

Resources on Academic Freedom

1) What is academic freedom?

In 1957 the Supreme Court defined academic freedom as the right of a university to "determine for itself on academic grounds who may teach, what may be taught, how it should be taught, and who may be admitted to study." *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

AAUP Policy Statements

Statement of Principles on Academic Freedom and Tenure (1940):

- Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
- College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

On Freedom of Expression and Campus Speech Codes (1994):

"On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed." Moreover, under the First Amendment, speech cannot be restricted simply because it is offensive or even intentionally inflammatory. But threats and conduct differ from expressions of ideas that some or even most may find repulsive. Accordingly, "[i]nstitutions should adopt and invoke a range of measures that penalize conduct and behavior, rather than speech—such as rules against defacing property, physical intimidation or harassment, or disruption of campus activities."

Keith E. Whittington, "Academic Freedom and the Scope of Protections for Extramural Speech," *Academe* 2019 <https://www.aup.org/article/academic-freedom-and-scope-protections-extramural-speech#.XMXJietKjMI>

"In its foundational 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, the AAUP asserted that academic freedom consists of three elements: freedom of research, freedom of teaching, and "freedom of extramural utterance and action." The Association recognized that it was this third freedom of "university teachers to express

their opinions freely outside the university or to engage in political activities in their capacity as citizens” that was often under threat. In 1940, the organization reemphasized its position that “when they speak or write as citizens,” professors “should be free from institutional censorship or discipline,” though it urged them to “exercise appropriate restraint” as befitting their role as scholars when engaging in such extramural activities.”

...Protections of extramural speech are best thought of as prophylactic rules [which] are common in American constitutional law. Law professor Brian Landsberg has characterized them as “risk-avoidance rules that are not directly sanctioned or required by the Constitution, but that are adopted to ensure that the government follows constitutionally sanctioned or required rules.” They “build a fence around the Constitution” to reduce the risk that core constitutional commitments are violated by discouraging behavior that might be innocent in itself but that unacceptably increases the probability that constitutional violations will occur.

... If faculty members could be dismissed for what they say in public, then the core mission of the university to advance and disseminate knowledge would come under pressure and be subverted. If higher education institutions were to construct a regime to monitor social media for professors making controversial statements or adopt the view that professors could be dismissed if students or alumni objected to statements that a professor made in public, the practical scope of free inquiry on campus would be diminished.

Perhaps the easiest case for insisting on such protections comes in the context of extramural speech about matters closely related to the scholarly expertise of the speaker. Colleges and universities should encourage faculty to bring their expertise to bear on matters of public concern and express their informed judgments to public audiences when doing so might be relevant to ongoing public debates.”

Procedural Standards in Faculty Dismissal Proceedings (1958)

Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments (1989 revision)

On Trigger Warnings (2014)

Recommended Institutional Regulations on Academic Freedom and Tenure (2018 revision)

2) Legal precedents on protection of speech in academic environments

Constitutional protections of free speech are critical to the missions of universities. In *Shelton v. Tucker* (1960) the Supreme Court ruled, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” Federal courts have prohibited government interference with the content of speech in educational institutions, for example: *Epperson v. Arkansas* (1968); *Monteiro v. Tempe Union High School District* (1998). In *West Virginia State Board of Education v. Barnett* (1943), the Supreme Court ruled that there are no circumstances under which the government can legitimately determine what is “orthodox” with regard to politics or religion: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion.”

3) Title VI of the Higher Education Act of 1965

Some colleges and universities receive federal funding through Title VI of the Higher Education Act for language and area studies/international studies programs, including Middle East studies programs. For years, rightwing Israel advocacy groups like the Amcha Initiative and the Louis D. Brandeis Center for Human Rights Under Law have attacked Middle East studies programs across the country, using flawed research to mischaracterize them as “biased,” “anti-American,” and “anti-Israel.” In previous years, [these groups have lobbied Congress and the U.S. Department of Education](#) to cancel all Title VI funding or mandate a mechanism for the DOE to receive complaints of “bias” to trigger investigations aimed at coercing academic centers to promote pro-Israel viewpoints. [According to the Center for Constitutional Rights these requirements would violate academic freedom and raise serious First Amendment concerns.](#)

Resources:

Bekah Wolfe, “Title VI and Middle East Studies,” *Middle East Report Online*, Nov. 14, 2014 <https://merip.org/2014/11/title-vi-and-middle-east-studies/>

“Statement of Jewish Studies professors in North America Regarding the Amcha Initiative,” *The Forward*, Nov. 1, 2014: <https://forward.com/news/israel/206629/statement-by-jewish-studies-professors-in-north-am/>

4) The Palestine Exception to Free Speech

Resources:

Center for Constitutional Rights, [The Palestine Exception to Free Speech](#) (Sept. 2015)

Jewish Voice for Peace, [Stifling Dissent: How Israel’s Defenders Use False Charges of Anti-Semitism to Limit the Debate over Israel on Campus](#), 2015.

5) Other Resources on Academic Freedom and Free Speech

[Journal on Academic Freedom](#)

John K. Wilson, [Academic Freedom and Extramural Utterances: The Leo Koch and Steven Salaita Cases at the University of Illinois](#) (JAF 6, 2015).

Joan W. Scott, [On Free Speech and Academic Freedom](#) (American Academy of Arts and Sciences Summer 2017 Bulletin).

Wendy Brown, [The Big Picture: Defending Society](#) (Publics Books and NYU’s Institute for Public Knowledge, 2017).

Christopher Newfield, [Feeding a Dangerous Fiction](#) (Inside Higher Ed, October 19, 2017).

David Palumbo-Liu, [Why We Have Free Speech on University Campuses](#) (The Stanford Daily, January 18, 2018).

Judith Butler, [Limits on Free Speech?](#) (Academe Blog, December 7, 2017).

Judith Butler, [The Criminalization of Knowledge. Why the struggle for academic freedom is the struggle for democracy](#) (The Chronicle of Higher Education, May 27, 2018).

Bettina Aptheker, [Free Speech! Hold Firm! We must protect and affirm the first and 14th amendment with everything we have](#) (Newscenter, US Santa Cruz, October 10, 2017).

Robert C. Post, [There is No 1st Amendment Right to Speak on a College Campus](#) (Vox, updated December 31, 2017).

Masha Gessen, [Does the Far Right Have a Place at Academic Conferences?](#) (The New Yorker, October 26, 2017).

Cheryl A. Leanza, [Heckler's Veto Case Law as a Resource for Democratic Discourse](#) (Hofstra Law Review 35:3, 2007).

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