

Academic Freedom: Its History and Evolution within the UC System
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I want to start by giving you a general theoretical background on the nature of Academic Freedom and some preliminary thoughts about how to conceive a subject that has exceedingly fuzzy boundaries.

There is a natural tendency to imagine academic freedom as a personal right on the model of a First Amendment right. First Amendment rights are constitutional rights, which means that they apply against the state, and only against the state. A faculty member at UC has First Amendment rights against UC restrictions because the university is a state actor. By contrast, a faculty member at Stanford does not have First Amendment rights against her university, because Stanford is a private university. There are three main justifications for First Amendment rights: individual autonomy, political self-determination (democracy), and the advancement of knowledge (the marketplace of ideas). First Amendment rights are personal rights, which means that they attach to and are asserted by individuals. The justifications for First Amendment rights are always analyzed in the context of the claim of a specific person to speak.

Academic freedom fundamentally differs from First Amendment rights. First, it is not a constitutional right. Academic freedom attaches against public and private universities, not against the state. Second, the justifications for academic freedom do rest on individual autonomy or democracy or the marketplace of ideas, but instead on a particular idea of the institutional mission of a University. Academic freedom creates protections that are grounded in a view of the purposes of a university. Third, the protections of academic freedom are not best conceived as personal rights, but as freedoms and responsibility accorded to the corporate body of the faculty. As an individual faculty member, for example, academic freedom does not protect me from the evaluation and judgment of my peers about such fundamental matters as hiring, advancement, tenure, or the receipt of grants or subsidies.

Academic freedom begins as a concept in Germany in the late 19th Century. It spread to America in the early 20th Century. Most American universities at that time were proprietary; professors were understood to be the employees of whoever owned the university, whether that was a private proprietor or the state. But as professors began to conceive of themselves not as mere employees, but as professional scholars who were answerable to the professional judgment of their peers, they began to create the idea of academic freedom. The first major assertion of academic freedom in the famous case of the Stanford economist Edward Ross, who supported a currency backed by silver and who was opposed to the importation of cheap foreign labor. At the time, Stanford University was owned Leland Stanford's widow, who believed that the gold standard was sacred and that railroads (upon which her fortune was built) required cheap foreign labor. She fired Ross for advocating his ideas. At the time there was no such thing as tenure.

The firing sparked a tremendous controversy throughout the American professoriate, which began to articulate the idea that professors were not mere employees, but experts whose professional work could only be judged by other experts. The American Economic Association began an investigation run by Edwin Seligman, and that investigation ultimately led to the creation of the American Association of University Professors.

The very first statement of academic freedom in the United States was made in 1915. AAUP's General Report of the Committee on Academic Freedom and Academic Tenure placed the notion of academic freedom squarely on the ground that the professorate ought to regulate itself.:

“The relationship between University trustees and members of the University faculties is not in any sense that of an employer and an employee. For once appointed, the scholar has professional functions to perform in which the appointing authorities have neither competency nor moral right to intervene. The responsibility of the University teacher is primarily to the public itself and to the judgment of his own profession. And while with respect to certain external conditions of his vocation, he accepts the responsibility to the authorities of the institution in which he serves and the essentials of his professional activity, his duty is to the wider public to which the institution itself is morally amenable.”

That passage contains the root idea of academic freedom. It is the notion that the professoriate is a profession that in the conduct of its professional obligations is answerable primarily to itself. Neither the owners of proprietary universities nor the public, who owned state universities, could presume to judge the professional work of professors. It follows popularity or unpopularity is an irrelevant and pernicious criterion for the judgment of professional work. Academic freedom is thus a claim to professional self-regulation. In almost every other profession this claim has been in recent years severely undermined. Certainly the claims of lawyers and for doctors to regulate themselves is now highly attenuated, and in light of recent scandals the same may be happening to the clergy. The one place where the idea of professional self-regulation continues to carry conviction is the context of academic freedom. This might be because the public understands that we need this academic freedom in order to do what they want us to do. Or it might be because the public doesn't really care what we do.

Notice that the idea of professional self-regulation is at its base incompatible with any simple idea of freedom of expression. The university is an institution that in fact exists to regulate speech. We evaluate and sanction our colleagues all the time based upon what we think about the quality of their speech. We award tenure to those who speak well, and we deny tenure to those whose work we deem inadequate. We evaluate the writings of potential hires and the research articulated in grant proposals. We couldn't run a university if we didn't do these things. Notice how distinct this idea of a university is from the concept of the free public that underwrites the First Amendment. I cannot penalize the New York Times for misunderstanding the distinction between Astronomy and Astrology, but I can sanction an Astronomy professor that fails to make this distinction. That is because the personal right to freedom of speech is not applicable to the context of the university.

Academic freedom sits at the intersection of two forms of social control. One is institutional. The University treats professors as employees in many ways. It requires that professors teach classes, that they conduct themselves according to rules and regulations, and so forth. In return the university pays our salaries and fulfills its obligations to us as an employer. The second is professional. As professors we are answerable to our peers. The complexity of academic freedom lies in the fact that it must live at the intersection of these two forms of control. That is one reason why it is so very tempting to conceptualize academic freedom as entirely resting on the institutional mission of the university, because that mission also lies the precise point of

intersection between the institutional and professional control. The professor has academic freedom to serve the purposes of the university, which is to say that the managerial prerogatives of the university are conceived as limited by these purposes, and that the professional norms of the scholar, by which the professor is also judged, are conceived as formulated by reference to these purposes.

Our own statements in the APM are quite clear about how academic freedom is to be justified and explained in terms of the institutional purpose of the university. Section 5 states:

“The University exists for the sake of carrying out certain functions... It follows that the individual members of the faculty and the individual departments of the university are the servants of those ideal ends for the sake of which the university exists, such as the advancement of learning, the spread of knowledge, and the cultivation of capacities for intelligent and significant living.”

Debate about the scope and limits of academic freedom is debate about the purposes and functions of the university.

President Sproul drafted the previous APM section describing academic freedom in 1934 in response to student riots at UCLA. His notion was that if the university was to be understood as a source of political criticism, the state wasn't going to support it. He therefore proposed to strike a bargain with the state. He proposed that the university will pursue scholarship and stay out of politics, and in return the state would support the university and give us the liberty to pursue our scholarship. This bargain required Sproul to distinguish scholarship from politics. In his drafting of the previous academic freedom statement, Sproul argued that politics was situated in the domain of passion, interest, advocacy, and conclusions. Scholarship, by contrast, was that which was dispassionate, disinterested, analytic, and open-ended. But on this account the reasons for engaging in scholarship are left entirely unarticulated. It seems radically incorrect to say that good scholarship is only that scholarship that dispassionate, disinterested, inconclusive and open-ended. Scholarship of course should be disinterested in the sense that it follows professional norms – that does not reach its conclusions because of the need to please a client or to curry favor with the public. Disinterested scholarship is that which is true to professional standards and undeterred by the temptations that normally beleaguer human endeavor. All this means, however, is that in his eagerness to strike a bargain with the state, Sproul lost track of relevant professional standards. The relevant distinction is not between passionate and dispassionate scholarship, but between competent and incompetent scholarship.

Most modern conceptions about academic freedom come out of the 1915 AAUP statement, which states,

“Academic freedom comprises three elements. Freedom of inquiry and research; freedom of teaching in the university or college; and freedom of extramural utterance or action.”

Notice each of these three elements is stated in a form similar to a First Amendment right. That is a weakness in contemporary articulations of academic freedom.

First, if we ask why academic freedom includes freedom of inquiry and research, the answer is that the university cannot fulfill its function of discovering and distributing knowledge unless there is such freedom. What counts as advancing knowledge is still to be determined by reference to generally accepted standards of professionally competent work. That is why the idea of freedom of inquiry and research cannot block a proper denial of tenure on the grounds that a faculty member's work is regarded by his peers as insufficiently advancing knowledge. We are not here dealing with a First Amendment right, but with a notion of academic freedom that is rooted in institutional mission. How judgment of academic work is to be rendered compatible with the freedom necessary to advance knowledge is a delicate question. On the one hand, we need to leave ample room for innovation. On the other hand, the corporate body of the faculty has to make judgments about what is, in fact, advancing knowledge. If we say that we cannot know what advances knowledge, we undercut the very institutional mission that sustains the value of academic freedom. So skepticism is not an option here, as it is in the context of the First Amendment.

Second, if we ask why academic freedom includes freedom of teaching, a traditional answer is that professors must freedom in the classroom or they couldn't report the results of their research. On this account freedom in the classroom is a corollary of freedom of research. But one may ask whether this really captures the full scope of academic freedom of teaching. Faculty lecturers, who do not engage in research, nevertheless have academic freedom in the classroom. It might be that their academic freedom derives from the notion that they are experts, self-regulating experts, about how to teach. But this explanation, which would entail public deference to pedagogical expertise, would imply that kindergarten teachers have academic freedom in the classroom, for they are also experts. Because this does not seem to be true, the explanation is not to me convincing. Instead it seems to me that we have to supplement our understanding of academic freedom in the classroom by affirming the premise that the pedagogical purpose of higher education is to inculcate in our students a mature independence of mind. If our function is to create students who think for themselves, then academic freedom in the classroom would be necessary, because independence of mind can only be taught by being modeled. This premise would also explain why we don't have academic freedom to indoctrinate our students, because such indoctrination violates the basic mission of university education.

Third, if we ask why academic freedom includes freedom of extramural utterance, we reach a true puzzle. If freedom of extramural utterance is understood to mean freedom to publish and distribute the results of my research, the fruits of my expertise, we can explain the justification of this freedom as reflecting the idea the purpose of the university is to create knowledge to society-at-large. As professors we speak to the public generally, which is the ultimate audience for our research. But this account of the freedom of extramural utterance does not justify protecting professors from speaking out to the public about matters that are irrelevant to their professional expertise. Of course as employees of the University of California we enjoy First Amendment rights to engage in such speech. But a Stanford professor does not have First Amendment rights. It is a genuine puzzle why Stanford should be precluded from sanctioning a professor for engaging in public speech that is by hypothesis unrelated to her professional expertise and function. The literature on this subject is evenly divided as to whether we can derive such a right from academic freedom or we have to derive it from independent principles.