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Professor Salaita's Intramural Speech

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Abstract

The Salaita controversy has exposed many fault lines within the academic profession. While some of the more vehement commentary appears inextricable from the speaker's attitude toward Zionism, much of the Salaita discourse seems premised on misunderstandings of concepts that are fundamental to the professoriate. Among these are the distinction between extramural and intramural utterance and the significance of the distinction as it relates to the limitations of academic freedom. Drawing on numerous AAUP documents, I argue that Professor Salaita's tweets, because they directly invoke his area of academic authority, should be considered intramural utterance. A common view, that Salaita's tweets are irrelevant to his professional fitness because he was speaking as a citizen and did not publish his opinions in a professional format, is antiquated in view of the efficiency, power, and reach of social media. Any disciplinary evaluation of Salaita's speech should apply the stricter standards of intramural utterance.

When people speak candidly, they sometimes express themselves more colorfully than they would if they were speaking on the record. When speaking with friends or sympathetic colleagues on issues of professional relevance, I sometimes express views—sincerely held during the utterance—that exceed what the objective evidence might support. I'm not alone in this; almost everyone who seeks my advice or help in my AAUP capacity contacts me from his or her personal, rather than university, e-mail account. These people want to speak candidly to me. They assume that I'm not likely to scrutinize their views through a scholarly lens, and they would prefer not to face consequences from colleagues or administrators, as they fear could occur if the administration chose to monitor their e-mails. They are well aware that, as Zoe Barnes says in the Netflix series *House of Cards*, "these days, if you're talking to one person, you're talking to a thousand."

Professor Steven Salaita's unhiring/firing by the University of Illinois at Urbana-Champaign (UIUC) in reaction to his political speech may have tragic consequences for academic freedom, but the case is also compelling drama, in part because the answers to so many of the questions that it raises reside in gray areas. Among them are these questions: Was he still an applicant or already a member of the UIUC faculty? Was his unhiring/firing an action of the university administration or the Board of Trustees (BoT)? Was it ethical for a BoT to overrule the decision of a faculty committee? Were his tweets anti-Semitic? Did the UIUC administration knuckle under to donor pressure? Is the controversy (1) an academic freedom issue, (2) an opportunity to advance the smear-Israel/Zionism obsession of many American leftists and academics, or (3) a demonstration of the Israeli/Zionist lobby's war on the free speech of anyone critical of Israel?

One's answers to these questions (as well as one's stance on the situation in Gaza) may shape one's reactions: If one finds it obvious that Salaita was already a member of the UIUC faculty, or that he was fired because the BoT and influential donors disagreed with his political position, or that pro-Palestinian faculty members are routinely punished for their opinions, UIUC's actions might seem more provocative than if one does not find these things to be obvious. However, the answers to none of these questions are as clear-cut as might be suggested by the intensity of conviction that characterizes much of the Salaita discourse.

Despite disparate perspectives, all sides seem to agree on three things: (1) Professor Salaita was unhired/fired in response to political statements that he made. (2) Neither the UIUC administration nor its BoT forced Salaita to write the tweets. (3) The practice of not "officially" hiring someone until weeks after he is expected to begin the job is reprehensible management policy. Many people also agree that Salaita's tweets were "extramural utterances," a term the AAUP, in asserting that academics enjoy the same right as other citizens to participate vigorously in the life of their communities, fashioned to describe speech that occurs outside academics' faculty responsibilities. But even the answer to this question—are his tweets intramural or extramural speech?—is not as obvious as many commentators find it to be. Much AAUP policy, as well as common sense, suggests that Professor Salaita's tweets are directly relevant to his faculty performance.

The distinction between intramural and extramural utterance is important because the protections for extramural utterance (the kind of thing we say at the city council meeting or in letters to the editor) exceed those of intramural utterance (the kind of thing we say in the classroom, journal articles, and conference presentations, or when we're otherwise uttering from the standpoint of disciplinary expertise).

As defined by the AAUP, academic freedom includes the right to extramural utterances. If you are an academic, outside the workplace you have the right to voice your opinions free from punishment. It is not an unlimited right, but the bar for transgression is high. As long as the utterance does not clearly and convincingly demonstrate that the speaker is unfit for the academic profession (when taken into

consideration with his or her established record of scholarship and teaching), the speaker has a right to say it without institutional reprisal. That's why, under the academic freedom protection for extramural utterance, an engineering professor has the right to proclaim that the Holocaust was a hoax. The statement, regardless of how inaccurate or reprehensible it might be, has no bearing on the speaker's fitness as a professor of engineering. That is also why the same statement, offered by a professor of twentieth-century history, would be ground for tenure denial, or even firing. Academic freedom does not protect professional incompetence.

Whether Salaita's speech is extramural is also significant because if he is making his statements outside the parameters of his job, he has the legal protections of the First Amendment. But First Amendment protections do not generally apply to the workplace, where (in most jobs) employees can't expect to say anything they want to without jeopardizing their employment. That's the main reason why academic freedom is so important—it provides teachers and scholars with protections for speech within the workplace that do not exist elsewhere. Yet academic freedom enjoys legitimacy because it is not unlimited—within the classroom or other professional venues a professor cannot say anything that he or she wants to (such as denying the Holocaust) with the expectation of impunity. That the limitations of individual academic freedom are defined by the profession or the discipline, as opposed to the individual professor's whim or imagination, also provides reassurance to a public that might be less interested in the pursuit of knowledge than in a controversial professor's influence on students.

On the basis of published statements, several of my colleagues on the AAUP's Committee A on Academic Freedom and Tenure agree that Salaita's tweets are extramural utterances. Marjorie Heins, a First Amendment expert, points out that Salaita's tweets “did not have anything to do with his performance as an academic.”¹ Michael Bérubé, a Penn State professor and the editor of this volume of the AAUP *Journal of Academic Freedom*, also characterizes UIUC's action as retaliation against extramural speech.² Rudy Fichtenbaum, the president of the AAUP, and Henry Reichman, first vice president and chairman of Committee A, assess Salaita's tweets as “largely extramural utterances of personal views.” While noting that Palestine appears to be a topic of scholarly interest for Salaita, Fichtenbaum and Reichman say that “his posts were arguably not intended as scholarly statements but as expressions of personal viewpoint,” and thus were irrelevant to Salaita's professional standing.³ AAUP associate secretary Anita Levy, writing to UIUC's then-chancellor Phyllis Wise on behalf of the AAUP, states the official AAUP position: “We see Professor Salaita's statements as extramural activity as a citizen rather than as faculty performance.”⁴

The AAUP's 2004 statement *On Academic Freedom and Electronic Communications* shouldn't have needed revision, in that extramural utterance has always been what occurs outside the confines of faculty performance. However, since the publication of the 2004 statement, many faculty members have been

punished for speech issued on social media, a medium that has expanded exponentially since the 2004 statement, prompting a revised document to state emphatically that speech delivered through new electronic means of communication is still protected by the old rules of academic freedom. The revised statement, approved by Committee A and adopted by the AAUP National Council in November 2013, warns faculty that in social media the lines between personal and public communication are often blurred. But while the literal distinction between on-campus and off-campus doesn't exist in cyberspace, "*the fundamental meaning of extramural speech, as a shorthand for speech in the public sphere and not in one's area of academic expertise, fully applies to the realm of electronic communications, including social media*" [italics mine].⁵

Similarly, the most significant recent AAUP document that addresses extramural speech, the 2011 statement *Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions* argues that academic freedom, particularly when exercised through social media, must extend beyond intramural utterance, which "directly relates to an academic's particular area of study."⁶

Therein lies Salaita's problem. Professors, when addressing issues outside their academic interests, cannot be presumed to speak with greater credibility than anyone else. But because his comments were in an area of his academic expertise—the situation of Palestinians—he was speaking as an authority. Otherwise, no one would care about his viewpoint. If Salaita wished for his opinions to be private, or if he considered himself to be merely testing or refining his ideas, he wouldn't have published them in a public forum—in a medium with the potential to influence an audience that far exceeds the students in his classroom or the readers of his more scholarly writings. In evaluating Professor Salaita's professional fitness, it would be imprudent to equally weigh his tweets against his established record of teaching and scholarship, but the tweets about Palestine are likely to offer insight into his scholarship and teaching, which his opinions about the Affordable Care Act, or whether corporations are people, would not.

In the AAUP's letter to Chancellor Wise, Anita Levy traces the many ways in which UIUC officials gave Salaita reason to believe that the job was his (notwithstanding the explicit notice that the offer was not final until BoT approval). Levy concludes that, as a practical matter, Salaita was summarily dismissed as a tenured faculty member of the UIUC.⁷ As such, his position is protected by the due process measures that are accorded tenured faculty members in dismissal procedures, including the right to a hearing before the designated faculty committee—which can be expected to better understand the parameters of academic freedom than might the UIUC administration or the BoT.

A staple of academic freedom is that a tenured faculty member can only be dismissed for bona fide financial exigency or, after he or she has received several levels of due process, for adequate cause. There is little in AAUP documents to advise faculty committees and administrations as to what, other than moral

turpitude, might constitute adequate cause. The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* recognizes the lack of direction and suggests that individual institutions devise their own definitions.⁸ The 1994 statement *On the Relationship of Faculty Governance to Academic Freedom* refers to speech that “violates some central principle of academic morality, as, for example, where it is found to be fraudulent (academic freedom does not protect plagiarism and deceit).”⁹ Among institutions that specify what else might violate academic morality, *intellectual dishonesty* is mentioned prominently in faculty handbooks. But even this term is vague. After all, it is difficult to read someone’s mind. One can be wrong without being dishonest, and—as has been amply demonstrated in Internet discourse regarding Salaita—many people suspect those with whom they disagree of being deceptive. Furthermore, circumstances differ. What might be egregious in one context could be innocuous in another. And to codify X as adequate cause might open the door for governing boards to fire professors in circumstances where X is inconvenient for the governing board but necessary for the good of society.

Cary Nelson, three-time former president of the AAUP who later served on Committee A, and who became the target of much anonymous vitriol for his view that Chancellor Wise acted properly in revoking Salaita’s offer before it became official, has written that, while the tweets were sufficient to prevent Salaita from being hired, they would not present adequate cause for his dismissal were he a tenured member of the faculty.¹⁰ The “outrageous” tweets, according to Nelson, are not clear and convincing evidence of professional incompetence, and thus do not exceed the limits of academic freedom protecting intramural utterance.¹¹

Is incivility adequate cause? UIUC’s administration and trustees, and some professors, seem to think so. Rather than violating Salaita’s academic freedom, they claim that they are protecting the academic freedom of others on the UIUC campus, especially students, who may be hesitant to voice Zionist opinions in the classroom or at campus forums in the face of the withering contempt that Professor Salaita has expressed about them and their opinions in his tweets. UIUC claims not to find his content to be objectionable—many other UIUC faculty members, including some in the American Indian Studies program, share his views of Zionism—so much as his manner of expression. His incivility, as they see it, threatens to create an environment that inhibits the free exchange of ideas.¹²

Anita Levy, addressing Chancellor Wise, refers to the 1940 *Statement of Principles on Academic Freedom and Tenure*, which is, with its 1970 interpretations, the bedrock AAUP document: “When [faculty members] speak or write as citizens, they should be free from institutional censorship or discipline.” However, the rest of that section adds a useful caveat: In view of their “special position” in society professors should “*at all times be accurate, should exercise appropriate restraint, [and] should show respect for the opinions of others.*” [italics mine].¹³

Only Salaita's staunchest supporters would argue that he exercised appropriate restraint (given their view that Israeli foreign policy is obscene), and no one can plausibly claim that Salaita's tweets show respect for the opinions of those who might disagree. But subsequent AAUP statements—including the 1970 interpretations—recognizing that the 1940 qualification could give license to mass dismissal of professors (not even Einstein was at all times accurate) have reduced the sentence to an offering of sound practical advice rather than academic statute.

While it is not a good idea for faculty members to be uncivil, for an administration or governing board to dismiss a tenured faculty member for incivility is verboten. Such judgments can be subjective, depending on whether the underlying opinion is one with which one agrees or disagrees. If a professor uses vulgarity in support of his or her audience's cause or passion, the audience is far more likely to find the vulgarity excusable, if not entirely appropriate. If a professor's alleged incivility legitimately affects professional performance, the effect is likely to be seen in ways that are less subjective, such as a poor teaching or service record. Furthermore, historically speaking, incivility has been used by institutions as an excuse for firing professors whose ideas or opinions are unpopular. That is why the AAUP, in protecting a professor's freedom to express opinions that may be unpopular with his or her administration or governing board, does not generally permit institutions to unbundle the manner of the expression from the content of the expression.

If I were on the governing board of UIUC would I have voted to unhire/fire Salaita? No. Did the BoT's action warrant AAUP censure? Although I was not in complete agreement with the Committee A report on UIUC's treatment of Salaita which became the basis of the AAUP censure, I voted to approve the report. Of central importance, UIUC did not provide Salaita with academic due process, as had been urged by the national AAUP, the UIUC AAUP chapter, and the UIUC Faculty Senate. But that's not the only reason. Fundamentally, the academic profession would become less "attractive to men and women of ability" if institutions habitually rescind job offers long after professors give formal notice to their previous institutions.¹⁴ Part of my reasoning was also that Professor Salaita—although clearly speaking candidly and publicly in his area of professional competence—was unaware that his public use of social media might be construed as faculty performance. I assume it never crossed his mind that he was modeling a level of discourse for his students. Yet another reason for my vote was that, in rescinding the job offer so late in the process, UIUC may well have ended Salaita's career as a tenured professor. Salaita may have colleagues willing to work with him, but it is unlikely that any board of trustees would ever approve his appointment; Salaita is suing not only the UIUC trustees and the chancellor but also the donors. Even if Salaita's lawsuit results in a settlement with UIUC, no financial settlement is likely to compensate him for the loss of a career.

However, if UIUC were to reverse course and give Salaita the academic due process to which he is entitled, it will not surprise me if a faculty committee finds that Professor Salaita's tweets exceeded the limits of academic freedom for intramural utterance and are an adequate cause for dismissal. A faculty committee, when evaluating speech, should always err on the side of free expression. No doubt arguments would be made to the committee that the offending tweets were taken out of context and that there is no evidence that Salaita has ever punished opposing viewpoints in the classroom. But now that Salaita has made his statements, one can assume that his classroom will be a much different place. I imagine that if Professor Salaita were (re)instated to the UIUC faculty some students would avoid him and other students would take his class to show that they regard Professor Salaita with the same contempt with which he has said—in his professional speech—he regards them and their families. If some of these students receive less than a very high grade, it is not difficult to imagine some filing complaints that Professor Salaita has punished them for their political opinions. Outside the classroom, the answer to speech is always more speech. Within the classroom, mutual contempt is more likely to lead to conflagration than to learning.¹⁵

There is a good reason that the AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure* offers advice about appropriate restraint and respect for the opinions of others. When a professor doesn't exercise restraint and respect in his or her public speech, it fosters distrust of the academic profession. When Salaita goes to court and asks a jury to (re)instate him to the UIUC faculty, he'll have much to overcome. People hate it when professors use academic freedom as an excuse for incendiary language.

Don Eron recently retired after twenty-five years as a non-tenure-track instructor at the University of Colorado, Boulder. He is the primary author of the Colorado Conference's "Report on the Termination of Ward Churchill," which was published in volume 3 of the AAUP Journal of Academic Freedom. His writing on academic freedom has been cited in petitions before the United States Supreme Court, the Inter-American Commission on Human Rights of the Organization of American States, and the National Labor Relations Board. He is a member of the AAUP's Committee A on Academic Freedom and Tenure.

Notes

1. Marjorie Heins, "Untangling the Salaita Case," *The Academe Blog*, September 7, 2014, <http://academeblog.org/2014/09/07/untangling-the-steven-salaita-case/>.
2. Michael Bérubé, "Bérubé on Salaita," *The Academe Blog*, August 7, 2014, <http://academeblog.org/2014/08/07/berube-on-salaita/>.
3. Rudy Fichtenbaum and Hank Reichman, "Statement on the Case of Professor Steven G. Salaita," (AAUP media release, August 7, 2014), <http://aaup.org/media-release/statement-case-steven-salaita>.
4. Anita Levy to Phyllis Wise, 29 August 2014, www.aaup.org/file/AAUPLetterChancellorWise.pdf.
5. AAUP, *Academic Freedom and Electronic Communications* (Washington, DC: AAUP, November 2013), <http://www.aaup.org/report/academic-freedom-and-electronic-communications>.
6. AAUP, *Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions* (Washington, DC: AAUP, August 2011), <http://www.aaup.org/NR/rdonlyres/895B2C30-29F6-4A88-80B9-FCC4D23CF28B/0/PoliticallyControversialDecisionsreport.pdf>. This discussion of extramural utterance relies heavily upon Matthew Finkin's and Robert Post's *For the Common Good*, which is a "comprehensive" account of the

history of academic freedom as formulated by the AAUP through policy statements and Committee A investigative reports. According to Finkin and Post, "Freedom of extramural expression refers . . . to speech made by faculty in their capacity as citizens, speech that is typically about matters of public concern and that is unrelated to either scholarly expertise or institutional affiliation." (Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* [New Haven: Yale University Press, 2009], 127.) It is natural to view Salaita's speech as extramural. Salaita was clearly exercising his rights as a citizen, and made no pretense of speaking on behalf of any institution. His views, as Fichtenbaum and Reichman note, were most likely personal and were not presented in a scholarly or professional format. While social media has radically expanded the concept of the classroom, Salaita did not present his tweets in the context of teaching a class. However, such a view of extramural utterance does not adequately consider that speech occurring outside "official" faculty responsibilities may have significant professional relevance. For example (as an extreme hypothesis), it would not be irrelevant to the question of his or her professional fitness if a biology professor, with a commendable teaching and research record, speaking entirely as a citizen, testified before a state legislature in support of a bill mandating the teaching of creationism as the truth.

7. Anita Levy to Phyllis Wise, 29 August 2014, www.aaup.org/file/AAUPLetterChancellorWise.pdf.

8. AAUP, "Statement on Procedural Standards in Faculty Dismissal Proceedings" (1958), <http://www.aaup.org/report/statement-procedural-standards-faculty-dismissal-proceedings>.

9. AAUP, "On the Relationship of Faculty Governance to Academic Freedom" (June 1994), <http://www.aaup.org/report/relationship-faculty-governance-academic-freedom>.

10. Colleen Flaherty, "In a Hurricane," *Inside Higher Ed*, August 15, 2014, <https://www.insidehighered.com/news/2014/08/15/cary-nelson-faces-backlash-over-his-views-controversial-scholar>.

11. Cary Nelson, "An Appointment to Reject," *Inside Higher Ed*, August 8, 2014, <https://www.insidehighered.com/views/2014/08/08/essay-defends-university-illinois-decision-not-hire-steven-salaita>.

12. John K. Wilson, "Chancellor Phyllis Wise Explains the Firing of Steven Salaita," *The Academe Blog*, August 22, 2014, <http://academeblog.org/2014/08/22/chancellor-phyllis-wise-explains-the-firing-of-steven-salaita/>; John K. Wilson, "University of Illinois Board of Trustees Statement on Salaita Case," *The Academe Blog*, August 22, 2014, <http://academeblog.org/2014/08/22/university-of-illinois-board-of-trustees-statement-on-salaita-case/>.

13. AAUP, "Statement of Principles on Academic Freedom and Tenure, with 1970 Interpretive Comments" (April 1970), <http://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

14. Among the justifications for tenure listed in the 1940 *Statement* is that tenure might provide "a sufficient degree of economic stability to make the profession attractive to men and women of ability." The AAUP statement "The Ethics of Recruitment and Faculty Appointment" recommends that "an offer of appointment to a faculty member serving at another institution should be made no later than May 1, consistent with the faculty member's obligation to resign, no later than May 15." (June 1993), sec. III.C, <http://www.ccas.net/files/EthicStatement.pdf>.

15. Committee on Academic Freedom and Tenure of the University of Illinois at Urbana-Champaign, *Report on the Investigation into the Matter of Steven Salaita* (n.d.), <https://cfailinois.files.wordpress.com/2014/12/caft-report-on-steven-salaita-case.pdf>. The connection between political speech and professional fitness has probably been most thoroughly articulated in a report by the UIUC Faculty Senate's Committee on Academic Freedom and Tenure (CAFT), charged by the Faculty Senate to investigate academic freedom and hiring issues relevant to the Salaita case. Rather than discuss Salaita's speech in terms of the extramural-intramural divide, the CAFT report distinguishes between political speech and professional speech. The CAFT report concludes that the UIUC administration violated many of its own policies (to say nothing of AAUP principles) in unhiring/firing Salaita for his political speech. But the CAFT report also concludes that Salaita's tweets raise legitimate issues regarding his professional speech and recommends that UIUC appoint a committee of "qualified academic experts" to examine the competence of Salaita's scholarship—a disciplinary hearing that CAFT considers to be consistent with AAUP principles:

Whence the 1940 *Statement's* coupling of a robust freedom for political speech with an allowance for inquiry into professional fitness instigated by its exercise: that the speaker's political utterances may be so devoid of fact, so obdurate in refusing to acknowledge evidence to the contrary, so single-minded in pursuit of the speaker's personal agenda as to give rise to a legitimate question of whether his treatment of issues within the orbit of his professional writ is similarly characterized. Such an inquiry is not a sanction for political outspokenness. It is a necessary exercise of collegial responsibility. (28)