

Accreditation, Academic Freedom, and Institutional Autonomy: Historical Precedents and Modern Imperatives

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Abstract

In light of the ongoing intrusions by state governments into core aspects of higher education, this article considers the roles that regional accreditors can play and have played in promoting and securing academic freedom and institutional autonomy. It discusses key elements of both academic freedom and institutional autonomy, demonstrating not only how they are different but also where they come together. It then turns to the roles that accreditors play in higher education and the specific standards for academic freedom and autonomy articulated by accreditors. Finally, this article reviews three historic cases (in 1930s Mississippi, 1940s Georgia, and 1960s North Carolina) where accreditors were instrumental in curbing state overreach. It concludes by calling for accreditors to be supported in playing similar roles today.

The success of American higher education . . . is explained in good measure by the observance of academic freedom. This freedom is manifested institutionally as colleges and universities seek to conduct their educational missions without inappropriate influence from external centers of power—public and private.

—AAUP and CHEA 2012, 1

In 2012, the AAUP and the Council for Higher Education Accreditation (CHEA) released an “advisory statement” calling for the affirmation of “the role that accreditation plays in the protection and advancement of academic freedom” (AAUP and CHEA 2012, 2). Much more recently, AAUP president Irene Mulvey (2023) has urgently underscored the linkages between the two. In testimony submitted to the National Advisory Committee on Institutional Quality and Integrity (NACIQI), she pointed to politically motivated attacks on higher education and appealed for NACIQI to exert greater oversight of accreditors.¹ She called for “more direct action,” arguing that “accrediting agencies must properly investigate restrictions on teaching, attacks on tenure, and violations of shared governance and should revoke accreditation if gross violations are not corrected” (Mulvey 2023, 2). Accreditation is often pitted against academic

¹ Authorized by the 2008 Higher Education Opportunity Act, NACIQI reviews accrediting agencies and provides advice to the US secretary of education.

freedom, including in this journal (Champagne 2011; Elmore 2010). Yet, as the statements above indicate, accreditation can play an important role in promoting and protecting academic freedom. Correspondingly, as S. E. Elman (1994) has argued, academic freedom is itself necessary for the entire accreditation process to work.

This article considers the role of accreditation in ensuring academic freedom and institutional autonomy in US higher education. Regional accreditors all have standards that explicitly call for the protection of academic freedom and the prevention of governmental interference in core institutional and academic matters. Moreover, accreditors historically have played important roles in resisting governmental intrusion into institutional functioning and academic freedom. This article begins with brief discussions of academic freedom, institutional autonomy, and accreditation before documenting accreditors' standards on academic freedom and institutional autonomy. It then points to a series of historical events where accreditors intervened when state governments overreached and threatened or abridged institutional autonomy and academic freedom. In so doing, it calls for accreditors to protect institutional autonomy and academic freedom even as ongoing state actions make this difficult.

Academic Freedom

Academic freedom is a central and needed element of higher education. In the United States, the modern era of academic freedom dates to battles over economic and social speech in the late nineteenth century, when faculty professionalization grafted versions of the German principles of *Lehrfreiheit* and *Lernfreiheit* onto US notions of freedom of speech. This grafting was important as in Germany there was no expectation that faculty could speak openly on contested political issues; they were employees of the state and beholden to it. In 1915, a group of elite professors formed the AAUP, with the establishment of academic freedom as one of their goals. At the end of that first year, its Committee on Academic Freedom and Academic Tenure's *Declaration of Principles on Academic Freedom and Academic Tenure* outlined the purposes and needed protections for academic freedom, noting, "Where the university is dependent for funds upon legislative favor, it has sometimes happened that the conduct of the institution has been affected by political considerations" (AAUP 1915). The passage continued to its famous warning of the "tyranny of public opinion" in a democracy, arguing that scholars need to be free to pursue unpopular ideas.

Twenty-five years later, the AAUP and what is now the American Association of Colleges and Universities (AAC&U) released the 1940 *Statement of Principles of Academic Freedom and Tenure*, affirming a tripartite understanding of academic freedom in teaching, research, and extramural expression (AAUP and AAC 1940). Academic freedom was justified not for personal benefit but because the "common good depends upon the free search for truth and its free exposition." The 1940 *Statement* became the defining document on academic freedom in the United States and perhaps the most important in the world. Its negotiated understandings are based both on the principles articulated in the 1915 *Declaration* and the experience of academic freedom in the years

after it. Beginning in 1915, AAUP investigations into potential violations of academic freedom formed a sort of “common law of academic freedom” (Finkin and Post 2009, 6). These investigations helped define the contours of academic freedom and established a fourth core component: the freedom of intramural speech.

Alongside these professional understandings are legal ones that emerged in response to the challenges posed by anticommunist attacks on faculty in the late 1940s and 1950s. The US Supreme Court first acknowledged academic freedom in Hugo Black’s 1952 dissent in *Adler v. Board of Education of the City of New York* (342 U.S. 485). In his 1957 concurrence in *Sweezy v. New Hampshire* (354 U.S. 234), Felix Frankfurter offered a stronger defense of the need for free universities, writing, “This means the exclusion of governmental intervention in the intellectual life of a university. It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.” A decade later, in *Keyishian v. Board of Regents of the State of New York* (385 U.S. 589, 1967), William Brennan termed academic freedom “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classrooms.”

Although these rulings portended greater legal acceptance, the relationship between the First Amendment and academic freedom has remained unclear, generating numerous attempts to reconcile or disentangle the ideas (for example, Areen 2008; Van Alstyne 1990). Just as important, the rulings left uncertain whose academic freedom was to be protected. Over time, though, the courts have most often spoken of academic freedom in ways that relate more to institutional freedom than traditional notions of professorial rights (Adams 2021). Indeed, in *Urovsky v. Gilmore* (216 F.3d 401, Fourth Circuit 2000), the majority ruled that “to the extent that the Constitution recognizes any right to ‘academic freedom’ . . . the right adheres to the University, not individual professors.”

Institutional Autonomy

Traditional notions of academic freedom involve the rights of individual faculty members and the corporate faculty to undertake their work without undue restrictions; the bounds and guides are academic and professional. Claims of *institutional academic freedom* relate to institutional autonomy, which involves colleges’ freedom from excessive external influences, be they governmental, denominational, or otherwise. These concerns are long-standing—F. King Alexander (2000, 413–14) has called them “as ancient as the university itself.” In the US context, *Dartmouth College v. Woodward* (17 U.S. 481) was a significant marker, with the Supreme Court ruling that an institution’s charter was a contract and could not be abridged by the state. The case, though, was a battle not over academic freedom in the modern sense but “over autonomy and against oppressive government of one sort or another” (Herbst 1982, xiii).

Institutional autonomy has historically been justified as enabling colleges and universities to maintain academic freedom; more recently, it has been defended as necessary for institutions to respond to market pressures (Dee 2006). In a classic work, Robert Berdahl (1971, 9) warned that “the real issue . . . is not whether there will be inevitable interference by the state but rather whether the inevitable interference will be confined to the proper topics and expressed through a suitably sensitive mechanism.” Recent decades have seen increased state-level efforts both to reign in institutional autonomy—using performance budgeting to shape institutional efforts, for example—and to further coordinate higher education. These have been joined by occasional retreats from such measures to allow more flexibility to compete (Dee 2006). Most recently, there has been significant alarm over substantial encroachments into institutional autonomy around the globe (for example, Bergan, Gallagher, and Harkavy 2020).

Institutional autonomy is often linked to and justified by academic freedom. It can shield faculty and researchers from external encroachment and can protect a college’s intellectual core. At the same time, institutions can be autonomous and still violate academic freedom (Finkin 1983). Years before it partnered with the AAUP on the 1940 *Statement*, for example, the Association of American Colleges (as the AAC&U was then known) argued for institutional autonomy to dictate what faculty taught and wrote (Cain 2012). As such, institutional autonomy and academic freedom are distinct; they can work at odds or together. Referencing the midcentury court defenses of academic freedom, Nathan Adams (2021) argues that they are most aligned when states encroach against shared interests of institutions and faculty. While no two historical moments are alike, multiple states are again encroaching on these shared interests. Accreditors can play a key role in resisting this overreach.

Institutional Accreditation²

Berdahl’s (1971) notion of state intervention on “proper topics” through appropriate means implicates the broader issue of institutional accountability. In the United States, accountability is addressed through the “regulatory triad” of federal regulation, state oversight, and institutional accreditation. Broadly speaking, federal roles related to institutional quality control are tied to access to and use of federal dollars, while states’ interests are expressed through their support of public institutions, provision of student aid, maintenance of student records, and interest in civic life. For their part, accreditors’ “traditional interest in quality has been quite comprehensive—embracing matters ranging from the adequacy of resources to the appropriateness of institutional governance arrangements to the qualifications of administrative and teaching staffs to adequate provisions of instruction” (Ewell 2018, 123). State and federal governments should have academic

² While the focus here is on institutional accreditation, program accreditors are also important and have occasionally been more willing to issue sanctions for violations of academic freedom (O’Neil 2008).

freedom and institutional autonomy as key concerns, but accreditors, as membership organizations, are best positioned to advocate for and mandate them.

The US system of accreditation dates to late nineteenth-century efforts to classify schools and colleges. By the early twentieth, institutional accreditation agencies were voluntary associations of institutions designed to ensure quality and foster improvement. The federal government's increased role in higher education in the mid-nineteenth century provided an inflexion point; concerned that federal dollars distributed through the Servicemen's Readjustment Act of 1944 (the GI Bill) had been captured by diploma mills, the 1952 GI Bill relied on accreditors to identify institutions qualified to accept student veterans' benefits. This role was entrenched with the 1965 Higher Education Act (Angulo 2016).

Combined, CHEA and the US Department of Education recognize eighteen institutional accreditors, seven of which are regional accreditors whose membership includes the vast majority of students and of public and selective four-year institutions (Kelchen 2018). National accreditors include institutions with more restricted—largely faith-based and vocational—missions. The accreditation process relies on institutional self-study and peer review, including site visits by members of other accredited institutions. Especially since the 2006 report of the Commission on the Future of Higher Education, accreditors have received intense scrutiny, with critics questioning whether membership organizations can ensure their own members' quality and whether the low rate of sanction reveals strength or laxity in the system. When they are imposed, accreditation sanctions are significant events that can spur institutions to change or threaten their very existence. The strongest of actions, removal of accreditation, often leads to the closing of an institution. In cases where institutions, of their own action or due to external intrusion, fail to meet these standards, sanctions including the removal of accreditation are warranted.

Standards on Institutional Autonomy and Academic Freedom

Accreditors' standards outline broad principles and provide guidelines that each institution needs to meet to become or remain accredited; they are assessed within the context of an institution's mission. All seven regional accreditors explicitly include ensuring academic freedom among these standards.³ For example, the Northwest Commission on Colleges and Universities' "Standard Two" (NWCCU 2020, para. 25–26) includes the following expectations: "Within the context of its missions and values, the institution adheres to the principles of academic freedom and independence that protects its constituencies from inappropriate internal and external influences, pressures, and harassment"; and "The institution defines and actively promotes an environment that supports independent thought in the pursuit and dissemination of knowledge." In its standard, the Middle States Commission on Higher Education stipulates that the first criterion of "ethics and integrity" is "a commitment to academic freedom, intellectual freedom,

³ Academic freedom standards are far less common among national accreditors and, when extant, are limited.

freedom of expression, and respect for intellectual property rights” (MSCHE 2023, 8). The Southern Association of Colleges and Schools Commission on Colleges both includes a specific requirement that academic freedom be protected and justifies voluntary accreditation by the need to protect it (SACSCOC 2018). The Accrediting Commission for Community and Junior Colleges’ standards require a “commitment to the free pursuit and dissemination of knowledge, and . . . support for an atmosphere in which intellectual freedom exists for all constituents” (ACCJC 2014, 3).

As the SACSCOC philosophy and NWCCU standards highlight, accreditors are concerned that external interference can impede educational missions. The Higher Learning Commission’s (2019, para. 28) standards, for example, require that “the governing board preserves its independence from undue influence on the part of donors, elected officials, ownership interests or other external parties.” MSCHE (2023, 15) standards include that “the institution . . . operates as an academic institution with appropriate autonomy.” They also prohibit political interference in the exercise of governing board responsibilities.

Taken together, these standards provide not just the justification for accreditors to address academic freedom and undue external encroachment but also the imperative to do so. Moreover, all regional accreditors mandate academic quality and center faculty in the design and implementation of the curriculum. Legislative bans on specific content and theoretical approaches inherently run against these standards; by enforcing their standards, accreditors can protect higher education.

Protecting Academic Freedom and Institutional Autonomy

Considering such standards, some observers have argued that accreditors need to do more, including former University of Virginia president and AAUP general counsel Robert M. O’Neil (2008), who contended that violations of academic freedom should threaten accreditation. While such jeopardization has been relatively infrequent—and there have been times when accreditors have explicitly not acted when urged to intervene—historical precedents demonstrate that accreditors can bolster institutional autonomy and academic freedom.

An important instance of an accreditor invoking sanctions related to institutional autonomy took place in the 1930s, when Mississippi governor Theodore G. Bilbo attacked higher education. In a series of actions, Bilbo fired the chancellor of the University of Mississippi, the dean of the medical school, more than fifty professors, and approximately 125 staff members across three public institutions (Sansing 1990). According to the AAUP, he did so “for political reasons, without due consideration of the welfare of students affected” (AAUP 1931, 141). The AAUP declared faculty at the institutions to be “ineligible” for membership, an early step toward what would come to be known as censure (Cain 2012). Numerous organizations joined the AAUP in condemning or sanctioning the Mississippi institutions, but it was the loss of accreditation that “most seriously damaged” these colleges and universities (Sansing 1990, 108–9). Outrage and

political battles over the future of higher education ensued, as did real efforts for change. After Bilbo left office, these efforts culminated in a reorganization of public higher education and the return of accreditation. For the AAUP, the accreditors' action was a positive sign. In his annual report, General Secretary H. W. Tyler (1931, 167) called it "gratifying" and noted, "It may be hoped . . . that accrediting agencies will hereafter deal more critically" with violations of tenure.

A decade later, in May 1941, Georgia governor Eugene Talmadge launched "a general assault on the University System" (Dyer 1985, 227). He moved to dismiss the president of the Georgia State Teachers College, Marvin Pittman, who had clashed with Talmadge's political allies, and Walter Cocking, a dean at the University of Georgia. Talmadge soon accused Cocking of being a communist and advocating school desegregation, neither of which were true. The university's board at first fired the two administrators, but the swift backlash caused it to retreat and hold public hearings on the men's futures. When the board voted to retain Cocking, Talmadge replaced three board members. The newly constituted board fired Cocking and Pittman, and Talmadge expanded his purge to other faculty for their political beliefs or for being born outside of Georgia (Dyer 1985).

Responses included student protests, efforts at mediation, and an investigation by the Southern Association of Colleges. University officials and board members sought to placate the SACS, and Talmadge apologized for "inadvertently" violating rules. Nevertheless, in December 1941, 400 SACS delegates unanimously voted to remove the accreditation of all white public institutions in Georgia. The controversy and resulting loss of accreditation were the main issues in the 1942 gubernatorial race, which Talmadge lost. Upon inauguration in January 1943, his successor immediately pursued legislation that would protect universities from interference, including reforming their boards and providing them with constitutional status (Dyer 1985). With these protections, and Cocking and Pittman invited to return, SACS restored accreditation.

In 1963, SACS played a key role in resolving controversies related to North Carolina's "speaker ban" law. Amid increasing civil rights activism and white concern that racial hierarchies might be disrupted, the legislature passed an act preventing communists, advocates of violating the constitution, and people who had pleaded the Fifth Amendment from speaking at public institutions in the state. The act was aimed at the University of North Carolina at Chapel Hill, which many in the state viewed as too permissive on racial and social issues. As William Link (1995, 199) notes, "The state's political leadership had bludgeoned its way into campus affairs; their intervention upset the delicate relationship between the university and the state." As UNC president William Friday, a member of the SACS board, worked to have the bill repealed, SACS undertook a site visit as part of the institution's reaccreditation process. Friday leveraged it to his institution's advantage. By the following summer, SACS's chairman had informed the state that the speaker ban violated its policies and threatened the accreditation of all public institutions. The possibility of accreditation loss roiled the state, and SACS representatives again visited "as a tactical device aimed at subtly prodding the governor"; accreditation proved to be an "effective

lever . . . to undermine the law” (Billingsley 1999, 110, 111). Friday navigated a compromise that did not entirely remove restrictions on campus speakers but gave authority to university administrators and preserved institutional autonomy, a resolution only possible because of SACS’s intervention (Link 1995; Billingsley 1999).

These and other such actions demonstrate the influence accreditors can have. These cases involved governmental overreach into higher education, the circumstance that Adams (2021) argues is most likely to align interests in institutional autonomy and academic freedom and which is most pressing today.

Accreditors, Institutional Autonomy, and Academic Freedom

In his discussion of state coordination, Frank Newman (1987, 9) quotes a legislator lamenting faculty departures from the state’s university: “The harsh fact that our state government has forgotten is that there are no great universities run by governors or budget analysts or legislators. There are no great centers of learning that are forced to submit to the open mistrust and control that we think are appropriate in this state.” Indeed, no great universities will exist where governors, analysts, or legislators dictate the curriculum, prohibit critical research, influence hiring, and eliminate efforts to promote diversity and inclusion. Educational quality and opportunity will necessarily recede. The modern threats are real and accreditors are key to countering them.

The current moment is fraught with widespread state-level attempts to disrupt higher education, eliminate the study and teaching of racial inequality, and make colleges and universities less safe for members of minoritized populations. These efforts are largely undertaken disingenuously and threaten both institutional autonomy and academic freedom. Legislators in Florida, Texas, and elsewhere are working to upend the regulatory triad through legislation, lawsuits, and other interference; they are trying to impose their will regardless of academic principles and educational values. Florida’s and North Carolina’s actions, especially, seek to undermine accreditors through mandated accreditation shopping and challenges to accreditation itself. While the threat is real, these efforts should be read as indicating the importance and power of accreditors. If accreditation did not have a key role in protecting higher education, it would not be the target that it is.

Accreditors have significant responsibilities in US higher education; charged with ensuring its quality, they can also shield it from attacks. Regional accreditors have themselves argued that academic freedom and institutional autonomy are necessary for faculty and institutions to do the work they are tasked to do. For faculty, this requires the freedom to study, to teach, to criticize, and to explore; for public colleges and universities, protection from government intervention keeps them from becoming political organizations no longer dedicated to the public good. Again, despite the current challenges, accreditors retain significant power. Suspending or removing accreditation is an extreme act only undertaken in extreme circumstances; it has ramifications for

students who cannot access federal funds or have credits transfer to accredited institutions. But when state actions fundamentally threaten the work that faculty undertake and the learning that students do, accreditors have an obligation to act. If they are supported, accreditors can, again, be “effective levers” to ensure that attempts to reshape higher education for partisan purposes are held at bay. If they do not act, the regulatory triad becomes a dyad, to the detriment of higher education, its students, its faculty, and the country.

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