

Academic Freedom

What It Is, What It Isn't,
and How to Tell the Difference

Donald A. Downs



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Executive Summary

Today's university is rife with competing claims about academic freedom. Although academic freedom is similar to the freedom of speech that all Americans enjoy, it has developed over time into a more specific guarantee for scholars and teachers. This paper explains what is meant by the term and to whom it applies. The paper places academic freedom in its historical, institutional, and legal contexts and offers guidelines for deciding when and where the protection of academic freedom should apply.

At its core, academic freedom is the freedom of scholars to pursue the truth in a manner consistent with professional standards of inquiry. It applies to institutions as well as scholars, and to students as well as faculty. It is bolstered by court cases and tradition and given particular strength by faculty tenure. The tenets have been discussed over the years through formal statements of the American Association of University Professors (AAUP).

As a First Amendment right, academic freedom applies only to scholars in public institutions because the U.S. Constitution protects liberty only against illegitimate governmental or state action and law. The Supreme Court has endorsed this protection, but has not given much guidance for its application.

Faculty have the freedom to teach or research as they wish, subject to accepted professional norms of competence and responsibility, but the school employing them has the right to determine acceptable teaching standards. The school also has the authority to evaluate the competence of the scholar for purposes of hiring, retention, and promotion. And recently, based on a 2006 Supreme Court case, lower courts have begun to give schools greater authority to curtail faculty speech conducted in the course of official duties.

Also holding academic freedom is the academic department, which has professional standards that it has a right to uphold. The student, too, has academic freedom. As stated in the AAUP 1967 statement on student freedom, students have a right to due process and free inquiry, which includes the right to take “reasoned exception” to data and views presented in class.

In the past, the academic freedom of the institution and the individual were largely in harmony. The contemporary university, however, is torn by a cultural clash between traditional notions of individual freedom and recently emergent ideologies that stress the need to be sensitive and caring, especially toward members of historically oppressed groups. Many institutions have adopted speech codes and related policies that restrict what faculty members and students can say about matters relating to race, gender, religion, sexual orientation, and the like.

The legal status of speech codes covering the faculty has not been decided, probably because courts have struggled to balance faculty freedom with the academic institution’s power to determine teaching standards. Courts have been much more critical of student speech codes.

Thus, many academic freedom issues exist in an uncertain, gray area. Even so, there are principles that can guide one in judging who has the freedom in any particular circumstance. Professional responsibility requires that instructors and researchers abide by basic standards of intellectual integrity; they must not seek to indoctrinate students; and they must not present propagandistic or fraudulent material as truthful. At the same time, it is wise to make freedom the default position because an enlightened citizenry aspires to encourage honesty and courage in teaching and research.

Academic Freedom

What It Is, What It Isn't,

Today's university campuses are rife with confusion and competing claims over academic freedom. On campus, the freedom of scholars to pursue their ideas is threatened by those aggressively promoting diversity and protecting students against possible harassment through speech. Those efforts, usually from the left, have aroused reaction from outside academe, especially from conservatives who argue that codes against hate speech and verbal harassment violate fundamental rights. This countermovement has led some critics to call for legislatively mandated intellectual diversity to protect ideas that challenge liberal campus orthodoxy. Both of these movements pose threats to the academic freedom of individuals and institutions.

Given these conflicts, it is not surprising that the country is witnessing a spate of statements about academic freedom from organizations such as the American Association of University Professors (AAUP),¹ the American Academy of Arts and Sciences,² and the American Council of Education.³

Yet, in spite of these pronouncements, exactly what is meant by the term academic freedom and who can claim it are often misunderstood. Although academic freedom resembles the freedom of speech that all Americans enjoy, it is a more specific guarantee for those who explore and acquire ideas and knowledge in a professional academic context. This essay will place academic freedom in its historical, institutional, and legal contexts and offer some guidelines for deciding when and where the protection of academic freedom should apply. At the outset I would like to make my own position clear: academic freedom—like all freedoms—can prevail only if it is vigorously defended by individuals and groups who are in a position to make a difference. It is a matter of the mind, the heart, and the will.

In this essay, I will also consider practical ways of negotiating the tension between individual freedom and academic responsibility. Academic freedom is a professionally derived concept, which means that its freedoms also depend on fulfilling certain fiduciary responsibilities. It does not give instructors carte blanche to do what they want in the classroom or elsewhere. At the same time, academic institutions, which have a right to expect those responsibilities to be met, must also be trustworthy in disciplining faculty.

Defining Academic Freedom

At its core, academic freedom is the freedom of scholars to pursue the truth in a manner consistent with professional standards of inquiry. Liberal democracies protect academic freedom on the grounds that the open pursuit of knowledge and truth provides substantial benefits to society, and because freedom of thought is essential to the fulfillment of human nature.

Through tradition, court cases, scholarly commentary, and faculty contracts, academic freedom has become a complex concept with different dimensions. Sometimes these dimensions compete with one another, as when institutional academic freedom clashes with an individual's academic freedom. In general, academic freedom applies more fully to universities and colleges than to primary and secondary educational institutions. (Schools for young students have a greater interest in inculcating respect for traditional values and authority.⁴)

As the essay proceeds, the reader will discover that while the basic principles are clear when considered in isolation, their application can be difficult because of the tension

and How to Tell the Difference

DONALD A. DOWNS

that exists among competing principles and because higher education has been politicized in recent decades. The framework I provide can only serve as a compass, leaving the decision about how to proceed to a combination of judgment and, I hope, a strong commitment to intellectual freedom.

A fundamental distinction should be kept in mind. Academic freedom as a First Amendment right applies only to scholars in public or state institutions because the U.S. Constitution protects liberty only against illegitimate governmental or state action and law. Scholars in private institutions also usually possess academic freedom rights, but these derive from contractual agreements between scholars and their institutions or from protections granted by state law, not the Constitution. The content and scope of those contractual rights vary depending upon the nature of the contracts. (Contracts and state law can also influence the academic freedom rights of scholars in public institutions but cannot contravene basic First Amendment principles that apply to all public schools.)

In some key respects, academic freedom is narrower than the general freedom of speech under the First Amendment. For example, U.S. citizens are free to say things that are false unless their falsehoods constitute libel or slander, or some other clearly demonstrated harm.⁵ They have a right to profess that the world is flat, but such expressions would be grounds for flunking a course in geography or astronomy or for terminating an instructor who taught such nonsense. The pursuit of truth in universities requires adherence to fundamental principles of intellectual integrity and responsibility—obligations that are not enforceable in the general marketplace of ideas.

In another respect, however, the protection of academic freedom is stronger than the general guarantee of freedom of expression in the First Amendment. That is because job tenure has historically been a bulwark of academic freedom. Although citizens have a right of free expression, that right does not include job protection. For tenured scholars, it usually does.

The Role of Tenure

Tenure is typically granted after a teacher or researcher has successfully completed a probationary period and performed with adequate distinction, as defined by the relevant institution. Tenure provides teachers and researchers with job protection—except in extraordinary circumstances such as severe financial distress—as long as they conduct themselves in a professional manner. A related right is the right of due process in discipline and dismissal decisions.

Such job protection is meant to ensure that faculty members will pursue the truth without fear of losing their jobs. Some critics doubt that tenure inspires such pursuit today, pointing to faculty members' reluctance to challenge speech codes and campus pressures to conform. Nonetheless, there is reason to believe that tenure remains a necessary, if not sufficient, means to protect free inquiry.⁶

Tenure is not a constitutional right per se, but courts will intervene if evidence shows that a faculty member has been denied tenure in violation of the employment contract (or other relevant legal rights provided by the institution), or if there is sufficient evidence of illegal discrimination by the department or the institution. In the absence of such

evidence, however, courts are leery of substituting their own judgment for those of the faculty member's academic peers.⁷

A recent U. S. Court of Appeals decision illustrates that a university's own documents are important in protecting tenure. The Inter-American University in Puerto Rico had dismissed Edwin Otero-Burgos, a tenured professor who fought (internally, not publicly) against the university's decision to give one of his students a special opportunity to raise his grade. The U.S. District Court of Puerto Rico ruled against the professor, holding that Puerto Rico Law 80 allowed the university to dismiss a faculty member as long as it provided a sufficient (though modest) severance payment. The appellate court reversed the decision, saying that the Faculty Handbook revealed a "substantial commitment" to its tenured faculty, and thus to Otero-Burgos.⁸

Faculty members who do not have tenure also enjoy basic due process and academic freedom protections, though generally less fully than faculty members who have tenure—mainly because they have limited-term contracts, and because the politics and folkways of campus life bestow more power upon tenured faculty members. Terminating

Who May Claim Academic Freedom?

In delineating the contours of academic freedom, two basic dimensions are most important. One is the type of person or group that may lay claim to academic freedom: individual teachers or researchers; academic institutions; departments and schools within institutions; and students. The other dimension is the professional context in which academic freedom can arise: teaching; researching; and extramural (outside the educational institution).

The U.S. Supreme Court has not provided much guidance in either area, leaving decisions largely in the hands of lower courts or the discretion of institutions. Peter Schmidt points out in a recent essay in the *Chronicle of Higher Education* that the Supreme Court has long held that the First Amendment protects academic freedom at public colleges and universities. "But it has left unanswered a host of key questions like what types of activities 'academic freedom' covers, or whether it affords individual faculty members speech rights beyond those of other citizens," he writes. Schmidt quotes Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, who observed

Socrates chose to die by taking hemlock rather than cease "corrupting" youth by teaching philosophic thought.

the contracts of non-tenure-track faculty members before the specified end date for reasons other than financial emergency or incompetence could violate academic freedom if such individuals work at a state institution or their contracts require just cause for dismissal.

Many observers believe that the future status of tenure is in jeopardy, especially due to financial and other pressures. Already, the number of non-tenured teachers in higher education has surpassed the number of tenured teachers. Indeed, the fact that the court based Otero-Burgos's right on provisions in the faculty handbook, rather than the U.S. Constitution, may open the door to weakening tenure. Without a constitutional foundation, tenure can be limited by legislative or administrative action.

in a recent case upholding the Bush administration's restrictions on academic travel to Cuba, that it is unclear "whether academic freedom is a constitutional right at all."⁹

Let us begin with the first dimension—identifying who has a right to academic freedom, especially when rights conflict.

The Individual

The basic idea of intellectual freedom was born with Socrates and the philosophical schools of ancient Athens in the fourth century B.C. Devoted to pursuing the truth without regard for conformity and social pressure, Socrates chose to die by taking hemlock rather than cease "corrupting" youth by teaching philosophic thought. The

Socratic conception of intellectual freedom is inherently individual in nature. Though modern universities and colleges are large, often labyrinthine institutions, their essential meaning remains Socratic. As Allan Bloom wrote, “One cannot imagine Socrates as a professor, for reasons that are worthy of our attention. But Socrates is of the essence of the university. It exists to preserve and further what he represents.”¹⁰

The *Otero-Burgos* case above appears to interpret academic freedom as an individual freedom. Teachers and researchers have the right to teach and pursue truth according to their own lights, subject only to accepted professional norms of competence and responsibility. The cases in which the U.S. Supreme Court forged the basic notion of academic freedom dealt with restrictions on individual instructors during the McCarthy era of the early 1950s. Governments had passed legislation calling for loyalty oaths and various restrictions on group membership as qualifications for teaching. Two cases in the aftermath of McCarthyism stand out.

Sweezy v. New Hampshire (1957) involved the firing of a lecturer for refusing to testify about his political beliefs before the state legislature; *Keyishian v. Board of Regents* (1967) dealt with New York laws that restricted the hiring of allegedly subversive teachers.¹¹ In ruling in favor of the instructor in each case, the Court emphasized both individual and institutional academic freedom. In *Sweezy*, for example, Justice Frankfurter’s well-known concurring opinion invoked Socrates. And in his opinion for the Court in *Keyishian*, Justice Brennan issued one of the most famous statements in the lore of free thought:

Academic freedom...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.... The classroom is peculiarly the marketplace of ideas. The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection.¹²

The Institution

In those and similar cases, the threat to freedom emanated from outside academia, so institutional and individual

academic freedom were more or less in harmony; accordingly, before the 1970s, the Court believed that institutional and individual academic freedom went hand in hand.

As law professor (and former chair of the Association of American University Professors’ committee on academic freedom) David Rabban has written, the Court “agreed with the AAUP that the academic freedom of professors depends to a substantial extent on the independence of the university from the state.” Rabban noted that Justice Felix Frankfurter’s concurring opinion in *Sweezy* “emphasized the close connection between university autonomy and academic freedom. ‘Any government intrusion into the intellectual life of a university,’ he warned, would jeopardize the essential functions of professors.”¹³

Yet the presumption of harmony between institutional and individual aspects of academic freedom dissipates when the threat to academic freedom comes not from outside the university, but from within. The contemporary university is torn by a cultural clash between traditional notions of individual freedom and more recently emergent ideologies that stress the need to be sensitive and caring, especially toward members of historically oppressed groups. Although this tension may have abated somewhat since the 1990s, it is still a powerful force on campus, rendering the status of academic freedom on campus murky and problematic.¹⁴

Indeed, institutional autonomy is, perhaps surprisingly, the most important of the four major types of academic freedom, at least in legal terms. It is predicated on the assumption that society’s interests in attaining academic objectives are best secured by leaving substantive decisions about education in the hands of professionals chosen by their institutions.

This view of intellectual freedom was shaped during the fifteenth and sixteenth centuries in Europe as a means to protect the corporate interests of the rising universities from undue governmental interference. Some European countries such as Great Britain have long stressed the institutional dimension of academic freedom, and it has also carried significant weight in the United States, despite our nation’s tradition of individualism and individual rights. Interestingly, Justice Frankfurter’s opinion in the *Sweezy* case ultimately rested on institutional rather than individual academic freedom, the Justice’s invocations of Socrates notwithstanding.

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And in the famous 1978 *Bakke* affirmative action case, Justice Powell concluded that so long as it did not violate basic Fourteenth Amendment principles, the University of California was free to “determine for itself on academic grounds: 1) who may teach; 2) what may be taught; 3) how it shall be taught; and 4) who may be admitted to study.” *Bakke* is often cited in support of institutional academic freedom.¹⁵

Accordingly, U.S. courts have often sided with the right of administrators. Their decisions can run counter to the decision in the *Otero-Burgos* case discussed above, as they bestow primary power in the institution rather than the individual instructor. Such emphasis makes sense when it comes to fundamental pedagogical responsibilities (such as competence in the subject matter, sticking to the subject matter of the course, not discriminating against students, and not using the classroom as a vehicle for proselytizing). It jeopardizes academic freedom, however, when institutions require pedagogical or scholarly conformity to ideas, values, and goals that comprise conventional wisdom on campus, such as diversity or other forms of moral orthodoxy.

Several cases illustrate the courts’ support of institutional freedom. In *Edwards v. California University of Pennsylvania*, a federal court ruled against a professor who was suspended without pay for pushing his religious beliefs in lectures.¹⁶ The court’s ruling in *Edwards* was broad, holding that the university could control course content. “Our conclusion that the First Amendment does not place restrictions on a public university’s ability to control its curriculum is consistent with the Supreme Court’s jurisprudence concerning the state’s ability to say what it wishes when it is the speaker.” Similarly, the Seventh Circuit Court of Appeals has recognized that a university’s “ability to set a curriculum is as much an element of academic freedom as any scholar’s right to express a point of view.”¹⁷

In *Edwards*, the court addressed the professor’s academic freedom rights and the right of the university to set teaching standards. It concluded that the First Amendment does not give a public university professor the right to use curricula or teaching techniques that conflict with institutional pedagogical or policy requirements.

The court did not resolve grayer issues, however. What if the instructor made critical remarks about affirmative action in a class that dealt with equal protection under the Constitution? Or offered critical thoughts about the political or moral implications of certain religions? Such opinions could well conflict with the policy of the institution—but should not such opinions be protected if they are germane to the subject matter of the class?

In another case, *Hetrick v. Martin*, a federal court wrote that academic freedom “does not encompass the right of a non-tenured teacher to have her teaching style insulated from review by her superiors...just because her beliefs and philosophy are considered acceptable somewhere in the teaching profession.”¹⁸ As in *Edwards*, this case did not involve institutions dictating the substantive content of the course or the conclusions that a faculty member might reach in class; such interference would be much more threatening to the academic freedom of the individual instructors.

And in *Urofsky v. Gilmore*, a federal appeals court ruled against faculty members who challenged a new Virginia statute requiring state employees to get prior written approval before accessing information “having sexually explicit content” using computers owned or leased by the state. In a decision that presented a very restrictive view of individual academic freedom, the court majority stressed that academic freedom is historically an institutional right and that faculty members who do research on sexuality do not possess any greater rights than the general public, even in the context of the university.¹⁹ *Urofsky’s* logic has continued to influence judicial decisions, with such exceptions as *Otero-Burgos*.

One prominent case involving a clearly unjustifiable institutional violation of individual rights took place in late 2001 and 2002 at Brooklyn College in the City University of New York. The college denied the exceptionally qualified Professor Robert David “KC” Johnson tenure because he had objected to a hiring decision based on race and gender rather than merit. The case revealed a highly politicized campus and union that had much more regard for a political

agenda than academic responsibility. The tenacious Johnson fought back hard, utilizing political mobilization and lawyers, and compelled the college to reverse its decision within a couple of months. This case is among the clearest examples of an institution forsaking its commitment to the principles of academic freedom and responsibility, and it serves as a yellow light (or red light!) to those who place unquestioning trust in educational institutions to enforce these principles. Johnson, the individual, upheld the responsibilities of the profession in the face of institutional abnegation.²⁰

The problem of giving too much power to the institution, illustrated by KC Johnson's case specifically, is revealed more broadly by the change in the campus environment regarding free speech. Beginning in the late 1980s, many institutions passed speech codes and related policies

Wisconsin, Madison. This movement, led by the Committee for Academic Freedom and Rights (CAFAR), an independent group of 25 faculty members from across the political spectrum, persuaded the faculty senate at Wisconsin to abolish the code in 1999. It was the first instance of a major university abolishing a code without being ordered to do so by a court. This case suggests that academic freedom is best defended by conscientious political action on campus, rather than by reliance upon courts. CAFAR helped enact subsequent reforms at Wisconsin, one of which made academic freedom an "individual right" (as opposed to an "institutional right") in the university's official policies and regulations.²¹

I will conclude this section by addressing private schools and religious schools, which are generally not subject to the First Amendment. Unless these schools have bestowed

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that restricted what faculty members and students can say (in class and on campus) about matters relating to race, gender, religion, sexual orientation, and the like. In numerous cases around the country, individuals—faculty and students—have been disciplined or investigated for saying things that clashed with reigning orthodoxies.

Courts have been more critical of student speech codes than of faculty speech codes. The legal status of speech codes covering the faculty is unclear, however. It appears that courts have struggled to balance the presumption of faculty freedom with the academic institution's power to determine standards for responsible teaching. Yet faculty codes can be very broad, and can, therefore, threaten academic freedom.

Troubling applications of a particularly broad faculty speech code sparked a political movement at the University of

academic freedom rights to their faculty through contract or charter, they possess the institutional right to circumscribe the freedom of students and faculty members, much like the power that any private corporation would enjoy.

Private schools are often established to strive toward a particular normative vision, and the right of a school to pursue this vision is an important component of freedom that may mean placing limits on the freedom of individual inquiry. It would be wrong to require a Christian college to hire a teacher who hated Christianity—although some such colleges might find it in their interest to do so. The point is that this decision lies within their discretion. In such cases, freedom properly accrues to the institution, not the individuals within the institution. Questionable restrictions of the freedom of students and faculty members in such institutions can be proper grounds for criticism, but not legal action.²²

Freedom of Professionals

The Declaration of Principles issued in 1915 by the American Association of University Professors (AAUP) has played an important role in guiding standards for academic freedom.²³ The AAUP was at one time the leading professional organization dedicated to academic freedom in higher education, although it has been overtaken by the Foundation for Individual Rights in Education (FIRE). Founded in Philadelphia in 2000, FIRE has responded to the rise of internal threats to academic freedom and been more willing than most other national organizations to protect individual academic freedom in an era in which threats are posed by the institution itself.²⁴ (The American Civil Liberties Union has been involved in several cases, as well.) In addition, academic freedom groups have arisen on individual campuses, such as Wisconsin's CAFAR.

Although the 1915 AAUP declaration seemed to embrace both individual and institutional academic freedom, it actually introduced a third realm of academic freedom. The declaration stated that “faculties hold an independent place” in higher education, a position essential “to enhance the dignity of the scholar’s profession, with a view to attracting to its ranks men of the highest ability, of sound learning, and of strong and independent character.”

This statement incorporated the power of academic professionals organized into departments or fields—like that of doctors, lawyers, and other professions—and backed by national organizations based on scholarly disciplines, such as the American Political Science Association or the American Historical Association.²⁵ These disciplinary fields have taken on guild-like powers, reflected in the right of departments and schools within universities to have the major (though seldom exclusive) say in who shall be hired and who shall be awarded tenure. Such power is not constitutionally based, but rather the result of policy decisions made by government bodies or institutions at their own discretion. The educational institution holds the ultimate power but often delegates many important decisions to departments out of deference to their professional expertise.

Departmental freedom—backed by the powers of the profession—should be construed as a type of academic freedom that lies between institutions and individuals—and is potentially in conflict with both. University deans or presidents may raise academic freedom issues by vetoing a hiring or tenure decision by a department. Or a department

may refuse to give tenure to someone because of ideological or methodological differences, raising a question of academic freedom for the individual.

Who possesses the trump card in such disputes? Usually the rights and powers of individuals, departments, administrators, and regents or trustees are delineated in university procedures. Difficult decisions arise, however, when substantive differences of opinion exist.²⁶

Freedom of Students

The fourth major kind of academic freedom concerns students. Speech codes pit institutional norms of sensitivity against students’ rights to express insensitive or unorthodox thoughts. I have already noted that courts have generally rejected speech codes restricting what students can say on campus,²⁷ although universities have continued to enforce them.²⁸

The issue is larger than speech codes, however. Student academic freedom is addressed in the AAUP’s 1967 Joint Statement on Rights and Freedoms of Students.²⁹ Emphasizing the importance of developing critical judgment, this statement strongly supports students’ rights to due process and free inquiry. These include a student’s right to take “reasoned exception” to data and views presented in class. Not surprisingly, the academic freedom of students, teachers, and institutions can clash.

The most non-controversial student right is to be graded and treated fairly, without regard for such things as the students’ “ascriptive” characteristics (e.g., race, gender, religion, sexual orientation, etc.) or political beliefs, military status, and the like. Many claims of politicized grading have been made by students in recent decades. If true, such claims would raise serious questions about the integrity of such institutions. (No one to my knowledge has conducted a systematic study of this issue.)

In a related vein, some students have objected to the intellectual orientations of some instructors. In 2004 and 2005, for example, many students at Columbia University publicly objected to what they considered ideologically slanted and bullying teaching in the Department of Middle East and Asian Languages and Cultures. Academic freedom advocates and experts found themselves on both sides of this controversy, torn between the rights of faculty to teach courses according to their lights and students’ rights to fairness and counter-speech.³⁰ Students at other schools

have accused professors of harassment for expressing insensitive views about race, gender, religion, or sexual orientation.

One solution is for the department chair or dean to meet with the instructor to discuss the students' concerns and ask the instructor to show more respect for student critiques, including allowing critical responses in class. Justice Louis Brandeis, a great champion of free speech, wrote in a classic opinion that "the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."³¹ Promoting student academic freedom is one way to honor Brandeis's wisdom.

In most cases, a faculty member will be responsive to such student claims. But if a professor introduces controversial material and forecloses debate or disagreement, this can be a violation of professional responsibility, and department chairs and deans will have grounds to question the professor and ask for more openness in the classroom. However, if administrators mandate openness too forcefully or thoughtlessly—rather than encourage it in a respectful manner—their pressure can become coercive and may raise concerns about the academic freedom of the professor.

We should not discourage professors from seeking truth and being honest about their thoughts in class. There is nothing inherently wrong with a professor taking a position in class, so long as he or she avoids falling into the trap of dogma (teaching a contested claim as absolute truth) or making students conform to a prescribed moral or political viewpoint. The issue of student free speech in the classroom can be a delicate one, requiring careful judgment. But we must not lose sight of the fact that students do indeed possess academic freedom rights.

A second approach is to allow students to critically evaluate professors. Such evaluations can be used in reviews for merit and pay raises, and in tenure decisions. If those evaluations are available to all students (as is usually the case today, often on-line), they can provide notice to other students when they choose their courses. Dogmatism in class is almost always wrong, but it is worse when the class is a required course and there is no exit.³²

In recent years, conservative students have charged liberal or secularist teachers with being insensitive to their viewpoints. A national organization, Students for Academic

Freedom (an offshoot of activist David Horowitz's Center for the Study of Popular Culture) has promulgated a Student Bill of Rights, which calls for legislative action, if necessary, to ensure intellectual diversity and protection of conservative ideas on campus.³³ The call for outside pressure in pertinent cases is understandable, but it can also threaten

The tensions among liberal, conservative, sensitivity, and post-liberal or post-modern critical viewpoints on campus make it harder for university leaders to resolve disputes.

institutional and individual academic freedom, especially if it calls political authority into play. Many observers agree with Horowitz's assessment of the problem, but do not support his proposed remedy.

On the other side of the political spectrum, the traditional and once-dominant liberal view of freedom—which largely gave free rein to expressing one's views—is being countered by new "critical" and post-modern theories of freedom. These theories, along with the new "sensitivity" theories mentioned earlier, often maintain that liberal notions of individual freedom are a mirage, for individuals are ultimately shaped and influenced by various forms of social pressure and power. Such views are especially prevalent in some of the humanities and in administrative offices dealing with student life.³⁴

The tensions among liberal, conservative, sensitivity, and post-liberal or post-modern critical viewpoints on campus make it harder for university leaders to resolve disputes. In terms of a governing philosophy, universities suffer from the condition Yeats depicts in his classic poem, "The Second Coming," in which "The falcon cannot hear the falconer; / Things fall apart; the centre cannot hold."

The Contexts of Academic Freedom

In addition to the question of who has rights to academic freedom, there is the question of the context in which freedom of expression is protected. The AAUP's 1940 Statement of Principles on Academic Freedom and Tenure, which reaffirmed the association's commitment to academic freedom, also affirmed duties and responsibilities relating to the three important contexts: research, teaching, and extramural activities.³⁵

Research freedom should be expansive, but must not interfere with the adequate performance of a teacher's other academic duties, the statement said. Freedom in teaching must be assured, but the teacher "should be careful not to introduce into his teaching controversial matter which has no relation to his subject." And when expressing views outside the classroom (extramural), the teacher should be free from censorship or discipline but also strive to be accurate and to acknowledge that he or she is not speaking for the institution.

The next few paragraphs suggest some initial distinctions for determining which actions in these contexts are protected.

RESEARCH

The pursuit of knowledge should be even freer than teaching. Research is intended to push the frontiers of knowledge, so obligations to the sensibilities of students and colleagues are minimal or nonexistent. Research should be governed by professional standards of competence, subject to the collective judgment of peers and society but not to punishment or discipline unless it contravenes the law or ethical academic norms, as in the case of plagiarism. There should be no formal sanctions for ideas, however offensive. The doctrine of evolution deeply offends some religious sensibilities, for example, and discussions of the law and morality of abortion ruffle many feathers—but such discussions should never be off limits. The right to offend is an essential, indispensable ingredient of intellectual freedom.³⁶

TEACHING

Teaching must be bound by the subject matter being taught, however broadly construed; and teaching necessarily involves a "captive" audience. Consequently, norms of civility are more properly part of teaching than research.

Intellectual honesty—being honest and forthright about one's intellectual position—should be valued at all times, and such honesty will sometimes offend those who disagree with the teacher.³⁷ All ideas or beliefs germane to the subject matter of the class should be allowed for both teachers and students, regardless of how insensitive they might appear. But responsible teachers will avoid gratuitous offending remarks.

EXTRAMURAL EXPRESSION

The right to extramural expression by scholars in public institutions has traditionally fallen within general First Amendment protection. Thus, the institution has had less power to restrain it than elsewhere. When a teacher publicly expresses an opinion about a matter "of public concern," the Supreme Court has required administrators to provide evidence of demonstrable harm to the institution before allowing the teacher to be disciplined. In a key 1968 case, *Pickering v. Board of Education*, the Supreme Court overturned the dismissal of a public school teacher who had been fired for writing an editorial in the local paper charging his school board with wasting money. The right to speak out as a citizen on this matter of public concern outweighed any disruptive effect the editorial might have caused.³⁸ In 1983, the Court weakened *Pickering's* protections somewhat, limiting what kind of expression met the "public concern" standard.³⁹

But in 2006 the Supreme Court changed the playing field, with potentially significant but still uncertain ramifications for scholars. In *Garcetti v. Ceballos*, the Court upheld the discipline of a supervising district attorney. He had recommended (in a disposition memorandum) that a case be dismissed because he thought a search warrant had been obtained on the basis of false representations.

Even though his comments raised important questions about the conduct of an important public office, the Court distinguished his speech from the speech in *Pickering*. *Pickering* had written about something beyond the ken of his duties as a teacher, but this attorney was acting in his official capacity. Justice Kennedy wrote, "We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."⁴⁰

In a dissenting opinion, Justice Souter wrote, "I have to hope that today's majority does not imperil First Amendment

protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write ‘pursuant to official duties.’”⁴¹ Souter’s concern appears to have some validity, and some critics have sounded alarm bells.⁴² Two other recent cases suggest that the *Garcetti v. Ceballos* case may be having an impact.

In the fall of 2007, the Seventh Circuit Court of Appeals held that a professor at the University of Wisconsin-Milwaukee acted in an official capacity when he contested the way that university administrators were handling a National Science Foundation grant that he and some colleagues had received. The university reduced his pay and returned the grant. The professor’s speech did not meet the *Pickering* standard, the court concluded; he was speaking as an employee, not a private citizen.⁴³ In another recent case, a U.S. District Court in California ruled that a professor at the University of California at Irvine was not protected by the First Amendment when he criticized his department’s hiring and promotion policies and its alleged overuse of graduate students rather than tenure-track professors as lecturers.⁴⁴

In these cases, the faculty members did not take their claims to the public, as *Pickering* did; their speech was internal to the university, arguably dealing with matters related to the everyday functions of the job. In this sense, their speech was not exactly “extramural” in the normal sense of that term, so the courts’ decisions in favor of the institutions had, perhaps, some justification. But these decisions nonetheless threaten academic freedom for two reasons.

First, at many universities, including Wisconsin, “public service” is one of the major criteria for tenure, promotion, and merit. Thus, speaking out in public is part of the job description. Yet such public expression could find itself outside the realm of First Amendment protection as a result of *Ceballos* and its progeny—at least until the Supreme Court clarifies matters.

Second, under *Ceballos* and related cases, the right to criticize the university could be in jeopardy—and perhaps even public speech unrelated to the university, depending on how a faculty member’s duties are defined. This line of decisions casts a pall over the incentive to engage in internal criticism of university action and decisions. Given the campus political pressures and forces that I have discussed, this lack of protection could enhance campus orthodoxy.

If First Amendment protection in this domain is not availing, the only remedy is constructive mobilization on campus designed to make such protection part of the institution’s own rules. In the long run, this form of protection might be preferable because it is earned by communal action rather than reliance on the beneficence of courts.

Four Examples of Academic Freedom Issues

To help apply the principles articulated above, I will describe four examples of conflicts over academic freedom and discuss the principles and practical issues they raise.

1. Controversial material that raises questions of scholarly competence or responsibility

In her book *History Lesson*, Mary Lefkowitz, a professor of classics at Wellesley, discusses the situation of a professor assigning material that is not just controversial but also very one-sided and non-scholarly.⁴⁵ The specific example she cites is the book *The Secret Relationship between Blacks and Jews*, published by the Historical Research Department of the Nation of Islam (1991), an anonymous inflammatory work assigned by one of her faculty colleagues.

This type of case, in which a professor uses a work that does not meet normal academic standards, can pit the freedom of the professor to choose material for the class against the institution’s obligation to ensure professional responsibility. Student academic freedom rights can also be implicated, if students react to what they consider to be objectionably one-sided teaching.

Even if there is universal or strong agreement that the material is irresponsible scholarship, we should approach this case with caution. If departments or institutions are authorized to intervene in such cases, such authorization can set a precedent that will allow campus orthodoxies to be imposed on individual instructors who dissent from these views. I know of a prominent professor who has labeled as “evil” what I consider one of the best books on free speech, and which I assign whenever I teach the First Amendment—Jonathan Rauch’s *Kindly Inquisitors: The New Threats on Free Thought*.⁴⁶ Rauch’s book is noteworthy because it clearly shows why free speech and thought are essential to the advancement of knowledge and truth, and because it does the best job I have seen of delineating the most important contemporary threats to free thought. I would not feel secure having this moral critic of Rauch’s book making administrative judgments about the books that I teach.

Furthermore, as Lefkowitz elucidates, concerned campus authorities should focus on not only one particular book that may be used in a course, but consider it in the context of the other readings for the course. In addition, what is the motive for assigning the book? Is the instructor using the book as an example of a questionable form of scholarship or as a representative argument of extremists? Or is the instructor using the book in order to engage in propaganda? If the latter situation prevails, then appropriate action is warranted.

The default position in this type of case should be to uphold the academic freedom of the instructor to choose the reading material that he or she wants and to utilize informal remedial mechanisms, if necessary, to persuade him to reconsider those materials when there are strong reasons to doubt their academic or pedagogical validity.

because they don't like what the professor stands for or because they have a viewpoint-neutral obligation to uphold professional standards of teaching and inquiry? If the primary motive is the former, then any action against the professor violates academic freedom. If the motive is the latter, then action is justified.

The underlying principle for department chairs and deans is to be skeptical in enforcing academic responsibility. Though institutions have the right—indeed, the duty—to insist on academic responsibility in clear cases of abuse by faculty members, they should be circumspect in exercising this power. Higher education today is beset by many political pressures. Laws are legitimate only if the state is fair and evenhanded in their enforcement. The same principle applies to higher education, and evenhandedness may be difficult to find.

We must rely upon a famous Russian motto regarding diplomacy that President Ronald Reagan often quoted: Trust (the professor's academic judgment), but verify.

But what if the instructor persists in using unscholarly material for illegitimate purposes, such as propaganda? Does academic freedom mean that institutions must remain helpless to enforce basic norms of scholarly responsibility? As discussed above, academic freedom exists within the broader context of professional standards and competence. At some point, departments and institutions must be able to deal forcefully with unprofessional teaching.

If instructors do use such material for intellectually invalid purposes, administrators should have the power to take appropriate action, which can range from mild sanctions to not letting the person teach the course, and even to termination in extreme cases, depending on the circumstances. (If the instructor has tenure, that complicates the matter, but the principle remains the same.) Taking such action under the right circumstances is justified, so long as the decision-makers act with respect for the rights and responsibilities of academic freedom.

In such cases, department chairs and deans must ask themselves a fundamental question: Are they taking action

At the same time, it would be a severe mistake to forsake well-recognized standards of academic responsibility, for without such standards, universities lose their claim to special status in our society. We must rely upon a famous Russian motto regarding diplomacy that President Ronald Reagan often quoted: Trust (the professor's academic judgment), but verify.

2. Insensitive remarks

Let's consider the narrower problem of faculty members' insensitive remarks in class. The distinction between gratuitous and non-gratuitous offense provides a starting point.

In my own department of political science at the University of Wisconsin, a teaching assistant was told in the late 1980s that he would be terminated from teaching the class if he continued to make disparaging remarks about the religion of one of the students, who was a Catholic. The remarks were not germane to the course and were precipitated each week by the student's wearing a necklace with a cross. In serving on the committee that made this

decision, I stressed that the situation would have been different had the teaching assistant made a critical, non-personal comment about Catholicism in a class dealing with religion and politics, for all views germane to the subject matter must be allowed. Had the class itself “piled on” the student in discussions about religion, then the instructor would have a responsibility to maintain basic civility, but higher education must not be in the business of saying that only non-offensive ideas may be presented. This point is especially important in an age in which skins are already so thin. Indeed, teaching students to have tougher skins is one way to prepare them for the rigors of constitutional citizenship.⁴⁷

One recent example of the threat of improper sanctions in this context is the case of economist Hans-Hermann Hoppe at the University of Nevada-Las Vegas in 2005. In a class dealing with the propensity to save for the future, the well-known economist referred to homosexuals as an example of a group with a lower time horizon for saving (apparently because they generally do not have children). A homosexual student in the class considered the comments demeaning. Rather than meeting with the instructor to discuss the matter (always the preferred route), he filed a harassment complaint. The administration then embarked upon a formal investigation that involved oppressive scrutiny.

The case wore on until the American Civil Liberties Union got involved on Hoppe’s behalf, and the university eventually dropped the investigation. Hoppe’s case appears pretty straightforward: his remarks were made to illuminate the matter under discussion, rather than gratuitously. Therefore, Hoppe’s remarks were protected by academic freedom.⁴⁸

Had Hoppe made disparaging comments about homosexuality for their own sake, such remarks would have fallen outside the umbrella of basic academic freedom principles. Even if that had been the case, he should not necessarily have been punished for such statements, absent repetition of them. That is because it is a good idea to provide breathing space for academic freedom by erring on the side of freedom.

In the famous 1964 Supreme Court case *New York Times v. Sullivan*, the Court gave substantial First Amendment protection to the libel of public officials even though such expression is not in principle worthy of protection.⁴⁹ The Court stressed the prudential need to give breathing space to speech that is critical of the government. The same principle should apply to classroom speech. Coercive

sanctions should not be applied to demeaning remarks unless they are clearly gratuitous and degrading.

3. Extramural Comments

Some interesting cases involve comments made by faculty members outside of the classroom. A classic example is Arthur Butz, a professor of engineering at Northwestern University. Butz has been outspoken in denying the accepted understandings of the Holocaust in public commentary and on his personal Web page at work, causing embarrassment to his university. But he has been careful to keep such commentary out of class, where it has no relevance. (Indeed, the university has made a point of requiring this posture in class.)

Due to pressure from inside and outside the university, Northwestern considered shutting down Butz’s Web site (or not letting him express his views about the Holocaust on it), especially after he began posting versions of his work *Hoax of the Twentieth Century*. In the end, the university decided that the Web site is a personal forum entitled to free speech protections (regardless of the fact that Northwestern is a private school). Butz possesses the same right as any other citizen to express his views about this matter.

At the same time, the university has publicly distanced itself from Butz’s views, which is its institutional right under basic free-speech principles. As mentioned above, faculty members have more rights to free expression in such extramural contexts than they do in the classroom (so long as they meet the narrowing *Pickering* and *Ceballos* standard). Butz has a right to free expression in his research about the Holocaust, but his colleagues possess the institutional academic freedom to evaluate and to reward him—or to not reward him—based on their judgment of the quality of his work. If they based their decision on their moral disagreements with his position on the Holocaust, they would run afoul of academic freedom principles.

Interestingly, while Butz maintains his teaching position because he does not address the Holocaust in his electrical engineering class, the university did not renew the contract of an engineering teaching assistant who brought Holocaust material to class that affirmed the actuality of the Holocaust. The institution had the right to prohibit the introduction of irrelevant material into the class.⁵⁰

Although faculty members cannot normally be fired because of extramural comments unless they clearly demonstrate

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intellectual irresponsibility and seriously disrupt or harm the institution on that account, such commentary can legally affect institutions' decisions to hire in the first place, or to renew contracts, if such comments cast legitimate doubts on the competence or professionalism of the instructor. Hiring decisions typically involve consideration of the overall ability of the candidate, and extramural commentary can provide information in this regard. If, for example, an otherwise worthy candidate had written editorials claiming that the earth is flat, or that astrology is more scientific than astronomy, such commentary would indeed be relevant to hiring in geology and astronomy departments, and perhaps others, as well. Highly intemperate screeds in the media could also cast light upon a person's fitness to be a member of a department, at least when it comes to hiring decisions. Termination of someone with tenure or a contract presents a significantly higher hurdle in this context and is presumptively beyond the pale, as the Butz case shows. We must remember that the right to engage in extramural speech is strong, and that it is one of the few areas in which individual academic freedom has actually received constitutional protection from the Supreme Court, the *Ceballos* decision notwithstanding. Faculty members should speak their minds honestly, and with passion, if need be.

4. Research

Research also possesses strong protection unless it is conducted in an academically irresponsible manner. Poor research can lead to one not being hired in the first place, to not being rehired, or to not obtaining tenure. The academic freedom and judgment of the department or institution must be respected when it comes to determining who shall join the ranks, unless the decision is clearly based on bias. If

a faculty member has tenure, it is much more difficult to terminate him or her for poor research (though pay raises, teaching choices, and other privileges can be affected in such situations), unless the contract specifies the expectation of growth in research.

Institutions may punish or dismiss researchers if their work constitutes academic fraud. A couple of years ago, the University of Colorado fired the controversial tenured professor Ward Churchill despite his voluminous writings because a professional committee appointed by the chancellor concluded that he was guilty of several counts of plagiarism. Already notorious for his scathing criticisms of America, Churchill earned his greatest fame for his comments in the immediate wake of the September 11 attacks on the Pentagon and the World Trade Center, in which he accused the workers in the Towers of being "little Eichmanns." In reaching its decision, the committee that investigated Churchill had to be careful not to base its decision on the public's hostility to his views. Were the decision to rest on this ground, Churchill would have an academic freedom claim. But no institution worth its salt can tolerate plagiarism or other forms of academic fraud. Academic freedom does not extend to passing off the work of others as one's own.

Another example of academic fraud allegations is the case of Emory University professor Michael A. Bellesiles, who resigned in 2002 after a panel from three major universities released a report that criticized the research for his book *Arming America: The Origins of a National Gun Culture*, which dealt with the history of guns in the United States. The panel accused Bellesiles of falsifying his data about the historical use of guns in order to buttress his position, one that was uncongenial to advocates of the right to bear arms. Bellesiles's research misconduct was clearly beyond the pale of academic freedom, so sanctions would have been in order had he not chosen to resign. No researchers have a right to make up or falsify data.⁵¹

Concluding Thoughts

As this overview shows, the principle of academic freedom is not as simple as many of its advocates assume. It involves both rights and responsibilities in a professional context, and it has both individual and institutional dimensions that can sometimes be in tension.

The heart of academic freedom is the protection of the right of teachers, students, and researchers to express

their ideas with intellectual honesty and without fear of reprisal. But professional responsibility requires that instructors and researchers abide by basic standards of intellectual integrity; they must not seek to indoctrinate students, and they must not present propagandistic or fraudulent material as truthful. At the same time, institutions also have responsibilities which they have not always lived up to in recent decades, as we saw in the KC Johnson case at Brooklyn College. This problem makes navigating the waters of academic freedom more difficult than it should be.

Controversies involving academic freedom often arise in gray areas, requiring practical wisdom if they are to be resolved. In such cases, it is wise to make freedom the default position because an enlightened citizenry depends on honesty and courage in teaching and research. At the same time, those who hold academic freedom, whether individuals or institutions, must recognize that violations of intellectual integrity undermine the justifications that have led society to bestow special protections upon the academic profession. Academic freedom is a fiduciary responsibility that individuals and institutions must honor in their thoughts, speech, and deeds.

Endnotes

1. AAUP, Freedom in the Classroom (2007). June 2007. Online: <http://www.aaup.org/AAUP/comm/rep/A/class.htm>.
2. American Academy of Arts and Sciences, Statement on Academic Freedom. Online: <http://www.amacad.org/projects/freedom.aspx>.
3. American Council of Education. Statement on Academic Rights and Responsibilities. 2005. Online: <http://www.acenet.edu/AM/Template.cfm?Section=HENA&CONTENTID=10677&TEMPLATE=/CM/ContentDisplay.cfm>.
4. See *Bethel School District no. 403 v. Fraser*, U.S. 675 (1986).
5. The Supreme Court has stated that “there is no such thing as a false idea under the First Amendment.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), at 339.
6. A comparison of the intellectual products of tenure-granting institutions with the products of comparable non-tenure granting institutions would be helpful in evaluating the consequences of tenure, but I have not heard of such a study.
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8. *Otero-Burgos v. Inter-American University*, U.S. Court of Appeals, 1st Circuit, No. 07-2501 (February 19, 2009), at 24–5. Online: <http://www.ca1.uscourts.gov/pdf/opinions/07-2501P-01A.pdf>.
9. Peter Schmidt, “Balance of Power: Professors’ Freedoms under Assault in the Courts,” *Chronicle of Higher Education*, February 27, 2009. Online: <http://chronicle.com/free/v55/i25/25a00103.htm>.
10. Allan Bloom, *The Closing of the American Mind: How Higher Education Has Failed Democracy and Impoverished the Souls of Today’s Students* (New York: Simon and Schuster, 1987), p. 272. Bloom’s next sentence strikes a note of pessimism, however. “In effect, it hardly does so anymore.” But Socrates’ ideal is what the university is when it is true to itself, so it must be held up as an aspiration.
11. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Keyishian v. Board of Regents* 385 U.S. 589 (1967).
12. *Keyishian*, at 603.
13. David M. Rabban. “Academic Freedom, Individual or Institutional? Most Federal Courts Agree that Academic Freedom Is a First Amendment Right. But Whose Right Is It?” *Academe Online*, November-December, 2001. Online: <http://www.aaup.org/AAUP/pubsres/academe/2001/ND/Feat/Rabb.htm>.
14. See, e.g., Harvey A. Silverglate and Alan Charles Kors, *The Shadow University: The Betrayal of Liberty on America’s Campuses* (New York: Free Press, 1998); Donald Alexander Downs, *Restoring Free Speech and Liberty on Campus* (New York: Cambridge University Press and Independent Institute, 2006).
15. *Regents of the Univ. of California v. Bakke*, 438 U.S. 265 (1978), at 312. See also *Grutter v. Bollinger*, 539 U.S. 306 (2003).
16. *Edwards v. California University of Pennsylvania*, 156 F.3d 488 (1998).
17. *Webb v. Bd. of Trustees of Ball State Univ.*, 167 F. 3d 1146 (7th Cir. 1999), at 1149.
18. *Hetrick v. Martin*, 480 F. 2d 705 (6th Cir. 1973), at 709.
19. *Urofsky v. Gilmore*, 216 F. 3d 401 (2000).
20. There is a copious literature on the KC Johnson case. See, e.g., Robert David “KC” Johnson, “Why I Was Denied Tenure,” History News Network, November 25, 2002, online: <http://hnn.us/articles/1122.html>; and Ronald Radosh, “The Sandbagging of Robert ‘KC’ Johnson,” History News Network, November 25, 2002, online: <http://hnn.us/articles/1116.html>.
21. I discuss this successful movement in chapters 6 and 7 of my book *Restoring Free Speech and Liberty on Campus* cited in note 14 of this essay. I am also the president of the Committee of Academic Freedom and Rights. On how courts are often unreliable agents of change and the protection of rights, making political action preferable, see Gerald Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (University of Chicago Press, 1991). The Wisconsin case supports Rosenberg’s thesis.

22. See Michael W. McConnell, "Academic Freedom in Religious Colleges and Universities." *In Freedom and Tenure in the Academy*, ed. William van Alstyne, Walter Metzger, Judith Thomson, and Robert O'Neill (Durham, NC: Duke University Press, 1993), pp. 303-24.
23. AAUP, General Report of the Committee on Academic Freedom and Tenure (1915), *AAUP Bulletin* 17. Washington, DC.
24. See the copious material (including cases) on FIRE's Web site: www.theFIRE.org.
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26. See, e.g., Judith Jarvis Thomson, "Ideology and Faculty Selection." *In Freedom and Tenure in the Academy*, ed. William Van Alstyne et al., id., pp. 155-76.
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28. See Jon B. Gould, *Speak No Evil: The Triumph of Hate Speech Regulation* (University of Chicago Press, 2005).
29. AAUP (and other organizations), Joint Statement on Rights and Freedoms of Students, June 1967. Online: <http://www.aaup.org/AAUP/pubsres/policydocs/contents/stud-rights.htm>.
30. On the Columbia University case, see Miriam Felton-Dansky, "Ivory Tower Angst: Israel Advocates Are Battling Bias in the Classroom. Is Academic Freedom at Stake?" *New Voices* (November/December 2004), pp. 9-13.
31. *Whitney v. California*, 274 U.S. 357 (1927), at 375.
32. On how the possibility of member "exit" enhances the quality of organizations and protects liberty, see Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).
33. See Sara Hebel, "Patrolling Professors' Politics: Conservative Activists and Students Press Campaigns against Perceived Bias on Campuses." *Chronicle of Higher Education*, February 13, 2004. Online: <http://chronicle.com/free/v50/i23/23a01801.htm>.
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36. See Jonathan Rauch, *Kindly Inquisitors: The New Attacks on Free Thought* (University of Chicago Press, 1993).
37. On the importance of intellectual honesty as a central academic virtue, see Jarislov Pelikan, *The Idea of the University: A Reexamination* (New Haven: Yale University Press, 1992).
38. See *Pickering v. Board of Education*, 391 U.S. 563 (1968).
39. *Connick v. Myers*, 461 U.S. 138 (1983).
40. *Garcetti v. Ceballos*, 547 U.S. 410 (2006), 421.
41. *Garcetti v. Ceballos*, 547 U.S. 410 (2006), 438.
42. See *Garcetti v. Ceballos*, 547 U.S. 410 (2006). And Peter Schmidt, "Balance of Power," (see note 9 in this essay).
43. See *Renken v. Gregory*, 7th Circuit Court of Appeals, No. 07-3126, December 4, 2008.

44. *Hong v. Grant*, 516b F. Supp. 2d 1158 (2007).
45. Mary Lefkowitz, *History Lesson: A Race Odyssey* (New Haven, CT: Yale University Press, 2008).
46. Rauch (see note 36 in this essay).
47. There is copious literature on how the development of such toughness is an important ingredient of citizenship. See, for example, Lee C. Bollinger, *The Tolerant Society: Freedom of Speech and Extremist Speech in America* (New York: Oxford University Press, 1986) and Richard Sennett, *The Fall of Public Man* (New York: Vintage, 1978). This is also a major theme of Rauch's *Kindly Inquisitors* (see note 36 in this essay).
48. On the Hoppe case, see Donald A. Downs, "Free Speech on Campus: Under Attack from Both Directions?" Independent Institute Newsroom, March 28, 2005. Online: <http://www.independent.org/newsroom/article.asp?id=1484>.
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50. This information was provided to me by academic freedom scholar and activist Robert M. O'Neil, former president of the University of Wisconsin system and the University of Virginia, and founder of the Thomas Jefferson Center for the Protection of Freedom of Expression. O'Neil also discusses the Butz issue in an informative new book on academic freedom, *Academic Freedom in the Wired World: Political Extremism, Corporate Power, and the University* (Cambridge, MA: Harvard University Press, 2008). See also Scott Jaschik, "A Holocaust Denier Resurfaces," *Inside Higher Education*, February 8, 2006. Online: <http://www.insidehighered.com/news/2006/02/08/butz>.
51. On the Churchill case, see "CU Fires Ward Churchill," TheDenverChannel.com, July 24, 2007. Online: <http://www.thedenverchannel.com/news/13742972/detail.html>. On the Bellesiles case, see HNN Staff, "Summary of the Emory Report on Michael Bellesiles," History News Network, October 25, 2002. Online: <http://hnn.us/articles/1069.html>.



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Academic Freedom

What It Is, What It Isn't,
and How to Tell the Difference



Donald A. Downs

Although the term academic freedom is tossed about almost with abandon, many people do not know exactly what it means. This paper defines academic freedom, explains to whom it applies, and places it in its historical, institutional, and legal contexts. This paper also offers guidelines for deciding when and where the protection of academic freedom should apply.

The author, Donald A. Downs, is a professor of political science, law, and journalism at the University of Wisconsin, Madison. An expert on academic freedom, he has advised several schools and organizations on academic freedom matters. He is the president of the Committee for Academic Freedom and Rights (CAFAR), a University of Wisconsin-based group of faculty dedicated to protecting academic freedom on campus and in the state of Wisconsin.

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