

democratic freedom needs some rethinking, with all of the pressures on higher education engendered by massification, commercialization, and accountability. What is needed is a return to the core concepts of academic freedom developed by von Humboldt and expanded in the AAUP's 1940 statement. Academic freedom, after all, is the right of professors to teach without constraint in their field of expertise, do research and publish, and express themselves in the public space (newspapers, the Internet, and so on). Academic freedom generally protects the employment of professors as well as providing the most ironclad guarantees possible—through a formal tenure or civil service system, or other arrangements.

Professors came to be protected in roles as members of the academic community as well. They could not be disciplined because they might oppose university leadership on issues relating to academic governance of policy.

A statement issued by professors at the University of Cape Town in South Africa and quoted in a famous 1957 United States Supreme Court decision states:

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

These ideals neatly summarize many of the essential ideas of academic freedom.

Academic freedom does not essentially concern how universities are managed, whether they are adequately funded or even how the faculty is compensated. Academic freedom does not ensure that professors have a role in governance but should guarantee that they can speak out on internal management issues without fear of sanction. Academic freedom does not relate to accountability. Universities may legitimately demand appropriate productivity from faculty members. Professors' work may be evaluated, and inadequate performance may lead to sanctions or even, in extreme cases, firing, but only after careful procedures that do not violate academic freedom. Academic freedom protects professorial freedom of teaching, research, and expression—and nothing else.

CURRENT PROBLEMS

Traditional academic freedom is under threat in many places today, creating the need for more attention to be paid to contemporary challenges. These crises range from professors being subject to severe sanctions for their teaching, research,

or expression—including firing, jail, or even violence. Groups like Scholars at Risk provide assistance to such academics and publicize their problems. In some countries, restrictions exist on what can be researched, taught, and published. In some cases the restrictions are explicit, but in most cases the "red lines" that cannot be crossed are not clearly spelled out. Yet, academics may be sanctioned if they violate these terms.

The list of such countries and fields of inquiry is unfortunately rather long. In the United States, which has in general effective protections for academic freedom, problems are emerging. Courts have recently ruled that academics who speak out against the policies of their own universities and are penalized for such actions are not protected by academic freedom. The growing number of part-time teachers in many countries have no effective protection of their academic freedom, since they are often employed for just one course or for a short and often indeterminate period of time. The ownership of knowledge by multinational corporations or even by employing universities has become an issue of contention in some countries. Is it a violation of academic freedom for an external organization to control publication through ownership rights? Is academic freedom violated if governments impose curricular requirements of various kinds, as is the case in a significant number of countries? In short, academic freedom is under considerable stress today, and expanding the definition of this key concept to include basically everything makes the protection of the essentials of academic freedom increasingly difficult. The complexities of the 21st century require careful attention to the core principles of academic freedom so that they can be protected in an increasingly difficult environment. ■

New Challenges to Academic Freedom in the United States

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Academic freedom in American higher education evolves in curious and often unpredictable ways. For those who teach at public or state-supported institutions, the courts play a major role in defining the scope of such freedom. For faculty at independent or private colleges and universities, whose policies are seldom subject to court review, standards are provided by organizations such as the American Association of

University Professors. Some faculties at institutions of both types may also be protected by collective bargaining agreements. After a decade or so with relatively few critical tests of the rights and liberties of US scholars, the past year or two has brought academic freedom to the fore in dramatic fashion. Three current tests merit special attention.

THE JOHN YOO CASE

The first case involved University of California-Berkeley law professor John Yoo. During the time he served as a high-legal adviser to the administration of President George W. Bush, Yoo offered views that seemed to validate or legitimize extreme methods of interrogation, potentially including torture—methods so controversial that the administration itself soon renounced their use. When several memoranda containing such counsel became public, demands emerged for university sanctions against the author, despite his long-tenured status on

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the Berkeley faculty. Such demands intensified when a national commission suggested the disbarment of several of the “torture memo” architects and when a federal judge refused to dismiss a civil damage suit by torture victims against Yoo and several other White House legal advisers. The law school dean, however, refused to launch any formal inquiry that might lead to dismissal, insisting that Professor Yoo's statements were protected by academic freedom, even if they were incompatible with prevailing principles of international law. He left open the possibility that a criminal conviction based, for example, on war-crimes charges might warrant a harsher assessment.

The dean's position seems indisputably sound, though far from obvious to the average observer. Advocating that the United States depart from established international norms in its interrogation of detainees is surely controversial and conflicts with our expectations for a scholar's role in government. Moreover, Professor Yoo's counsel was presumably sought by the Bush administration because of his academic standing and faculty role. Yet academic freedom clearly extends beyond the classroom and scholarly journals and encompasses contentious views expressed in other settings and media. And if the offering of such dangerous (even unlawful) counsel to the national administration were to place the author's faculty position at risk, future scholars might well temper their views unacceptably or decline outright. If Professor Yoo is eventually charged with and convicted of a war crime, a less sympathetic response may be warranted. But for now, the dean's defense of academic freedom, even in so controversial a case, seems consistent with our traditions and values.

THE WILLIAM ROBINSON CASE

Meanwhile, a strikingly different though equally challenging issue was unfolding at another University of California campus. The University of California-Santa Barbara sociology professor William Robinson sent to his undergraduate class an e-mail message that was highly critical of Israel's treatment of Palestinians in Gaza. Though he was himself Jewish, Robinson had been increasingly troubled about conditions in Gaza and in his message strongly implied that Israel's role there was analogous to Nazi atrocities during the Holocaust. Accompanying photos added a graphic dimension to his charge, juxtaposing what one account termed “grisly photos of children's corpses” from both the current Middle East and from eastern Europe seven decades earlier.

Several of Robinson's students promptly conveyed to a national Jewish organization their deep concern about this message, and the organization in turn protested to university officials. A faculty senate committee soon launched an inquiry within a deeply divided campus. Many of Robinson's colleagues insisted that academic freedom protected such communication, while many outside groups and some within felt Robinson had crossed the line and had abused his position and had engaged an inexcusable anti-Semitism. After weeks of charges and countercharges involving at one point three separate faculty inquiries, the key committee announced in early summer that it was closing the matter and that no further action would be taken. The university administration concurred, and that ended the formal process.

The faculty committee's disposition did not, however, end debate and in fact left open, for further analysis, an intriguing set of issues. The novelty of the medium that Professor Robinson had used remained under closer scrutiny. Had he conveyed his views in class or shared them with students by more conventional means, they would surely have evoked concern, though even most critics would concede the material was directly related to the course and thus within the instructor's academic freedom. But e-mailing the message and the photos to all students in the class seemed to some a quite different (and reprehensible) act. For one thing, the communication was less clearly within the protected scope of a classroom or a course. Moreover, some critics claimed that Robinson had used campus facilities (the e-mail system and server) to broadcast a personal political view. For another, the inevitable impact of the “grisly photos” along with the Gaza-Holocaust analogy substantially raised the risks. Yet, the change in medium should not—and happily at Santa Barbara did not—diminish the safeguards of academic freedom even for contentious faculty expression.

THE WARD CHURCHILL CASE

Finally, there is the continuing saga of University of Colorado ethnic studies professor Ward Churchill. Although vindicated by a faculty committee for statements he made about the September 11 attacks in an essay posted on an obscure Web

site—referring to World Trade Center victims as “Little Eichmanns” and praising the hijackers for having “the courage of their convictions”—Churchill was eventually dismissed from his tenured post on the basis of substantial and serious misconduct on a separate research project. He brought suit in state court, initially seeking damages for wrongful dismissal; the jury agreed he had been fired improperly, but awarded him only nominal damages of one dollar. Churchill then returned to court, asking to be reinstated in his faculty position. He claimed that the research inquiry had been triggered solely (and in his view unconstitutionally) by the protected statements in the “Little Eichmanns” essay.

In midsummer 2009, a Colorado judge rejected these claims, deferring to the university's judgment and the process it had followed in the ultimately dispositive review of Churchill's research methodology. That ruling seems sound, though far from obvious, and it has been appealed to a higher court. Meanwhile, the lesson seems clear: If a subsequent inquiry about a totally different aspect of a professor's activity (research methodology versus extramural statements) were placed permanently off limits solely because controversial views might have helped trigger that inquiry, the institution could be left without recourse against a serious and wholly separate transgression. Such a result would be stretching academic freedom beyond its properly protective scope.

CONCLUSION

All three cases are extremely complicated and are very close to the elusive line that separates academic freedom from punishable misconduct. Quite some years have passed since our understanding of academic freedom has been so sharply tested. Yet the experiences recounted here should prepare us better for the inevitable next round of challenges. ■

Academic Freedom at the Crossroads in the United States

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Academic freedom in the United States has long been associated with the values inherent in the First Amendment free-speech clause of the US Constitution. Indeed, in 1967 the United States Supreme Court definitively stated that academic freedom is “a special concern of the First Amendment.” Despite the fact that the First Amendment applies only to public institutions, academic freedom has been widely espoused as

a highly protected value of academia in almost all universities in the United States. In private universities, academic freedom protection is usually stated in a faculty contract or in university policy.

In recent years a deterioration of academic freedom has occurred in higher education institutions in the United States. Exacerbating this trend is that US courts, longstanding protectors of the value of free speech, have whittled away some of the traditional academic freedom protection afforded to faculty at public colleges and universities. Several factors have contributed to a general decline in protection of academic freedom. These factors threaten the future viability of academic freedom and the advantages to higher education and society.

EVENTS OF 9/11

The terrorist attack of 9/11 has resulted in an increased attention on national security, resulting in a scrutiny of views different from the official position of the US government. Faculty speech criticizing the US government resulted in demands by some groups and state legislatures for restricting “unpatriotic” faculty speech, especially in public universities, where some argued that taxpayers should not pay to support “anti-American” faculty. These instances directly affect academic freedom by their chilling effect on faculty speech. Before making statements critical of the US government or that could be construed as defending other countries or cultures deemed antagonistic to the United States, professors must consider the possible repercussions to that speech by students, administrators, legislatures, and the public. This movement has subsided to some extent, but the damage has weakened academic freedom through its disturbing effect on faculty speech.

(MIS-)APPLICATION OF THE BUSINESS MODEL

Many higher education institutions in the United States are now attempting to apply a business model of hierarchical management. Power and control are more centralized, resulting in a dramatic decrease in faculty autonomy. Shared governance is disappearing. Instead of providing oversight and overall coordination, administrators are making the decisions (even academic decisions) with less input from faculty. Faculty who openly disagree with the administration can be subjected to retaliatory action. These actions are generally supported by the courts. Courts used to dealing with centralized hierarchical organizations are deferring more to university administration on matters that under traditional academic freedom were decided by shared governance with the faculty.

US COURT DECISIONS

Although the US Supreme Court has stated that academic freedom is a special concern of the First Amendment, it has never precisely defined the protections provided by academic freedom. This has left it to the lower courts to determine how to analyze First Amendment faculty speech (academic freedom) issues. The results have been mixed, with some courts giving