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Against the Common Sense: Academic Freedom as a Collective Right

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Abstract

This essay argues that the common sense of “academic freedom” in US universities today represents a historically anemic version of the concept that is markedly misaligned with contemporary political culture and its bearing on higher education. In this commonsense view, academic freedom is distinct from and yet fundamentally analogous to free speech rights: it is a principle that protects the free expression (spoken or printed) of individual faculty. This common sense privileges only the third principle (of three) in the AAUP’s 1940 codification of academic freedom—the principle concerning a faculty member’s civic freedom—and, moreover, erroneously conceives the first two principles, regarding research and teaching, as operating on the same model of individual liberties as the third. We need to resuscitate an understanding of academic freedom as the collective right of faculty to set the norms of academic debate, free from interference by administration, governing boards, or the state.

The common sense of “academic freedom” in US universities represents a historically anemic version of the concept that is markedly misaligned with contemporary political culture and its bearing on higher education. This common sense is not “wrong” in any simple way—common sense rarely is—but it amplifies the specific dimensions of academic freedom that are least functional in relation to contemporary institutional politics and jettisons those dimensions on which we might productively build to address the kinds of conflicts unfolding across college and university

campuses in this moment. In this commonsense view, academic freedom is distinct from and yet fundamentally analogous to free speech rights: it is a principle that protects the free expression (spoken or printed) of *individual* faculty. This understanding privileges the third principle (of three) in the AAUP's 1940 codification of academic freedom—the principle concerning a faculty member's *civic* freedom—and, moreover, erroneously conceives the first two principles, regarding research and teaching, as operating on the same model of individual liberties as the third.¹

The consequences of this reduction are far-reaching: the critique of liberal individualism on the left, a critique now central to the thought of multiple generations of academics, means that this commonsense version of academic freedom is rapidly losing traction with rising cohorts of scholars, and most especially with graduate students. It has therefore become urgent that we revisit the meaning of academic freedom so as to emphasize the *collective* right of faculty to set the norms of academic debate, free from interference by administration, governing boards, or the state. This understanding of academic freedom has a long historical warrant. It is also, as I hope to suggest, directly and profoundly relevant to the future of the professoriate in the corporate university.

An incident in the University of Washington AAUP chapter, of which I serve as president, recently compelled me to collect my scattered thoughts on this topic. The case involved a faculty member in the sciences, who blogs on a variety of topics (some related to his research, others not); over the summer, he posted on the wave of current Black Lives Matter (BLM) protests, condemning the “rioting” and destruction of property, and comparing it to what occurred during the infamous 1938 Kristallnacht pogrom. As the absurdity of the comparison should make clear, the ostensible point of the post was precisely to outrage the sensibilities of colleagues and students. In response to the post, a petition began to circulate on campus, garnering strong support among graduate students and junior faculty, condemning the faculty member's views and calling for his immediate dismissal from the university. The point was not merely the grossly offensive comparison of BLM protesters to Nazis, the

petitioners alleged, but the faculty member's extensive record of racist and sexist behavior that created a toxic climate for students and peers.

Debates on the faculty member's post and the resulting petition quickly blew up on the AAUP chapter's listserv; several posters to the list suggested that UW-AAUP needed to take a stand. A longtime member of our board drafted a response that affirmed the rights of students to protest faculty and conceded that "elsewhere we should discuss the complaints lodged by the petitioners" but condemned as "irresponsible and dangerous" the demand for university authorities to "fire faculty over issues that fall within the bounds of academic freedom and free speech." For an explanation of these principles, this draft response linked to the 1940 AAUP statement. Others on the board immediately expressed discomfort with this straight-up condemnation of the petition. While no one on the board embraced the call for summary dismissal, there was broad solidarity with the petitioners' demand that there be accountability for racist speech. The draft response had cited principles of "academic freedom and free speech" to suggest that the blog post, however objectionable, was protected. But among our board members, it seemed less cut-and-dried that this form of speech by a faculty member *should* be protected, particularly as it was part of a documented pattern of egregious statements.

At the core of our internal struggles were two messy issues. The first was that we could not simultaneously argue that the faculty member's blog post was protected speech *and* that the petitioners' concerns deserved to be heard. For the petitioners, it was clear, racist speech acts inflict material harm by contributing to an institutional climate that is both psychically and professionally injurious to BIPOC (Black, Indigenous, and people of color) faculty and students. To cite "free speech" protections for the offending faculty member would mean effectively dismissing their claim to harm. Indeed, for the faculty member and his defenders, "free speech" rights ought to protect him not just from summary dismissal but from any kind of censure whatsoever. The second concerned the muddy line between what we do as scholars (which is protected by academic freedom) and what we do as private citizens (which is protected by free speech). As the 1940 statement itself concedes, this is not necessarily a tidy

distinction; in the age of social media, it is more vexed than ever. I will return to this point shortly.

Was there a way to respond to the petition that wouldn't go the "free speech" route—wouldn't amount to a claim that faculty can say anything at all with impunity? In other words, could we reject the alarming inflation of administrative power implied in the petition's call for summary dismissal, while leaving *open* the questions of whether the blog post was the statement of the private person or the faculty member, and whether or not the comparison of BLM protestors to Nazis constitutes a form of hate speech? When I first saw the petition, what surprised me was not the demand for a reckoning with a faculty member's racism (such demands are being put forward across the university on a more or less daily basis) but rather *the tactic*: It was stunning to me that, in their frustration with faculty impunity, the petitioners were *conferring power on the very same university administrators* who for years have *buried* student and faculty complaints about racist departmental cultures and racist policing on campus. It is worth noting that another petition (demanding termination of faculty for alleged racist conduct) had recently circulated in the School of Medicine. Was there a way for our AAUP chapter to highlight the alarming implications of such petitions, while recognizing as legitimate the demand for accountability on racism?

My concern was not just to frame a statement on which the board might agree but to respond in a manner that might invite the petitioners to reconsider the form of their demand. Myriad conversations over the last several years have taught me that for the younger cohorts of scholars on campus—younger generations of faculty as well as graduate students—both the concept of academic freedom and the AAUP as an organization are associated with the prerogatives of a vanishing elite: the ranks of the tenured faculty. Many if not most graduate students (certainly the overwhelming majority of those in the humanities and the social sciences) do not imagine that they will ever hold tenure-line positions. Faculty in the lecturer ranks know that access to tenure-line appointments is all but closed to them. They perceive, correctly, that faculty on term appointments are not protected in taking intellectual and political risks. In the context of the downward mobility of the

professoriate, academic freedom comes to mean a set of protections conferred on predominantly senior faculty—a free pass for aging contrarians and reactionaries.

In this way, the skepticism around academic freedom aligns with a Left critique of liberalism: in treating all individuals as formally the same, a liberal, rights-based model protects and perpetuates the structural inequities that render us, in fact, highly unequal. From the perspective of this critique (as old as liberalism itself) the familiar claims to symmetry—for example, that white nationalists must not be censored so that Black militants will enjoy the same freedom of expression—is a ruse, since in fact the Black militant is harassed, surveilled, arrested, and abused, even as police cordons protect the white racists from counterdemonstrators.² Moreover, for many among the rising generations of scholars, *the concept of academic freedom decodes in the same manner*: a nominally universal faculty right, which operates in practice to shore up existing structures of institutional power and privilege. From this perspective, the question was whether we could produce a response to the petition that would function pedagogically, to suggest why this is a profound misapprehension of academic freedom and why we should care *all the more* about protecting it as the institution of academic tenure erodes.

Rereading the 1940 AAUP statement with this problem in view, I was struck by the relation of the third principle to the other two. The third principle concerns the rights of faculty as private citizens:

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

The very circumstance that freedom of speech in matters of civic engagement must be separately and expressly affirmed makes clear that it is a right distinct from the academic freedom of the scholar. Interestingly, the statement acknowledges that hiving off the citizen (who represents only himself) from the scholar (who represents both a field of inquiry and an institution) is not as simple as it may seem. This problem is writ large in the current moment, when social media routinely confounds the distinctions between the scholar as public intellectual and the scholar as private person or citizen. (In the case to which we were responding, the faculty member's blog site identifies him as such; it includes expert commentary related to his field of study, interspersed with random posts on "current events.")

The first two principles delineate the terms of academic freedom proper:

Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

These principles constitute the AAUP's codification of the concept of *Lehrfreiheit*, central to the institution of the modern university in its German variant. *Lehrfreiheit* meant freedom of inquiry and of teaching—and it was a freedom predicated not on the individual rights of faculty, but on the institutional autonomy of the university. *Lehrfreiheit* signaled that the pursuit of knowledge within the university would not be under state supervision or subordinate to the aims of state. While the university was to exercise a cultural and a socializing function—to produce citizen-subjects for the state—it would do so as a largely autonomous entity, "in dialogue with the state."³ As such, the academic freedom at the core of the

modern university has its roots in the premodern university and its struggles against ecclesiastical control. “The contribution of medieval British, French, and Italian universities to the modern concept of academic freedom was the primacy of the faculty in determining the mission, curriculum, and academic standards of the institution and their autonomy in selecting the institution’s leadership.”⁴

Thus academic freedom at its origins is the *collective* freedom of a faculty from extramural control—and while that point is nowhere explicit in the AAUP language, it is strongly implicit in the reference to “full freedom in research and the publication of results.” Both access to research funding and publication of results are governed by the practice of *peer review*. As a citizen, I might claim a right to express *whatever* view—but I have no such prerogative as a scholar. As Joan Scott trenchantly observes, “Free speech makes no distinction about quality; *academic freedom* does. Are all opinions equally valid in a university classroom? Does creationism trump science in the biology curriculum if half the students believe in it? Do both sides carry equal weight in the training of future scientists? Are professors being ‘ideological’ when they refuse to accept biblical accounts as scientific evidence? What then becomes of certified professorial expertise?”⁵ Her rhetorical questions remind us that the research faculty conduct and publish must meet certain collectively established norms of relevance, coherence, and evidence. These norms are neither static, transparent, unproblematic, nor uncontested—however, they are altered not at the whim of the individual scholar but through the collective elaboration of new objects, methods, and stakes. In other words, the terms of scholarly debate within a field are transformed when the practitioners collectively place pressure on them. Moreover, curricular design, course content, and teaching methods are determined by the same norms and debates that structure research in the field—and indeed, teaching, like research, is subject to regular peer review.

It merits emphasis that, for Scott, the will to conflate (and, indeed, replace) academic freedom with free speech emanates from the Right, which appropriates free speech as its latest weapon in the culture wars. In her important analysis, it is precisely because free speech makes no distinctions, and thus offers equal sanction to all statements—whether

demonstrably true, taken on faith, or manifestly counterfactual—that the Right wields it with such ferocity (and success) to undermine the authority of the professoriate. In this reactionary reframing of the academy as a “marketplace of ideas,” all ideas are to be represented—and the existence of disciplinary consensus constitutes proof of bias (that can and should be corrected through extramural control). My complementary argument in this essay is that the academic Left has responded to this tactic by mounting a critique of free speech *rather than by defending academic freedom as the expression of the faculty’s collective power to differentially assess the merit of ideas.*

Of course, the power to make distinctions—to set disciplinary norms—is inherently political, deeply consequential, and susceptible to abuse. This is perhaps one reason that the academic Left has shied away from defending it. Peer review is not (should not be) a litmus test, but I suspect many of us will recollect tenure and promotion meetings, or editorial board meetings, where compelling, innovative scholarship was challenged in the interest of shoring up established positions or perspectives in a field. “Freedom of inquiry,” in the AAUP’s phrase, rests on the assumption that inquiry in any field is heterogeneous and debated—and that debate remains open to the marginal, emergent, or outlier view. In that sense, to be sure, “freedom of inquiry” supports the intellectual autonomy of the individual scholar.⁶ But this autonomy is nonetheless rooted in a collective enterprise: when I defend the interdisciplinary tenure candidate, my argument is not that anything goes but that (for example) the interdisciplinary journals in which they have published are widely respected, widely cited, and are pressing disciplinary debates in useful, new directions.

In our current historical moment, threats to academic freedom emanate, not only from culture warriors on the right, but from the state, insofar as we might understand the defunding of the public institutions as the failure of governments to protect the university’s autonomy. In the US context, specifically, they emanate from the tradition of lay boards of trustees, who exert substantial control of institutional governance.⁷ They emanate from private donors, including corporations that view sponsored research instrumentally, as a means to economic ends. And I

would argue that they emanate from the explosive growth of administrative ranks over the last several decades, including, in particular, the proliferation of high-ranking managerial personnel with no experience in teaching or research.

This was the history and the present reality that I sought to engage as I rewrote the board's response to the petitioners. Rather than wave the wand of "academic freedom and free speech" to suggest a blanket protection for every willfully offensive thing a faculty member might say, I wanted to foreground what was amiss in the appeal to the administration for summary dismissal. The resulting draft read, in part,

At the core of this controversy is a question about what it is, exactly, that academic freedom is intended to protect. The assumption that would appear to underlie both the petition, as well as numerous posts to this list, is that academic freedom is a kind of academic analog to the first amendment, protecting the rights of faculty to say anything at all. The counter-claim is that certain forms of speech are so injurious that they should not be accorded those protections.

This is a profound misinterpretation of what academic *freedom* most fundamentally represents. **Academic freedom is not about the freedom of individual academics to say whatever they want—rather, it defines the *collective freedom of the faculty* to set the norms of academic debate, free from interference by administrators, governing boards, or the state.**

Unfortunately, the circulating petition seeks to confer on *university administration* the power to repudiate faculty through summary dismissal—a power it does not and *should not have*.

An apt comparison would be to the infamous incident at the University of Illinois, when university administration intervened to "dehire" Professor Steven Salaita after the hiring department had extended a job offer. We should recall that over the years, most threats to academic freedom have come from corporations and conservative interest groups, from agribusiness and chemical companies seeking to shut down research that might harm their

markets, and from conservative politicians demanding this or that radical professor be fired. This is not a door we should wish to open.

This version of our response concluded by noting that, “while there is no question that discriminatory or harassing behavior cannot be tolerated and that our institution must do better to ensure an equitable learning and research environment for women and BIPOC faculty and students, such violations must be addressed through equitable grievance procedures that protect both students and faculty from administrative over-reach.”

But this version of our response did not fly. The board member who had drafted the original response could not abide my “weird interpretation” of academic freedom. In the end, we posted an altogether minimal response, in which we cited (without explaining or discussing) “key rights and protections that AAUP has defended for over a century,” and cut directly to the sentence about equity and administrative overreach. To be fair, my colleague was perhaps not wrong in suggesting that my interpretation of academic freedom did not conform to the common sense. In fact, the distinction between free speech and academic freedom had been somewhat troublingly eclipsed in the very case I had sought to invoke as a relevant comparison. The AAUP had condemned Salaita’s dehiring, arguing that his tweets excoriating the Israeli bombardment of Gaza were extramural speech, and that the rescinding of his tenured position was therefore a violation of his free speech rights. This was, of course, entirely correct, but it was only part of the story. Salaita’s critics, who pointed out that his tweets were continuous in substance, if not necessarily in tone, with his scholarly output, were also correct—even though, for their own political reasons, they refused to draw the appropriate conclusion, namely, that the indictment of the Israeli state for genocidal policies toward Palestinians is a *valid and broadly held position within scholarly debates on the subject*.⁸ This is, of course, the true source of concern for defenders for Israeli policy: that they are losing the *intellectual* debate on the Zionist project. From this perspective, Salaita’s dehiring was, *separately*, a violation, not only of his academic freedom but of the academic freedom of the Department of American Indian Studies at the University of Illinois, which had vetted his record as

a researcher and a teacher, and voted to hire him. My point is that there were two violations in Salaita's case, not one, and that the AAUP response perhaps reflects a broader tendency to elide the crucial distinctions between the two.

If my interpretation of academic freedom is out of tune with the common sense, then, I am suggesting, the common sense is becoming a problem. The conclusion I draw from the petition to terminate the faculty Kristallnacht blogger is that if we fail to distinguish between academic freedom and free speech—if we run together the three principles of the 1940 AAUP statement as though they were all predicated on the same model of individual rights—then academic freedom will go down with the ship of liberalism. In a bitter irony, it will be repudiated by committed university activists on the left—the very people rendered most vulnerable by its demise. Under the sign of academic freedom, *we should be organizing across the ranks of the tenured and the untenured to try and preserve (a measure of) faculty control*, not just over research and curricula but hiring, retention, disciplinary actions, and adjudications. At least at my institution, control of the latter is endangered, not only by the austerity regime that eviscerates faculty autonomy on matters of hiring and retention but also by the heavy hand of the Human Resources Department in disciplinary proceedings, which has meant that management, not faculty peers, routinely judges (and penalizes) faculty accused of inappropriate speech or conduct.⁹ *This* was the alarm that I had hoped to sound to the petitioners. To do so requires that we reclaim the proper meaning of academic freedom.

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Notes

¹ The AAUP's statement of principles is available at <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

² For a still-decisive critique of liberalism contemporary with its emergence, see Karl Marx, "On the Jewish Question," in *The Marx-Engels Reader*, ed. Robert C. Tucker (New York: W. W. Norton, 1978).

³ Bill Readings, *The University in Ruins* (Cambridge, MA: Harvard University Press, 1996), 68.

⁴ Stephen G. Olswang and Barbara A. Lee, "Faculty Freedoms and Institutional Accountability: Interactions and Conflicts," *ASHE-ERIC Higher Education Research Report* 13, no. 5 (Washington, DC: Association for the Study of Higher Education, 1984), 5.

⁵ Joan Scott, "On Free Speech and Academic Freedom," *Journal of Academic Freedom* 8 (2017): 6.

⁶ Readings nicely elucidates the relation between institutional and individual autonomy in a discussion of Schleiermacher: "For Schleiermacher," he writes, "the benefit [of the university] for the state is not a direct one of utility. The University does not produce better servants for the state. Instead, the benefit is indirect: the University produces not servants but *subjects*. That is the point of the pedagogy of *Bildung*, which teaches knowledge acquisition as a *process* rather than the acquisition of knowledge as a product. . . . Educated properly, the subject learns the rules of thought, not a content of positive knowledge, so that thought and knowledge acquisition become a freely autonomous activity, part of the subject"; Readings, *The University in Ruins*, 67. On this point, Schleiermacher is close to his contemporary Humboldt, founder of the modern university in Prussia. My point, however, is that the capacity of the faculty to model this mode of subjectivity, and to cultivate what we would call today (in a more contemporary, English-language idiom) critical thinking in our students, demands first and foremost institutional autonomy from the various forces (political and economic) that aim to harness and subordinate knowledge production to their own specific ends.

⁷ As Olswang and Lee remark, the creation of governing boards staffed by business and political leaders is a specifically US tradition that has had, since its inception, a substantial impact on academic freedom. If early twentieth-century boards styled themselves as "preservers of collegiate virtue" (the ostensible counterforce to a more free-thinking faculty), their contemporary analogs are (for the most part) less obviously willing to intrude in curricular and cultural matters; Olswang and Lee, "Faculty Freedoms and Institutional Accountability," 6. At the same time, their oversight of fiscal matters and control of top-level administrative appointments arguably makes the reach of latter-day trustees into the university's research and teaching mission still more consequential.

⁸ This explains why Cary Nelson's defense of Salaita's firing takes the form of attempting to police disciplinary boundaries, so as to make it appear that such indictments of Israeli

policy—and, in particular, that analyses of Israel as a settler-colonial state—are purely political and without scholarly merit. The burden of his laborious (and paternalist) exposition is to insist both that Salaita was never an appropriate hire in the field of American Indian studies and that the members of that program (and, indeed, Salaita’s recommenders) were unqualified to assess his work on Israel/Palestine but rather advanced his candidacy out of political solidarity with the boycott, divestment, sanctions movement. As Robert Warrior justly responds, Nelson’s argument amounts to disappearing the entire field of comparative Indigenous studies, about which Nelson himself is entirely unqualified to speak. See Nelson, “Steven Salaita’s Scholarly Record and the Problem of His Appointment,” and Warrior, “Response to Cary Nelson,” both in *Journal of Academic Freedom* 6 (2015), <https://www.aaup.org/reports-publications/journal-academic-freedom/volume-6>.

⁹ What I have come to understand as the “HR-ization” of disciplinary proceedings thus aligns with the shift from the governed to the managed campus. “On the managed campus,” notes Rachel Ida Buff, “administrators and their henchpersons . . . operate with little input from or serious accountability to their faculty, staff, and student constituents.” See Buff, “Editor’s Introduction: Is the Managed Campus a Graveyard?,” *Journal of Academic Freedom* 11 (2020), <https://www.aaup.org/JAF11/editors-introduction-volume-11>.