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The Relationship between Tenure and Academic Freedom: Challenges For the 21st Century

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I wish to start off with a quote from a 1983 court decision:

Academic freedom is not a license for activity at variance with job related procedures and requirements, nor does it encompass activities which are internally destructive to the proper function of the university or disruptive to the education process. .... Academic freedom does not mean freedom from academic responsibility to students, colleagues and the orderly administration of the university (Stastny v. Central Washington University, 647 P.2d 496, 504 (Wash.Ct.App. 1982), cert. denied, 460 U.S. 1071 (1983)).

In “What Is a University” Cardinal Newman observes that the central purpose of a university is the pursuit of truth, the discovery of new knowledge through scholarship and research, the study and reasoned criticism of intellectual and cultural traditions. He posits that learning takes place best where there is a diversity of ideas and a diversity of learners. Central to this learning is the notion of freedom of inquiry, expression, and discussion. These are indispensable to the achievement of the goals of a university.

These “rights,” however, are tenuous at best and may not be unfettered. Academic freedom is to some extent governed by “formal” or “logical” truth. Fact taught as fact should be returned as fact (in the absence of proof to the contrary), and expressed opinion should be taught as opinion and returned as opinion in search of further complementary facts. Academic freedom is a right based upon a willingness to do serious investigation in discovering further truth. Hence, academic freedom may not be absolute. It is something that may be limited by truth and at the same time tolerated in the quest for further truth.

Many academicians and others incorrectly believe that academic freedom is protected by legal doctrine and even by the first amendment. While often debated and expressed as desirable,
academic freedom is at best a quasi-legal concept. It is not well defined and it has never been convincingly justified from legal principles (Academic Freedom in the USA - Copyright 1999, 2000, Ronald B. Standler).

The legal concept of academic freedom originated in Germany around 1850, where it was declared that "art and science and its teaching shall be free" of outside interference. In 1915, the newly formed AAUP (American Association of University Professors) issued its first report on academic freedom, noting that it covers both the individual faculty and the institution; in other words, it covered the whole community of scholars from outside interference (see Appendix A).

I assert that there are two levels of academic freedom (AAUP): (1) Individual and (2) Institutional. Academia is under attack on both fronts. More troubling is the recognition that we are under attack both from inside as well as from outside the academy.

The notion of individualized academic freedom is meant to insulate the professor from institutional as well as community interference. It also represents the relationship between the professor and the institution/administration. It is an understanding that creativity and openness of inquiry are best allowed to grow in an atmosphere where there are lower levels of supervision. Except for outcomes-based evaluations, faculty are “free to go where interest take them.” They do such things as write and select textbooks, conduct research, grade assignments, and participate in governance by way of hiring, tenure, and promotion.

University- or institution-based academic freedom is meant to insulate the university from interference by political and community forces (i.e., the notion of Town & Gown). So what are the major threats to academic freedom?
Academic Freedom and the Individual

I. Academic freedom has now become part of the university tradition; but as with any tradition, the lack of knowledge of the WHY is the single largest threat to its survival. The story of the wife and the ham illustrates this point well. A husband and wife got into an argument because she insisted in cutting off one end of the ham before baking it. He argued that it was waste and she argued that it was the way it was supposed to be done and the way it has always been done. When queried she said that she knows that to be true because her mother had always done it that way. So they went to the mother and she said, yes, her daughter was correct – you must cut off one end of the ham before baking it or it would not taste good. The mother-in-law, when queried, indicated that cutting off the end of the ham was correct because, as far back as she could remember, she had seen her mother do it that way. So, as any good social scientists, off they went to the aged grandmother and asked the question. The old lady laughed, as old people are known to do and said, my child, I had to cut off the end of the ham to get it to fit in the only baking pan that I could afford. The point? We have lost track of its reason for being; now, academic freedom is invoked to protect all manner of ideas and utterances, thereby eroding its effectiveness. As a result, we create an “oh-not-that-same-old-argument-again” reaction, leading to a general devaluation of the academic freedom principle.

II. The second challenge comes from within the professoriate itself. Lacking a more fundamental understanding of the notion of academic freedom, we violate its tenets even while claiming its protections. For example, some academicians argue that academic freedom provides
the mechanism for tenure, promotion, termination, and merit decisions; we often try to use it as a weapon of power in the internal dynamics of the institution.

III. The erroneous belief that there is linkage between tenure and academic freedom also presents a challenge. To the extent that we believe that we must have tenure to achieve academic freedom, we allow it to be eroded in the period before tenure and in situations where there is no tenure. Further, in the period after tenure, we abuse it, very much as kids from a very tightly controlled environment behave when they get their first taste for freedom (such as when going away to college). We posit that assistant professors must “toe the line” if they want to achieve tenure, yet this sentiment is completely at odds with the notion of academic freedom. We have all heard the “horror stories” of assistant professors compelled to do what the senior professors want, or face rejection come tenure and promotion time.

Rightfully, academic freedom applies to all professors – tenured, tenure-earning, non-tenure-earning, and part-time/adjunct. Academic freedom is to the professoriate what air is to man. It is a professional imperative. It is the right to inquire and express ideas no matter how controversial. The oft-argued link between academic freedom and tenure is a myth. All tenure does is convert the faculty from an employee “at will” to one who cannot be removed without “just cause.” Tenure does not guarantee academic freedom, but only contract/protected rights. This is not to say that tenure is a bad thing, but simply that academic freedom and tenure are not as intertwined as is often asserted. Academic freedom is not linked to the employment status; rather, it is a right or moral imperative bestowed by virtue of being a member of the professoriate. To defend tenure as a branch of academic freedom devalues it and seeks to deny it to non-tenure members of the professoriate.
IV. Lack of tolerance for diversity in all its forms, but especially when it comes to diversity in inquiry, may be the single biggest threat. We pay lip service to academic freedom, but across the country we hear the complaints of faculty who cannot get published because they are not using the latest “new” methodological technique. In our doctoral programs, we teach researchers to select the techniques and methods that best suit the inquiry. Yet, when it comes to the publishing game, we the senior faculty—as editors, reviewers, and gatekeepers—reject quality works when the author(s) fails to use the technique de jour, regardless of its suitability for the study. Check some top journals and you will see article after article using the same techniques and espousing the same theoretical underpinnings. When that technique and the theory “go out of style,” or when there is a next new thing, the publications are thus reflective. This represents a degree of academic intolerance and is a serious challenge to the establishment of ideas. Given the “publish or perish” environment of higher education, we need to guard against stifling the free expression of academic ideas, the slow but methodical strangulation of academic freedom from within.

V. A lack of understanding that there are differences in academic freedom across different departments of the university (math & sciences versus arts & humanities) also poses a threat. These differences get expressed in terms of criteria for hiring, publishing and tenure decisions. It embodies a sort of academic snobbery affecting our view of colleagues in different fields (e.g., medicine is best, followed by engineering, the professional colleges and then education, and lastly the arts – “those weird folks other there”). This insidious progress towards a one-size-fits-all system continues to threaten academic freedom.
Institutional Academic Freedom

Nationally and within the various states, threats to institutional academic freedom from the community in turn affect individual freedom. In this respect, the old notion of “Town & Gown” remains with us. Given academic freedom, universities are free to select faculty and students, set curriculum, and course content. The threat to institutional academic freedom comes in the many utterances about accountability from among those who themselves would agree that they were well educated (by our universities), but who now tell us that without their imposed assessments there is no way for us to illustrate that we are meeting our educational goals. This is not to suggest that we should not be conducting assessment. Rather it suggests that we need to be about the business of and place more emphasis on research and teaching and not so much on reporting.

Increased outside intervention is not in itself bad, and can even have a positive effect on the quality of education. The real danger stems from the seemingly well-meaning mandates that represent a movement away from teaching, learning and inquiry, towards testing and reporting. The real test of institutional academic freedom is the extent to which universities are free to determine:

i. who is admitted

ii. what may be taught (courses and content)

iii. who may teach (now under challenge by accrediting agencies)

iv. how the subject is to be taught

Government and accreditation agencies also threaten academic freedom. If you have been through regional accreditation, you know that agencies are becoming more prescriptive.
Universities now need to seek permission before doing what are now termed “substantive changes.” De facto, institutions are in danger of being run from outside. These real threats to academic freedom can damage the quality of our education.

The recent adoption of “new” articulation rules also threatens academic freedom. Because universities accept federal funds, they are not able to use another institution’s accreditation status in determining whether to accept transfer credits. This can result in having to accept transfers from institutions that may be of questionable reputation. Add to this mandates on the number of credit hours for graduation, the setting of general education courses and the like, and our institutional academic freedoms are under serious attack.

References


APPENDIX A

Academic freedom does not apply to…

Despite some court opinions in the U.S. to the contrary, academic freedom does not apply to teachers in elementary and high schools. The following reasons for distinguishing school teachers from university professors can be mentioned:

- **Primary educators** teach well-known facts and methods (e.g., reading, writing, arithmetic, history) to their pupils. **University professors** teach cutting-edge knowledge to their advanced students, and professors are actively involved in the creation of new knowledge and new methods.

- **Primary educators** rarely write scholarly works that are published in archival journals or books. University professors are routinely expected to write scholarly works that are published in peer-reviewed archival publications.

- **Primary educators** have pupils between 5 and 18 years of age, while university professors generally have students at least 18 years of age (i.e., legal adults). Public policy makes abundantly clear that laws provide more protection and governmental regulation for children than for adults. **Primary schools inculcate "American values" in pupils, while university students are free to make their own conclusions. Indeed, pupils are required by law to attend school, while it is optional and voluntary to pursue higher education.**

- **Primary educators** usually have a bachelor's or master's degree with a major in "education." University professors generally have earned a doctoral degree in the subject that they teach and do research in.

As a result of the greater regulation of children than adults, and as a result of the differences in academic qualifications of primary educators and university professors:

- **Primary educators use textbooks that are chosen by state educational committees.** University professors make their own selection of textbooks for classes that they teach.

- **Primary educators are required to follow a standard syllabus that comes from the administration.** In advanced courses, university professors make their own syllabus and determine for themselves the course content, methods, etc.; they are academically autonomous. In elementary courses, university professors follow a syllabus that is written by a committee of professors in that department at that university; the control lies with local colleagues, not remote management.

In short, **Primary educators cannot have academic freedom because such teachers are not academics.** Only professors in colleges and universities are proper academics.