

Perhaps the most contentious discussion of limits comes in relation to professional norms. While academic freedom is a professional right necessary for academics to fulfill their roles as scholars and educators, the narrow assertion of professional norms has served to undermine academic freedom. In medicine and economics, in particular, professional norms are often used to suppress critical voices, especially those challenging dominant paradigms and powerful corporate interests.

We need to remember Thomas L. Haskell's observation that "trustworthiness" of knowledge and training is assured by "perpetual exposure to criticism" in academic communities of scholarly experts, criticism "more severe" than in other types of community.³ Thus ongoing severe criticism provides the foundation for professional norms — a foundation undermined when such criticism is suppressed.

I would like to conclude this preface with a remark by historian Frank H. Underhill, one of Canada's leading public intellectuals during the 1930s and 1940s. A social activist who engaged in partisan politics, Underhill was denounced by premiers of Ontario and threatened with dismissal several times by the University of Toronto because he practised what he preached: "The best way to defend academic freedom is to exercise it."⁴

—Jon Thompson
President, Harry Crowe Foundation

James L. Turk (ed), *Academic Freedom in Conflict: The Struggles over*

INTRODUCTION

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Free Speech in
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Post-secondary educational institutions serve the common good of society through searching for, and disseminating, knowledge and understanding, and through fostering independent thinking and expression in academic staff and students. Robust democracies require no less. These ends cannot be achieved without academic freedom.¹

Academic freedom is often understood as the name for freedom of expression in academic settings. That is not the case. Freedom of expression is a *general* right protected in the United States by the *First Amendment* and in Canada by the *Canadian Charter of Rights and Freedoms*. Academic freedom, on the other hand, is a *special* right of academics — a right to freedom from prescribed orthodoxy in their teaching, research, and lives as academics; a right necessary so that teaching and scholarly research are not corrupted by the will of politicians, special interest groups, religious authorities, the media, corporations, donors, or board members. It is not a privilege or a luxury but the foundation that makes possible the work of academics to fulfill their societal obligation to advance knowledge and educate students.

In this sense, academic freedom is a professional right — a right necessary to fulfill one's professional obligations as a teacher and

scholar. But as a professional right, it has professional constraints.

Matthew Finkin and Robert Post nicely illustrate the difference between freedom of expression and academic freedom, "Although the *First Amendment* may prohibit the state from penalizing the *New York Times* for misunderstanding the distinction between astronomy and astrology, no astronomy professor can insulate himself or herself from the adverse consequences of such a conflation."²

No freedom is without limits, and the limits to all freedoms are always contested. The reason is simple. Just as any freedom protects and permits certain activities, it restricts those who want to curtail the very same activities. The boundary with respect to what is protected is never fixed, but the result of the push and pull between conflicting forces, as any even cursory look at the American *First Amendment* or the Canadian *Charter* jurisprudence will illustrate. It is in that sense that any freedom is a social construction that is always under construction. This is no less true for academic freedom.

Academic freedom as it exists in North America can trace its origins to developments in German and Swiss universities in the late eighteenth century.³ Its particular contemporary formulations have been developed by academic staff organizations in response to inappropriate efforts to limit, curtail, redirect, or halt faculty work as teachers and scholars. The first, and arguably most important, articulation of academic freedom in the United States was the newly formed American Association of University Professors' "1915 Declaration of Principles on Academic Freedom and Academic Tenure."⁴

The creation of the AAUP, led by Arthur O. Lovejoy and John Dewey, and the subsequent drafting of the "1915 Declaration," were animated by the inappropriate attack on scholars in the late nineteenth and early twentieth centuries. No case played a bigger role than the firing of Edward A. Ross, a prominent economist at Stanford University. Ross's public condemnation of the use of cheap immigrant labour by American industry deeply offended Mrs. Leland Stanford, wife of the university's founder and chair of Stanford's Board of Governors. The Stanford fortune had been built on the basis of cheap immigrant labour. Mrs. Stanford ordered the university president to fire Ross, which he did.⁵

Lovejoy and Edwin R. A. Seligman, the two principal drafters of the "1915 Declaration," had been witnesses to Ross's firing. But the Ross case was by no means unique. The AAUP history of that period notes: "The committee of fifteen [chosen to draft what became the "1915 Declaration"] had scarcely been constituted when a number of cases of alleged infringement of academic freedom were brought to its attention. These cases were not only numerous, but also diverse in character . . ."⁶

While the formation of the Canadian Association of University Teachers thirty-six years later emerged from a desire of faculty to better co-ordinate their terms and conditions of work, the decisive event in CAUT's history, several years after it was formed, was the firing of historian Harry Crowe by the president of United College [now the University of Winnipeg] over a personal letter Crowe wrote to a colleague criticizing those who had been fundraising for the church-related college (a responsibility he saw belonging to the administration) and expressing concern about the possibility of a Conservative victory in the upcoming federal election.⁷

The Crowe case became a national *cause celebre*, galvanizing the relatively new CAUT to set up its first investigatory committee and publishing its first report on a violation of academic freedom.⁸ Since then, the articulation and defence of academic freedom has been a centrepiece of CAUT's work, much like the AAUP.

The path to reasonable consensus on academic freedom has been difficult. While few oppose the concept itself, many seek to limit its breadth and restrict its application. None of the four key aspects of academic freedom — freedom of teaching, freedom of research and publication, freedom to express one's views of the educational institution in which one works ("intramural academic freedom"), and freedom to exercise one's rights as a citizen without sanction by the university or college ("extramural academic freedom")⁹ — has been free from threat — either historically or today. Special interest groups have wanted to be able to shape what and how subjects are taught,¹⁰ politicians have tried to use the public funding of research to dictate what can be studied,¹¹ university administrators have attempted to restrict criticism of their institutions,¹² and many have pressed universities to sanction

academics for unwanted public utterances.¹³

The present volume examines what should and should not be the limits to academic freedom — to what extent is a claim of academic freedom appropriate or inappropriate; what limits can be placed on what academics do or say without undermining their academic freedom.

The starting point is university autonomy and the extent to which the institution's autonomy can allow it to limit the academic freedom of its staff. Universities have necessarily been accorded relative independence *as institutions* from outside authority. This tradition has been traced back to Bologna in the twelfth century that exempted students and teachers from tolls and taxes, and protected them against injustice, Paris in the thirteenth century where the university had a recognized right as a body corporate to award degrees¹⁴, and to universities appropriating the medieval idea of liberty as that into which the state does not enter.¹⁵ In the modern period, the 1997 UNESCO General Conference adopted a statement that described the university's institutional autonomy as "that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights."¹⁶

Commonly the institutional autonomy of the university has been described as the basis of academic freedom — that which insulates academic staff from the inappropriate intrusion of outside forces. While there is a measure of truth to that — university autonomy helping make possible the academic freedom of its academic staff — it is important not to conflate university autonomy with academic freedom. To the extent that autonomy of the university as an institution is translated into "institutional academic freedom," the stage is set for the institution to assert its institutional right to limit the academic freedom of its academic staff and to deny them any redress outside the institution.

To pretend that building a moat around the university protects the academic freedom of the academic staff ignores the porous boundary

between the university and the external world. There is no clearer example than Ross, who was fired at Stanford by the president of the university at the behest of the chair of the Board of Governors. In the commercialized university of today, where vestiges of the self-governing collegium are rapidly being replaced by a corporate management structure, university autonomy and institutional academic freedom are, more often than not, being used to limit, not protect, the academic freedom of the academic staff.

Part One of this book explores institutional autonomy and academic freedom. Constitutional scholar David Rabban¹⁷ examines the increasing prominence of the concept of "institutional academic freedom" in American constitutional law and its implications. He argues it "threatens to overwhelm, and even to eliminate, *First Amendment* academic freedom as an individual right of professors."

Len Findlay¹⁸ then looks broadly at the changing character of the contemporary university, and how university autonomy has become a threat to academic freedom rather than a means to ensure it. As "the university" is transformed from a collegium of its academic staff into a corporation managed by its senior administration, Findlay argues its autonomy becomes a tool for intruding on individual academic staff's academic freedom, not a protection for professional self-regulation by colleagues within the institution.

The arbiter of standards for academic work (and, hence, academic freedom) is not the corporate institution, but the collective academic staff in the institution and in the academic discipline within which the scholar works. While a member of the public has the freedom of expression to claim that the world was created in six days six thousand years ago, and that dinosaurs and humans cohabited the earth, university biologists in their teaching and research do not because such a claim has no recognized scientific or scholarly basis.

The usual debates about what exceeds the boundary of academic freedom are not so clear cut. If academic freedom is based on professional standards and disciplinary norms, to what extent can those standards and norms inappropriately restrict academic freedom by rejecting approaches that challenge conventional scholarly wisdom within the

discipline or propose moving beyond the discipline? The double-sided nature of academic disciplines means they simultaneously are helpful as a way to organize knowledge and legitimate inquiry and destructive if standards are applied narrowly or dogmatically to stifle inquiry or restrict questions about the nature of the discipline itself.

Part Two of the book examines the necessary but uneasy relationship between academic freedom and disciplinary norms. Matthew W. Finkin¹⁹ starts from the position, following the "1915 Declaration," that "academic freedom is a professional liberty in the exercise of which the faculty member is required to observe a professional standard of care." He then discusses and responds to criticism of this view and illustrates his position through a careful examination of, and commentary on, the controversial case of Ward Churchill, a tenured professor of American Indian Studies at the University of Colorado. Following a public furor over an essay Churchill wrote in the aftermath of September 11 that referred to the victims of the World Trade Center bombings as "little Eichmanns," the university launched an investigation, in the course of which allegations of research misconduct arose, and for those Churchill was fired.

Mark Gabbert²⁰ addresses the same issues, starting from a concern that "a too one-sided emphasis on professional norms risks having the effect of producing not critical minds but . . . well, normal academics." He critically examines different perspectives and also ends with a discussion of the Churchill case to highlight the key issues he sees it raising with respect to academic freedom and disciplinary norms.

In the third article in Part Two, Joan Scott²¹ discusses the tensions inherent in the theory and practice of the academy as a self-regulating community. She explores those tensions and argues that, while they are unresolvable, they have to be addressed as the ideal of academic freedom must be pursued if we are to preserve what is best about universities and university education.

The issues discussed in Part Two are followed up in Part Three with a specific focus religious universities and the extent to which the requirement for a faith-based homogeneity on campus is antithetical to academic freedom. AAUP and CAUT have taken different positions

on this matter. In its still current "1940 Statement of Principles on Academic Freedom and Tenure," the AAUP allowed "limitations of academic freedom because of religious or other aims of the institution" provided these limitations were "clearly stated in writing at the time of the appointment."²⁶ However, in its "1970 Interpretive Comments" on its "1940 Statement," AAUP reversed its position: "Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure."²⁷

CAUT considers a required commitment to a particular ideology or statement of faith as a condition of employment to be a violation of academic freedom and has established procedures for investigating allegations that a university has such a requirement.²⁸ To date, CAUT has investigated such allegations in relation to five Canadian universities and has posted the investigatory reports' findings that each does require a faith test.²⁹

Although most religiously affiliated universities do not require a faith test as a condition of initial or continuing employment, those that do often deny that this is a violation of academic freedom.³⁰ The articles in Part Three address the relationship between faith requirements and academic freedom. John Baker³³ offers a philosophical analysis of whether it is plausible to claim that an institution can require compliance with tenets of a religion while being capable of fulfilling the societal roles expected of a university.

William Bruneau³¹ examines religious conviction within universities, tracing the history of religious universities in Canada. He identifies major arguments made by defenders of religious requirements within universities as well as the counter-arguments of critics. Noting these two very different ways of viewing university teaching, research, service, administration, and outreach, he argues that the value of academic freedom could and should contain them both.

Gerald Gerbrandt³² closes Part Three with a personal perspective on these issues as the President Emeritus of Canadian Mennonite University and formerly as a faculty member at the Mennonite Bible College. Affirming his commitment to academic freedom as essential to all

universities, he nevertheless considers it appropriate and justifiable for Christian universities to expect their faculty members to be practising Christians — “without making use of the argument that religious freedom gives such institutions a kind of exemption to override academic freedom.” His article elaborates the reasons and provides a perspective on academic freedom from within a faith-based Christian institution.

Part Four examines the tensions in relation to academic freedom and marginalized academics and students. Anver Saloojee²² extends issues raised in Scott’s article to look specifically at the tension between academic freedom and freedom from discrimination as universities have become more diverse. Saloojee takes the position that scholarly work felt to be racist should not be defended in the name of academic freedom, citing the controversial case of Western University psychology Professor Philippe Rushton.²³ Saloojee also questions whether teachers should cite racist, homophobic, Islamophobic, or sexist quotes and texts so as to deconstruct them in class, given the impact such texts have on students.

Richard Moon²⁴ takes up the question of whether there should be more restrictions on freedom of expression in the university in order for it to fulfill its educational mission, noting that the injury of racist and other forms of bigoted speech may be more harmful in the closer environment and tighter community of the campus. He identifies potential problems with greater restriction of expression within the university and explores the issues through an examination of the annual campus Israeli Apartheid Week.

In the final article in Part Four, David Schneiderman²⁵ addresses respectful workplace policies that universities and colleges have adopted as the diversification of post-secondary educational institutions has given rise to challenges to traditional academic practices. He notes the serious tension between such policies and academic freedom, which is deemed by many to be irresolvable. He proposes reframing the matter using a version of federalism that recognizes pluralism and autonomy as a means of facilitating diversity.

Part Five looks at the implications of the closer working relationships of universities and the corporate sector. All three of the authors

start from a premise that there are basic differences in the objectives of universities and corporations — differences that can compromise the independence and public mission of the university and its academic staff. Sheldon Krinsky³⁴ looks at institutional conflicts of interest and how they should be dealt with to allow a full realization of academic freedom. Risa L. Lieberwitz³⁵ traces some of the history of the tightening university-industry embrace and explores the actual merger of university and corporate interests in the case of the Cornell University New York City Technology program. In my closing article³⁶, I point out examples of the corporate undermining of scientific inquiry, review studies on the extent to which universities have compromised their academic integrity in corporate collaborations, and discuss recent initiatives that point the way to protecting academic integrity and academic freedom when universities enter into partnerships with corporate or special interest groups.

In Part Six, Jamie Cameron³⁷ concludes the book with an examination of the implications for academic freedom of the growing movement for civil discourse. She examines American and Canadian university respectful workplace and civil discourse policies. She argues such policies institutionalize a standard of civility — or courtesy — that threaten the freedoms that anchor the university mission.

Protection of academic freedom requires engagement with questions of its limits. Conceived too restrictively, academic freedom does not permit real inquiry and new ways of thinking necessary for the advancement of society. Conceived too expansively, purporting to permit everything, it will effectively permit nothing — losing credibility if seen as a claim for unrestricted licence by academic staff.

Social recognition of, and scope for, academic freedom depends on public understanding that it is a requirement for the job as an educator and scholar. Academic freedom is not a luxury, not a perk, not a bonus but a necessity to do the work entrusted to educators. It is impossible to advance knowledge unless one has a protected right to question the unquestionable, to explore new territory, to advance new ideas, to subject conventional wisdom — whether scholarly or popular — to rigorous critique, to challenge the status quo in the name of advancing our

understanding of the world, and to share one's views with students, colleagues, and the public at large. These are not easy things to do. They make people, often powerful people, uncomfortable. Without academic freedom, they mostly will not be done, and society will be the worse for it.

I. ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY