

and entertained argument from those supporting the proposition that pseudonymous authorship of scholarly work, contemplating future reliance on that work by the actual author without accurate attribution, ought to be allowed in the discursive community of American Indian Studies. It deliberated on the arguments and explained its thinking on them. It was not persuaded. Should it have been?

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THE RIGHT TO THINK OTHERWISE

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In 1940, reflecting on a professional culture of freedom, academic and otherwise, that had existed at Cornell University when he became a faculty member in 1917, the historian Carl Becker observed that "a professor, as the German saying has it, is a man [*sic*] who thinks otherwise."¹ It appears that he often expressed this opinion: the distinguished historian of US foreign policy, Fred Harvey Harrington, an undergraduate student of Becker in the 1930s, repeated to his graduate students at the University of Wisconsin Becker's saying that "a professor's *purpose* . . . [*is*] 'to think otherwise.'"² This right to think otherwise implies an individual component to academic freedom that in my view we overlook at our peril.

Not that we have any excuse for missing it. General strictures against institutional censorship and imposition of prescribed doctrine are, after all, designed to protect the individual teacher and scholar. In the most recent statement of the Canadian Association of University Teachers (CAUT), we are told that academic freedom entails for the individual academic:

the right, without restriction by prescribed doctrine, to freedom to teach and discuss; . . . to carry out research and disseminate and publish the results thereof; . . . to produce and perform creative works; . . . to engage in

service to the institution and the community; . . . to express one's opinion about the institution, its administration, and the system in which one works; . . . to acquire, preserve, and provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship.

And in the next clause we read that:

Academic freedom does not require neutrality on the part of the individual. Academic freedom makes intellectual discourse, critique, and commitment possible.

Finally, lest there be any doubt about the relation between university autonomy and the individual nature of academic freedom, CAUT concludes with the following:

Academic freedom must not be confused with institutional autonomy. Post-secondary institutions are autonomous to the extent that they can set policies independent of outside influence. That very autonomy can protect academic freedom from a hostile external environment, but it can also facilitate an internal assault on academic freedom. Academic freedom is a right of members of the academic staff, not of the institution. The employer shall not abridge academic freedom on any grounds, including claims of institutional autonomy.³

These passages are forcible reminders that, at bottom, it is the freedom of the individual academic that must be protected.

Most recently, in a work that certainly pays ample tribute to the normative power of disciplines, American Association of University

Professors' (AAUP) Past-President Cary Nelson reconfirms this emphasis on the individual:

Although I agree that academic freedom cannot simply be construed as an individual right, it is fundamentally exercised by individuals within professional and institutional traditions . . . Academic freedom means that institutions should be very reluctant to intervene in an individual faculty member's teaching and research.⁴

But of course this emphasis on the individual's right to academic freedom exists in tension with a powerful insistence that academic work must be carried out within a framework of professional or disciplinary norms. Although the nature of such norms is not always specified, they run the gamut from the AAUP's 1915 insistence that academic work must be carried out through "a scholar's method"⁵ to a more recent emphasis on the universally accepted disciplinary findings of disciplines which have achieved the status of "dogmatic knowledge"⁶, so generally recognized are they in a particular field of inquiry. However defined, on this view, it is by defending a perimeter with the razor wire of norms that we protect what Thomas Haskell, writing about the "1915 Declaration," has called the "community of the competent" whose aim is "to establish authority and cultivate reliable knowledge."⁷ From this perspective, such norms, methods, and findings are the basis for the production of expert knowledge, and it is precisely the untrammelled possibility of producing such knowledge that the provision of academic freedom is supposed to make possible.

An impressively lucid and thorough assessment of the place of disciplinary norms in our understanding of academic freedom is found in the work of legal scholars Matthew Finkin and Robert Post.⁸ Since their work is chiefly concerned with countering what they take to be the danger of treating academic freedom as a right of individual academics at the expense of the justifiable limits on such freedom imposed by academic norms, their argument is particularly important to take into account here.

Based on the AAUP's "1915 Declaration" on academic freedom, Finkin and Post's position is grounded on the assumption that the university is an institution that exists for the public good as a site where expert knowledge can be produced. Academics, as the experts who create this knowledge through their research or communicate it in the classroom, must be free to carry out their scholarly work without interference from a lay public which does not possess disciplinary competence. Academic freedom is, therefore, best understood as the freedom of the community of scholars to function within a framework of professional norms and findings rather than an individual right akin to the rights to free speech that the public has under such protections for free expression as the *First Amendment* of the US Constitution.⁹

The point is that, while in the general realm of public opinion all views are equally protected, in academic life no such egalitarian reception exists. Instead, the acceptability of any purported academic findings must be warranted through some form of peer review as meeting the scholarly standards for validity in a particular discipline. Failure to meet these standards means that the findings are ruled out as not consistent with what is currently known. In sum, academics are hired, given tenure, and promoted on the basis of their capacity to produce work within a framework of disciplinary norms and findings that they must respect and of standards for truth that they must meet. The university is not a world where, as in the public realm, anything goes. *The New York Times* has a right to promote astrology; but an academic astronomer taking this view would soon find herself outside the discipline and out of a job, academic freedom being no defence against such a blatant violation of what could be considered the dogmatic findings of astronomy.¹⁰

Finkin and Post's rigorous emphasis on disciplinary expertise as the framework for academic freedom in research and the classroom¹¹ has to stretch a bit when it is necessary to address the question how academic freedom covers the realm of intramural utterances. While it is easily shown that experts in a discipline have the clearest claims to academic freedom in the realm of research and the classroom, one might think it is less certain how this qualification could establish the right of

academics to participate in institutional governance and to criticize the policies of university administrators. But notwithstanding that particular disciplinary expertise does not necessarily apply to specific issues of university governance, Finkin and Post note the AAUP's designation of the faculty member's status as more than a mere "employee"; and they affirm the essential place of collective deliberation as assuring the success of institutions that must operate for the public good. The importance of the faculty member's experience as a scholar and educator therefore justify a level of intramural participation in post-secondary institutions that would not be acceptable in a private business existing for private purposes.¹² Here it must be said that the reach at least of more specialized professional norms has met a limit, especially by comparison with the realm of research where presumably a discipline's standards and findings have the most potent impact. Citizenship in the academy is warrant enough for this participation. In this realm, at least, something like free speech among academics, even when critical of the employer, must exist.

With respect to the problem of the protection for extramural utterances supposedly provided by academic freedom, Post and Finkin lay out the AAUP view that university administrators who proceed to discipline or fire professors whose public statements create adverse public images of post-secondary institutions thereby create an unacceptable chilling effect on individual academics which undercuts academic freedom in the realms of research and teaching. Extramural speech is, nevertheless, subject to considerations of whether the speech in question indicates academic incompetence and this is a matter for experts in the field to determine and not lay people.¹³

A view of the university as a knowledge producer, powerful as it is in capturing much of what post-secondary institutions do, does run up against a problem when it comes to developing justifications for academic freedom that cover the work of academics in the creative arts. Here the difficulty is to determine whether, for example, a novel written by a professor of creative writing is a contribution to knowledge like that made by other disciplines and hence protected by academic freedom in research or whether it is better seen as an extramural

matter. The authors survey what they see as the somewhat ambiguous AAUP decisions on this question and conclude that the place of the arts in academic life is unclear.¹⁴

This analysis appears to pose a choice between a considerable stretching of our usual notion of what constitutes "knowledge," or removing the work of creative artists from the university to the public sphere. Perhaps this difficulty would be partly addressed if it were recognized that the university is not simply a knowledge factory. Rather, it is also a conservatory designed to preserve and further the capacity for a range of self-expressive artistic and cultural practices. Academics teach their students how to deploy the demanding modes of expression these practices require and how to apply them in innovative and sometimes controversial ways. The scholarly work of such academics, embodied in creative works intended to extend the capacity for cultural expression, should be as much protected as academic work against interference as that of any other professor. In the arts, of course, the place of professional norms, dogmatic knowledge, and prevailing practice must often give way in the face of individual creativity.

Finkin and Post are well aware of the problematic tension that prevails between the current methods and findings of any academic discipline and the reality that such methods and findings are inevitably themselves the objects of scholarly criticism and hence subject to revision. On the one hand, there is the discipline with its norms and authority, and on the other hand there are the practitioners in the field who may well call the current accepted norms and findings into question. The problem arises when this tension eventuates in a skeptical approach leading to an antinomianism that threatens to undercut the legitimacy of disciplinary standards as the basis for the progress of knowledge. Since it loses a sense of the limits imposed by academic norms, they see such a view as threatening to undercut the public respect for academic freedom which is based on the assumption that it promotes the production of useful knowledge.¹⁵ They register the validity of some criticisms of peer review, but, citing Thomas Kuhn, they see it as an element of "normal science" involving "the unexceptional application of unexceptional professional norms".¹⁶ On this view, the great threat posed by a definition

of academic freedom as an individual right is that, instead of enforcing professional norms, skeptical peer reviewers will authorize individual dissent at the cost of weakening the scholarly standards which alone defend academic freedom against lay interference.¹⁷

Finkin and Post are not indifferent to the importance of providing protection for dissent from the existing consensus in any given discipline. In this regard, they argue for a "sensible and wise equilibrium between innovation and stability."¹⁸ They cite with approval Joan Scott's eloquent account of how disciplines evolve through an ongoing critical encounter with prevailing norms:

Disciplinary communities . . . [sic] share a common commitment to the autonomous pursuit of understanding, which they both limit and make possible by articulating, contesting, and revising the rules of such pursuits and the standards by which outcomes will be judged . . . This recognition insists on a place for criticism and critical transformation at the very heart of the conception of a discipline and so guarantees the existence of that scholarly critical function that discipline is meant to legitimate and that academic freedom is designed to protect.¹⁹

They might also have cited Judith Butler's further perceptive elaborations on the processes of norm transformation, which were specifically a response to a piece by Robert Post.²⁰ Butler has a lively sense of the way in which individual academics on the ground deal with dissent from their own normative positions, ranging from narcissistically driven refusal to consider innovation to generous admiration for new and original work.²¹ What matters to Butler is a capacity "to be open to a clash of norms"; and by her standards "a good faculty member will welcome and reward a well grounded interpretation that defeats his or her own."²²

It is, however, fair to ask whether either the Finkin/Post plea for "equilibrium" or the Scott/Butler hopeful confidence in the healthy

and ethical functioning of disciplines adequately addresses the problems that arise from the commitment to normal science that undergirds these views. Though the Scott/Butler language calls us to meet an admirable ideal, in the end it arguably rests on a highly idealized view of how open the prevailing norms are to revision and of the way in which they are enforced. Certainly in this discourse the right to think otherwise is not robustly front and centre.

In light of the concern with skepticism about disciplinary knowledge that drives the vigorous defence of norms, it is worth considering the barriers against any such skepticism and the weight of practices in favour of prevailing perspectives. A too one-sided emphasis on norms risks having the effect of producing not critical minds but . . . well, normal academics. How could it be otherwise, when one considers the ranks of norm bearers that aspirants to membership in the community of the competent must please: undergraduate teachers, graduate advisors, and dissertation committees; followed by hiring committees and tenure committees; and promotion committees; and peer reviewers of work; and all this in synergistic combination with the norms of granting agencies. Throughout, the norms and their bearers are presumably fully in charge. With all this normative grinding there is little danger of producing too many closet enthusiasts of intelligent design; or astrologers masquerading as astronomers; or historians explaining the recent history of the Middle East as an episode in salvation history. But on the other hand, how likely is this process to turn out many critical thinkers? Is the encouragement to think otherwise at the centre of things? The risk is creating colleagues not much given to critical perspectives on either their discipline or the profession much less on the employer. The result may be the production of anxious careerists who, to paraphrase past AAUP President Cary Nelson's complaint, are too preoccupied with meeting the norms to participate in collegial governance.²³ Under the circumstances, who can blame them?

Once hired, disciplinary pressures hardly abate. Indeed, the technical means for increasing them are available as never before, providing a temptation for the ambitious university administrator. For example, in August 2012 Thomson Reuters Corporation published an ad in which

they claimed that their web-based InCites technology for assessing research output and significance had been adopted by Canada's largest fifteen research universities. The technology was promoted this way:

Built on data from Thomson Reuters Web for Science, the customized data sets in inCites provide analytics on authors, journals and fields, as well as connect to the universities' proprietary research management and profiling systems for full workflow integration . . .

InCites is a customized, web-based evaluation tool that enables universities to analyze their research productivity and compare their output with that of their peers. The solution provides normalized metrics for repeatable analysis of outcomes, cross-regional impacts, discipline comparisons and standardized, accurate reviews for promotion and tenure processes. InCites can also serve as a support solution in ongoing quality assurance activities . . .²⁴

Such bibliometrics presumably make it possible to reduce the complexities of considering promotion and tenure cases to applying a numerical score. Indeed, Thomson Reuters's claims to be able to parse the numbers in a way that "normalises citation average for subject field and age of papers Meaning [*sic*] you can now compare the geneticist with the historian."²⁵ Facing up to this digital big brother hardly inspires an academic to take alternative approaches that might not get published in the highly ranked journals or even at all, or to undertake projects that will take a long time. Who can afford disciplinary skepticism in such an environment?

Strategies of this kind are not limited to research. Consider the perhaps somewhat less insidious turn to the "tuning" of degree programs. "Tuning" is described as "a process of detailing learning outcomes at the program-of-study level — a mostly faculty-driven process to determine what students should know, and be able to do, by the end of their degree." The virtue of "tuning" is allegedly that it establishes outcomes

on the basis of a faculty input at a number of institutions internationally not just the faculty deliberations at one university. Originally begun in Europe, it now counts participants in Latin America, Japan, Africa, and China.²⁶ Will courses now have to be designed to assure they are "in tune" with some set of agreed upon normative outcomes?

A different sort of assessment that points to the invulnerability of prevailing orthodoxies to transformative criticism appears at the end of sociologist Vivek Chibber's recently published study of the subaltern studies tradition in post-colonial theory. After nearly three hundred pages of vigorous critique of the assumptions and findings of this school of historical analysis finishing with claims about post-colonialism's failure to take account of recent historical developments, Chibber asks what the likelihood is that this particular version of normal science will be dethroned. The answer: probably not very high. After all, he notes, a dominant school of thought is not simply a set of ideas. Post-colonial theory is promoted through specialist journals, embodied in academic positions, and supported by specialist professional associations and book publishers. Moreover, any weakening of the theory's status presents a problem for the many academics whose scholarly production and standing are linked to it. Against these more material factors, mere argument and evidence may have no immediate impact.²⁷ One need not accept Chibber's conclusions about post-colonial theory to register the realism of his view of the difficulties of revising that or any other disciplinary stance. The essential point is that disciplinary norms are often well-defended against the skepticism that so worries Finkel and Post, and immune to the critical transformations promoted by Hunt and Butler.

Needless to say, the emphasis on norms can be highly popular with the employer. We were reminded of this a year ago when the Association of Universities and Colleges of Canada (AUCC) produced its brand-new, state-of-the-art policy on academic freedom apparently designed to serve the purposes of the neo-liberal corporate university. The statement omitted any mention of faculty rights to participate in institutional governance or any guarantee of protection for extramural utterance, and it made problematic claims for institutional constraints

on academic freedom. Along with this went strong assertions of the responsibility of faculty members to meet professional norms while exercising their academic freedom. Among these propositions was that "Faculty have an equal responsibility to submit their knowledge and claims to rigorous and public review by peers who are experts in the subject matter under consideration and to ground their arguments in the best available evidence."²⁸ To this, CAUT responded that "However innocuous the intention [of this statement], the effect can be chilling. Do you mean that if peers view one's work negatively, one no longer has the academic freedom to pursue the idea?"²⁹

The CAUT response is perfectly reasonable. And yet how effective can CAUT's objection be in an environment where we actually say so little about the proper limits of peer review to restrain the individual scholar? About the power of norms to shape our work? Should we not be saying more about the right of academics to be wrong, even in the view of their peers who supposedly represent the community of the competent? An overemphasis on professional or disciplinary norms at the expense of the autonomy of the individual academic opens the way for these kinds of employer offensives. And it is arguably a factor that encourages the highly problematic claim that institutions have academic freedom.

At the institutional level, of course, disciplinary knowledge and norms are always in play. Some version of them, for example, regulates who gets hired and who does not. Is this a place where any but an orthodox, neo-classical economist need apply? Will the only acceptable candidate for a position in Soviet history be one who takes a Foucauldian line on Stalinism? Will a paleo-Marxist who thinks he can salvage the social interpretation of the French Revolution get an interview? Then there are the local institutional norms for tenure, promotion, the awarding of grants, and so on. By now, we are in a realm of standards that are sometimes very far from being simply under the jurisdiction of the "community of the competent" alone. For the autonomy of that community is arguably eroded by the participation of administrators with a veto power and goals of their own; granting agencies with their own priorities; and, of course, the government

and interested private sector actors. So given the evident potential for disciplines to affirm an orthodoxy that does not meet the standard for provisionality, and given the possible drift of norm setting to regions outside the control of the professoriate, the existence of norms in all their complexity and multiplicity may turn out to be something other than just a benevolent barrier against interference with the work of experts in search of knowledge.

Let us take a somewhat different case of the clash or contestation of norms. A Department of Economics for decades contained members representing a wide range of theoretical approaches. In addition to the usual neo-classical economists, there were Marxists and institutionalists, and some members were demographers or labour historians. For many years, a rough balance between the so-called orthodox and the heterodox others was deliberately maintained by careful hiring. Then there was a stretch of time during which retirements put the neo-classical contingent in the majority. This coincided with the arrival of a new dean who made it a project to assure the dominance of the orthodox side. The dean overturned hiring recommendations that would have benefited the heterodox side. Soon every new hire was a neo-classical economist, leaving the heterodox increasingly marginalized.

Subsequently, an external curriculum review recommended further strengthening the orthodox side. In the aftermath, teaching assignments and proposed revisions to courses threatened to make things more precarious yet for the minority. As a result, the right of the minority to think otherwise is arguably at risk, including the right of each individual to teach according to his or her best professional judgment. Here we have conflicting disciplinary norms, with the administration promoting one faction and leaving the other feeling like an endangered species. The solution to this is not to have recourse to parsing the norms, but rather to affirm that duly hired, tenured, and promoted academics have a right to pursue their own individual best professional judgment about such fundamental matters as what problems to investigate, and how to approach them, and what to teach, and how to teach it.

Departments inevitably change over time. Nothing says an academic unit has to be staffed in the same way now as it was twenty-five

years ago. On the other hand, what of the individual rights of those colleagues who do not accept the neo-classical model of economic analysis? Would it be proper for them to be relegated to the remote fringe, potentially having their access to advanced students and to an adequate array of courses cut off? Are we simply to say, "Well, the majority of academics sets the norms" and academic freedom is not in question? Here it seems to me that a recognition of the individual right of such unorthodox colleagues to think differently ought radically to restrain any effort to force their conformity with some disciplinary orthodoxy, even if most economists accept it as gospel. To leave dissenters defenceless undercuts the critical contestation of norms that we claim is fundamental to academic life.

There is a further, very serious problem. It is that the reverence for norms can be played upon in quite insidious ways. As Ellen Schrecker has recently put it:

Especially during moments of stress, when strong outside pressures demand the sacrifice of an institution's squeakiest wheels, many of its leading professors capitulate. The external trappings of due process ease the operation. Faculty members and administrators go through the motions of an official investigation that cloaks their capitulation in the language of academic freedom and claims that the culprit somehow violated the norms of the scholarly community and is no longer qualified for its membership. Rarely do the victim's colleagues protest. After all, it takes both prescience and courage to recognize how seriously the proposed dismissal threatens academic freedom and then to stand up against it. Such solidarity is uncommon within the professoriate as it is in the rest of American society.³⁰

Schrecker's own work on McCarthyism has provided a major example of how this deployment of professional norms as a fig leaf for

political motives can work. American academe failed to protect from dismissal colleagues who were members of the Communist Party or refused to co-operate fully with Congressional investigators of alleged Communists among faculty members. The justification for this was in part the claim that any member of the Communist Party was a person who had entirely given up the intellectual autonomy necessary to the search for truth. Ruthless participants in a secret and amoral conspiracy, slaves of Communist dogma, manipulated by a foreign power, such individuals had no right to membership in the academy.³¹ By definition, these creatures had placed themselves outside the "community of the competent," and universities should protect their autonomy and purge themselves of such before external authorities took the matter in hand.³² Coming to this conclusion supposedly had nothing at all to do with politics; instead, firing the Communists could be presented as a matter of defending the norms of the academic enterprise by excluding those who were unfit for the life of the mind.

This rationale was widely accepted by the academic community, which was apparently happy enough to wrap itself in the norms. Some one hundred academics paid for this with their jobs or suffered other professional setbacks.³³ A more vigorous sense of the rights of the individual academic against the professional views of a majority of colleagues might have made it much more difficult to take this line.

The political deployment of the argument from professional standards is arguably still very much with us. The most recent example of it is the case of Ward Churchill, a well-known scholar of American Indian Studies and tenured full professor and Chair of the Department of Ethnic Studies at the University of Colorado, Boulder.³⁴ A radical critic of US policy, Churchill's comment in 2001 asserting that the employees of the Twin Towers on 9/11 were "little Eichmanns" created a public furor when it became widely known in 2005. The issue was soon a national *cause célèbre*, with Churchill becoming the *bête noire* of conservatives for whom the academic left, multiculturalism, and the existence of non-traditional departments like Churchill's were a standing offence. Administrators at the University of Colorado at Boulder found themselves under intense political pressure to punish Churchill

for his outrageous comment: the governor demanded Churchill's ouster, and a livid state legislature passed a motion insisting that he be sacked. The Governor, Republican Bill Owens, had already chosen his side in the fight against people like Churchill, having earlier helped organize a meeting of the university's regents with representatives of the conservative American Council of Trustees and Alumni (ACTA). When university President Elizabeth Hoffman refused demands of Owens and the regents to dismiss Churchill, she was forced to resign. She was replaced by Hank Brown, who had once represented Colorado in the US Senate and was himself a member of ACTA. In the meantime, the Department of Ethnic Studies was swamped with hostile, often vicious e-mails demanding Churchill's head.³⁵

Struggling to maintain some control of the situation while meeting rising political demands for action, in early February the university's Interim Chancellor, Phil Di Stefano, struck an ad hoc committee constituted of himself and two deans to investigate Churchill's scholarship and conduct, and determine whether there was a case for dismissal. What the committee found was that Churchill had merely exercised his constitutional right to free speech and hence could not be fired for his offensive comments. But Chancellor Di Stefano also reported to the regents the committee's discovery of several allegations that Professor Churchill was guilty of academic misconduct. Di Stefano referred these allegations, which were based on claims of Churchill's opponents within the discipline of American Indian Studies, to the university's Standing Committee on Research Misconduct. Though dropping two of the nine charges, the committee found the others serious enough to strike a committee of investigation to look into the matter. In Ellen Schrecker's opinion, by turning the case into one of academic misconduct to be resolved through academic due process, the university hoped to keep control of the case and head off objections from bodies such as the AAUP.³⁶ In any case, by taking refuge in the norms one could avoid the *First Amendment*.

As most are aware, Churchill was convicted of academic misconduct and dismissed. Though four of the five members of the Investigation Committee (IC) recommended penalties short of dismissal, the

university's Standing Committee on Research Misconduct recommended Churchill be fired, and the chancellor concurred. Churchill appealed to the university's committee on Privilege and Tenure, which dropped two of the charges but still upheld the verdict of misconduct. Two of the five members of Privilege and Tenure voted to fire Churchill but the other three recommended lesser penalties. Though all of the committees found serious misconduct, in the end, only one of the three committees involved voted for dismissal; and a majority of the academics (ten of nineteen) involved in the process were in favour of lesser penalties. But, of course, the committees were never anything but advisory, which left the final decision to fire in the hands of President Brown and the popularly elected lay board of regents.³⁷

Reasonable people will continue to disagree about the Churchill case. That said, for many, perhaps most, academics who had followed the case the norms had been upheld and that was an end to it.³⁸ For some, however, the Churchill case raised many questions. There were the problems of fairness: the IC had remained vague throughout on exactly what standards it was using to assess Churchill's scholarship.³⁹ Churchill was never informed that the committee chair had, prior to her appointment, written an e-mail that assumed his guilt; yet she was appointed, though it was also decided that any of the nearly 200 UC faculty members whose names had appeared on a petition in favour of Churchill were biased and hence disqualified from serving on the IC.⁴⁰ The IC's five members included only one person who had expertise related to Churchill's field of American Indian Studies, an interdisciplinary field where, in the opinion of one recognized expert, the questions of identity and genocide at issue in the case were "exceptionally controversial" matters.⁴¹ Churchill was therefore faced with a committee that was arguably importantly unaware of the methods and issues of American Indian Studies. In the aftermath of the IC's report, two separate groups of faculty members and others from CU and elsewhere filed charges of research misconduct against the IC itself;⁴² and in 2011 the Colorado Conference of the AAUP wrote a vigorous critique and refutation of the committee's findings.⁴³ The Colorado Conference report was partly based on advice from American Indian

Studies scholars Professor Eric Cheyfitz of Cornell University and Michael Yellow Quill of the University of Kansas and so reflected the expertise of two specialists in the field.⁴⁴

Finally, there was the undeniable fact, recognized by all those involved, that the whole Churchill affair had been triggered by the public outcry in response to his constitutionally protected extramural comment; and there was the corresponding realization that the initial decision by Di Stefano to investigate was a violation of the university's own stated commitment to protect the academic freedom of its faculty, including protection of extra mural utterance.⁴⁵ The right to think otherwise is not easy to exercise if there is a standing threat that those who do so are likely to be subjected to a level of academic review not imposed on those who think the way most everyone else does.⁴⁶ Moreover, looked at from another perspective, Churchill's encounter with the investigation might be seen as at least partly about conflicting norms. The norms in question were, of course, politically inflected in the sense that Churchill's stance that US history is a story of genocide shaped both his activist politics and his assessment of scholarly questions and practices while those of colleagues possibly wedded more to notions of American exceptionalism were unlikely to view Churchill's position with much sympathy.⁴⁷ The eleven academics who filed one of the complaints of research misconduct against the IC concluded that "the Report turns what is a debate about controversial issues of identity and genocide in Indian studies into an indictment of one position in that debate."⁴⁸ Whatever one thinks of the charges against Churchill and his firing, the case is a reminder that in the battle over norms, counsels of ethical practice may have little purchase.

In the end, Churchill had one alternative left, which was the legal system. He sued the university for wrongful dismissal, and a six-person jury agreed that the university had fired Churchill for his *First Amendment* protected speech. It awarded him one dollar in damages — a sum which was the minimum allowable and supposedly took account of Churchill's claim that he only wanted justice not money. At this point, the National Council of the AAUP passed a resolution calling on the university to return Churchill to his position and declaring

that the whole matter had been inappropriately treated as a discipline case instead of a scholarly dispute⁴⁹. But this was not to be. The trial judge concluded that the university regents were legally protected against suit. He therefore quashed the jury verdict, remarking later that the courts should be reluctant to interfere in the affairs of the academy.⁵⁰ Churchill appealed the decision all the way to the Colorado Supreme Court, but without success.⁵¹

When Churchill appealed the Colorado decision to the US Supreme Court, the university's opposing brief emphasized the deference owed the institution. Reaching back to Justice Frankfurter's remarks in *Sweezy v. New Hampshire* (1957), the university's lawyers reminded the court of the university's right "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study". Thus, "When judges are asked to review the substance of a genuinely academic decision . . . [sic] they should show great respect for the faculty's professional judgment." By its refusal to hear the case, the Supreme Court implicitly accepted this position, which the university welcomed as a confirmation of its "right and obligation to ensure high professional standards from its faculty."⁵²

Notwithstanding the findings against Ward Churchill, it was stretching the point to claim that this was merely "a genuinely academic decision." The origins of the case in an initial exercise of Churchill's academic freedom to make extramural utterances, and the refusal of a majority of the faculty committees or of faculty members involved in the case to recommend dismissal undercut that simple conclusion. As noted, Churchill's firing was carried out by lay persons, the very same ones who had howled for his dismissal before any academic investigation was in the offing. His right to think otherwise and say so was violated from the beginning.

The Supreme Court's decision not to hear the Churchill case represents an ongoing judicial drift in the US away from any tendency to regard academic freedom as an individual right and toward vesting it in the university. A key case here is *Urofsky v. Gilmore*, which involved a state law in Virginia forbidding state employees from accessing sexually explicit materials on line with the employer's equipment without

a supervisor's permission. A group of university professors whose work entailed accessing such materials filed suit against the state on grounds that the laws violated their academic freedom in both research and teaching. Though they won in the lower court, the state appealed, and the professors lost. In its judgment, the Circuit Court observed that, insofar as academic freedom had any constitutional standing at all, it was not as an individual right but as an institutional right of self-governance enjoyed by the university. There was, therefore, no violation of academic freedom in the requirement that professors wishing to access sexually explicit material get permission from a university official such as a dean.⁵³ According to Sheila Slaughter, the case affirms a neo-liberal emphasis on the importance of untrammelled administrative authority as essential to good management;⁵⁴ and as she notes, the Supreme Court's refusal to review *Urofsky* implicitly affirms the attribution of academic freedom to institutions rather than individual academics.⁵⁵

None of this leaves the individual academic's right to think otherwise in very good health. By contrast, the norms seem to be in pretty fine fettle. Certainly academic freedom as an individual right, however restricted by disciplinary norms we may think it to be, is threatened by the drift in US cases to attributing academic freedom to the university itself or by developing notions of university autonomy that have a similar impact. If ever there were a need for a more robust discourse about the rights of individual academics to think otherwise, whether against the prevailing norms of their disciplines, the policy proposals and decisions of university administrators, or on broader public questions, now is certainly that time.

In the end, for all that we must emphasize membership in the "community of the competent" as the basis for the individual's academic freedom, that freedom remains a possession of the individual academic. The individual academic's right to be free of "prescribed doctrine" requires that we defer to her or his right to think differently in any given circumstance. Any normative boundaries must be very broad indeed. As Judith Butler has reminded us, it is important to resist the temptation to "legislate a norm" where in fact the norms are multiple

and contested. And it is our ethical obligation to "recognize good work that adheres to modes of inquiry and method that we do not share".⁵⁶ Two decades ago in a dispatch from the battle over norms, Joan Scott wrote that "universities . . . are places where separate and contingent, contradictory and heterogeneous spheres of thought have long coexisted; the grounds for that coexistence are acceptance of differences and an aversion to orthodoxy."⁵⁷ Protection of the individual academic's freedom to think otherwise is a crucial element in preserving this essential quality of university life. Failing this, we are left with a situation like that which existed at Harvard in the 1950s, where left-wing economists were often denied tenure ostensibly on grounds of incompetence — though the real reason was pressure from the conservative Board of Overseers. According to then Dean McGeorge Bundy, one such controversy over a Liberal candidate prompted John Kenneth Galbraith to observe that in these cases "Competency is always a disguise for something else."⁵⁸

All that said, the balancing of a respect for disciplinary standards with the rights of the individual academic to think otherwise remains a permanent challenge for defenders of academic freedom. These difficulties only increase with the claims to university autonomy pressing against the academic freedom rights of individual faculty. The danger that academic standards will be eroded by epistemological skepticism is much less serious than the threat that the individual academic's freedom to think otherwise will be increasingly crushed.

Finally, on the matter of the limits to the reach of norms, it is salutary to keep in mind the thinking of Ronald Dworkin on academic freedom.⁵⁹ From an institutional perspective, Dworkin sees it as inevitable and entirely acceptable that academics should be hired on the basis of how likely it is that they will conform to the prevailing disciplinary norms and findings. At the moment of hiring and granting tenure, the reigning local community of the competent must have full liberty to distinguish among candidates on the basis of contributions to normal science.⁶⁰ Once this moment has passed, however, the individual academic's freedom must be increasingly respected.⁶¹ What Dworkin refers to as "conversions" over time to other perhaps

radically dissident approaches to professional work must be tolerated,⁶² because academics must not be hindered in carrying out their "responsibility to speak, and write and teach truth as they see it."⁶³ On this view, the norms have the most power at the beginning of careers as they inform the decisions of academic "gatekeepers" who are in charge of hiring.⁶⁴ Given the rewards and pressures, no doubt the norms and prevailing disciplinary knowledge will typically continue to dominate most careers, but a space must be kept open for those who come to think otherwise.

With Dworkin there is a shift beyond Finkin and Post's definition of the university solely as a knowledge producer. For him, academic freedom is a critical element in "society's support for a culture of independence and of its defense against a culture of conformity."⁶⁵ While the production of knowledge and teaching the disciplines remain fundamental, the university also emerges as a space for ethical development enabling a capacity for individual choices about what is important and true. For Dworkin making this possible is a highly valuable contribution to the creation of a social order in which individual integrity and authenticity can flourish. The health of the university and society as a whole requires that those in it are operating on the basis of what they really think and not on some externally imposed norm.⁶⁶ This takes us back to Carl Becker's happy reflections on his life at Cornell, where the right to think otherwise was the fruitful governing principle of academic life.