

**Scaling Back Tenure:  
How Claims of Academic Freedom Limit Accountability in Higher Education**

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If you ask a professor why he needs tenure, the first words out of his mouth will undoubtedly be some variation of this phrase: “to guarantee academic freedom.” Believe me. I’ve tried this dozens, if not hundreds, of times. I have asked professors on both ends of the political spectrum and those whose work falls so squarely in the middle that they couldn’t cause offense to a fly.

They have all given me the same response—at least to start. If professors don’t have a guaranteed job for life (or what usually amounts to it), the argument goes, they will not be able to speak or write freely. Those with unpopular views—or views that upset the administration or the trustees or other members of the faculty—will be run off campus.

But many Americans might wonder just why academic freedom is a principle worthy of defending anyway. Don’t some radical faculty members *deserve* to be run off campus? Shouldn’t various religious and political groups be able to criticize what professors are saying? Why aren’t college faculty subject to the same kind of scrutiny by customers (that is, parents) and the general public that other sorts of professionals are?

Twenty-five years after Allan Bloom wrote *The Closing of the American Mind*, exposing what passes for a college curriculum these days, many Americans are fed up. They’re fed up with the content and, more than ever, they’re fed up with the price tag. Should we really be giving our tax and tuition dollars to these professors—no questions asked?

But does the fact that we are asking questions about the value of academic freedom and the purpose of tenure for university professors mean, as some members of the ivory tower have warned, that we are headed inexorably to another era of McCarthyism?

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No. Rather, it is the understanding of academic freedom and tenure that have changed, while the public attitudes toward scholarship have largely remained the same. In this chapter we will look at how the idea of academic freedom and its connection to tenure evolved.

The idea that tenure protects academic freedom is “an article of faith,” says David Kirp, professor of public policy at U.C. Berkeley says. “It needs to be justified.”<sup>1</sup> Let me take up Mr. Kirp’s gauntlet and throw it down a little harder. It is not simply that tenure needs to be justified. We must first answer the question of just who is entitled to academic freedom in the first place.

For example, the extension of academic freedom to people teaching even the most basic courses, like freshman composition, produces a lack of consistency and quality control. But there are also professors teaching in the physical sciences, in a variety of vocational areas and in area, ethnic, and gender studies for whom academic freedom is not at all necessary. Granting it to them anyway only invites trouble.

## **The Early Days**

Tenure was really a sort of de-facto arrangement until the early 20<sup>th</sup> century. It had little to do with academic freedom and was intended mostly to protect the economic security of a group of people who devoted long years to training for a job that didn’t provide much remuneration. For that matter, tenure wasn’t a particularly unusual arrangement either. In 1950, most people worked for the same company for their entire lifetime. It didn’t seem unreasonable for professors to have a similar deal.

Professors didn’t really need tenure to protect their academic freedom, because academic freedom wasn’t much of an issue. Sure, some intellectuals found themselves on the wrong side of public sentiment, but Socrates and Galileo weren’t exactly the norm.

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In the early days of America, most colleges were religious. Sometimes they were devoted specifically to training clergy. Many simply took a religious vision as the foundation for studies of the secular world. The goals of such schools were well illustrated in a 1643 brochure explaining Harvard's purpose: "To advance Learning and perpetuate it to Posterity; dreading to leave an illiterate Ministry to the Churches."<sup>2</sup>

If this is the stated mission of a school, then the question of who deserves to teach there is not a particularly open-ended one. When lines were crossed, that is, when faculty engaged in one sort of heresy or another, they were dismissed. It didn't happen all that often, however, since the rules were made abundantly clear from the beginning.

### **Who is Paying the Piper?**

In the 19<sup>th</sup> century, the conflicts between scholars and university benefactors began to grow. A few factors drove this trend. First, religious institutions began to receive a smaller percentage of their funding from denominational churches, and university scholars and administrators sought to compete with secular schools by shedding their parochial identities. Second, more and more universities saw money coming in from business interests, who were hoping to see scientific advances that would bear fruit for the American economy. And third, President Lincoln signed the Morrill Act in 1862, which provided the basis for "land-grant universities," making the state and federal governments major benefactors of higher education in a way they hadn't been before.

Despite the money they poured into the system, neither America's clergy, its businessmen nor its politicians were altogether happy with the results. The faculty had their own ideas about what they wanted to study and how. And they didn't much care for the outside

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interference. As Bruce Smith, Jeremy Mayer and A. Lee Fritschler note in their recent book, *Closed Minds: Politics and Ideology in American Universities*, the universities “wanted patronage, but found it difficult to live with the patrons.”<sup>3</sup>

The first significant conflict along these lines occurred in 1894. Richard Ely, who was the director of the University of Wisconsin’s School of Economics, Politics and History, found himself accused by the state superintendent of education of inciting agitation by organized labor and encouraging people who were not unionized to get cracking. Ely, who was studying what we might now call the “root causes” of violent labor unrest, was tried in a three-day hearing that was later dramatized on *Profiles in Courage*, the 1960s television series. Ely was absolved of the charges. And the university regents concluded: “In all lines of academic investigation it is of utmost importance that the investigator should be absolutely free to follow the indications of truth wherever they may lead.”<sup>4</sup>

It was John M. Olin who insisted that the regents’ conclusion be used “to do the University a great service.”<sup>5</sup> A plaque at the school now reads: “Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.”<sup>6</sup>

Ely’s case is still celebrated today, not only for those inspirational lines, but also for its rarity. Despite the simmering tensions between patrons and professors, few faculty members in the 19<sup>th</sup> or early 20<sup>th</sup> century ever suffered dismissal as a result of controversial scholarship. And few politicians or members of the public demanded it.

Edward Ross, a Stanford University economist, was not as lucky as Ely. Ross, who favored a ban on Asian immigration, pushed for municipally owned utilities and supported

socialist Eugene Debs for president, found himself on the wrong side of the school's benefactor, Mrs. Leland Stanford. Her husband had made his money in railroads and gave the seed money to start the university in 1885.

On November 16, 1900, the *New York Times* published an account of Ross's departure from the university: "In his formal letter of resignation, he intimated that he was being forced out of the university by Mrs. Stanford who had taken exceptions to statements made by him in his public addresses on sociological and economic question [sic]." Though the university's president David Starr Jordan denied the charges, it turned out that Mrs. Stanford had written the following to him: "When I take up a newspaper... and read the utterances of Professor Ross," she wrote, "and realize that a professor of the Leland Stanford Junior University thus steps aside, and out of his sphere, to associate with the political demagogues of this city...it brings tears to my eyes. I must confess I am weary of Professor Ross, and I think he ought not to be retained by Stanford University."

Unlike some of its cousins back east, Stanford was not originally a religious institution. It was founded on the German model of a "research university." The new model, which came to the American shores in the 19<sup>th</sup> century, had two distinct features. One was that its faculty were tasked with pursuing knowledge free from any "proprietary" strictures. According to this theory, no benefactor of the institution, whether he be a religious leader or a businessman or a politician, could determine the direction of the faculty's scholarship. In other words, the founders of this system seemed to build a lack of accountability into it.

The second feature of the research university was that professors were no longer simply educating students in classical texts with a view to making them good people or good citizens. Rather, faculty at these new institutions were conceived of as experts. They were supposed to

add to the general pool of knowledge available to mankind and use that knowledge to improve society.

The research university made some sense for professors studying the physical sciences. The 19<sup>th</sup> century began with the invention of the steam locomotive and the stethoscope and ended with the development of the internal combustion engine and germ theory. Scientific knowledge was becoming more specialized and more difficult for the average person to understand. Under the old model of the proprietary institution, of course, the school administrators could still decide what sorts of research and teaching fell afoul of the institutional mission. But under the new model, only faculty colleagues familiar with a particular discipline could determine the bounds for research.

The implications of the new research university for professors in the social sciences and humanities were harder to comprehend. After all, what did it mean that professors of sociology or history or English were supposed to add to the store of society's knowledge? Is our 21<sup>st</sup>-century understanding of Shakespeare inherently superior to the 17<sup>th</sup>-century one? Should we count on modern professors of political science to improve American government? Do they understand our politics better, than, say the authors of the Federalist papers?

The answer of the era's Progressives was an unqualified "yes." Herbert Croly, for example, wrote of the need in government for a "permanent body of experts in social administration" whose task would be to "promote individual and social welfare."<sup>7</sup> For our own good, the progressives argued, we needed to protect the rights of these professors to engage in any kind of scholarship that they and their fellow experts deemed necessary. It was their expertise that meant these men could not be held accountable by the public, who knew nothing of these complex matters.

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In firing Edward Ross, Stanford had plainly violated the new rules of the higher education game. A year later, seven Stanford professors resigned in protest of the university's actions. Among them was Arthur O. Lovejoy, a philosophy professor.

In 1915, Lovejoy, along with famed progressive educator John Dewey, formed the American Association of University Professors. The "Declaration of Principles" they issued remains a sort of biblical document among academics today. Here, for Dewey and his colleagues, was the crux of the matter: "To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish."<sup>8</sup>

As far as Dewey and his colleagues were concerned, if faculty find their teaching or writing or "outside" statements are being influenced by, say, their desire to hold on to their jobs, then they don't have much academic freedom. The AAUP issued a "re-statement" of this idea in 1940.<sup>9</sup>

### **What Does Academic Freedom Mean Today?**

"The commentary on these AAUP statements is like the Talmud," jokes Martin Finkelstein, a professor of higher education at Seton Hall University. "So many people have attempted to do an exegesis on this or that aspect of the statement. But, for all of our discussion in the academy, I think we do a terrible job of articulating what we mean by academic

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freedom.”<sup>10</sup> Even Robert O’Neill, director of the Thomas Jefferson Center for the Protection of Free Expression at the University of Virginia and a member of the AAUP’s Committee on Academic Freedom and Tenure, agrees that the organization has not done a very good job of explaining what all this means.

“Is it academic freedom,” Mr. Finkelstein asks, “to teach anything you want when giving a course in freshman English?” What if the department has a syllabus that all the instructors are required to follow? “Is this an issue of academic freedom?”<sup>11</sup> he wonders. This is a particularly important question for widely offered courses like freshman composition.

Indeed, Mr. Finkelstein’s questions bring to mind the controversy a few years ago over a U.C. Berkeley course offering called “The Politics and Poetics of Palestinian Resistance.” Listed as a “composition” class in the English department, the instructor explained “This class takes as its starting point the right of Palestinians to fight for their own self-determination” and “Conservative thinkers are encouraged to seek other sections.”<sup>12</sup> As Erin O’Connor explained in her blog, Critical Mass, “politics seems to interest Cal’s fall writing instructors more than writing does. Roughly twice as many courses promise to address politics—which they define, predictably and uniformly, in terms of race, class, gender, nation, ethnicity, ideology—than promise to address the craft and technique of writing. Many instructors seem to have forgotten entirely that they are teaching writing courses, and make no mention of writing at all in their descriptions of what students who take their class will do.”<sup>13</sup> Is it academic freedom to stray so far from the job you were hired to do?

Even the legal definition of academic freedom is in flux. As it pertains to private universities, the courts have traditionally considered that professors and administrators have a

contract. And like any other employer the university is required to live up to the terms of it. But if the contract says the institution is an evangelical Christian one and faculty should not say things that violate a particular church's teachings, then those who do, whether or not they have tenure, can be fired. There are, of course, professors who decide to run afoul of the rules anyway, and the AAUP has censured innumerable religious institutions, like Brigham Young University—for restricting the activities of its faculty members. Overall, though, these institutions seem to have plenty of autonomy from a legal perspective.

At public institutions, however, the matter is significantly more complex. Oddly enough, the current precedent for determining what professors can say seems to be a 2006 Supreme Court case about a Los Angeles deputy district attorney, Richard Ceballos, who recommended dismissing another member of his office for misrepresenting information in an affidavit. He claimed his supervisors retaliated by firing him, thereby violating his First Amendment rights. The court held, though, “that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”<sup>14</sup>

So what happens at a public university? Is speech protected in a classroom? Is it protected when a faculty member is criticizing the school's provost or his department chair? What about if he is railing against American foreign policy? Surely the jobs of a professor and that of other public employees are somewhat different.

Professors are not simply hired for the purpose of being government mouthpieces or to carry out the government's bidding, the way, say, a bureaucrat in a municipal department of public health might be asked to do. In other words, professors are not supposed to be instruments of the state. (There are some libertarians who would reasonably argue that this is the problem

with public universities in the first place.) And if they are not instruments of the state, to whom are the professors accountable? Can taxpayers reasonably complain when public university faculty go off the rails?

The court briefly acknowledged the dilemma in applying the public employee standard to university professors when it wrote: “We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”

But as it stands, the court has not clarified what the decision does mean for professors. Rachel Levinson, the general counsel for the American Association of University Professors notes one significant problem with the way the court has drawn the lines. “The paradox of *Garcetti* is that the more you know about something, the less you are protected for speaking about it.” Ms. Levinson believes that this is “problematic for the faculty and the public interest as well.” If a constitutional law professor wants to write a controversial op-ed about constitutional law, he won’t be protected from retaliation by his employer, but if he wants to write one about the scientific proof for the existence of UFOs, the university has no claim against him. Ms. Levinson argues that this decision actually means that professors’ speech is protected *less* than that of the average American. “Do you give up the basic rights of being a citizen when you become government employee?”<sup>15</sup>

While the Supreme Court has left things vague, some lower courts have taken up the issue of academic freedom. In 2003, five professors at the Metro College of Denver sued, claiming that changes in the school handbook change significantly altered the terms of their employment by making it easier to fire tenured professors. The state district court ruled for the

trustees. The decision was appealed—with the American Association of University Professors filing an amicus brief—and in 2007 a state appeals court ordered a new trial.

The AAUP argued in its brief that “depriving the tenured faculty of a preference in retention places the tenured faculty at greater risk of being singled out” because of an administrator’s or trustee’s dislike for his teaching or research, or for positions taken on issues off campus.<sup>16</sup>

The results of that new trial came down in June 2009. Rather than simply deciding that the change in the handbook altered what was a “vested right” of the professors, Judge Norman D. Haglund ruled that “the public interest is advanced more by tenure systems that favor academic freedom over tenure systems that favor flexibility in hiring or firing.” He also noted that “by its very nature, tenure promotes a system in which academic freedom is protected.”<sup>17</sup>

### **Finding a New Way to Think About Academic Freedom**

So in the course of the past 100 years or so, we’ve gone from tenure as de-facto system which gives poor academics a little economic security to a system where tenure is actually deemed by our courts to be *in the public interest* because it protects academic freedom. And despite all this, we are still without a very good definition of academic freedom.

Perhaps the best way to proceed is by using a little common sense. Most Americans would probably agree that there are some courses in some subjects at some universities that require professors to go out on a limb. Those faculty members will have to question accepted truths. They might say things that their colleagues don’t agree with. They might write things in newspapers or academic journals that challenge the theories of their disciplines. We should not fire those people for saying such things.

Perhaps, but higher education today looks a lot different than it did in John Dewey's time. Do all of the new additions to our university menu should mean we need to extend the protections of academic freedom to a whole bunch of new chefs?

Tenure, as Stanley Fish explains in his book, *Save the World on Your Own Time*, was not meant to protect off-the-cuff political statements outside the classroom, but merely the freedom to teach and conduct research in one's own discipline without administrative interference. When all is said and done, writes Mr. Fish in the Chronicle of Higher Education, "academic freedom is just a fancy name for being allowed to do your job, and it is only because that job has the peculiar feature of not having a pre-stipulated goal that those who do it must be granted a degree of latitude and flexibility not granted to the practitioners of other professions... That's why there's no such thing as 'corporate-manager freedom' or 'shoe-salesman freedom' or 'dermatologist freedom.'"<sup>18</sup>

But here is the truth of the matter: More college teachers resemble dermatologists and corporate managers and shoe salesmen than ever before. I do not say this to insult them, but merely to acknowledge this fact. The landscape of higher education has changed and most courses have exactly what Mr. Fish calls a "pre-stipulated goal."

### **The Rise of Vocational Education**

The total number of four-year degrees awarded during the 1970-71 school year was 839,730.<sup>19</sup> In 2005-06, that number jumped to 1,485,242,<sup>20</sup> an increase of 77 percent. We are a wealthier country now. More of the American population can afford college. And more of us need it too. As factory jobs became a less reliable source of lifetime income, high-school graduates looked to college to train themselves both for our information economy and our

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service economy. It is also true that K-12 education in America has experienced a decline. Some of the knowledge that young people used to receive in high school is now only gained through a college degree. And finally, apprenticeships are less common. That is, job skills that people used to learn under the watchful eye of a single skilled laborer are now only offered in a formal setting.

The bottom line is that people who never used to go to college now find that they have to in order to train for good jobs. And so, not surprisingly, a significant portion of those additional degrees colleges have added in the past few decades came in vocational areas. Degrees in agriculture and natural resources doubled. Degrees in communications and related field increased seven-fold. The number of degrees awarded in health sciences tripled. Parks, recreation, leisure and fitness studies went from 1,621 degrees in 1971 to 25,490 in 2006.<sup>21</sup> As a percentage of degrees awarded, these vocational categories went from making up 10 percent of all four year degrees to 22 percent.<sup>22</sup> In fact, vocational degrees made up 38 percent of the overall increase in four year degrees in the past 25 years.<sup>23</sup>

There is no doubt that young people with these vocational degrees have contributed significantly to American prosperity. But these fields simply do not engage students in the search for ultimate truths. They all have “pre-stipulated goals” that are immediately obvious. And so one must ask, do we need to guarantee the academic freedom of professors engaged in teaching and studying “Transportation and materials moving,” a field in which more than 5,000 degrees were awarded in 2006?<sup>24</sup>

Of course, there are also plenty of what one might call vocational courses within nonvocational fields. Freshman composition, a requirement at almost every four-year institution in the country, does not require faculty members to ask existential questions. Some will say that

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making judgments about the quality of writing is inherently subjective. But most college freshmen have yet to master even the most basic principles of thesis statements, rules of grammar and style and research citations. If these courses are not fundamentally rigorous exercises in “how to” rather than “why,” then the faculty teaching them haven’t done their jobs. Yet it is increasingly common to hear disgruntled junior faculty complain that sticking to a required curriculum for these types of courses is a violation of their academic freedom. Of course, they would rather teach Derrida, but that’s not the purpose of the course.

In the Declaration of Principles, Dewey wrote that “if education is the cornerstone of the structure of society and progress in scientific knowledge is essential to civilization, few things can be more important than to enhance the dignity of the scholar's profession.”<sup>25</sup>

There is no need to belittle or demean teachers of vocational subjects, but we would be kidding ourselves if we suggested that degrees in “family and consumer sciences” (20,775 degrees) are “essential to civilization.”<sup>26</sup> We don’t have to treat the people who teach them badly, of course, but we also don’t need to “enhance the dignity” of their positions by offering them special job perks like tenure.

Many of the courses offered at the Metro College of Denver fall into exactly this vocational category. Some of the courses taught this year by the five professors who sued include American Baseball History and Business Statistics. The school even offers a nutrition major. These are all fields of study that have fairly definitive answers. Faculty members don't really need the freedom to ask controversial questions in discussing them.

When we tie ourselves in knots to make sure that professors of these vocational subjects are guaranteed their academic freedom, we are only asking for trouble. Do professors of “security and protective services” (35,319 degrees)<sup>27</sup> really need to be granted the freedom to

make controversial statements in the interests of creating a better learning environment? Of course not.

As Peter Berkowitz of the Hoover Institution rightly notes, “The more a college education is vocational, the less you need tenure.”<sup>28</sup> And the more we give people tenure when they don’t need it, the more times we will end up defending the perfectly outrageous.

Take the case, for instance of Arthur Butz, who has been teaching electrical engineering at Northwestern University for more than three decades now. In 1976, he published *The Hoax of the Twentieth Century: The Case Against the Presumed Extermination of European Jewry*, shortly after he received tenure. A couple of years ago, in interviews with the Iranian press, Mr. Butz was asked about Iranian president, Mahmoud Ahmadinejad’s views on the Holocaust : “I congratulate him on becoming the first head of state to speak out clearly on these issues and regret only that it was not a Western head of state.”<sup>29</sup>

Northwestern has been defending Mr. Butz’s Holocaust denial as within the bounds of his “academic freedom” for years now. But why? Why does a professor of electrical engineering need protection in the first place? Was he going to go out on a limb with some untested idea about integrated circuit design and be subject to persecution at the hands of the university administration or board of trustees? No. The only occasions on which people in disciplines with “prestipulated goals” make use of their academic freedom is to stray from their field.

But, critics will ask, doesn’t Mr. Butz have rights as a citizen of the United States to say whatever he wants? Sure, but he doesn’t have the right to his job. If Mr. Butz were running a Fortune 500 company, do you think he’d be allowed to spout this nonsense? The board of directors would fire him in an instant. They couldn’t revoke his citizenship but they sure

wouldn't have to pay him a salary. That's the kind of accountability that exists in the private, for-profit sector of our economy.

### **When the Answers Are Political**

Another change in the face of higher education over the past 30 years has been the expansion of "area, ethnic, cultural and gender studies." Only 2,579 degrees were awarded in these areas in 1971.<sup>30</sup> Today, that number has tripled to 7,879.<sup>31</sup> Unlike the vocational degrees, this increase was felt most at the country's most elite institutions. At universities that ranked in the top 25 in the U.S. News and World Report survey, degrees in these disciplines went from an average of 35 per school in 1987 to 73 per school in 2006.<sup>32</sup>

Like the vocational disciplines, the missions of these academic pursuits also have predetermined outcomes. As Mark Bauerlein of Emory University explains, in many cases "ideological content has drifted down to the fundamental norms of the discipline."<sup>33</sup> Whether it's women's studies or black studies or queer studies, the entire premise of the discipline is a political agenda.

One need only read the mission statements of these departments to see what he means. At Berkeley, the African American Studies department's mission "emerges out of a conviction that a sound understanding of the realities of the life and culture of persons of African descent in the United States cannot but take into account the legacies of colonialism, enslavement, the plantation, and migration."<sup>34</sup> And at SUNY New Paltz, the Black Studies department "seeks to define the Black experience from an African and Afro-American centered perspective rather than Euro-centric perspective."<sup>35</sup> Courses include "Psychology of the Black Child" which "assumes

that Black children are, in general, subject to forces that cause their psychological development to differ from that of the middle class American child studied in traditional child psychology courses.”<sup>36</sup>

It is not merely that these departments approach African American studies from a particular perspective—an African-centered one and one in which blacks residing in America today are still deeply hobbled by the legacy of slavery. Indeed, course and department descriptions often seem like they are a series of axes that faculty members would like to grind. These departments must also ensure that their professors are engaged in a particular political project.

Take the mission of Ohio State’s department, where the faculty “contributes ideas for the formulation and implementation of progressive public policies with positive consequences for the black community.”<sup>37</sup> The distinction between academic researcher and policymaker has been lost in these disciplines.

At Ohio university, the department places “an emphasis on implementation of a service agenda that allows students and faculty to both study and contribute to a variety of factors pertinent to African Americans and the African diaspora in other parts of the Americas.”<sup>38</sup> The emphasis on “service learning,” which has recently become all the rage in higher education, actually means that faculty members are no longer simply engaged in teaching and learning and research. Rather, professors are supposed to lead students into the field to accomplish particular “progressive public policies.”

A similar trend can be seen in the women’s studies departments (many of which have become gender studies departments in recent years to include queer studies and the study of sexuality generally). At Columbia College in South Carolina, the women’s studies program

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“encourages students to advocate for social justice for women.”<sup>39</sup> At Iona College in New York, the department is supposed to “promote social justice for women through the practical application of theory...[and] ... develop proactive responses to the differential impact of gender-based bias in the lives of women from diverse backgrounds and experiences.”<sup>40</sup>

And just like the case of African-American Studies, professors are not simply supposed to be engaged in policymaking. The endpoint of their academic study is also predetermined. Take, for example, the University of Rhode Island, where “the discipline of Women’s Studies has a vision of a world free from sexism. By necessity, freedom from sexism must include a commitment to freedom from nationalism; class, ethnic, racial, and heterosexual bias; economic exploitation; religious persecution; ageism; and ableism. Women’s Studies seeks to identify, understand, and challenge ideologies and institutions that knowingly or unknowingly oppress and exploit some for the advantage of others, or deny fundamental human rights.”<sup>41</sup> And at Penn State the department “analyzes the unequal distribution of power and resources by gender.”<sup>42</sup> The department of sexuality studies at Duke has as its “central emphasis” the “social construction” of sexuality—that is, how sexuality is shaped by historical, social, and symbolic contexts.”<sup>43</sup>

But what if you believe, as many Americans do, that gender is not purely a “social construct,” that biology does mean something for the way that men and women act in relation to each other and their children? Or what if you think that power is not unequally distributed among men and women? For that matter, what if you don’t believe that it is the job of a professor to free your students from “nationalism”? These various departments at institutions both large and small, with students both elite and average, are advertising their lack of a need for academic freedom.

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Let's return to Mr. Fish's idea of academic freedom, what he calls the "freedom to do the job." In *Save the World on Your Own Time*, he writes: "Pick up the mission statement of almost any college or university, and you will find claims and ambitions that will lead you to think that it is the job of an institution of higher learning to cure every ill the world has ever known: not only illiteracy and cultural ignorance, which are at least in the ball-park, but poverty, war, racism, gender bias . . . and the hegemony of Wal-Mart."<sup>44</sup> Mr. Fish is merciless in mocking the overreach of the modern university, concluding: "I want an academy inflected by no one's politics, but by the nitty-gritty obligations of teaching and research."<sup>45</sup>

But not even Mr. Fish, it turns out, has the courage of his convictions. During the 2008 presidential campaign, William Ayers, co-founder of the Weather Underground and the man responsible for bombing a number of federal buildings in the 1960s, garnered much media attention because of his friendship with Barack Obama. As Stanley Kurtz explained in the *Wall Street Journal*: Mr. Ayers favors "individual schools built around specific political themes," which "push students to 'confront issues of inequity, war, and violence.'"<sup>46</sup> He believes teacher education programs should serve as 'sites of resistance' to an oppressive system." By Mr. Fish's measure, Bill Ayers is an activist professor out to save the world by way of the classroom, and he should cut it out.

And yet in an essay on his *New York Times* blog, Mr. Fish defended Mr. Ayers, accusing Sen. Obama's critics of "McCarthyism" for bringing Mr. Ayers into the discussion. And Mr. Fish confessed to trying to persuade Mr. Ayers to stay at the University of Illinois, where Mr. Fish was a dean until recently, when Harvard was trying to lure him away. In short, Mr. Fish is a defender and admirer of Bill Ayers.<sup>47</sup>

Mr. Ayers doesn't spend his classes asking students to assess objectively the arguments about whether America is an oppressive regime. As Mr. Berkowitz notes, Mr. Ayers's purpose is “not to make refined minds think more sharply, but to turn teachers into preparers of young radicals.”<sup>48</sup> And for that project, one does not need academic freedom.

In its 1915 statement, the AAUP founders discussed the case of “a proprietary school or college designed for the propagation of specific doctrines prescribed by those who have furnished its endowment.”<sup>49</sup> The writers were referring to the institutions of the time--those controlled by religious denominations or the case of “a wealthy manufacturer [who] establishes a special school in a university in order to teach, among other things, the advantages of a protective tariff.” In these cases, the authors conclude “the trustees have a right to demand that everything be subordinated to that end.”<sup>50</sup>

The AAUP authors express no opinion about the “desirability of the existence of such institutions.” If someone wants to fund a university for a particular end, that’s fine. “But,” they write, “it is manifestly important that they should not be permitted to sail under false colors. Genuine boldness and thoroughness of inquiry, and freedom of speech, are scarcely reconcilable with the prescribed inculcation of a particular opinion upon a controverted question.”<sup>51</sup>

“Political correctness represented the return of proprietary universities,” says University of Wisconsin professor Donald Downs.<sup>52</sup> They may not have religious goals or industrial ones, but they are pre-stipulated nonetheless. If universities want to play host to trendy disciplines, in which almost no “inquiry” is actually required,” that’s fine. But these departments should not be able to “sail under false colors” either. They needn’t deceive themselves or the public by making a claim to the protections of academic freedom.

## **Selling Academic Freedom**

The return of the proprietary institution is also evident in another area of university life today. Research scientists are increasingly entering into multimillion-dollar contracts with corporations. Unlike Edward Ross, the professor at Stanford who was fired for his political views, these faculty members are directly selling their services to drug companies or firms engaged in biomedical research. The university itself often gets a cut of the deal but the faculty are definitely at the bargaining table. And the corporations are often engaged in determining whether the results of the research are released and how.

If academic freedom means the ability not only to question the assumptions of a particular discipline, but also the free flow of information gained from research and writing, then many faculty members seem to be selling their cherished principles.

Take, for example, the University of California. As Jennifer Washburn documents in her book *University, Inc.*, “From 1993 to 2003... industry-sponsored research at the U.C. system grew 97 percent in real terms (from \$65 million to \$155 million.) In 1998, U.C. Berkeley signed a \$25 million agreement with the pharmaceutical company Novartis. Under the agreement, Ms. Washburn writes, “Berkeley granted Novartis first right to negotiate licenses on roughly one-third of the [College of Natural Resources’] discoveries, including the results of research funded by Novartis, as well as projects funded by state and federal resources. It also granted the company unprecedented representation—two of five seats—on the department’s research committee which determined how the money would be spent.”<sup>53</sup>

There were faculty objections, of course, to this arrangement. After all, it basically gave a private corporation a vested interest in, not to mention, proprietary rights to the research that was supposedly being conducted by impartial scientists. Though many faculty objected to this

arrangement, 41 percent of the faculty, according to Ms. Washburn, “supported the agreement as signed.”<sup>54</sup>

And why wouldn't they? If they agree to the corporations' terms, these professors will see the resources for their departments expanded, their prominence rise, and presumably, a nice bump in their salaries too. But how far are they willing to go in acceding to the industry's terms? Ms. Washburn's research is eye-opening.

A team at the University of California, San Francisco signed a contract with the Immune Response Corporation to test the company's newly developed AIDS drug Remune. Three years into the testing, the researchers determined that the drug was ineffective, according to Ms. Washburn. When they went to write up the results, however, they noticed a clause in their contract with IRC saying that they couldn't use any of the raw data from their study in publications.<sup>55</sup>

This is not uncommon. One Harvard survey found that 88 percent of life science companies often require students and faculty to keep information confidential.<sup>56</sup>

Professor Downs at the University of Wisconsin began to notice this tension between academic freedom and the desire of universities and professors themselves to gain corporate sponsors a few years ago. His own university was about to sign a contract with Reebok. The company would supply all of the athletic attire for the university's teams. And the university faculty would promise not to say anything negative about Reebok. Mr. Downs recalls going to the chancellor and demanding that he excise this clause. “Once you have a gag order between a university and someone outside, you're playing with the devil,” says Mr. Downs.<sup>57</sup>

Some observers of higher education would come away with the impression that it is only the administrators engaged in this kind of solicitation. But as Ms. Washburn notes, there are

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plenty of professors these days who are playing the role of corporate interest as well. They own their own companies and often use their undergraduate and graduate students as employees. The *Wall Street Journal* reported one MIT student who refused to hand in a homework assigned to one professor because he feared doing so would violate his employment agreement with a company founded by another one of his professors.<sup>58</sup>

(It is also important to note here that research scientists, unlike many academics, are not hurting for money. The AAUP's original desire to ensure that academics have a degree of economic security to "enhance the dignity" of their profession is not a concern of this group.)

If professors and students want to enter into such agreements, there is no law preventing them from doing so. Schools will have to negotiate for themselves whether they understand their faculty to be acting ethically. As the AAUP founders said, there is nothing wrong with these proprietary agreements per se.

But they do reveal a great deal about the value that university faculty place on academic freedom. If the price is right, they are happy to give it up. (One could imagine that humanities professors might feel the same, if only someone were willing to pay so much for a study of Chaucer.) Given this attitude among many research scientists, why should the public take their claims to academic freedom seriously? If they're voluntarily giving it up, should we really worry about taking it away?

Unlike the professors of vocational studies and "area studies," it turns out that professors in the physical sciences are subject to some standards of accountability. The market compensates the competent ones, not the incompetent ones. But these professors still don't seem to be answerable to the parents and taxpayers funding their academic salaries. Many of these faculty have simply arranged their workload and their careers in order to please their highest corporate

bidders. But if their jobs as faculty members are not their priority, we don't need to offer them special protections as such.

## **Conclusion**

If you count faculty in vocationally oriented departments, those who teach area, ethnic, cultural and gender studies, as well as a significant chunk of the country's research scientists, you will arrive at number that is more than half of the tenured faculty in the United States.

Obviously we can't revoke the contracts of these professors now, but going forward, there is no justification for continuing to offer life-time contracts to people in these fields. Whether because they have a political agenda or their subjects do not necessitate the freedom to ask big questions or because they seem happy to voluntarily give up their right to ask big questions for the right price, these professors do not need their academic freedom protected. And they don't need tenure.

So what can be done to build accountability back into the academic profession? Universities could return to the original idea of tenure, one that protected only professors' speech in the classroom, as it related to discipline, instead of the one that has recently evolved, to protect outrageous political activism on campus.

A different kind of tenure agreement could be written, one that allowed for post-tenure review. It would ensure that even if there were some ideological eccentricities, at least the basic competence of professors' could be monitored and some quality control could be enforced.

There are a number of "carrots and sticks" that exist under the current system, but are rarely employed by university administrations. There is nothing that guarantees the level of professors' raises from year to year. As for those cushy academic schedules, there is no reason

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that good teaching and strong research can't be rewarded with afternoon classes three days a week. And as for dumping all that work on graduate students, professors could earn an extra stipend for supervising independent studies by students.

Tenure could be considered a fringe benefit and treated as such. Professors should be given the option at some point early in their careers: Do you want tenure or a higher salary? Do you want tenure or the more expensive health insurance package? Tenure or a nicer office? Tenure or a better parking space? The idea would be that people who knew they were good teachers and smart researchers would take the chance on more money instead of job security. And the people who decided they preferred what one faculty observer calls the "statism" of the university could have tenure. It would also protect dissenting voices. If you know you're the type of person who is going to say controversial things, you can opt into the tenure system. But there will be a cost.

At the very least, there is no reason that tenure shouldn't be abolished at the vast majority of the 4,000 degree-granting colleges and universities in the U.S., where academic freedom is an almost irrelevant concept. When professors are engaged in imparting basic literacy skills, or even classes on how to cook or how to start a business, there is no reason that their academic freedom has to be protected. At that point professors are just like any other employee. They have the right to speak freely, as guaranteed by the Constitution, but they don't have the right to say whatever they want in their role at the university.

Administrators, faculty and parents might disagree about which disciplines are vocational, which ones have "pre-stipulated" political goals, and which professors have already sold their academic freedom to the highest bidder. The goal of this chapter is not to make determinations about each faculty member or department. Rather it is to suggest that the burden

of proof should be on professors. They should have to show parents and taxpayers that there is some reason that academic freedom is necessary for them to do the job they have taken on.

There are, it's important to note, a number of universities out there that don't offer tenure. The military academies don't. Neither do some religious schools. Colleges like Grove City, in Pennsylvania which has a decidedly conservative curriculum and Hampshire, in Massachusetts, with a liberal one, also don't have tenure. What do these schools all have in common? Very clear missions. The goal of eliminating tenure is not to fire people more often. Instead, getting rid of the academic jobs for life might make colleges think more seriously about their missions, hire professors who will carry them out and show parents that what they are paying for is what they will get.

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<sup>1</sup> interview

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<sup>10</sup> interview

<sup>11</sup> interview

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<sup>13</sup> <http://www.erinoconnor.org/>

<sup>14</sup> <http://www.supremecourtus.gov/opinions/05pdf/04-473.pdf>

<sup>15</sup> interview

<sup>16</sup> <http://online.wsj.com/article/SB124571593663539265.html>

<sup>17</sup> <http://www.insidehighered.com/news/2009/06/08/metro>

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<sup>29</sup> <http://www.mehrnews.com/en/NewsPrint.aspx?NewsID=282535>

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<sup>33</sup> <http://online.wsj.com/article/SB122480129356364639.html>

<sup>34</sup> <http://africam.berkeley.edu/history.htm>

<sup>35</sup> <http://www.newpaltz.edu/blackstudies/>

<sup>36</sup> <http://www.newpaltz.edu/blackstudies/courses.cfm?course=BLK357>

<sup>37</sup> <http://aaas.osu.edu/aboutus/mission.cfm>

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<sup>39</sup> <http://www.columbiacollegesc.edu/academics/womensstudies.asp>

<sup>40</sup> <http://www.iona.edu/academic/artsscience/departments/womenstudies/mission.cfm>

<sup>41</sup>

[http://www.uri.edu/assessment/uri/outcomes/Undergraduate/arts\\_sciences/majors/women%27s\\_studies/outcomes.html](http://www.uri.edu/assessment/uri/outcomes/Undergraduate/arts_sciences/majors/women%27s_studies/outcomes.html)

<sup>42</sup> <http://www.womenstudies.psu.edu/>

<sup>43</sup> <http://web.duke.edu/womstud/about.html>

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<sup>46</sup> <http://online.wsj.com/article/SB122212856075765367.html>

<sup>47</sup> <http://fish.blogs.nytimes.com/tag/bill-ayers/>

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