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Academic Freedom and Extramural Utterances: The Leo Koch and Steven Salaita Cases at the University of Illinois

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Abstract

A century ago, the AAUP declared that extramural utterances were an essential part of academic freedom. The Leo Koch case at the University of Illinois in 1960 sparked a sharp debate within the AAUP about whether extramural utterances had to meet professional standards. The AAUP's decision to eliminate such standards transformed the meaning of academic freedom and led to the University of Illinois adopting statutes that clearly protect extramural utterances. The dismissal of Steven Salaita for his tweets is a classic example of extramural utterances, and both University of Illinois Statutes and AAUP standards clearly prohibit any punishment. The firing of Salaita, and the willingness of so many to defend it, shows how extramural utterances remain the most vulnerable (and often misunderstood) aspect of academic freedom.

The dismissal of Steven Salaita by the University of Illinois for his tweets put the spotlight on one of the most misunderstood but essential aspects of academic freedom: extramural utterances. In the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, the AAUP identified three major components of academic freedom: research; teaching; and extramural utterances, which refer to speech as a citizen outside a faculty member's professional work. In the century since the founding of the AAUP, extramural utterances have caused the vast majority of the cases threatening academic freedom, and dealing with these cases has become the core mission of the AAUP.

The University of Illinois played a pivotal role in shaping the AAUP's history of handling extramural utterances. A half century ago, the AAUP censured the University of Illinois for firing a professor for his extramural utterances, and that case led to the most important changes in the AAUP's history about this topic. The AAUP's censure also led the University of Illinois to adopt statutes, unequalled by any university in the world, protecting extramural utterances, although these rules were ignored by the administration and the trustees in the Salaita case.

The man whose controversial actions pushed the AAUP to transform the concept of academic freedom was an assistant professor of biology at the University of Illinois at Urbana-Champaign named Leo Koch. Koch's problems began when he wrote a letter on March 16, 1960, in response to an article published that day in the *Daily Illini*, the student newspaper. Koch was responding to a forum titled "Sex Ritualized," which lamented how unfortunate it was that men were obliged to be "smooching" with women in a sorority "until the one o'clock 'dong' relieves the males from their chivalrous duty." The authors reported "Men are not so concerned with a girl as a living individual—as an organic complexity of personality and character, emotion and intellect, and passion and reason—as they are concerned with her as a simple female sex unit." They argued that "male-female relations on campus" have "stultified into a predetermined ritual."¹

Koch's letter, which was more than 2,500 words long, chided the student newspaper for omitting "any reference to the social meleu [sic] which compels healthy, sexually mature human animals into such addictions (of which masturbation is likely the least objectionable) to unhealthy and degenerative practices."²

Koch noted in his letter, "Any one who insists on speaking about sex in public, say the orthodox moralists, (unless it is condemned soundly) must be a sexual deviate (a Queer) in their orthodox view." Koch added, "The second, and by far the more important, hazard is that a public discussion of sex will offend the religious feelings of the leaders of our religious institutions. These people feel that youngsters should remain ignorant of sex for fear that knowledge of it will lead to temptation and sin."³

Koch wrote against "a double standard of morality which accepts as respectable premarital sexual experience for men but not for women." Double standards were the focus of Koch's letter, which blamed "the hypocritical and downright inhumane moral standards engendered by a Christian code of ethics which was already decrepit in the days of Queen Victoria." Koch attacked "the widespread crusades against obscenity which are so popular among prudes and puritanical old-maids."⁴

Not satisfied with insulting religion, Koch urged a "mutually satisfactory sexual experience." He wrote, "college students, when faced with this outrageously ignorant code of morality, would seem to me to be

acting with remarkable decorum, and surprising meekness, if they do no more than neck at their social functions.” Showing no meekness himself, Koch concluded: “With modern contraceptives and medical advice readily available at the nearest drugstore, or at least a family physician, there is no valid reason why sexual intercourse should not be condoned among those sufficiently mature to engage in it without social consequences and without violating their own codes of morality and ethics.”⁵

He signed the letter “Leo F. Koch, Assistant Professor of Biology.” Koch's letter was published on March 18, 1960, and the firestorm began. There were banner headlines in the *Chicago Tribune* and other papers.⁶ Belden Fields noted, “A right-wing anti-communist former missionary to China, whose daughter was a student at the university, campaigned in the state legislature and among other parents to pressure the university to fire Koch. The missionary claimed that Professor Koch was part of a communist conspiracy to destroy the morals of our youth.”⁷ A pamphlet denouncing Koch called his letter “an audacious attempt to subvert the religious and moral foundations of America.”⁸

The pressure was on the University of Illinois administration, and they quickly buckled. On March 28, the Executive Committee of the College of Liberal Arts and Sciences voted 5–0 that Koch's letter was irresponsible and justified his removal from classes. On April 6, the same committee voted 5–1 to urge his dismissal, although the committee was split on paying his contract. On April 7, President David Dodds Henry formally fired Koch, who never taught again.

Henry declared that Koch's views were “offensive, repugnant and contrary to commonly accepted standards of morality and his espousal of these views could be interpreted as an encouragement of immoral behavior and that for these reasons he should be relieved of his University duties.”⁹

The immediate firing of a professor for allegedly espousing “immoral behavior” might seem to be a clear-cut violation of academic freedom, but in 1960 the question of freedom in extramural utterances was still up in the air.

Koch had few supporters on campus. On April 18, 1960, the Urbana-Champaign Senate Committee on Academic Freedom held a hearing, and it issued a report on May 13, 1960. The six committee members were united on two points: they hated Koch's letter, and they disliked the administration's violation of due process procedures because the lack of a faculty hearing was “contrary to the standards of proper procedure in dismissal cases.”¹⁰

Campus AAUP leader Victor Stone (who would later serve as president of the AAUP in 1982–84), described some of the members of the Senate Committee, many of whom were strongly prejudiced against Koch: E. I. Rabinowitch, coeditor of the *Bulletin of Atomic Scientists*, “was appalled that anyone would question

authority.” According to Stone, Gilbert Fett, in engineering, “wasn’t a political activist,” but he strongly defended Koch “speaking on principle.” Stone noted that Glenn Salisbury believed that he was later “not made dean of the College of Agriculture because he had not controlled the committee,” even though Salisbury was one of the three members who strongly opposed Koch.¹¹

The report from the committee noted, “This committee holds firm belief that the concept of academic freedom is fundamental to a democratic society, because it is only through the freedom to pursue truth without fear of reprisal or censure and through the unfettered competition of ideas that the democratic society can progress to higher intellectual and moral levels. This freedom cannot be reserved only for those who agree with majority beliefs and those who have the wisdom to be right. To so restrict academic freedom would render it meaningless” (2).

After this promising start, the committee went on to argue for restrictions on academic freedom that would render it meaningless: “A faculty member does not have the right to urge students, or any one else, to engage in illegal or immoral behavior or to violate University regulations” (3). The report added, “The faculty member, in keeping with his University association and his position as a man of learning, has the obligation to be accurate, to exercise appropriate restraints, and to show respect for the opinions of others” (3). Citing AAUP documents, the committee declared, “Academic freedom does not mean unlimited license in either conduct or speech” (3). The committee concluded, “Koch did commit a breach of academic responsibility, not because he publicly expressed controversial views on sexual mores, but because of the way in which he expressed them” (4).

At one point, the committee defended Koch's letter against some of the accusations being made against him: “It urges society to condone certain sexual behavior, and does not urge readers to engage in such behavior.” However, the report noted, Koch’s letter “could be interpreted . . . as encouraging students to engage in premarital sexual relations. Professor Koch did show poor judgment in publishing, in a student newspaper, a letter that lent itself to such interpretation” (4). It is a strange sort of logic to blame Koch for something he had not written merely because what he had written could be misinterpreted. The Senate Committee was worried about public relations and reported that there was “a lengthy commentary by a Chicago publicist suggesting that Professor Koch’s letter and its writer were subversive” (2).

Still, the committee recognized the importance of “meaningful academic freedom”: “This freedom cannot be real unless its bearers have no doubts about their rights to exercise it and do not feel compelled to assume the attitude, ‘I had better be careful’” (6).

The six-member Senate Committee was evenly divided as to Koch's academic freedom, however: "Three members of this committee came to the conclusion that the discharge would be so excessive a penalty as to constitute a violation of Professor Koch's academic freedom" (7). The other three felt that "Koch's action was a sufficiently clear violation of academic responsibility to invalidate his claim to the protection of academic freedom" but added that academic freedom at the university "would not be served by his discharge" (8). The entire committee urged "that Professor Koch be reprimanded for his action and admonished to act in keeping with the dignity and responsibility of a scholar, but not be discharged." The committee also called for a revision of university statutes (8).

According to the University of Illinois Statutes at the time, "cause for discharge shall consist of conduct seriously prejudicial to the University through deliberate infraction of law or commonly accepted standards of morality, neglect of duty, inefficiency or incompetency" (8). The Board of Trustees could also discharge faculty members for other reasons "under exceptional circumstances" for "conduct which is clearly prejudicial to the best interests of the University" (8). This kind of vague language would allow any professor to be fired for almost any reason. And the resentment toward the administration's failure to consult the faculty before punishing Koch spurred the Senate Committee to make a more critical view of the university's actions.

Although the Koch case dealt purely with extramural utterances, there were hints that Koch's approach to his letters was mirrored in the classroom. The University of Illinois Senate Committee noted that Koch claimed that he used a "shock treatment approach" in his teaching and in the letter (6). Still, the AAUP's sharp distinction between responsibility in the classroom and in extramural comments was often lost upon academia's external critics.

The Senate Committee also addressed the issue of Koch's professional identification: "Professor Koch believes that although he has signed the letter 'Assistant Professor of Biology' (How else, he said, could he have identified himself?), he was not expressing himself as a representative of the biology department. But he considered that he wrote the letter as a biologist" (7). Koch's specialty was the study of moss, so it would be hard for him to claim any particular expertise in human sexuality.¹² Koch was a well-published scholar with dozens of articles. He was also "a real liberal" active on issues such as the atomic bomb, racial equality, and women's rights, who believed in "humanism as a religion," according to David Danelski, a political science instructor at the University of Illinois who defended him.¹³

The Senate Committee invoked the language of the gentleman scientist model: "In his role as citizen, the faculty member has the same freedoms as other citizens, without institutional censorship or discipline,

although he should be mindful that accuracy, forthrightness, and dignity befit his association with the University and his position as a man of learning” (Urbana-Champaign Senate Committee on Academic Freedom, “Report,” 9). This gentlemanly call for “dignity” that befits a “man of learning” reflected the contempt toward faculty members who expressed controversial views: “It is the opinion of this committee that Professor Koch’s letter did constitute a breach of academic and professional responsibility. The letter is not a reasoned, detached document marshaling evidence or reason in support of a view held by the writer. It is rather an impassioned message” with “overstatement and ridicule” (14).

However, the key issue facing the AAUP and academia in the Koch case was not whether Koch would be condemned for his impassioned views but whether he deserved to be punished with the loss of his job. The question was whether the “dignity” required by the gentleman scientist model was merely a moral guide for faculty, or an enforceable job requirement.

Victor Stone defended Koch on campus, but Stone encountered problems with the national AAUP when he sought to enlist its help. The AAUP president was traveling in Asia at the time, and one person in the national AAUP office whom Stone dealt with was a “traditionalist” and “very snobbish.” This individual believed that the AAUP “should not be doing this on behalf of an assistant professor.” The resistance continued, Stone said, “until I raised holy hell” and the AAUP sent in a committee to investigate.¹⁴

Stone noted that he personally thought Koch was irresponsible, and reported that “in other letters he had been intemperate” with “attacks on organized religion.” But Stone considered this particular letter a “very temperate, carefully drafted letter.”¹⁵

Although Koch was technically an assistant professor who had been teaching at the University of Illinois since 1955, he had been informed in 1959 that he would not receive tenure, and he agreed to sign a two-year terminal contract. The university told him, “Your professional advancement will best be served in a position which provides greater scope for your special interests than does your present program.”¹⁶ But the Koch case was about a larger question of whether faculty could be free to speak out. Koch claimed, “The majority of professors are badly suppressed. You can't step out of line, and that's a very bad situation.”¹⁷ This fundamental truth about academia would cause the AAUP to transform some of its basic principles.

How Leo Koch Altered the AAUP

An AAUP ad hoc investigative committee led by famed First Amendment scholar Thomas Emerson argued, “As applied to a faculty member having definite or indefinite tenure, making public utterances on matters of

general concern to the community, the standard of ‘academic responsibility’ is not a valid basis for reprimand, dismissal, or other official discipline.”¹⁸

However, Emerson’s interpretation was not fully accepted. The AAUP’s Committee A on Academic Freedom and Tenure declared in response, “In light of Committee A’s understanding of the 1940 *Statement*, together with the legislative history of the document and its ‘interpretation,’ the Committee disagrees with the authors of the report that ‘the notion of academic responsibility, when the faculty member is speaking as a citizen, is intended to be an admonition rather than a standard for the application of discipline.’”¹⁹

If Committee A and much of the AAUP were not quite willing to give up the “responsibility” standard, the Koch case still appalled them. The firing of a professor, without any due process, for writing one controversial letter to the editor, was shocking. Committee A went on to call Koch’s dismissal “outrageously severe and completely unwarranted” and criticized the violation of due process.²⁰ Much like the Faculty Senate Committee, Committee A wanted to condemn both the University of Illinois and Koch for their actions.

The Koch case helped push forward the protection of controversial extramural statements under the umbrella of academic freedom. It did so not only by revealing the schism within the AAUP over the subject but also by providing a key example that was difficult to dismiss. Those who wanted “responsibility” to remain as an academic freedom standard had to grapple with the fact that abuses like the Koch case were almost inevitable.

Despite all the internal disputes over the theory of academic freedom, Committee A was united in condemning the University of Illinois’s failure to follow due process and the extreme punishment given to Koch.

Censure of the University of Illinois

The censure in the Koch case had an immediate effect at the University of Illinois. According to Stone, President Henry would “never forgive” the national AAUP for censuring his institution. But in the wake of the censure, the University of Illinois moved to change its policies. The three senates from the University of Illinois system were brought together, financed by the administration, to propose changes. Stone noted, “We emerged from that with the best statutes on academic freedom and tenure in the country.”²¹

With the changes in place, the University of Illinois sought to end the censure. Stone reported, “I did intervene to ask the national to remove it.” The key problem was the lack of compensation or reinstatement

for Koch. Stone noted, “I wished for it” but “I was convinced we would never, never get any compensation” and “it could be an endless deadlock.”²² Instead, with the amended Statutes, the AAUP removed the censure and the AAUP paid Koch a year's salary.

The first beneficiary of the new protections for academic freedom at the University of Illinois was professor Revilo P. Oliver. Oliver, Stone reported, “had fortified his basement to resist the communist hordes” and was “expelled from the Birch Society because he was too extreme,” even though Oliver had helped to found the John Birch Society.²³ When, in 1964, Oliver publicly expressed his view that John F. Kennedy “was executed by the Communist Conspiracy because he was planning to turn American” (i.e., turn against communism), or “as part of systematic preparation for a domestic take-over,” there was widespread outrage (Oliver, 1964). But this time, the University of Illinois's policies protected academic freedom, and Oliver did not lose his job. The Board of Trustees condemned Oliver but did not fire him. Oliver spent thirty-two years as a professor of classics at the University of Illinois.

For Leo Koch, the results were much different. He never got another job in academia, and his lawsuit against the University of Illinois failed. The Illinois Supreme Court ruled, “When the plaintiff entered into his employment contract with the University of Illinois, he voluntarily agreed to the University's rules and procedures for determining the causes of discharge, the quasi-judicial framework for determining the existence of those causes and the procedure whereby he might be discharged as a result of those causes.”²⁴ According to Danelski, “the corrupt Illinois judicial system buried the case.”²⁵

The Illinois Supreme Court ruled that “no constitutional issues were involved” and an appellate court dismissed the case. William Murphy called the decision “palpably incorrect” and said it “simply demonstrates a judicial reluctance to recognize that a professor may have the same freedom of speech as other citizens.”²⁶ But the reality was that academic freedom as a fundamental right had not yet been clearly identified by the United States Supreme Court, and the University of Illinois policies did, effectively, give the Board of Trustees the power to fire any professor for any reason it wanted to.

Koch compared his case to the Scopes Trial and said, “I expect it to reach the Supreme Court, and I hope it does. Some kind of precedent has to be established.”²⁷ But on January 13, 1964, the US Supreme Court refused to hear Koch's appeal. Koch's hope of changing the legal status of academic freedom fell short. It was within the AAUP that Koch's case would have the greatest impact.

The 1964 *Statement on Extramural Utterances*

The Koch case led to a substantial change in the University of Illinois's procedures on academic freedom. But more important, it forced the AAUP to confront the flaws and contradictions in its guiding philosophy. The key issues surrounding the case laid bare the fault lines in the AAUP's approach to academic freedom.

Although bitterly divided about Koch himself and his letters, the AAUP recognized that it could no longer accept the threat of administrators to punish professors for their comments as citizens. Just after Committee A expressed its ambivalence about Koch in 1963, the AAUP was moving forward with a new approach to extramural utterances.

In 1963, Committee A had been unwilling to give up the concept of "responsibility" for Leo Koch. By 1964, the AAUP as an organization embraced a radical new principle on extramural utterances.

The *Committee A Statement on Extramural Utterances*, approved in October 1964, marks one of the most fundamental changes in the AAUP's approach to academic freedom. It rejects the notion of a common academic ethic that binds the behavior of all professors, on and off campus. The 1964 statement begins with an important restatement of the 1940 *Statement of Principles on Academic Freedom and Tenure*, claiming that it "asserts the right of faculty members to speak or write as citizens, free from institutional censorship or discipline," while adding that it "calls attention to the special obligations of faculty members arising from their position in the community: to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to make every effort to indicate that they are not speaking for the institution."²⁸

This opening summary does not quite fit the actual language of the 1940 *Statement*, which declares, "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."²⁹ The 1964 *Statement on Extramural Utterances* changes "should be free" into "the right of faculty members to speak." And the 1964 statement likewise transforms the original 1940 language of "imposes special obligations" into "calls attention to the special obligations of faculty members." The 1940 *Statement* emphasizes an equivalence between the freedom of faculty members to speak as citizens and the obligation imposed to be accurate and restrained. The 1964 statement changes this into a fundamental right of faculty to speak and a special obligation that rests on the conscience of individual faculty members rather than being imposed by the institution.

In effect, the AAUP was unilaterally changing the meaning of the 1940 *Statement* in a dramatic way that had never been intended by the original drafters a quarter-century earlier—and which Committee A had itself rejected only a year earlier in the Koch case.

However, in the 1964 *Statement on Extramural Utterances*, Committee A explicitly recognized a problem with this revision: the fact that the AAUP and the Association of American Colleges (AAC) agreed at a November 8, 1940, meeting to an interpretation of the 1940 *Statement* allowing the administration to file charges “if it feels that a faculty member has failed to observe the above admonitions and believes that the professor's extramural utterances raise grave doubts concerning the professor's fitness for continuing service.”³⁰

William Van Alstyne, who would serve as president of the AAUP from 1974 to 1976, said this 1940 “trade-off” with the AAC had been intended “to cultivate public confidence in the profession by laying down a professionally taxing standard of institutional accountability for *all* utterances of a public character made by a member of the profession.”³¹

The 1940 *Statement* brought the AAUP credibility and institutional acceptance, but it did so at the price of creating a dangerously vague standard of “responsible” behavior that would frequently be used to attack academic freedom in the decades to follow. The compromise of 1940 may have been necessary at a time when academic freedom was still vulnerable and the AAUP was anxious to have institutions adopt its standards for tenure and due process.

To get around this power, Committee A in 1964 simply redefined the terms: “The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness to serve. Extramural utterances rarely bear upon the faculty member's fitness for continuing service.”³² Committee A added a new requirement that the faculty member's “entire record” must be weighed in judging a professor unfit to serve.³³ To reinforce the role of faculty, the 1964 *Statement on Extramural Utterances* established that the “unfitness” of a faculty member must be judged by a faculty committee.

The 1964 statement made subtle changes in wording to the official AAUP position, but it amounted to a transformation in the organization's approach to extramural utterances. Instead of the 1940 *Statement's* standard of “raise grave doubts” about a professor's fitness, the 1964 statement requires evidence that “clearly demonstrates” unfitness for the job, a nearly impossible standard to meet considering that Committee A had just declared that extramural utterances rarely have any connection to a professor's fitness to serve.

The 1964 *Statement on Extramural Utterances* concludes, “In a democratic society freedom of speech is an indisputable right of the citizen. Committee A will vigorously uphold that right.”³⁴ As the AAUP's enforcer of

academic freedom, Committee A was declaring that it would no longer defer to institutions in interpreting the vague language of the 1940 *Statement* on extramural utterances.

But the Committee A *Statement on Extramural Utterances*, although deeply influential, did not represent the entire AAUP. Nor did it represent the official stand of other organizations, such as the AAC, that had a vital role in the 1940 *Statement* and its embrace by colleges across the country. The AAUP had begun a dramatic step down the road toward the liberty model. But unless the AAUP could convince the rest of academia to follow, one statement by Committee A could not transform academic freedom.

Although the 1964 statement (and the 1966 *Statement on Professional Ethics*) reflected a new idea of academic freedom for the AAUP, the 1940 *Statement* remained as a monument to the gentleman scientist model fully in force at most campuses and as the official policy of the AAUP. The AAUP needed to directly tackle the 1940 *Statement* and update the way academic freedom was interpreted under it.

Revisiting the 1940 *Statement*

When the AAUP sought to reform the 1940 *Statement of Principles on Academic Freedom and Tenure* in the late 1960s, it encountered a problem: the leading associations of colleges and universities were not interested in expanding academic freedom by addressing the “responsibility” standards. Indeed, the AAC&U's main interest in revisiting the 1940 *Statement* was to remove the “seven-year rule” for tenure and allow colleges to hire faculty for additional years without providing them with tenure.

For the AAUP, the 1940 *Statement* was flawed, but the dangers of undermining tenure by creating a new statement could be even more hazardous. If the widely adopted 1940 *Statement* were abandoned, it could be replaced by something worse, or colleges could simply retain the older language indefinitely. The very success of the AAUP in getting the 1940 *Statement* adopted by universities and written into campus codes now proved to be a barrier to further progress when the AAUP wanted to alter its fundamental model of academic freedom.

To deal with this, the AAUP adopted a compromise: an “interpretation” of the 1940 *Statement*, which would allow the AAUP to update the meaning of the language without actually undertaking the burden of getting a consensus for a new statement or its adoption at colleges around the country. This innovative solution allowed the AAUP to make its new approach to academic freedom immediately adopted and enforced more effectively.

A joint committee of the AAUP and the AAC met in 1969 to reevaluate the 1940 *Statement*. What is most surprising about what this committee produced is not that the AAUP was adopting a dramatic shift in its approach to academic freedom but that the administrator-oriented AAC would go along with these changes almost without opposition.

However, by 1969 campus protests and disruptions had gained national attention and spread to campuses across the country. In comparison with the turmoil on campus, the new approach of the AAUP no longer seemed so radical.

The 1970 Interpretive Comments

The 1970 *Interpretive Comments* to the 1940 *Statement* marked the most important turn in the AAUP's history with regard to academic freedom. And the text of the document made it clear that change was happening. The 1970 *Interpretive Comments* argue, “The 1940 *Statement* is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.”³⁵ The 1970 comments include recognition of “relevant developments in the law itself” and quote the Supreme Court's direct recognition of academic freedom as “a special concern of the First Amendment” in the 1967 case *Keyishian v. Board of Regents*.

But the majority of the 1970 comments consist of footnotes to the existing 1940 *Statement*, amendments in meaning, which nevertheless often transform all previous interpretations of the words or effectively nullify them altogether.

The *Interpretive Comments* note that the AAUP and other professional organizations had made numerous statements “providing guidance to professors in their utterances as citizens.”³⁶ This comment had two important implications. First, it suggested that the proper place for addressing extramural utterances was in the realm of professional ethics, not institutional enforcement. Second, it used the word *guidance* rather than *enforcement*, indicating that the ethos of the 1964 *Statement on Extramural Utterances* was being incorporated into—and directly countering—the 1940 *Statement*. In fact, the 1970 Comments quote the 1964 statement at length.

The 1970 *Interpretive Comments* are not without their flaws. By allowing the older language to remain in the 1940 *Statement*, the AAUP left intact the danger of abuse. Despite the clear declaration to the contrary in the *Interpretive Comments*, many colleges would continue to use the “responsibility” language to justify punishment

of professors for their controversial speech. But the fact that the *Interpretive Comments* were also endorsed by the AAC gave heightened importance to their language.

From the time of Leo Koch's letter in 1960 to the Kent State massacre a decade later, the idea of academic freedom underwent the most dramatic changes in the history of the concept. And the AAUP's organizational changes were equally dramatic.

In 1960, the AAUP was in a backward, weakened state. The failure to stop McCarthyism or even lead a forceful opposition had humiliated the organization, leading to a belated *mea culpa* in 1956 with several long-delayed reports on some of the worst firings. Worst of all, McCarthyism had exposed the flaws in the organization's principles of academic freedom. As an institution, the AAUP was ready for change and new ideas.

By 1970, the AAUP was a dramatically modernized organization. Along the way, it had embraced the 1964 *Statement on Extramural Utterances*, the 1967 *Joint Statement on Rights and Freedoms of Students*, and the revolutionary 1970 *Interpretive Comments*, as well as started the process of becoming a union for collective bargaining.

Steven Salaita and the Problem of Extramural Utterances

The dismissal of Salaita for his tweets is a classic example of punishment for an extramural utterance. Salaita's tweets on his personal account had nothing to do with his research or his teaching, even though he often writes and teaches about Israel. The key test for an extramural utterance is the context, not the subject matter. Unless it is part of one's teaching or research, an utterance cannot be evaluated as such, and it falls, instead, under the rubric of extramural utterances.

The University of Illinois provides a clear-cut definition of academic freedom that fully protects extramural utterances. According to the "Academic Freedom" section of the University of Illinois Statutes,

"2b. As a citizen, a faculty member may exercise the same freedoms as other citizens without institutional censorship or discipline. A faculty member should be mindful, however, that accuracy, forthrightness, and dignity befit association with the University and a person of learning and that the public may judge that person's profession and the University by the individual's conduct and utterances."³⁷

The statutes go on to this crucial part: "2c. If, in the president's judgment, a faculty member exercises freedom of expression as a citizen and fails to heed the admonitions of Article X, Section 2b, the president

may publicly disassociate the Board of Trustees and the University from and express their disapproval of such objectionable expressions.”³⁸

Here are some very important differences from the 1940 *Statement*, and the University of Illinois Statutes are, in fact, written much better than the AAUP *Statement*. Instead of the ambiguous *should*, the University of Illinois uses *should be mindful*, which removes any confusion about whether it is an enforceable directive, as does the fact that accuracy, honesty, and dignity “befit association” rather than being compelled. In fact, the University of Illinois Statutes contain no mention of the AAUP’s exceptions for an extramural utterance that “clearly demonstrates” a professor’s “unfitness”; they provide an absolute protection for speech as a citizen.

Then, the University of Illinois Statutes go even further to protect extramural utterances by declaring that the only allowed response to a violation of “dignity” is criticism by the administration. It is very clear from the statutes that the University of Illinois does not allow formal punishment for faculty “freedom of expression as a citizen” and strictly limits the power of the administration to being able to only “disassociate” the university from those comments and “express [its] disapproval.”

Of course, some defenders of Salaita’s dismissal will be quick to claim that these rules only apply to faculty members and that Salaita was not yet a faculty member. The AAUP, by contrast, declared that Salaita, in fact, was considered a professor under AAUP standards.³⁹ But even if we ignore the AAUP’s view, it would be a bizarre interpretation to assert that even though the University of Illinois Statutes contain a complete prohibition on using extramural utterances to evaluate current faculty, the statutes would allow extramural utterances to be the sole basis for evaluating a professor who had been formally hired except for the routine, final approval of his contract by the board. The only reason that the section for extramural utterances mentions “faculty members” is that no one imagined that the administration would need to disassociate itself from someone who wasn’t employed by the university—not because anyone thought that completely different criteria could be used for hiring a professor with tenure than would be used for granting tenure to an existing professor.

But the University of Illinois Statutes also make it clear that they are not limited to existing faculty members. The section of the statutes on academic freedom begins, “It is the policy of the University to maintain and encourage full freedom within the law of inquiry, discourse, teaching, research, and publication” and only then mentions the protections for academic staff.⁴⁰ So the University of Illinois policy is to “maintain” complete “freedom” of “discourse,” without regard to employment status, and that is the guiding principle of its statutes. That first section of the statutes applies to Salaita because it applies to all actions by the university. And the other sections clarify that extramural utterances cannot be punished by the University

of Illinois without violating freedom of discourse. In firing Salaita, the administration was not only breaking a contract, infringing upon the First Amendment, and breaching the core AAUP principles of academic freedom, but also violating the fundamental statutes of the University of Illinois.

Conclusion

As the professor who helped push the AAUP toward dramatic change, Koch was thrown out of his profession and received only halfhearted support from his colleagues and the AAUP in defending academic freedom. But, ultimately, Koch's view of the rights of a faculty member prevailed only a few years later.

Koch died in Glendale, California, in 1982, a forgotten man. But his vision of academic freedom became the one embraced by the courts, the AAUP, and colleges around the country. As Koch declared in 1960, "My view is that academic freedom should become a full and equal parallel to freedom of speech."⁴¹ Koch lost his lawsuit, his job, and his career, but his vision of academic freedom ultimately prevailed. However, the right of extramural utterances requires constant vigilance against efforts to infringe it, as in the Salaita case, even at institutions such as the University of Illinois that have the strongest written protections.

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Notes

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10. Urbana-Champaign Senate Committee on Academic Freedom, *Report to President David D. Henry, University of Illinois* (May 13, 1960), <http://www.worldcat.org/title/report-to-president-david-d-henry-university-of-illinois-from-urbana-champaign-senate-committee-on-academic-freedom>, 5.
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28. AAUP, "Committee A Statement on Extramural Utterances," in *Policy Documents and Reports* (Baltimore: Johns Hopkins University Press, 2006), 32.
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31. William W. Van Alstyne, "The Specific Theory of Academic Freedom and the General Issue of Civil Liberty," *Annals of the American Academy of Political and Social Science* 404, no. 1 (November 1972): 155.
32. AAUP, "Committee A Statement on Extramural Utterances," 32.
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³⁸. *Ibid.*

³⁹. Anita Levy, e-mail message to Phyllis Wise, August 29, 2014, <http://aaup.org/file/AAUPLetterChancellorWise.pdf>.

⁴⁰. University of Illinois, "Academic Freedom," 40.

⁴¹. Goddard, "Sex on Campus?"