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THE LIMITS OF ACADEMIC FREEDOM

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In its early articulations, at least in the United States, academic freedom was more than an individual faculty member's right. It was, in the words of Matthew Finkin and Robert Post, a compact between society and the university community, "the price the public must pay in return for the social good of advancing knowledge."² The title of their 2009 book, *For the Common Good*, conveys that notion: knowledge is a social good, which requires extraordinary protections. Academic freedom thus had a larger aim than *First Amendment* protection of free speech, which was, after all, guaranteed to all citizens of the nation. "Were academic freedom primarily a protection for the value of free and critical inquiry, which is a universal value in a democracy, public control over scholars would seem neither more nor less justifiable than restraints that apply to the public generally."³

The compact between society and the university community is premised on the idea that this is a self-regulating community in which disciplinary bodies certify the competence of their members according to strict rules of professional practice. The regulation occurs in at least two ways: first by discipline — individual scholars, in effect, have to pass a series of tests that demonstrate mastery; second by the institution of the university itself — the autonomy it supposedly enjoys from the pressures of politicians, businessmen, and others, rests on the procedures it has established for community membership, responsibility, and deportment.

Finkin and Post insist that without this compact, academic freedom is a weak, if not empty, concept. While that is undoubtedly true, I think they underestimate the tensions inherent in the theory and practice of a self-regulating community. In this essay I look at some of these tensions and I argue that they are unresolvable. This doesn't mean we should do away with the principles on which academic freedom rests; they are the ideals to which our actions aspire. It does mean that we become more aware of the difficulties we necessarily encounter when we attempt to act according to those principles.

The first tension is the one between disciplinary orthodoxy and innovative thinking. The idea of a self-regulating community of scholars emerged in the US along with new disciplinary associations at the end of the nineteenth century. Disciplinary associations were depicted as uncorrupted by the play of interests that shaped the world outside the academy, even if the scholars they licensed dealt, as Dewey put it, with "face-to-face problems of life, not with problems of technical theory." Dewey wrote about "an organized society of truth-seekers" by which he meant the newly created disciplinary associations of his day, those inter-collegiate bodies that set standards of inquiry and assessed the validity (the apparent scientific quality or truthfulness) of the ideas offered by their members.⁴ In return for fulfilling one's responsibilities to the discipline, one received protection from outside intervention. It was, wrote Arthur Lovejoy in the 1937 edition of the *Encyclopedia of the Social Sciences*, "qualified bodies of his own profession" that protected an individual scholar from interference by "political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed."⁵ Glenn Morrow in the 1968 edition of the *International Encyclopedia of the Social Sciences* echoed his forebearers:

Even after prolonged examination and testing, the claim [to truth] can be accorded only a high degree of probability; and its status is never immune to later

criticism. These conditions imply a community of scholars and scientists cooperating with one another through mutual criticism and selecting and recruiting new members through disciplined and systematic training. These very requirements tended to produce such a community, animated by a professional spirit and resentful of any attempts by incompetent outside authorities to control its activities or judge its results.⁶

Indeed disciplinary authorization was meant to defend those whose work was unavoidably controversial against charges of partisanship and from political retribution. If their colleagues attested to the soundness of their methods and the plausibility of their interpretations, these faculty could be represented not as interested parties, but as objective seekers after truth.

Yet, as is well-known to all of us, disciplinary communities are hierarchical with a power dynamic of their own. If the community certifies the competence of its members and protects them from external meddling, it also establishes methods of inquiry ("disciplined and systematic training"), standards of judgment ("selecting and recruiting new members"), as well as behavioural norms ("co-operating through mutual criticism"). Those who write the history of disciplines and those of us who have broken new ground in our fields know that discipline and disciple can be synonyms as well as antonyms, and that punishment is not always the alternative to discipline, but often its regulatory tool. The devastating review, the charges of incomplete research, mockery by one's elders can bring an end to a promising academic career, especially one that engages in a critique of disciplinary premises. These are not external interventions by the incompetent into the workings of the academy; they are internal conflicts, involving not public morality or conventional social belief, but disciplinary *politics*. And, of course, even the line drawn between disciplinary politics and those of the "outside world" is not a clear one, since, as Dewey and his colleagues recognized a century ago, research in the human sciences especially is often inspired by contemporary concerns with inevitable political ramifications.

Those of us historians who challenged prevailing views in the name of disciplinary redefinition well remember the kind of opposition we faced when we asked who got to count as a historian, what got to count as history, and how those determinations were made. The critique — and it was a critique in the technical philosophical sense of the term: an interrogation of founding premises, an illumination of methodological and interpretive blind spots — was aimed at the very grounds on which the field was based and at the notion that there could be a single prototype of a disciplinary subject. A woman historian was not just a historian with female genitals, but someone who might bring different perspectives to her work. How did those perspectives affect the idea of an appropriate historical inquiry? Women's history was not just another topic, a minor theme in the exalted stories of nations and their leaders, it was for many of us an inquiry into the founding assumptions of so-called mainstream history. (African-American history, post-colonial history, queer history offered similar interrogations.) The reply was often furious, and it wielded the weapons of the strong in a defence of scholarship against corruption by politics. They were professionals; we were politicizing history by exposing the ways in which standards of inclusion effectively discriminated on the basis of gender or race. They were defending the terrain of disinterested history; we were substituting ideology for scholarly rigour. Reviewing a book on nineteenth-century French women, Norman Hampson dismissed it as "uterine history," and Lawrence Stone, offering his ten commandments to historians of women, warned of the dangers of "distorting evidence" to "support modern feminist ideology" — as if the meaning of evidence were unequivocal and otherwise presented no problems about the position, point of view, and interpretations of historians.⁷ Accusations from feminists of male bias were greeted as political and ideological; the men's rejection of women's history was taken as a defence of the integrity of the field.

Post-structuralism met an even more vehement refusal, the intensity of which differed according to discipline. Lawrence Stone (erstwhile champion of history) denounced Foucault as a failed or *faux* historian. Some literary critics (and many others, of course) used Paul De Man's

early Nazi writings to call the entire "linguistic turn" into question. The charges of nihilism and moral relativism, of destruction (a play on Derrida's deconstruction), and irrelevance portrayed the struggle in Manichaeian terms. The guardians of orthodoxy were defending mastery and excellence against those who, they claimed, were directly or indirectly bringing political considerations into a hitherto purely objective arena. Hence John Searle:

The biggest single consequence of the rejection of the Western Rationalistic Tradition is that it makes possible an abandonment of traditional standards of objectivity, truth, and rationality, and opens the way for an educational agenda, one of whose primary purposes is to achieve social and political transformation.⁸

In 1985, as these struggles were unfolding, a report of the American Association of University Professors' (AAUP's) Committee A on Academic Freedom and Tenure warned that orthodoxy might endanger academic freedom, in effect acknowledging the existence of power dynamics internal to disciplinary communities. The report came in response to an inquiry from Stanford law school Professor Paul Brest about a comment by Paul Carrington, then Dean of the Duke law school. Carrington had written that those who identified with "critical legal studies" disqualified themselves from any law school faculty appointment. The report rejected Carrington's statement, maintaining that belief in the governing principles of a discipline ought not to be a condition of employment:

In many instances a show of disrespect for a discipline is, at the very same time, an expression of dissent from the prevailing doctrines of that discipline. There is more than a sonant connection between respectfulness and respectability; there is no wide gap between respectability and ideological conventionalism. Thus, while a litmus test of belief in the worth of a subject

as a minimum qualification for appointment to a position where one is expected to teach it or teach about it may seem modest in the abstract, on reflection it may prove to be very mistaken; it may end by barring those most likely to have remade the field . . . It is not merely that the long history of academic freedom teaches that charges of irreverence can readily serve as covers to objections to unorthodoxy; rather, it is that it is all but impossible to extenuate the one without abetting the other.⁹

The internal/external, thought/action contrast, which makes power and politics the activity of threatening outsiders has, on the one hand, been taken as the necessary condition for faculty and university autonomy, yet — as the AAUP statement makes clear — it also masks the challenge posed by the legitimating disciplinary authority to the free exercise of critical thought. Disciplinary communities provide the consensus necessary to justify academic freedom as a special freedom for faculty. But the inseparable other side of this regulatory and enabling authority is that it can suppress innovative thinking in the name of defending immutable standards. Paradoxically, the very institutions that are meant to legitimize faculty autonomy can also function to undermine it.

Another tension has to do with the relationship between the institution of the university (understood as the community of scholars beyond their disciplinary affiliations) and individual faculty members. There are two aspects to this tension I want to explore. The first has to do with what Marjorie Heins calls "academic freedom as an institutional right."¹⁰ She notes that although there were earlier precedents, it was only late in the twentieth century that the US Supreme Court introduced "a tension between claims of university autonomy . . . and teacher autonomy . . ." Heins cites a passing remark by Justice John Paul Stevens in a case involving the right of a university to terminate

a medical student. Stevens noted that academic freedom "thrives not only on the independent and uninhibited exchange of ideas among teachers and students . . . but also, and somewhat inconsistently, on autonomous decision making by the academy itself."¹¹ Universities have refused, on these grounds, to respond to discrimination claims by faculty who were denied tenure. They claim that academic freedom protected them from having to reveal confidential peer-review materials, citing Justice Frankfurter in *Sweezy v. New Hampshire* (1957) that among the four freedoms a university possessed was the right "to determine for itself on academic grounds who may teach." This notion, of course, has its positive side when it is invoked against the outside interference of politicians, lobbyists, and others. Judith Shapiro, former President of Barnard, fended off a group of alumnae who sought the firing of anthropology Professor Nadia Abu el Haj, on the grounds that she was critical of Israel's treatment of the Palestinians, and that this criticism showed she lacked scholarly integrity. Shapiro replied that the university and Abu el Haj's colleagues — the community of scholars — were the best judges of her competence to write and teach. The negative side, though, is evident when a university claims that academic freedom protects its right "to set its own agenda, to police its employees, and to hire and fire free from interference by the state."¹² When it is the state that investigates and adjudicates charges of employment discrimination based on sex or race or other differences, and it is the university that discriminates, this creates a conflict not easily resolved.

The need for the university to protect itself from outside interference and thus to discipline faculty who are thought to bring disrepute to the institution is another aspect of this tension. This usually comes under the rubric of responsibility (what is expected from faculty in return for the rights they enjoy), especially in the area of extramural speech. To what extent do a professor's words and actions outside the classroom — despite being protected by the *First Amendment* in the United States's guarantee of freedom of speech — violate his or her duties to

the community of scholars to which they belong? Finding an appropriate answer has roiled members of Committee A over the years, as they went back and forth between free speech rights on the one hand, and the "peculiar obligation [of professors] to refrain from intemperate or sensational modes of expression," on the other.¹³ In the AAUP's 1940 statement, the admonition to "make every effort to indicate that he is not an institutional spokesman" was added to the list of professorial responsibilities when exercising extramural speech.¹⁴

Despite these warnings, it has been difficult to arrive at a usable definition of professorial responsibility in relation to extramural speech, as any number of cases demonstrate. Here I will cite only three. The first case actually occasioned a debate among AAUP leaders about the value of invoking "academic responsibility" as a test of professorial merit. It concerned an assistant professor of biology at the University of Illinois in 1963 who wrote a letter to the editor of the student newspaper which so outraged public opinion that he was dismissed by the president. Leo Koch's letter was about sex. In response to an article by two students complaining about the ritualized nature of relations between men and women on campus, Koch counselled greater freedom. Arguing that the students treated the issue too narrowly, he diagnosed a "serious social malaise . . . caused . . . by the hypocritical and downright inhumane moral standards engendered by a Christian code of ethics which was already decrepit in the days of Queen Victoria."¹⁵ The cure was to end the psychological inhibition of healthy needs by condoning sexual intercourse "among those sufficiently mature to engage in it without social consequences [i.e., by using modern contraceptives and with good medical advice] and without violating their own codes of morality and ethics." The response, as one can imagine, was explosive. It was led by the Reverend Ira Latimer, a member of the University of Illinois's Dad's Association who (following the double standard of the day) wrote to parents of *women* students. He called Koch's letter "an audacious attempt to subvert the religious and moral foundations of America" and identified it as the "standard operating procedure of the Communist conspiracy."¹⁶ Letters of protest poured in to university administrative offices. Following the

recommendations of the executive committee of the College of Liberal Arts and Sciences, the president decided that "Professor Koch's published letter constitutes a breach of academic responsibility so serious as to justify his being relieved of his University duties." He went on "the views expressed are offensive and repugnant, contrary to commonly accepted standards of morality and their public espousal may be interpreted as encouragement of immoral behaviour. It is clear that Mr. Koch's conduct has been prejudicial to the best interests of the university."¹⁷ Here was a statement that called for condemnation if one took critical thinking to be the mission of the university and if the free speech rights of citizens were to be respected. There was never evidence presented either that Koch (a botanist) uttered these views in his classroom or that he was unfit to teach his subject. Indeed, his colleagues on the faculty senate committee on academic freedom concluded that at most his letter deserved a reprimand. The AAUP investigating committee agreed, concluding that there were administrative violations both procedural and principled, and it called upon the board of trustees to resist public pressure, to "take a broader view of the function of the university and the value of academic freedom . . . to recognize [the university's] maturity, its ability to absorb a few gadflies and its need for uninhibited freedom of discussion."¹⁸

The investigating committee went on at some length about the utility of the notion of academic responsibility, arguing, in effect, that in cases of extramural utterance an individual faculty member's rights as a citizen could not be limited by such a vague and ambiguous term. Citing a passage from John Stuart Mill's "On Liberty," they maintained that "any serious application of the standard would tend to eliminate or discourage any colorful or forceful utterance. More likely . . . the standard would be reserved as a sanction only for the expression of unorthodox opinion."¹⁹ These comments gave rise to heated debate among the members of Committee A (which receives and acts on these investigatory reports) and to the publication, along with the report, of two statements on "Academic Responsibility," one the majority view, the other a dissent. While not disagreeing with the investigators' conclusion that Professor Koch had been denied due process

and while conceding that "academic responsibility is admittedly very difficult to define," the majority nonetheless insisted that academic responsibility was a standard worth enforcing because: "we can hardly expect academic freedom to endure unless it is matched by academic responsibility."²⁰ The notion might, of course, be abused, but this was not grounds for denying its importance. "The remedy is, instead, insistence on proper procedural safeguards, a highly significant role for the faculty. . . and a vigilant oversight by this Association."²¹ The dissenters were not convinced. They insisted that the majority had misinterpreted the 1940 statement which, on the question of speech outside the classroom, was unambiguous: "by law, in the expression of his opinions, the teacher is no less free than other citizens."²² The only legitimate ground for dismissal was — historically and in the present — "demonstrated unfitness to teach."

To speak of 'academic responsibility' as a standard or test for dismissal because a teacher has expressed an unpopular opinion without anchoring it to unmistakable particulars is to waver on a floating bog of semantics.²³

The dissenters continued, a special standard of academic responsibility not only treated teachers differently from other citizens, but it also opened

a Pandora's box of all the coercive and compulsive crusades of sectarian, political, and economic pressure groups together with consequent attempts at dismissal by administrators who are unable to resist the public pressure engendered by such groups whose causes often contain more heat than light.²⁴

Oberlin College English Professor Warren Taylor, the author of the dissent, undoubtedly had the previous decade's experience in mind. During the McCarthy period, many faculty were fired, some for having

admitted to membership in the Communist Party, some for simply having been accused of such membership, some for having declined to name names, and others for having taken the *Fifth Amendment*.²⁵ "Academic responsibility" was directly or indirectly used as a justification for these firings. Sometimes the need to protect the university from legislative intervention was the reason, sometimes the refusal of the professor to come clean with his colleagues inside the university was the issue, sometimes it was that communism was by definition antithetical to free thought. Thus the American Committee for Cultural Freedom (the group of Cold War intellectuals founded in 1951) argued that "a member of the Communist Party has transgressed the canons of academic responsibility, has engaged his intellect to servility, and is therefore professionally disqualified from performing his functions as a teacher."²⁶ This logic substituted for any need to provide concrete evidence of scholarly or pedagogic unfitness. And it ruled out the possibility that, for some faculty at least, communism was more about developing a critical theory of society than it was about offering unquestioned obeisance to the Soviet state.

Most often, as Warren Taylor had predicted, academic responsibility was invoked when administrators or trustees were unable to resist public pressure to punish a professor whose off-campus speech had offended some group's sensibility. In these cases, the responsibility was not to think freely (not to exemplify the function of the university), but to protect the public reputation of the university (by refraining from the expression of critical ideas). AAUP investigators found themselves time and again arguing against administrative judgments "in applying what are necessarily somewhat imprecise standards for the limits of propriety of extramural controversy."²⁷ In most of these instances, in fact, faculty committees (and AAUP investigators) made a case for a professor whose extramural speech was deemed outrageous based not on the content or style of that speech, but on the fairness (according to AAUP recommendations) of procedures followed in judging the individual and, usually more importantly, on the quality of his or her professional standing as a scholar and teacher. In this they carefully restricted "academic responsibility" to the fulfillment of teaching and

disciplinary requirements, thereby reinforcing the distinction between knowledge production and politics as forms of activity, not as personal qualities that separated professors from ordinary people. That they did not usually prevail is an indication, I think, of the difficulty of maintaining the distinction in practice.

The second case is that of Angela Davis, who was not renewed as a lecturer in philosophy at UCLA in 1970 because of her membership in the Communist Party and because in public speeches she attacked police as "pigs" and maintained that academic freedom was an "empty concept" if divorced from freedom of political action or if 'exploited' to maintain such views as the genetic inferiority of black people.²⁸ Her colleagues argued that nothing in her lectures or classroom behaviour indicated dereliction of duty.²⁹ Students talked about her courses as rigorous and open-minded; they were not expected to parrot her conclusions which were, in any case, offered as tentative interpretations. If her off-campus rhetoric was inflated, inaccurate, and even "distasteful and reprehensible," it had not spilled over into her research and teaching. One of the few regents who opposed her firing noted that "in this day and age when the decibel level of political debate . . . has reached the heights it has, it is unrealistic and disingenuous to demand as a condition of employment that the professor address political rallies in the muted cadences of scholarly exchanges. Professors are products of their times even as the rest of us."³⁰ Absent here was the idea that "academic responsibility" extended beyond one's purely academic responsibilities. Although the style and manner of one's performance counted (Davis was said to be as calm in the classroom as she was outrageous in public), it did so only within the walls of academe. Though this was the dissenting opinion of a regent in the Davis case, it came increasingly to characterize the restriction of the notion of academic responsibility to things academic. There was indeed a separation between knowledge and politics, but an academic could participate in both as long as she distinguished between her roles as a scholar and a citizen. Academic freedom was meant to guarantee this separation in theory, difficult as it might be to maintain in practice.

But what if a professor's political engagement led to revelations about

the quality of his or her scholarship? This is what happened in the case of Ward Churchill at the University of Colorado. Churchill's reference to the World Trade Center's September 11, 2001, bombing victims as "little Eichmanns" who deserved their fate, infuriated the regents of the university. In response to demands from the regents and the governor that he be fired immediately, the administration of the university (following AAUP procedures) asked a faculty committee to examine his professional competence. The inquiry into his work produced information about "research misconduct" considered so damning that neither the committee nor the AAUP felt they could come to his rescue. It was certainly true, his colleagues conceded, that there would have been no examination of his scholarly opus if the political charges hadn't been made, yet given the questionable nature of his academic credentials and the extensive criticism that came from within his own field of American Indian studies, it was extremely difficult to make a strong bid for his retention.³¹

Although the Churchill and Davis cases differed on the question of the scholarly integrity and teaching performance of the professor, both were fired and for the same reasons: their extramural speech incurred the wrath of outside groups whose power influenced the decisions of university administrators. These were cases that revealed the weakness of the notion that a full separation was in fact possible between thought and action, scholarship, and politics. Academic freedom was easily compromised by a notion of academic responsibility that could be extended to include the responsibility to protect the university from exactly those forces that Dewey and his colleagues in 1915, and subsequent generations of AAUP spokesmen, warned would compromise its mission of free and critical inquiry.

The separation between extramural speech and classroom speech posits a separation that is hard to maintain because it doesn't take account of the fact that one's sense of responsibility as a citizen could affect one's scholarship. That was surely the case for the AAUP founders, many of whom were treated punitively for their progressive views on economics and politics.

That has been the case recently for teachers of Middle Eastern studies who are perceived to be too critical of Israel's current policies; for biologists who reject creationism; and for historians who are deemed insufficiently patriotic according to neo-conservative standards. But where is the line between polemical advocacy and critical scholarship in work that is informed by some kind of deeply held political or ethical commitment on the part of the professor? This is especially the case in the humanities and social sciences, where scholarly work necessarily engages social issues. It is here (as John Dewey noted) that the protection of academic freedom is most vital. Social scientific research, he warned, was more likely to come up against "deep-rooted prejudice and intense emotional reaction" because it addressed "habits and modes of life to which the people have accustomed themselves. To attack them is to appear to be hostile to institutions in which the worth of life is bound up."³²

It is precisely in these cases that the university's institutional interest and the autonomy of individual faculty ought to coincide in defence of academic freedom, but, as Heins has pointed out, the pressures of politics and money have made these increasingly antithetical interests.³³

In pointing out the ongoing tensions that the principle of academic freedom mediates, I don't mean to call its utility into question. On the contrary, it seems to me that it is precisely because the tensions evident a century ago continue to trouble the relationships among faculty, administrators, and boards of trustees; because the value of critical thinking is regularly under siege in the disciplines, the universities, and the nation; and because the tensions I've been describing are not susceptible to final resolution, that we need this principle in our ongoing struggle to preserve that which is best about universities and university education — the commitment to free and unfettered inquiry as an ideal which we reach for, even as its attainment never seems quite complete. The French historian/philosopher Michel de Certeau put it nicely in a discussion of ethics: "Ethics," he wrote, "is articulated through effective operations, and it defines a distance between what is and what ought to be. The distance designates a space where we have something to do."³⁴ Academic freedom is the principle that gives us something essential to do on the increasingly fraught terrain of the university.