

The First Investigation¹

By WALTER P. METZGER

To many outside observers, the American Association of University Professors is pre-eminently the policeman of the profession, charged with the task of detecting crimes against academic freedom and tenure. No doubt, the leaders of the Association, knowing all too well that they are lightly armed, do not wish to be literally regarded as ubiquitous academic cops. They realize that they lack in their investigations any legal power of compulsion: they cannot gain access to a university by obtaining a writ to search the premises; they cannot compel disclosures by the use of subpoenas and contempt citations; they cannot arrest or arraign. When they find a president or dean who acts in an arbitrary manner, they cannot deprive him of his license; when they find a governing board that is about to take some pernicious action, they cannot restrain it with a court injunction. They carry two weapons only—the threat of adverse publicity and the moral authority of the Association—and both of these are uncertain arms, since they depend so much for their effectiveness on the susceptibility of the target. Nevertheless, granting the lack of coercive force (which shapes, of course, the character of the results), there is merit in the policeman metaphor. In that wilderness of several thousand disparate units that we call a "system" of higher education, the chief exponent of a rule of law with regard to faculty dismissals has been this professor's organization, while the chief deterrent to a violation of the law—aside from the inhibitions of conscience—has been the threat of an AAUP investigation. There can, moreover, be no doubt that the main drama of the Association's work lies in its constabulary functions. Nothing so catches the eye as the sight of delegations of scholars setting off under the AAUP banner to investigate some campus trouble in our trouble-prone academic Congo. Nothing that the Association publishes is so widely read in the profession as the reports of these Committee A inquiries. And nothing that the Association does so touches the collective imagination as its censuring of a culprit administration—a ceremonial act of ostracism performed at the annual

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convention by all of the delegates assembled. In a profession rather inclined to be indolent in its own defense, these efforts to enforce good rules of conduct by inquiry, publicity, and solemn rites stand out with a certain luminousness.

Why did the professional Association, despite its congenital weaknesses, take on this difficult assignment? Plausibly, one might reply that it did so out of default, that no public or other private agency dealt with the problem of unjust dismissal before the AAUP came upon the scene. And indeed, it is true that traditionally the courts had not been hospitable to suits over violations of tenure (unless a contractual right was infringed), that academic freedom had not been subsumed under protected First Amendment freedoms, that the specialist societies of professors which antedated the AAUP had not been able to cope with matters of broad interdisciplinary concern. Yet, when one looks back to the moment when the AAUP launched its first investigation and thereby fixed its role and major purpose, one finds little that suggests awareness of these factors, and much that points to the role of accident, to the happy effects of miscalculation, to eventualities that were not foretold. An examination of these beginnings shows that the undertaking was not requisitioned by necessity, and that it was to a considerable extent a product of human error and chance.

One thing is certain: those who founded the Association did not foresee a policing program. The men who came together in 1915 to set up the professor's organization were members of the elite of the profession, occupants of the highest rank in the leading universities of the country. Having made an orderly ascent to the peak of their several disciplines, the John Deweys, the E.R.A. Seligmans and the Roscoe Pounds were strongly inclined to assume that the academic world as a whole was conforming to a law of progress and that the worst examples of executive encroachment on the rights of university professors—such dark instances, for example, as the attacks on academic evolutionists by religious fundamentalists or the silencing of radical economists by wealthy, intolerant trustees—belonged to a period forever past. As John Dewey, the first President of the Association, put it, "I do not know of any college teacher who holds that [an]

infringement of academic freedom . . . is [not] an attack upon the integrity of the calling. But such cases are too rare even to suggest the formation of an association like this. . . . I am confident that the topic cannot be more than an incident in the activities of the Association in developing professional standards." Like most of the charter members, he shared the complacency of the unafflicted.

This complacency was very quickly shattered by the pressure of events. As it happened, 1915, the year of founding, was a year of academic ferment. Early in the spring, only several months after the establishment of the Association, seventeen members of the University of Utah faculty resigned in protest against the firing of several of their colleagues. Some weeks later, a professor of law at the University of Colorado charged in a letter to the press that he had lost his position because, in siding with the local miners' union, he had incurred the displeasure of the coal mine interests. To these shocks were added, in June of that same year, a tremor from the University of Montana—the president, a dean, and two professors were summarily dismissed by the Board of Regents after a long and bitter intramural controversy. And, then, to dispel any notion that the paroxysms were confined to the more volatile states of the West or to public institutions subject to political aggression, word came, again in the month of June, of the dismissal of Professor Scott Nearing from the University of Pennsylvania as a consequence, so it was claimed, of his radical economic utterances. In all, 13 cases of allegedly unjust dismissals came to light in that one year. The realm was not nearly so advanced as Dewey and his compeers had supposed.

Even so, it was not certain that the Association would intervene, and it was anything but foreordained that it would undertake to intervene on a sustained and inclusive basis. For one thing, the delegates at the founding session, ignorant of the cataclysms to follow, had not established any machinery to deal with particular dismissals. This gave the parliamentarians in the group an excellent argument for inertia. To be sure, a Committee on Academic Freedom—the first committee to be organized, hence designated by the letter "A"—had been already authorized, but its function, as originally conceived, was to draw up a general set of principles to which trustees in time might adhere, not to convert by combative methods those in academic power who were still unregenerate or uninformed. Many of the members argued that the poise and dispassionate mien needed for this longterm constructive task would be destroyed by a preoccupation with the febrile conflicts of the moment. A few were more activistically inclined and favored more immediate responses. Yet even they did not urge intervention on behalf of every teacher with a grievance. They thought that something should be done where there was strong presumptive evidence that academic freedom had been breached.

But they were not prepared to accept jurisdiction over cases that raised any lesser issue. To encourage and entertain appeals whenever a professor felt mistreated would, as one of their number put it, transform the Association into a "committee of appeal for disgruntled members"; it would require the fledgling Association to review administrative judgments concerning who was fit or unfit to teach; and it would demean the work of the society by giving it shop steward functions and by turning it—the word was anathema—into a professorial union. The general inclination, even in the face of so much challenge, was to be selective and discriminating, or to hold entirely aloof.

Thanks to an adventitious factor the decision went contrary to these predilections. One man seized the initiative—Professor Arthur O. Lovejoy, the distinguished Johns Hopkins philosopher, who was one of the founders of the Association and was then serving as its general secretary. His version of how the first great step was taken testifies to the major role that can be played at times by minor accidents:

In April of 1915 [he tells us] I happened to be going up from Johns Hopkins to New York during the Easter vacation to see some plays. When the train got to Newark, a newsboy came on with the evening editions of the New York newspapers. I bought an Evening Post and read an editorial paragraph saying that an interesting report had come from Utah that seventeen members of the state university had resigned in protest against the conduct of the administration in dismissing some of the faculty. It was *interesting*: It looked like a grave encroachment on the freedom of American university teachers. The editorial went on to say that it was impossible to judge the merits of the case, but that the facts would doubtless be investigated by the newly formed Association of University Professors and would duly be given the public in time. When I read that I thought "it is up to us". . . . We had no machinery for sending investigating committees to Universities, but I decided then and there to go up and see Professor Dewey who was living near Columbia University. It was late when I arrived—he was on the point of retiring—but I showed him the editorial and said I would go to Salt Lake City myself if he would put up the money for the railroad fare. This would be at his own risk, as we both realized, since no appropriation had been made by the Association, but he consented to go to the bank the next morning, gave me three hundred dollars and I was off the next evening for Utah.

The way in which the die was cast must give determinists pause. If Lovejoy had not then come to New York, or if he had put his holiday pleasures above his sense of civic duty, who knows but that, with the moment lost, the chance for decisive action might irrevocably have slipped away?

If the conjunction of the man and the place was one fortuitous factor, the resonance of the man with the case may be considered another. Plainly, there was something

about the Utah story that immediately "interested" Lovejoy, something that made him change his plans—and the entire course of the Association—in the instant between Newark and New York. What roused him, we assume, was the report that professors had resigned because of the mistreatment of their colleagues. A champion of professional solidarity, as were all the early leaders of the Association, Lovejoy could not fail to be impressed by this rare display of united feeling. But, in addition, there was a special factor: unlike the other leaders of the Association, who were libertarians but had never felt a wound, Lovejoy had once endured the pain of renouncing academic office. A decade and a half before, when the president of Stanford University had fired the liberal economist, Edward Ross, Lovejoy and seven others had ceremoniously resigned from that institution. Doubtless, he was at once sympathetically drawn to other teachers capable of sacrifice—as a man with heroic and nostalgic memories finds communion with his kind. These terms would also explain why he assumed that the case had to do with academic freedom. He had, after all, very little concrete evidence on which to base such a bold assumption. All that he knew came from weak authority—a brief newspaper editorial commenting on a far-away event. The Association, in later years, would be wary of scandals in the press, and would demand a more complete account before deciding on a campus investigation. But in this case, it appears, caution was disarmed by recollection; the present took on luster from the past; and the issue of academic freedom, which alone could justify intervention, was not so much found as interjected. A fateful trick of perception: for the Utah case in reality was not the case Lovejoy beheld through the haze of his remembered glories.

The Stanford incident may well have set the focus of Lovejoy's investigation. The dismissal of Edward Ross had been effected against a background of suspicious circumstance: the presence of a wealthy patron given to the prejudices of her class; the presence of a weak-willed President sycophantic to her wish; the presence of a heterodox professor who flaunted his economic theories in the face of conservative disapproval. At the same time, when called upon to explain his action, the President had not been willing to confess that Ross had been deposed for his opinions. Such an admission would have jeopardized the academic prestige to which an ambitious university laid claim and upon which a major university necessarily relied. The President consequently had taken refuge in the alleged imperfections of his victim: Ross, he had announced, had been dismissed for scholarly incompetence. When the American Economic Association launched an inquiry into the case, it had set as its primary task the unmasking of the administrative motive. Unsurprisingly, Lovejoy now assumed that he faced a similar situation at Utah and was embarked on a similar task. The

Stanford paradigm suggested that the Utah administration would not engage in frank confession and that the object of the investigation would be to expose the grounds for dismissal that were ulterior and as yet arcane.

Accordingly, Lovejoy spent a good part of his time on the Utah campus looking for two kinds of evidence: signs of improper pressure originating outside the university, signs of official pusillanimity visible from within. Nor was he disappointed in his search. In 1915, the state university of Utah was certainly no academic freedom sanctuary. It was clear to Lovejoy from his inquiry, and he made it clear in his report, that the President's protective instincts went out to the annual appropriation and not to enduring principles. Inclined to respond with contagious fright to any sign or whisper of disapproval, this head of a state university had gone so far as to warn the members of the faculty not to bestir the Mormons by doubting the words of Joseph Smith, while on economic issues he had given his faculty to believe that it would be wise to appease the conservative Legislature by holding *Adam Smith* sacrosanct as well. At one time, President J. T. Kingsbury had replaced the head of the English Department with a Mormon religious apologist; at another time, the Utah Board had refused to reappoint a teacher who had become *persona non grata* to the governor. And there were other unsavory details, which Lovejoy set down in his report with revulsion and a certain gusto.

But contrary to his apparent expectations, these sinister events and indications, while they illuminated general conditions, did not bear on the motives for the main dismissals or get at the heart of the issue that had caused the faculty to resign. Eventually, Lovejoy had to conclude that the issues in the case were not ideological but personal, that the acts which had provoked dismissal had not been some impious speech aimed at sanctified ideas, but at some presumed discourtesy and defiance directed at official authority. What was more, lacking either worldliness or guile, the President and the Board had frankly said so, so that the stated grounds for the dismissals, far from being disingenuous, actually defined the policy of the institution toward certain kinds of faculty conduct. Lovejoy was compelled to revise his initial assumptions about the case. The case did not involve academic freedom—at least not as he and his contemporaries defined the term. Compared with the momentous image of embattled men of learning striving to make their knowledge known (the image that had drawn him to the scene), the picture now before him of a president squabbling with subalterns over the deference owed to rank was smaller in scale and bereft of grandeur, an academic issue of another sort. Moreover, as he had to alter his understanding of the case, so too he had to modify his definition of his task. It was not enough in a case like this to expose clandestine motives; what was needed was an appraisal of the rules dealing with hierarchical relationships. This—it should be said

for his flexibility—he was willing to attempt: having crossed a continent to become enlightened, he was not disposed to depart until every vital issue had been explored. But the proliferation of issues quite unexpectedly produced a ramification of roles for the investigator. Expecting to play the detective, Lovejoy found that he had to be as well a critic of academic management, a human relations counselor, and a judge of the involuted problem of internal academic discipline.

At Utah, as at most institutions at that time, there were no written statutes or regulations defining the classes of acts that made a teacher liable for dismissal on disciplinary grounds. Offenses, as Lovejoy pointed out, were "determined in individual cases by the judgment of the President and the Board holding office at the time. . . ." What the current President defined as conduct meriting expulsion was made clear in his recommendations for dismissal which he had submitted to the Board that spring:

I am convinced [he told the Board] that Dr. A. A. Knowlton has worked against the Administration of the University. Dr. Knowlton has also spoken very disrespectfully of the Chairman of the Board of Regents. My opinion is that respect is due the Regents, especially their presiding officer, . . . and that therefore the author of such remarks should not be retained in the employment of the University.

I am convinced that Professor George C. Wise has spoken in a depreciatory way about the University before his classes and that he has also spoken in a very uncomplimentary way about the Administration.

The Board adopted the recommendations, dismissed the two professors without a hearing, and offered this additional justification:

When friction is developed to a serious and irreparable point it must be eradicated. Investigations to ascertain whether the superior officer or a subordinate is most to blame do not stop the friction. In such cases the only practical course is to remove such causes of friction as are deemed least valuable to the work of the organization.

The ominous gist of this latter statement was that harmony took precedence over every other value. It mattered nothing to the Board whether in a conflict with superiors the teacher was more sinned against than sinning or even whether he sinned at all. Presumably, according to the Board, for the sake of a frictionless existence, a professor might forfeit his position if he but troubled an administrator's dreams.

To know what such rulings meant, one had to ascertain the particular acts to which they had been applied. Lovejoy discovered that Professors Knowlton and Wise had given offense on two occasions. Professor Knowlton had once made bold to say, to a colleague in private conversation, "Isn't it too bad that we have a man like that as Chairman of the Board of Regents?" (The colleague with

genial malice had passed this on to the President.) Professor Wise had once remarked to his students that "the educational standing of the University of Utah was inferior to such a University as Yale." "I did not forget to add," Professor Wise later deposed, "that in this respect Utah was improving rapidly." (These comments had also been conveyed to the central intelligence office.) The President's other charge—that the men had been working against the Administration (by which he meant that they had been trying to have him removed from office)—proved to be entirely unfounded.

Lovejoy was appalled. To magnify such paltry sins into the crime of insubordination, to use a system of espionage to check on the faculty's affections, to insist on a loyalty more fastidious than that which a jealous husband would be likely to ask of a wife, seemed to him to be gross perversions. "The law of *lèse majesté*," he declared, "cannot with advantage be applied to university faculties in America." Espionage, he believed, could not be tolerated; the use of tattled confidences for the purpose of incrimination was a practice, he thought, to be condemned. As for the Board's policy of harmony at all costs, Lovejoy felt bound to remark, looking at the decimated faculty, that the trouble with such a policy was that the costs were invariably much too high. In his words, "the policy of disregarding considerations of equity and of heeding only considerations of efficiency does not in the long run tend to the efficient working of any organization of human beings. . . . [I]t is not effective even in the management of business houses. Applied in the government of universities it is the sure beginning of disaster."

To Lovejoy, the attitude of this Administration toward the problem of insubordination seemed so extreme as to be exceptional. He thought the conduct of the President was so injudicious that it required a psychological—he almost said psychiatric—explanation. He noted that the President in recent years had been subjected to heavy criticism for his handling of university affairs, that he was afraid that he might lose his position, and that this ever-growing anxiety made him unduly suspicious of his staff. The Board, he thought, also behaved in an unusual fashion. By refusing to investigate the charges, by announcing that a teacher had to please, it had blithely surrendered the institution to that large uneasiness of mind that took possession of the President whenever he found opposition. Without actually using the terms, Lovejoy made it appear that the President was almost paranoid, and the Board singularly obtuse.

But here Lovejoy failed to employ either a large or long enough perspective. In demanding the allegiance of his faculty, President Kingsbury was not unique, and in automatically ratifying the President's wishes, the Board was not uncommonly remiss. Both were employing a formula of control that had long been enshrined in academia. This formula of control had originated in the patriarchal setting of the old-time college. All through

the colonial period and down to the end of the ante-bellum era, the president of the college, as a pastor in the sponsoring sect and usually a highly placed churchman, had been the paterfamilias of the institution. The teachers under his charge, often men of tender years who were deviating temporarily from their church careers, had accepted a filial relation to him. Thus, a system of academic command had developed which rested on a strong underpinning of consent. The president had become an object of veneration as much for his ecclesiastic status as for his high academic place; and the faculty had accorded their devotion not merely to a formal superior but to a man who far surpassed them in years, in communal standing, and in experience.

Since then, many changes had occurred in the academic social order. The secularization of the colleges, which gradually had laicized the presidency, had dispelled some of the aura of that office: the new academic executive, drawn from the less spiritual walks of life, might win regard if he had merit, but he usually did not inspire genuflection. Concomitantly, the status of the professor had risen, as in time he became released from degrading schoolmaster duties, began to engage in scholarly research with its high honorific rewards, and came to render a lifetime of service to what was no longer a retreat but a profession. With these changes, the old habit of veneration began to wither. More and more faculties came to feel that the academy was a society of equals, not a family of father and sons. But the patriarchal ideal remained

viable in the minds of many college presidents. Archaic though it was, it still possessed the very great utility of appealing to their vanity; it still served as a useful instrument in their sometimes desperate struggles for survival; and it suited their altruism too, for they did not find it difficult to identify loyalty to their persons with loyalty to the institutions they controlled. What the formula lacked in these modern times, however, was the element responsible for its past success—normative acceptance by the faculty—and what it produced whenever it was asserted was a resounding clash of expectancies. In such a situation it was not unusual for a president to take arms against a figment or a trifle. The ability to convert a lack of positive affection into a positive sign of disaffection, an occasional disparaging remark into a full-fledged conspiracy against authority, was not President Kingsbury's special talent. Immoderation and hyperbole were inevitable in a situation where leaders demanded a kind of homage which their followers were not willing to concede.

It was, in fact, the typicalness of the Utah story that gave the case significance. For these wrangles over pride and precedence were the very stuff which academic wars were made of, and would far more often issue in dismissals than the great intellectual combats which the founders had had in view. Having once taken cognizance of the ordinary, the Association could not refuse to accept the large and continuing responsibilities for which it had been initially unprepared.

. . . a régime of law

When we turn to the special field of government over institutions of higher education, there is perhaps even more room for differences of opinion as to what type of government should prevail. However, there is logically room for only one view in the ranks of the American Association of University Professors. The Association is dedicated to the view that a government of principles or law is as suitable and as necessary to the administration of higher education as it is to the control of society at large. In the view of the Association only the development of such a régime of law can eliminate administration based upon the personal views of administrators or their whims and limitations or upon the expediencies of the moment. Any socially acceptable direction of higher education calls for the effective grounding of educational policy upon a régime of law.

From "Due Process in Higher Education," by DR Scott, Bulletin, Summer, 1946, p. 370.