

A Response to AASCU's Position on Financial Exigency

When can a college or university lay off tenured faculty because of a financial crisis?" So began a press release issued by the American Association of State Colleges and Universities last February 14. The press release announced the publication of the new AASCU statement on academic government that is discussed on the preceding page. But the principal emphasis of the release was on the AASCU statement's definition of financial exigency, a definition which it described as being "in direct contrast to that of the AAUP." According to the statement, financial exigency is "a condition under which reduced financial resources threaten to impair an institution's ability to provide high educational quality and individual opportunity." An institution "should not view financial exigency as a catastrophic event," but should "recognize that when it is in that state it will have to redefine some of its programs and reallocate resources to insure that its essential mission remains intact."

It is disturbing that AASCU has seen fit to issue so nebulous a standard for declaring financial exigency. It is still more disturbing that AASCU's press release characterizes its definition as a standard for laying off faculty members that is in direct contrast to AAUP's. For the last half century, the general community of higher education has joined the AAUP in recognizing that involuntary termination of a faculty appointment carrying continuous tenure, on financial grounds as well as on other grounds, should be an exceptional action in the life of an institution, to be taken only under exacting criteria and with assurance of requisite safeguards of academic due process.

The 1925 "Conference Statement on Academic Freedom and Tenure," jointly endorsed by the Association of American Colleges and by AAUP, addressed terminations based on financial exigency as follows: "Termination of permanent or long-term appointments because of financial exigencies should be sought only as a last resort, after every effort has been made to meet the need in other ways and to find for the teacher other employment in the institution."

The 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly drafted by representatives of AAUP and the AAC during a time of economic depression, recognized that tenured appointments may be terminated "under extraordinary circumstances because of financial exigencies" but required that "termination of a continuous appointment because of financial exigency should be demonstrably *bona fide*." Commenting in 1939 on this provision of the *Statement of Principles*, of which he was one of the principal drafters, Brown University President Henry W. Wriston observed: "The displacement of a teacher on continuous appointment should not be merely an 'economy move'

but should be done only because of a genuine emergency involving serious general retrenchment. . . . Purity of purpose is no defense in the public eye, unless the purity is demonstrable. The provision is a protection to the administrative officer because it reminds him to establish the record so clearly that the exigency is as obvious to the public as it is to him."

Criteria and procedures for specifying the 1940 *Statement's* provision that "termination of a continuous appointment because of financial exigency should be demonstrably *bona fide*" have been set forth in AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, initially in 1968 and in more detail in 1976. The AAUP here defines a financial exigency as "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means" than terminating faculty appointments. The procedures require faculty participation in determining the existence and extent of the exigency, in determining where within the overall academic program terminations may occur, and in determining the criteria for identifying individuals whose appointments are to be terminated. If notices are then issued, the standards require that the administration provide affected faculty members with opportunity for a full on-the-record adjudicative hearing before an independent faculty committee. The burden rests with the administration to prove the existence and extent of the financial difficulty, the validity of the educational judgments and the criteria for identification for termination, and the proper application of the criteria in the individual case. Other standards are specified as well.

When "financial exigency" is the stated basis for the termination of faculty appointments, the need for such exacting procedural standards is especially important, perhaps even more so than in a dismissal for cause, in order to prevent either a casual or an arbitrary process in which actions violative of academic freedom can occur. The point was well made in 1975 by a federal appellate court in the case of *Browzin v. Catholic University of America*:

The real concern is with arbitrary or retaliatory dismissals based on an administrator's or a trustee's distaste for the content of a professor's teaching or research, or even for positions taken completely outside the campus setting. If a professor had no protections against such actions, he might well be deterred from pursuing his studies or his teaching in the paths that seem to him to be best. The tenure system . . . is designed to eliminate the chilling effect which the threat of discretionary dismissal casts over academic pursuits. It is designed to foster our society's interest in the unfettered progress of research and learning by protecting the profession's freedom of inquiry and

instruction.... But the obvious danger remains that "financial exigency" can become too easy an excuse for dismissing a teacher who is merely unpopular or controversial or misunderstood—a way for the university to rid itself of an unwanted teacher but without according him his important procedural rights. [527 F.2d 843 (D.C. Cir. 1975)]

The absence of a rigorous definition of "financial exigency" in the AASCU policy document or of any statement as to the considerations that would lead to the "redefining" of programs or the "reallocation of resources" makes it difficult to envision circumstances where a faculty member's appointment could *not* be terminated for financial or programmatic considerations. An administration would seem to have warrant,

under the AASCU statement, to terminate faculty appointments for whatever reasons it deems appropriate in order to assure "high educational quality and individual opportunity," thereby giving little respect to the principles of tenure and academic freedom. AAUP agrees with AASCU that "The enhancement of the quality of education rather than mere survival must be everyone's shared goal." But the AAUP also believes that achievement of this "shared goal" requires shared responsibility and continued respect for the principles of academic freedom, tenure, and academic due process.

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