by a scholar's method and held in a scholar's spirit (AAUP, 1915/1990, p. 401).

The academic discipline has also been seen as a limit on the subject matter about which one has the freedom to teach. For example, the definition of the freedom to teach which was set forth in the 1940 Statement was the freedom to teach “one’s subject.”

I interviewed 89 faculty members at six private universities and asked them about the limits of academic freedom. Forty percent of the faculty mentioned their academic disciplines, fields of expertise, scientific methods, or scholarly methods as a limit on their academic freedom (Keith, 1996). Faculty members said that they did not have the freedom to say or publish things that would not be accepted within the community of scholars in their own fields.

This limit on academic freedom gives rise to a significant dilemma. If approval by the community of scientists or scholars in one’s discipline is required in order to claim the protection of academic freedom, then no idea that is not yet accepted by the discipline will be protected. Yet it is precisely such new ideas that need protection. The 1915 Declaration argued that a university:

should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world. (AAUP, 1915/1990, p. 400)

It is not clear how a genuinely new idea, not accepted within an academic discipline, is to germinate and ripen. The dilemma is described by Scott (1995):

Academic freedom protects those whose thinking challenges orthodoxy; at the same time the legitimacy of the challenge--the proof that the critic is not a madman or a crank--is secured by membership in a disciplinary community based upon shared commitment to certain methods, standards, and beliefs The critic of orthodoxy thus, ironically, must find legitimation in the very discipline whose orthodoxy he or she challenges. (p. 44)

This legitimation is hard to find, because the consensus of those in the discipline excludes whatever is different from “the reigning philosophical and methodological assumptions” (Scott, 1995, p. 46).

William Rainey Harper, the 1915 Declaration, and the faculty I interviewed assumed that the scientific method or the methods of academic disciplines must be used to discover truth, and truth is established when colleagues in a discipline agree. It follows that scientific or scholarly work that does not employ the traditional methods, or is not accepted by colleagues, should not be protected by academic freedom because the work must be false. This position conflicts with the fact that advances in knowledge are made only when new truth replaces the old. Kuhn (1970) described the scientific discoveries that contribute to crises and lead to the adoption of new paradigms during scientific revolutions. There are periods of fragmentation and confusion during which new theories are proposed and debated before a new paradigm gradually emerges and gains general support. Those proposing the new theories and supporting a new paradigm need the protection of academic freedom so that new truths can emerge and take hold.

The influence of the academic discipline is related to its claim of objectivity. Tierney (1993) noted that according to the modernist concept of science:

the researcher’s biases or beliefs are not supposed to enter into either the research topic chosen or the theoretical orientation employed. . . . Scientific inquiry is to be bereft of ideology, and objectivity is the sine qua non of inquiry. (p. 147)

However, this objectivity is difficult to achieve. A critical perspective recognizes that:

the production of knowledge is socially constructed. . . Participants define knowledge according to their social and historical contexts. . . [I]nstitutions, individuals, and the constantly shifting social forces of society combine to determine what accounts for knowledge at a particular moment in history. . . . [C]ultural politics surrounds how knowledge gets defined, studied, and enacted,

which in turn structures how we have thought about academic freedom. (Tierney, 1993, p. 148).

According to the critical perspective, senior faculty in institutions and leading scholars in their disciplines define what is true, what is knowledge, what is acceptable, and therefore what will be protected by academic freedom. Inevitably, this means that some topics or ideas will be excluded from protection. The exclusion of these topics or ideas may silence not only individuals, but groups of individuals who do not have access to the power structure, and who are therefore denied a voice.

In summary, academic freedom was established so that faculty members could follow the truth wherever it leads them, regardless of how unpopular or controversial their statements or conclusions might be. However, for Harper, the 1915 Declaration, and the faculty I interviewed, academic freedom is the freedom of faculty to teach or publish only what their colleagues in their disciplines accept as truth. Once a new truth is accepted by his or her colleagues, the faculty member propounding a new truth will be protected by academic freedom against individuals, groups, or entities *beyond* his or her discipline, such as the administration, the board, the government, or the general public. To put it simply, the faculty member who stands *with* those in his or her discipline will be protected against others; the faculty member who stands *against* those in his or her discipline will not be protected against either colleagues or others.

This emphasis on acceptance by colleagues in the discipline may have its roots in the early role of the college, which was to transmit truth, rather than the role of the modern university, which emphasizes the search for new truths. Unfortunately, limiting academic freedom to what is

already accepted within the academic discipline can make academic freedom relatively useless in the search for new truths.

Tenure systems as a limit

A second limit on academic freedom is the tenure system, which was established to protect academic freedom. According to the 1940 Statement, after the expiration of a probationary period not to exceed seven years, faculty should have permanent or continuous tenure, and their services should be terminated only for adequate cause. Tenure thus protects the academic freedom of tenured faculty by preventing arbitrary dismissal.

Tenure has been seen as the most important protector of academic freedom (Machlup, 1964/1967; Tucker & Mautz, 1982; Brown & Kurland, 1990). However, less than half of all faculty are tenured or have tenure-track positions (Gappa, 1997). This means that the tenure system directly protects the academic freedom of only half of the professorate. Metzger (1973) observed that the tenure system has left unanswered the question of how to protect the academic freedom of the nontenured, who are the “unentitled” in a two-class system (pp. 150-151).

It has been argued that the tenure system indirectly protects the academic freedom of nontenured faculty. Tenure “creates an atmosphere favorable to academic freedom for all . . . because the tenured faculty form an independent body capable of vigilant action to protect the freedom of their nontenured colleagues” (Commission on Academic Tenure, 1973, p.15). Also, “because of their own tenure, the senior professors who in practice make the tenure decision are not threatened by bringing on able colleagues” (Brown & Kurland, 1990, p. 334).

There seems to be no question, however, that nontenured faculty have less academic freedom than tenured faculty. Van Alstyne (1971) stated that “the anxiety of prospective nonrenewal may be seen to chill the appointee’s academic freedom in a manner unequaled for those members of the faculty with tenure “ (pp. 331-332). In my interviews with faculty at six private universities, I found that *both* the tenured and the nontenured faculty agreed that junior faculty seeking tenure have much less academic freedom than tenured faculty (Keith, 1996).

There is also some evidence that the tenure system actually *decreases* the academic freedom of nontenured, tenure-track faculty. Since the tenure decision is based in most cases on the recommendations of senior faculty, junior faculty seeking tenure are often under pressure to conform to existing norms and not challenge the accepted views of the senior faculty (Machlup, 1964/1967; Sartorius, 1972; O’Toole, 1978; Bowen & Schuster, 1986; Byrne, 1989). The nontenured, tenure-track faculty whom I interviewed said that they were told to hold their tongues, lay low, self-censor, and be diplomatic, if they wanted to achieve tenure (Keith, 1996).

In summary, tenure systems are two-edged swords: They enhance the academic freedom of tenured faculty, but do not directly protect, and may in fact decrease, the academic freedom of nontenured faculty. If the full benefit of academic freedom is to be realized, it will be necessary to find ways to provide academic freedom to all faculty, not just those who are tenured.

Academic Freedom Is Fragile

Academic freedom as we now define it is not only new and narrow, but also fragile. In this section, I will describe how academic freedom has failed to protect faculty from the pressure of national events and political movements during the twentieth century.

The first crisis occurred during World War I. Patriotic zealots set the standard for loyalty, and those who were less enthusiastic were suspect. The AAUP formed a three-person Committee on Academic Freedom in Wartime, chaired by Arthur Lovejoy, a founder of the AAUP.

According to Marsden (1994), the Committee “argued simply that freedom of speech and academic freedom had to be temporarily curtailed in wartime” (p. 310). Fuchs (1963/1967) said:

During World War I some of the staunchest proponents of academic freedom sanctioned the muzzling of anti-war professors and even of those whose ancestry and utterances gave ‘reasonable ground for belief that they contemplate[d]’ acts to aid the enemy or hamper the war effort. (p. 251).

Only two years after the founding of the AAUP and the issuance of the 1915 Declaration, academic freedom was not only limited, it was AAUP leaders themselves who argued for the limits. Academic freedom had failed its first major test.

Academic freedom failed again during the communist witch hunts. Ironically, during the year in which the 1940 Statement was adopted, more than forty professors were fired or their contracts were not renewed “either because they were alleged to be communists, or because they refused to divulge their political beliefs” (Lucas, 1994, p. 224).

Under political pressure, the definition of academic freedom changed. Academic freedom was no longer about what faculty taught, published, or said as citizens--it was now about whether faculty belonged to the Communist Party. Few believed that communist teachers were propagandizing in class or indoctrinating their students (Schrecker, 1983; Lucas, 1994). The problem was simply membership in the Communist Party. Because membership in the Communist Party was not illegal, congressional and state investigating committees had no power to punish

faculty members who were communists. What the investigating committees could not do, however, the universities were often willing to do for them (Slaughter, 1981). State colleges and universities were especially repressive (Lucas, 1994). In 1949, after hearings by the Washington State legislature, the University of Washington fired three professors--two for being communists, and one for refusing to say whether he was a communist or not. A faculty committee involved in the case agreed that members of the Communist Party were, by definition, unqualified to teach.

Exercising one's Fifth Amendment rights was constitutional, but faculty who did so embarrassed their universities. The New York City municipal colleges dismissed more than a dozen faculty without a hearing, on the basis of a section of the New York City Charter which allowed the automatic dismissal of any city employee under legislative investigation who refused to answer any question on the grounds that it would tend to incriminate him or her. In 1952, Rutgers University dismissed two faculty members for taking the Fifth Amendment.

During 1953 and 1954, when congressional investigations were active, more than 100 college faculty were questioned in public. Most refused to cooperate; at least 30 lost their jobs (Schrecker, 1983). Unfortunately, "the AAUP, which was the association most likely to take a stand against McCarthyism, did little to oppose it" (Slaughter, 1981, p. 84). It was not until 1956, after the peak of the congressional and state investigations, that the AAUP issued its report on "Academic Freedom and Tenure in the Quest for National Security." After affirming the importance of academic freedom and due process, the report took the position that faculty should disclose their party membership or activities, even though disclosures would not be legally privileged and could be used to incriminate them later, eliminating their Fifth Amendment protection. "But we believe that the institution's right to know facts relevant to fitness to teach

should prevail over this consideration,” the report said (AAUP, 1956/1967, p. 55). The AAUP report affirmed faculty members’ constitutional rights, but concluded that for the good of their institutions, faculty members should not exercise their rights.

Lazarsfeld and Thielens (1958) studied the impact of this period of “unusual stress” on faculty members who were social scientists. They found that a plurality of the social scientists were not willing to protect the academic freedom of faculty members who were communists. When asked whether an admitted communist who was teaching at a college should be fired, 45 percent said yes, 35 percent said no, and the remaining 20 percent didn’t know or didn’t answer.

In only a few cases did a university dismiss a faculty member whom a faculty committee wanted to retain. While some faculty resisted, “in the main, when academe was pressured to cleanse itself of suspected dissidents, colleges and universities readily acceded” (Lucas, 1994, p. 306). Protection for individual faculty eventually came from the U. S. Supreme Court in cases such as Sweezy v. New Hampshire (1957) and Keyishian v. Board of Regents (1967), noted above.

Academic freedom suffered again in the late 1960's during campus “revolutions,” with students and faculty speaking out and taking action, some in the name of civil rights, many in opposition to the war in Vietnam, and most against “the Establishment.” Students seized buildings, held sit-ins, threw rocks, and set fires; police invaded campuses. Unpopular speakers were shouted down or physically removed from their podiums. Faculty who were “suspected of not supporting students were subjected to acts of humiliation and intimidation” (Lucas, 1994, p. 258). Other faculty joined with students in “radical acts” which challenged many institutions to respond, sometimes seeking to restore order, sometimes seeking to repress political activity.

Lewis (1973) studied 217 contested faculty dismissals reported in the AAUP Bulletin from 1916 through 1970. From 1945 through 1962, the ideological position of the faculty member was the most frequent reason for dismissal. Insubordination became a frequent reason for dismissal beginning in 1967. From 1967 to 1970, institutions gave insubordination as the reason for dismissal in a quarter of the cases, while the faculty who were dismissed saw insubordination as the cause in 44 percent of the cases. “When radical ideology was combined with active defiance of the administration’s claim to power, dismissals resulted” (Lewis, 1973, p. 555). Lewis concluded that the threats to academic freedom in the late sixties and early seventies came from within the university, especially from the administration, but also from the trustees.

Since the 1970's, financial exigencies have overridden tenure and due process. The provisions on tenure in the 1940 Statement do not guarantee lifetime employment for tenured faculty (Van Alstyne, 1971). Tenured faculty can still be removed “for adequate cause” or their positions can be eliminated “under extraordinary circumstances because of financial exigencies”(AAUP, 1940/1990, p. 4). “Financial exigencies” became a common justification for the termination of faculty beginning in the 1970's.

Slaughter (1981) said that the use of “financial exigencies” by university administrations “strikes at the heart of due process and tenure since reorganization and cutbacks are often defined by fiscal agents, administrators, and sometimes by faculty as a management problem thereby legitimizing administrative rather than professional decision making about who should stay and who should go” (p. 88). Financial exigencies were used by administrations to justify action on a range of issues such as faculty credentials, class size, faculty work load, and the general shape of academic programs--all areas which had previously been considered areas for faculty self-

governance or participation. Some institutions used financial exigencies to let go senior faculty and hire back younger, lower salaried faculty to save money; some eliminated troublesome faculty; some reorganized or changed the institution's mission without faculty participation in the process (Slaughter, 1981).

By the late 1980's, political correctness had become a campus issue affecting academic freedom. In his book, Illiberal Education: The Politics of Race and Sex on Campus, Dinesh D'Souza charged that political correctness had a chilling effect on campuses, hindering or halting free speech and debate on race and ethnicity. D'Souza (1992) said that "[o]n virtually every campus, there is a de facto taboo against a free discussion of affirmative action or minority self-segregation, and efforts to open such a discussion are considered presumptively racist" (pp. 238-239). However, D'Souza's charges were based on anecdotal evidence and reports of incidents at only a handful of universities.

In July 1991 the AAUP issued a statement which said that the attack on political correctness:

has frequently been less than candid about its actual origin, which appears to lie in an only partly concealed animosity toward equal opportunity and its first effects on modestly increasing the participation of women and racial and cultural minorities on campus. (AAUP, 1991, p. 48)

The AAUP statement supported affirmative action, and reminded all parties that "some discomfort is an inevitable consequence of a climate of give-and-take on campus, especially when the subjects of disagreement are sensitive issues of race, gender, or ethnicity" (AAUP, 1991, p. 48). Poch (1993) disagreed with the AAUP position, saying that "the AAUP fails to recognize that some manifestations of political correctness can jeopardize academic freedom" (p. 54). He

argued that the fear of being unpopular or being penalized leads to withdrawal and the withholding of ideas, so that universities are no longer a “marketplace of ideas.”

The increase in diversity may be a factor in both the occurrence of, and the consciousness of, “hate speech” on some campuses. “Hate speech” is “the generic term that has come to embrace the use of speech attacks based on race, ethnicity, religion, and sexual orientation or preference” (Smolla, 1990, p. 195). Because hate speech is morally repugnant and contrary to the concept of a campus community, a number of universities have attempted to design and enforce rules limiting hate speech. A policy adopted by the University of Michigan in 1988 regarding harassment was struck down by the federal district court in Doe v. University of Michigan (1989). The court concluded that the policy was enforced “broadly and indiscriminately,” and that the university could not establish an anti-discrimination policy “which had the effect of prohibiting certain speech because it disagreed with ideas or messages sought to be conveyed” (Doe v. University of Michigan, 1989, pp. 861, 863). The court said this was of special significance in a university setting, “where the free and unfettered interplay of competing views is essential to the institution’s educational mission” (Doe v. University of Michigan, 1989, p. 863).

Committee A of the AAUP, in its statement “On Freedom of Expression and Campus Speech Codes,” issued in June 1992, concluded: “Free speech is not simply an aspect of the educational enterprise to be weighed against other desirable ends. It is the very precondition of the academic enterprise itself” (AAUP, 1992, p. 31). The AAUP position was that hate speech is wrong, but it should not be stopped with rules which limit constitutional free speech or academic freedom. Instead, universities should condemn breaches of civility, punish inappropriate conduct, and develop courses and materials which would educate students so as to deter offensive speech.

In summary, the historical record shows that academic freedom as we understand it today is fragile. It was overcome by the patriotic fervor of World War I, did not protect faculty members from the communist witch hunts of the 1940's and 1950's, did not stop university boards and administrations from terminating faculty who spoke out during the campus unrest of the 1960's, and did not stop the elimination of faculty positions and departments during the financial exigencies of the 1970's and 1980's. In the 1990's, some faculty feel that their academic freedom is being chilled by political correctness, while others argue that academic freedom and free speech should be limited to control hate speech. In light of its history, academic freedom needs strengthening if it is to withstand the pressures of national events and political movements.

Agenda for the New Century

In this paper I have argued that in the unique form in which it is found in America today, academic freedom is new, narrow, and fragile. In this section I will make suggestions regarding steps which can be taken to enhance academic freedom in the new century. The steps include strengthening broad-based understanding and support for academic freedom, reviewing the limits on academic freedom, addressing new dimensions of academic freedom, and integrating the two historic definitions of academic freedom.

Strengthening understanding and support

Increased support for academic freedom may be achieved when more people understand it. Even within colleges and universities, the current level of understanding may not be very high.

Research indicates that faculty see academic freedom as a basic value of their profession (Bowen & Schuster, 1986), one of the concepts that make up the shared values and beliefs of the academic profession (Kuh & Whitt, 1988), and one of the ideologies which make up the common

values of the profession (Clark, 1987). However, faculty may not know very much about academic freedom. Shils (1993) asserted that “most academics have not and do not give much thought to academic freedom. For many of them, it has not been an issue at all” (p. 204). Zito (1993) found that faculty do not know much about the legal aspects of academic freedom. Two thirds of the faculty whom I interviewed at six private universities could not recall any incidents which raised academic freedom issues on their campuses, and half said that academic freedom issues never came up or they never thought about it (Keith, 1996).

The level of understanding of academic freedom is presumably even lower among members of the general public than it is on campus. The faculty I interviewed gave the general public the lowest rating of eleven protectors of academic freedom (Keith, 1996). A number of faculty members said that the public had no idea what academic freedom was.

As the new century approaches, institutions of higher education and their stakeholders should review the history, definitions, limits, and potentials of academic freedom. Convocations, workshops, seminars, lectures and special publications can inform faculty, administrations, boards, government officials, and community leaders. It will be hard to strengthen academic freedom if key leaders in higher education do not know what it is.

Reviewing the limits

The faculty, on their campuses and in their organizations, should review the limits on academic freedom. The discussion can begin with the limits imposed by academic disciplines. Should faculty members have to gain the acceptance and support of colleagues in their disciplines, before their academic freedom will be protected? Does this make sense, when it is the individual with a new idea, a new method, a new truth, whose academic freedom most needs protecting?

Similarly, if academic freedom is essential to the academic profession, why shouldn't it be granted to all faculty--tenured or nontenured, full-time or part-time? Why shouldn't every faculty member who enters the classroom or research laboratory have academic freedom?

If tenure limits the protection of academic freedom, then tenure and academic freedom should be "de-coupled" and analyzed separately (Keith, 1997; Byrne, 1997). Tenure can be analyzed as a rational employment practice, designed to select faculty who will be given long-term employment (McPherson & Winston, 1983). The protection of academic freedom, meanwhile, can be analyzed as an issue which is broader than tenure, and sources of protection other than tenure can be identified and implemented.

One way to protect the academic freedom of all faculty is to include guarantees of academic freedom and due process in all faculty contracts (Keith, 1996, 1997; Byrne, 1997). According to Kaplin and Lee (1995): "The legal boundaries of academic freedom are initially defined by contract law. Faculty members possess whatever academic freedom is guaranteed them under the faculty contract" (p. 300). The guarantee of academic freedom for nontenured faculty members can be found in union contracts at public universities. For example, the contract between the University of California and the University Council-American Federation of Teachers regarding the non-Senate instructional unit guarantees full academic freedom to nontenured instructors. The contract refers to an appeal process which a faculty member can use in the event of a complaint regarding academic freedom (University of California, 1993).

Senior faculty will play a critical role in the discussion of the expansion of academic freedom to the nontenured. Senior faculty are the only faculty whose academic freedom is directly protected by tenure; they influence their disciplines, which determine *what* will be

protected by academic freedom; and they serve as gatekeepers in the tenure system, which decides *who* will be protected by academic freedom. Senior faculty should engage the issues of supporting new truths not yet accepted by their disciplines and enhancing the academic freedom of nontenured faculty. The goal should be a shift from academic freedom for the profession to academic freedom for individual faculty, regardless of tenure status.

Addressing new dimensions of academic freedom

Academic freedom also needs to be updated for the new century. A simple but important question which should be asked is: What has changed that might require the definition of academic freedom to change? When the AAUP was founded in 1915, the major concern was the protection of the extramural speech of faculty. As Tierney and Bensimon (1996) wrote: “Whereas academic freedom was once defined in universal terms of protection against political interference from external forces, individuals increasingly rely on segmented and differential definitions that reflect on their institutional, disciplinary, and individual viewpoints” (p. 26). McCart (1991) found that the 57 faculty she interviewed at a public university were concerned about the impacts on their academic freedom of limited institutional finances, the scarcity of grant money for research, and the impact on research topics which resulted from partnerships with private corporations. The 89 faculty members I interviewed at six private universities had little interest in extramural speech, but were very interested in their freedom to teach, especially the selection of texts, teaching methods, and methods of evaluating student learning (Keith, 1996).

Nationally accepted definitions of academic freedom such as those developed by the AAUP are valuable as references or guidelines. However, each institution can supplement those

national definitions or draft its own provisions, crafted to suit its own mission, culture, and values.

Research institutions can more fully define the freedom of research, and address the impact of scarce funds and the implications of various funding sources. Teaching institutions can more fully define the freedom to teach, and address the question of who selects texts, teaching methods, and methods of evaluation. These new, updated definitions will provide a more useful, detailed understanding of what academic freedom means on each campus.

Integrating the two definitions of academic freedom

Finally, these new, updated definitions, should integrate the two historical definitions of academic freedom--institutional academic freedom and faculty academic freedom. All institutions of higher education have a stake in faculty academic freedom, since it is that freedom which is expected to result in the advancement of knowledge and the discovery of new truths. Meanwhile, faculty have a stake in institutional academic freedom, because it is institutional academic freedom that can protect universities from governmental intrusion, and therefore protect the faculty. While the AAUP does not recognize institutional academic freedom, the four essential freedoms which the Supreme Court has used to define institutional academic freedom are freedoms which are today most often exercised by faculty--the freedom to decide who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

The integration of the two historic definitions of academic freedom would provide a comprehensive definition of academic freedom worthy of the challenges of the future. Institutions of higher education need a degree of autonomy from the larger society in order to make academic decisions which support the freedom of faculty to advance knowledge in ways which benefit the

larger society. An integrated definition would recognize the roles of faculty, administrations, boards, the government and the general public in enhancing and protecting academic freedom.

Conclusion

A unique form of academic freedom has been successfully established in the United States during the past 50 years. Perhaps because the AAUP asserted that academic freedom belongs to the academic profession, it has been limited by academic disciplines. Perhaps because academic freedom and tenure were first articulated by senior faculty, the tenure system directly protects the academic freedom of only the senior faculty. Perhaps because academic freedom is still new, it has floundered or failed under the intense political pressures of war, communist witch hunts, student unrest, financial exigencies, political correctness and hate speech. For whatever reasons, academic freedom as we define it today is new, narrow, and fragile.

The academic freedom we know today was a response to the issues which affected faculty at the beginning of the twentieth century. If academic freedom is to be relevant and strong, we need to rethink it for the twenty-first century. We need academic freedom which will protect new truths as they emerge, and will support the academic freedom of the nontenured. We need to address new issues which impact the academic freedom of faculty, and to incorporate those new issues into expanded definitions of academic freedom. Finally, we need to integrate the two historical definitions of academic freedom to establish a comprehensive definition which will provide improved protection for both the faculty and our institutions of higher education in the years to come.

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