

**INTIMIDATION, SILENCING, FEAR, AND ACADEMIC FREEDOM**

March 2021\*

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**ABSTRACT**

The argument of this paper is set against the backdrop of a climate of intimidation, silencing, and fear that surrounds the discussion of several hot-button issues in academe, nowadays mainly having to do with race. An important and painful feature of this situation is that people on both sides of the issue feel vulnerable. The contribution of this paper is to help all involved to understand what academic freedom means and how it supports or fails to support the expression of controversial views. I show that a climate hostile to academic freedom is not an academic freedom issue *per se*. It becomes an academic freedom issue when there is harassment, silencing, or dismissal of those who take a position within the sphere of their professional competence. At bottom, academic freedom is an institutionally-protected privilege relevant, above all, to employment law. Neither First Amendment rights nor anything resembling academic freedom exist in the employee-employer relationship in the private sector. The paper discusses the origins of academic freedom in the United States and the major changes in the understanding of academic freedom over time, particularly those relevant to extramural speech and the rights of students. The paper concludes with a discussion of five contemporary threats to academic freedom, stemming from (1) social stratification within academe, (2) university branding concerns, (3) the actions of conservative state legislatures, (4) the constraints applied by institutional review boards, and (5) the demands of social movement activists.

**Keywords:** Academic freedom, University speech climates

Graduate students and faculty in the social sciences and humanities (and perhaps elsewhere in academe) feel that a climate of intimidation, silencing, and fear surrounds the discussion of several hot-button issues, nowadays mainly having to do with race. These issues are partly theoretical (how respected is critical race theory?), partly methodological (how respected is qualitative work?), and partly diagnostic (how many of the problems we encounter are due to structural issues and how many are due to intolerance for intellectually diverse positions?)

An important and painful feature of the situation is that people *on both sides* feel intimidated, silenced, and fearful. Critical race theorists feel unsupported by some faculty members and students and are therefore worried about negative reactions if they express their views. Those who are skeptical of aspects of critical race theory feel unsupported as well and also worry about being labeled as “racists” or “white supremacists” if they express their views. Similar concerns exist among those who identify as qualitative social scientists and those who do not. And they are there for those who see the problems of academe as principally structural and for those who see the problems as largely interpersonal and based on intolerance.

These problems are the backdrop to the discussion of academic freedom – what it is and what it is not. Those on both sides of the divides I have described need to understand what academic freedom means and how it supports or fails to support the expression of controversial views.

I want to begin with a fundamental point: A climate hostile to academic freedom is *not* an academic freedom issue *per se*. It becomes an academic freedom issue when there is harassment, official silencing, or dismissal of those who take a position within the sphere of their professional competence. A climate hostile to academic freedom is a problem for universities, but the only solution to it is for people to have the courage and the sense of obligation to express their views based on the tools of rational

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discourse: contextual understanding, sound evidence, solid analysis, and logical argumentation. The simple truth is that where courage does not exist, a climate hostile to free inquiry can and often does fill the void. Note that I am not advocating lonely acts of heroism. Courage is much easier to muster – and is likely to be more effective – with the support of a network of like-minded people.

### **WHAT IS ACADEMIC FREEDOM?**

A second point is equally fundamental: Academic freedom is not equivalent to First Amendment rights. Thanks to the First Amendment, every person has the right to express their opinion. Academic freedom instead has to do with reasoned discourse in the sphere of professional competence. To state it another way, academic freedom in research and teaching is based on a professional model in which expertise is the criterion, not First Amendment-protected freedom of speech. This is the foundation of academic freedom in research and teaching. Here's how the political theorist Joan Scott draws the distinction: "The appeal to free speech sweeps away the guarantees of academic freedom, dismissing as so many violations of the Constitution the thoughtful, critical articulation of ideas, the demonstration of proof based on rigorous examination of evidence, the distinction between true and false, between careful and sloppy work, the exercise of reasoned judgment. Their free speech means the right to one's opinion, however unfounded, however ungrounded, and it extends to every venue, every institution."<sup>1</sup>

A third point follows: At bottom, academic freedom is an institutionally-protected privilege relevant, above all, to employment law. In most states, business employment is at will, meaning that employees' speech rights mean nothing if they come into conflict with the interests of their employers. If they criticize their employer or say something that their employer finds objectionable, they can be fired. This includes, for example, engaging in political activities the employer opposes, making jokes about the company, or using profanity. Neither First Amendment rights nor anything resembling academic freedom exist in the employee-employer relationship in the private sector. By contrast, the power of employers is explicitly restricted in the academic world. University leaders and boards of trustees may be attacked by, embarrassed by, or even financially hurt by the statements of their faculties and graduate students, but faculty members and graduate students cannot, at least in principle, be dismissed, silenced, or harassed on the basis of those statements. Why? Because freedom of inquiry is essential to intellectual progress, and no employer should be able to control what professors in their areas of expertise say or do.

There is an exception to the emphasis of academic freedom on professional expertise and professional judgment. The trend has been for extramural statements – statements made outside of teaching and research – to be protected by First Amendment rights rather than needing to meet the professional standard. I have mixed feelings about this, but that is clearly the current approach – and has been for a long time. The upshot is the same; faculty and graduate students cannot, in principle, be fired for extramural statements however painful they may be to their employers or other constituencies in the university.

I will discuss contemporary threats to academic freedom soon, but first a bit of context concerning why academic freedom became such an important principle for scientists and scholars beginning in the last quarter of the 19<sup>th</sup> century.

### **THE ORIGINS OF ACADEMIC FREEDOM**

The origins of the struggle for academic freedom in the United States began with Charles Darwin's *The Origin of the Species*. In the mid-19<sup>th</sup> century when Darwin published many American colleges and universities were run by ministers and others had a large number of ministers on their boards. Darwin seemed to displace all notions of a transcendent deity with natural processes of evolution as the designer of life. When they saw the evidence Darwin and others presented, scientists rather quickly adopted the theory of evolution, but theologians, not surprisingly, were highly resistant to it. This led to a number of dismissals of professors including those of Alexander Winchell at Vanderbilt, James Woodrow at the Presbyterian Seminary of the South, and Egbert Smith at the Andover Theological Seminary. As the historian Walter Metzger wrote, "We can summarize these conflicts by saying that science and education joined forces to attack two major objectives – the authority of the clergy and the principles of doctrinal moralism – and that one of the effects of this coalition was the hastening of academic freedom."<sup>2</sup>

The next great struggles occurred at the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup>. These are often described as conflicts between business barons who then dominated boards of trustees and professors who were more sympathetic to the plights of workers and immigrants. The most famous case of dismissal was that of E.A. Ross, a leading economist at Stanford, whose writings were considered dangerous by Jane Stanford, the power behind the throne at the university her husband founded. Ross was fired in 1900. There were other firings and harassments during the period, including those of Richard Ely, Edward Bemis, John Commons, and Scott Nearing, among at least 25 others.<sup>3</sup>

### **THE AAUP AND ACADEMIC FREEDOM**

The dismissals of the early 20<sup>th</sup> century led directly to the founding of the American Association of University Professors, the AAUP, and the promulgation of principles of academic freedom.

Leading professors of the day, including the philosopher and educational theorist John Dewey, were instrumental in the founding of the AAUP. The AAUP's founders adopted the norms of neutrality (the expectation of exposition, not imposition in relation to students) and competence (the expectation that professors would only speak and write in areas in which they had specialized knowledge).

Here is the way academic freedom was framed in the 1915 AAUP statement: "Professors are not like other employees; their responsibility is to the public not to the trustees...Professors are like judges; they are no more responsible to trustees than judges are to the President who appoints them. The faculty is like an intellectual experiment station responsible to posterity, not to the public in its current (potentially biased or narrow-minded) incarnation." And the AAUP founders wrote, "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." <sup>4</sup>

Fast forward 25 years. The 1940 AAUP Statement on academic freedom introduced the ideas of tenure after a period of probation and the idea that professors should have sufficient economic security to fulfill their obligations to students and society. It affirms that full academic freedom should exist in research as a precondition to determining the truth of ideas and that academic freedom should exist in teaching so long as the teacher does not introduce controversial material that has no relation to his subject. The statement also extends academic freedom without institutional interference to speech as a private citizen so long as the professor always attempts to be accurate, speaks with proper restraint, and is respectful of the opinions of others.<sup>5</sup> In the great majority of cases, the language of the 1940 statement continues to frame U.S. college and university affirmations of academic freedom.<sup>6</sup>

The 1940 Statement is akin to scripture within the academic community – with one exception. As I've indicated, the AAUP's position on extramural speech has changed considerably since the 1940s with more expansive readings of First Amendment rights. The AAUP took the position in 1964 that "extramural utterances...rarely bear on an individual's fitness for his position." The report also stated, "institutional sanctions imposed for extramural utterances can be a violation of academic freedom even when the utterances themselves fall short of the standards of the profession."<sup>7</sup> This means that even scholars who showed a lack of academic integrity in their extramural political expressions cannot be disciplined by the university.

Notably, according to the AAUP, many of the protections of academic freedom also apply to students. Specifically, as Cary Nelson, the former president of the AAUP, argued, academic freedom means that both faculty members *and students* can:

- engage in intellectual debate without fear of censorship or retaliation;
- express their views – in speech, writing, and through electronic communication, both on and off campus – without fear of sanction, unless the manner of expression substantially impairs the rights of others;
- study and do research on the topics they choose and draw what conclusions they find consistent with their research, though it does not prevent others from judging whether their work is valuable and their conclusions sound;
- have immunity from the imposition of political, religious, or philosophical beliefs of politicians, administrators, and members of the public;
- have the right to seek redress or request a hearing if they believe their rights have been violated;
- be protected from reprisals for disagreeing with administrative policies or proposals;
- challenge one another's views and not be penalized for holding different views.<sup>8</sup>

The widespread acceptance of academic freedom principles by American university leaders has *not* always prevented universities from firing or attempting to fire professors whose rights should have been protected by academic freedom. In 1969 the UC Board of Regents fired philosophy instructor Angela Davis ostensibly over statements that seemed to argue for denying academic freedom rights to other professors. In 2014, University of Colorado sociology professor Patti Adler resigned after the university removed her from a course and exerted pressure by publicly citing campus regulations that she may have broken during her popular class on deviance. Also in 2014, the University of Illinois rescinded a job offer in Native American Studies to Steven Salaita for tweets that students and donors found to be anti-Semitic. These are but a few prominent examples, and there have been many, many other cases.

The recourse of the AAUP in these cases is to investigate and to place institutions on their censure list. Fifty-eight institutions were on the censure list at last count.<sup>9</sup> To be placed on the list is a stigma, to be sure, but it has not prevented many of the better known institutions on the list from continuing to thrive, including Catholic University in D.C., the M.D. Anderson Cancer Center of the University of Texas, and the University of Nebraska at Lincoln.

## CONTEMPORARY THREATS TO ACADEMIC FREEDOM

I want to turn now to contemporary threats to academic freedom. One of the threats, as I have suggested, comes from confusion about the meaning of the term. Most writers on academic freedom continue to put the emphasis on “academic” while others increasingly put the emphasis on “freedom.” It seems clear that the intended meaning of academic freedom is that scholars have freedom in so far as they exercise it in relation to their areas of professional competence. But in the realm of extramural speech, professors blog and tweet about many subjects outside their spheres of professional competence. Some of these communications are of dubious merit and a few are clearly deserving of strong condemnation, as in the case of the Utah professor who wrote that police protesters in the streets should be run over by passing automobiles.<sup>10</sup>

In addition to the conflicts between the professional view of academic freedom and the First Amendment view, there are some who hold the Angela Davis position that academic freedom is a “bourgeois privilege” that tends to support the current system of domination and that the only people who should have academic freedom are those who are working to undermine that system. The literary theorist and law professor Stanley Fish has had harsh words for the premises behind this and other plainly illiberal views of academic freedom: “If the conclusions of inquiry (is) ordained before it begins, (it) is not academic; it is something else, and because it is something else, it does not deserve the protection of academic freedom.”<sup>11</sup>

The other contemporary threats to academic freedom come from different quarters. I will discuss five of these threats very briefly.

*Social stratification within academe* is clearly an important factor. The Edward Bemis case from the late 19<sup>th</sup> century shows that it has always been a factor. Bemis was similar in most ways to his teacher Richard Ely, except in academic stature. He was fired from his position for views that also got Ely into trouble but did not in the end lead to Ely’s dismissal. (Ely and Bemis were both supporters of labor unions and state regulation of industry.) The lesser known person, the person who has fewer powerful friends, is more likely to have his or her academic freedom abridged than the better known person and the person who has more powerful friends.

Today, adjunct lecturers are in the most exposed position. The research evidence suggests that they are much more likely to be dismissed than tenured professors for issues involving academic freedom – though in most cases universities claim the reasons for dismissal are economic rather than anything the instructor has said inside or outside class.<sup>12</sup>

*University branding priorities and relations with donors* can represent a threat to academic freedom. These priorities likely played a role in the withdrawal of an employment offer to Steven Salaita at the University of Illinois. Wealthy donors threatened to reduce their support for the university if Salaita joined the faculty, and emails produced at trial show that the University of Illinois chancellor met with donors prior to making her decision.<sup>13</sup> In so far as a strict First Amendment guarantee applies, he should not have been un-hired, regardless of how offensive his extramural tweets.

Numerous academic freedom cases continue to emerge when donors object to the findings of academic researchers and demand that the researchers be dismissed. In some cases, as at the University of Oklahoma over fracking research<sup>14</sup> and Brown University over research critical of Johnson & Johnson hip replacement technology,<sup>15</sup> research has been censored following complaints or professors have been removed from the classroom. The sociologist Gaye Tuchman cites other cases in which black instructors were dismissed for tweets that could be considered racially inflammatory and therefore threatening to the university’s public image.<sup>16</sup> Arguably, university branding also played a role in the Patti Adler case. Once there was a public petition after a TA complained, the university seemed to be particularly sensitive to public opinion about the sex worker skit that Adler had used in her course for more than 20 years without incident.<sup>17</sup>

*Conservative and right-wing politicians* have proven at times to be a serious threat to academic freedom. This includes the Trump Administration’s restrictions on climate change research and against those who challenge drug company claims of their product’s safety. It also applies to state legislators in Arizona who passed a bill in 2010 that prohibited state institutions from offering any class or activity that promotes “division or resentment...toward a race, gender...or other classes of people.” The bill was ruled unconstitutional in 2017, but that has not prevented legislators in New Hampshire, Oklahoma, and West Virginia from contemplating following Arizona’s lead.<sup>18</sup> Another legislative proposal in Arkansas sought to prohibit any writing by or about the historian Howard Zinn from inclusion in the school curriculum;<sup>19</sup> one in Iowa would poll public university employees about their political party affiliations.<sup>20</sup>

The situation abroad under authoritarian regimes – in places like China, Hungary, Iran, and Turkey – is, of course, much more consistently threatening for academic dissenters and a reminder that authoritarianism of any stripe is incompatible with free inquiry.<sup>21</sup>

Some scholars have cited *Institutional Review Boards* as threats to academic freedom because of the amount of regulation they impose on the procedures and topics of academic inquiry. Here, protections for the subjects of academic inquiry, as interpreted by the IRB, can come into conflict with academic freedom protections, but arguably do so less if institutional review boards are considered a form of peer review to which all professors are subject.<sup>22</sup>

Finally, *campus social movements* can represent a threat to academic freedom. Recently, we have seen several cases in which campus administrators (and/or professional colleagues) have condemned, harassed, and dismissed faculty members who took positions in opposition to demands by student and faculty activists on campus. These include the cases of Charles Negy at the University of Central Florida, Leslie Neal-Boylan at the University of Massachusetts-Lowell, Joshua T. Katz at Princeton University, William Jacobsen at the Cornell Law School, Gordon Klein at University of California Los Angeles, and Harald Uhlig at the University of Chicago.

The Katz case is illustrative. Katz wrote an essay entitled “A Declaration of Independence,” in which he criticized the Princeton Faculty Letter on anti-black racism. In it, he used derogatory language about a student group, characterizing it as “a local terrorist organization.” The remainder of the essay was a reasoned dissent from the Faculty Letter on the grounds that it would create divisiveness on campus by favoring one group of professors over others.<sup>23</sup> The President of Princeton took exception to the characterization of the student group and a university spokesman said that “the matter would be investigated further.”<sup>24</sup> Although the investigation of Katz was dropped, the statement by the university spokesman could be interpreted as official harassment of Katz and as sending a message about what kinds of protected speech would actually be protected by the Princeton University Administration. It is disheartening to the supporters of academic freedom to see campaigns mounted and taboos erected that can create a chilly climate for professors who dissent from dominant viewpoints on campus.

Again, I want to emphasize that harassment and dismissal are serious matters; condemnation, as I indicated, is not in the same category. We all have to live with the possibility of harsh criticism if we take unpopular positions.

At the same time, condemnation can, under some circumstances, create a climate hostile to academic freedom. And, of course, there are important questions about when a climate of sensitivity and respect for others and a desire to address structural issues of racism or sexism turns into a climate that is hostile to academic freedom. That arguably has happened at some institutions such as Smith College. At Smith, the college president, Kathleen McCartney, implemented a number of programs to sensitize white staff to issues of racial inequities. Some staff members and faculty found these programs oppressive and more likely to create than to heal racial divisions.<sup>25</sup> There are reasons to worry about over-the-top illiberal responses to the real issues of racial discrimination and injustice, but I think the evidence is mixed concerning how serious an issue it has become. There have been outbreaks of angry denunciations and even intimidation at quite a few places, but these tend to fade nearly as quickly as they arise.

Is academic freedom in jeopardy? There was a saying in Mississippi that academic freedom existed for as long as one could outrun one’s angry neighbors. So, yes, it is always in jeopardy. Can it be sustained? We do not know whether one of these threats may yet prove decisive. But all who care about free inquiry should hope that no dogma will ever displace it.

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## Notes

<sup>1</sup> Joan Wallach Scott, “On Free Speech and Academic Freedom.” *American Academy of Arts and Sciences Summer 2017 Bulletin*.

<https://www.amacad.org/news/free-speech-and-academic-freedom/>

<sup>2</sup> Walter P. Metzger, *Academic Freedom in the Age of the University*. New York: Columbia University Press, 1955, p. 72.

<sup>3</sup> *Ibid.* pp. 146-76. As Metzger notes, the political pressure occasionally came from the other direction, as indicated by the firing of a number of conservative professors at the behest of a Board dominated by Populists at the Kansas State Agricultural College (later Kansas State University).

<sup>4</sup> American Association of University Professors, *AAUP’s 1915 Declaration of Principles*, p. 7. [http://www.aaup-ui.org/Documents/Principles/Gen\\_Dec\\_Princ.pdf/](http://www.aaup-ui.org/Documents/Principles/Gen_Dec_Princ.pdf/)

<sup>5</sup> American Association of University Professors, *AAUP 1940 Statement on Academic Freedom and Tenure*. <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure/>

<sup>6</sup> Jeorg Tiede, “New Report on Prevalence of AAUP Policies in Higher Ed.” *Academe Blog* (July 20, 2020).

<https://academeblog.org/2020/07/20/new-report-on-prevalence-of-aaup-policies-in-higher-ed/>

<sup>7</sup> American Association of University Professors, *Committee A Statement on Extramural Utterances*. In American Association of University Professors, *Policy Documents and Reports*. Baltimore: Johns Hopkins University Press, 2006.

<sup>8</sup> Cary Nelson, “Defining Academic Freedom.” *Inside Higher Ed* (December 21, 2010).

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- <sup>9</sup> American Association of University Professors, *Censure List*. <https://www.aaup.org/our-programs/academic-freedom/censure-list/>
- <sup>10</sup> Courtney Tanner, "Weber State Professor Under Investigation for Tweets Threatening Those Involved in Police Protests." *The Salt Lake Tribune* (June 1, 2020). <https://www.msn.com/en-us/news/us/weber-state-professor-under-investigation-for-tweets-threatening-those-involved-in-police-protests/ar-BB14Tkk3/>
- <sup>11</sup> Fish, quoted in Colleen Flaherty, "Freedom Creep." *Inside Higher Ed* (October 3, 2014). <https://www.insidehighered.com/news/2014/10/03/new-books-warn-expanding-notions-academic-freedom-and-checks-free-speech-are-hurting/>
- <sup>12</sup> Metzger, op cit., pp. 151-62.
- <sup>13</sup> John K. Wilson, "How Money Mattered in the Salaita Case." *Academe Blog* (January 6, 2015). <https://academeblog.org/2015/01/06/how-money-mattered-in-the-salaita-case/>
- <sup>14</sup> Zach Greenberg, "University of Oklahoma Censors Research at the Request of Company CEO." *FIRE News Desk* (November 28, 2017). <https://www.thefire.org/university-of-oklahoma-censors-fracking-research-at-the-request-of-oil-company-ceo/>
- <sup>15</sup> Francie Diep, "A Brown Professor Took on Big Pharma. His University Pulled Him from the Classroom." *The Chronicle of Higher Education* (January 6, 2020). [https://www.chronicle.com/article/a-brown-u-professor-took-on-big-pharma-his-university-pulled-him-from-the-classroom/?cid2=gen\\_login\\_refresh&cid=gen\\_sign\\_in/](https://www.chronicle.com/article/a-brown-u-professor-took-on-big-pharma-his-university-pulled-him-from-the-classroom/?cid2=gen_login_refresh&cid=gen_sign_in/)
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- <sup>21</sup> See John Aubrey Douglass (ed.), *Neo-nationalism and Universities Populists, Autocrats, and the Future of Higher Education*. Baltimore: Johns Hopkins University Press, forthcoming.
- <sup>22</sup> American Association of University Professors, *Regulation of Research on Human Subjects: Review Boards and Academic Freedom*. Washington, DC: AAUP, 2013 (March). <https://www.aaup.org/file/IRB-Final-Report.pdf>
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- <sup>24</sup> Marie-Rose Schneirman, "Eisengruber Condemns Professor's Op-Ed that Called Black Justice League a "Terrorist Organization." *The Daily Princetonian* (July 12, 2020). <https://www.dailyprincetonian.com/article/2020/07/joshua-katz-black-justice-league-terrorist-organization-quillette-letter-princeton/>
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