

## Does Academic Freedom Have a Future?

*The battle for academic freedom never ends.*

By Henry Reichman

Prognostications about the future of academic freedom will be informed best by the lessons of its past. And if there is any lesson to be learned from the AAUP's first century, it is that academic freedom can never be taken for granted. While academic freedom is one of the foundations of greatness in the American higher education system, it has always been—and always will be—contested and vulnerable. Academic freedom must be fought for repeatedly, and there will be no final victory in the struggle. Despite some important failures—most notably during World War I and the Red Scare of the late 1940s and 1950s—the AAUP can look back with considerable pride on its initial century championing academic freedom. The Association in 1915 first defined the fundamental principles of academic freedom, and the subsequent 1940 *Statement of Principles on Academic Freedom and Tenure*, formulated jointly by the AAUP and the Association of American Colleges (now the Association of American Colleges and Universities), has gained such extensive support that it is now viewed as the “gold standard” in colleges and universities across the country. Endorsed by nearly 250 educational associations and scholarly organizations, the *Statement* or its principles can be found in thousands of faculty handbooks, collective bargaining agreements, and institutional policies. Today, few colleges or universities fail to claim to embrace some version of academic freedom, albeit not always in the manner that the AAUP has defined and defended it for a century. Even the enemies of academic freedom are often compelled to disguise their assaults on it by employing the language of academic freedom itself.

Nevertheless, as we look back on a century of progress and accomplishment, it is difficult not to recognize that, in key respects, our present situation is painfully reminiscent of that faced a century ago by our founders. In 1915, only a handful of prominent full professors at elite institutions held an appointment carrying indefinite tenure. In 1940, tenure policies at most institutions were inadequate, if they existed at all. By the 1960s and 1970s, however—thanks in good measure to the efforts of the AAUP—tenure had become an established norm in American higher education, and today only a small minority of American four-year colleges and universities fail to recognize the need for some sort of tenure system linked to the protection of academic freedom.

But if most colleges and universities now provide tenure protections, they provide them for an ever-shrinking segment of the faculty. At present, only about a fourth of all those who teach in higher education are included in the tenure system—certainly more than were in that position at our founding or even, perhaps, as late as 1940, but a much smaller percentage than a few decades ago.

If, as the AAUP has argued, the tenure system provides the most reliable protection for academic freedom—especially if that system can be supported by the provisions of a collective bargaining agreement—then academic freedom today may be as endangered as it has been at almost any moment since the AAUP's inception.

### **New Gilded Age**

The AAUP was created in the context of the expanding economic and social inequality and the concentration of corporate power associated with the Gilded Age. Conditions today are eerily similar. Economic inequality has reached a level not seen since the 1920s or earlier. The expanding influence of money—of the “1 percent”—on politics, society, and culture cannot be ignored. Moreover, if our founders were justly concerned, as are we, about the untoward influence of corporate and business interests on higher learning, today's universities—and many smaller colleges, too—now function increasingly as corporations themselves. Governance at these institutions is progressively more hierarchical, and the principal focus is more and more on “the bottom line.” John Dewey and his colleagues might have found much in our

current system of higher education that is new and improved, but they would surely recognize the profound dangers posed by corporatization.

In important respects, then, the challenges we confront are fundamentally similar to those faced by our predecessors. First and foremost among those challenges is the search for ways to protect academic freedom in a world where a growing majority of teachers are employed in what are essentially “at-will” positions. The solution forged by our founders was the tenure system; while some claim that system is outdated, we at the AAUP insist that tenure remains critical to our efforts.

The point, however, is not simply to “defend” tenure, especially if such defense is understood as limited to those already blessed with this increasingly infrequent status. The point instead is to expand considerably the reach of tenure, much as our founders did a century ago.

And their success should encourage us. Can we convert non-tenure-track positions to tenure-track ones? Of course we can; our predecessors did it. There is a rightful place for some temporary part-time appointments, but compelling allegedly “adjunct” faculty to cobble together the semblance of a career from a series of part-time jobs is not only an unconscionable abuse of those colleagues but also an ominous threat to the academic freedom of all faculty members. There is no more critical task in the defense of academic freedom today than a renewed fight to make the overwhelming majority of faculty appointments once again full time and probationary for tenure. Tenure, I should add, was never defined in AAUP policy documents as a protection only for research, as some now claim. As the AAUP’s Committee on Contingency and the Profession insisted in its 2010 report *Tenure and Teaching-Intensive Appointments*, “Tenure was not designed as a merit badge for research-intensive faculty or as a fence to exclude those with teaching-intensive commitments.” Hence, proposals for a “teaching-intensive” tenure track are not so much innovations as reaffirmations of tenure’s fundamental premises, and they could provide one possible route for reversing the baleful trend toward contingency of the past few decades.

In other words, even as we champion as aggressively as we can the academic freedom rights of *all* faculty, including part-time “adjuncts,” we must continue to insist, in the words of the 1940 *Statement*, that “after the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.”

### **Threats to Academic Freedom**

In its first hundred years, the AAUP became justly renowned for its defense of individual faculty members whose academic freedom was violated, an activity that we are committed to continue and, where feasible, expand. But as legal scholar Geoffrey Stone points out in a recent essay, “The real threat to academic freedom comes not from the isolated incident that arises out of a highly particularized dispute, but from efforts to impose a pall of orthodoxy that would broadly silence all dissent.” This clearly is the lesson of the AAUP’s failures during World War I and the Red Scare. More encouraging, however, has been the Association’s willingness to stand up to the national security state, for example in its 2003 report *Academic Freedom and National Security in a Time of Crisis*.

From where might future efforts to impose such orthodoxy emerge? What broad threats to academic freedom can be seen on the horizon?

First, and most visible, is the expanding and corrupting influence of money. The need for resources has always posed challenges to the principles of academic freedom. How much sway should donors, granting agencies, and governments have in how colleges and universities make use of the resources they provide? When must an institution and its faculty simply say “no” to offers of money that carry constraining conditions? These questions are at least as old as the AAUP itself. But as colleges and universities grow increasingly dependent on outside largesse, concerns over the abuse of external influence are expanding dramatically. The recent proliferation of externally funded “centers” catering to the needs of business or other outside forces is a troubling illustration.

Colleges and universities, too, may limit academic freedom and institutional independence for financial reasons. Research universities not only seek arrangements with private interests to fund activities once supported by the government but may also themselves seek to become more “entrepreneurial,” claiming the right to control what has historically been the faculty’s intellectual property, hence restricting the faculty’s academic freedom to control the results of research. In its

landmark decision in *Stanford v. Roche*, the US Supreme Court ruled that faculty rights to patents and other intellectual property belong to the faculty unless specifically signed over to the university. In response, many research universities now compel faculty members to sign over these rights in advance, as either a condition of university support for research or a condition of employment itself. In short, they have begun to act as if they were businesses whose employees produce works made for hire.

Even before the 2008 economic crisis, public colleges and universities were facing strained financial conditions stemming from a now decades-old trend of disinvestment in public higher education. But in a disturbing number of cases, difficult financial straits have provided college and university administrators with specious justifications for assaulting the academic freedom of their faculties. In a disquieting number of cases, administrators (and some legislators) have sought to justify faculty layoffs and the discontinuance of controversial programs not by claiming exigency but simply by making ill-defined assertions of “distress”—sometimes on grounds that are unproven, if not bogus.

Perhaps the most dramatic example of how financial conditions may negatively affect the academic freedom of faculty can be found in what transpired this year in Wisconsin, where legislators cut funding for the University of Wisconsin system by \$250 million over two years. In addition to this draconian cut, the state also approved provisions to remove the protections of tenure from Wisconsin law, increase the power of administrators, degrade the long-standing university system of shared governance, and authorize the board of regents to terminate faculty appointments for reasons of “program discontinuance, curtailment, modification, or redirection.” This move marked a profound departure from the former policy, which allowed termination of faculty appointments only for just cause after due notice and hearing or in the event of a fiscal emergency. Unfortunately, there is not much reason to hope that the Wisconsin experience will be an outlier.

Our era is one in which it has become increasingly difficult to take certain positions without becoming subject to a flood of abuse. Controversies about race, Israel-Palestine relations, gender, sexual orientation, religion, or terrorism may roil campus conversations in ways that lead to efforts that chill freedom. Ironically, one such effort has been the spread of calls for “civility.” The celebrated case of Steven Salaita at the University of Illinois at Urbana-Champaign is but the most prominent of such recent instances.

In that case, as in others, the rapidly expanding use of social media has seemingly intensified controversy. In a growing and distressing trend, college and university administrators, as well as politicians and journalists, may treat faculty e-mails, Facebook posts, and Twitter messages as somehow exempt from the full protections of academic freedom and, arguably, the First Amendment. Sometimes administrators have couched their censorious actions in rhetoric about combating cyberbullying, which undoubtedly is a problem among some students but hardly one that justifies the surveillance and censorship of faculty and student expression. As the AAUP stated initially in 2004 and has repeated frequently ever since, “Academic freedom, free inquiry, and freedom of expression within the academic community may be limited to no greater extent in electronic format than they are in print.”

Today the words of the AAUP’s 1994 report *On Freedom of Expression and Campus Speech Codes* are more pertinent than ever: “On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed. . . . An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disserves its academic mission.”

Connected to censorship through the banning of allegedly offensive utterances is the mounting invocation of “hostile learning environments.” Such environments may be defined not just by disrespect or abuse but by the mere creation of discomfort. Colleges and universities have traditionally been places designed to make people uncomfortable. Education can and should be joyful, but it should also be challenging, difficult, and sometimes unsettling. Yet increasingly we hear that the faculty’s right to academic freedom must be limited by the “right” of students not to be “offended” or unduly disturbed by material or ideas they encounter in and out of class. To be sure, colleges and universities must protect their students from genuine threats, and the freedom of students to question and to dissent is as important as their instructors’ freedom to do so. But current demands that syllabi include “trigger warnings” and that the university community adhere to some arbitrary standard of “civil” discourse—products, I would argue, of the consumerist culture of the market—are out of place and threaten not only academic freedom but also the academy’s fundamental purpose and mission. As the AAUP

declared in our statement last year *On Trigger Warnings*, “The presumption that students need to be protected rather than challenged in a classroom is at once infantilizing and anti-intellectual.”

Another related concern has been the recent employment of overly broad harassment policies, and in particular the apparent misuse of Title IX, to chill expression. Earlier this year law professor Jamin Raskin told a congressional subcommittee that “the overwhelming number of public universities and colleges know the difference between a serious intellectual debate and a relentless campaign of personal harassment.” I hope that he is correct, but surely the much-publicized experience of Northwestern University professor Laura Kipnis, investigated for alleged harassment under Title IX for an essay the *Chronicle of Higher Education* published, should give us pause. In response to growing concerns about this issue, the AAUP has named a subcommittee to investigate the implications of harassment rules, including enforcement of Title IX, for academic freedom and for student and faculty free expression rights.

### **A Call to Action**

The founders of the AAUP, largely privileged and from elite institutions, defined for themselves and future generations the principles of academic freedom and the fundamental concerns and standards of our profession. They understood viscerally that in jointly expressing and advocating these principles there is strength. It is a tribute to our profession that the organization they founded has survived, albeit not without challenges to its reason for being.

Today, however, too many faculty members take the AAUP and, more important, the very existence of academic freedom for granted. Too often they regard academic freedom more as an inviolable inheritance from the past than as an imperiled gain that must always be won anew. There are powerful forces in our society today that would not only restrict our academic freedom but also seek to transform our institutions of higher education into engines of profit instead of sources of enlightenment. But these forces pale before the challenge of our own apathy and indifference. Yes, faculty are overworked. But service to the profession cannot be neglected. Yes, union activism, participation in faculty governance bodies, and simple involvement can be time-consuming and tiresome. But it can also be rewarding and enjoyable. Yes, we have our divisions: humanists versus scientists, business versus education faculty, part time versus full time, young versus old. But if we do not overcome these differences, if more of us do not become active, all of us will suffer the consequences.

A century ago, the AAUP issued the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*. These principles helped build what became the largest and most successful system of higher education in the world. One hundred years later, US institutions of higher learning desperately need a renewed commitment from faculty, students, and community allies to reclaim the possibilities threatened by corporatization. I therefore call on you to get involved. If you think you are too busy, find the time. If you are demoralized, get over it. If you are indifferent, wake up.

The answer to the question posed by my title, then, is quite simple: “It is up to us.”

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