Academic Freedom in the 21st Century

by William G. Tierney and Vicente M. Lechuga

Throughout the 20th century, academic freedom was a foundational value for the academy in the United States. The concept pertains to the right of faculty to enjoy considerable autonomy in their research and teaching. The assumption that drives academic freedom is that the country benefits when faculty are able to search for truth without external hindrance and when they are able to report their findings regardless of what those findings may be. Faculty are evaluated by their peers based on the quality of their ideas, rather than by administrators or legislators for instrumental or ideological reasons.

In this article, we first delineate the traditional idea of academic freedom and then suggest an alternative framework for thinking about it. We then provide an overview of four recent examples of infringements on academic freedom. We conclude with a consideration of what the implications are for the academy of these recent intrusions on academic freedom, and offer some suggestions about possible responses.

The genesis of any idea is always hard to determine. It is particularly true in this case, insofar as no single event or individual brings forth a concept as abstract and complex as academic freedom. However, one might safely suggest that the roots of academic freedom in the United States can be traced to the late 19th century when scholars returned from graduate work in Germany. It was there that

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they learned about *Lehbfreiheit*—“the right of the university professor to freedom of inquiry and to freedom of teaching, the right to study and to report on his findings in an atmosphere of consent” and (struggled) to implement this idea in their classes and on their campuses. At the same time, U.S. higher education experienced enormous growth. Numerous public and private institutions were established. The thin layer of administration that had characterized higher education in most of the 19th century increased. The size of the faculty rapidly expanded. Faculty work changed to include research.

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In the late 19th century administrative control was paramount and faculty input was nil. Tenure did not exist. Faculty meetings, if they did occur, concerned the grading and evaluation of students. If individuals had contracts, the terms were dictated by the president of the institution, and professors were dismissed at will. Faculty had no input on budgets, buildings, or what their work should be. Academic structures such as faculty senates, grievance committees, or promotion and tenure committees were nonexistent.

Although hindsight is always 20/20, one should not have been surprised to find that a crisis erupted in the early 20th century over the nature of faculty work. The size of the faculty had more than doubled. Faculty from the United States continued to return from Europe with a desire for greater autonomy in their work. Professional associations began to take hold. Research became of interest to the professorate. At the same time, authority remained vested at the top of the organization. Conflict was bound to occur.

The violations of a professor’s academic freedom from that time period are legendary and well documented. Richard Ely, a liberal economist at the University of Wisconsin, lost his job in 1894 because of his support for unions. Scott Nearing was fired in 1915 from the University of Pennsylvania because he opposed the use of child labor in coal mines. John Mecklin, an outspoken liberal professor at Lafayette College, had to resign in 1913 because of his philosophical relativism, interest in pragmatism, and teaching of evolution. Edward Ross of Stanford University used what today would be considered hate speech
to argue for the rights of unions and to warn of the threat of imported labor. He lost his job in 1900.

One result of all these occurrences was the creation of the American Association of University Professors (AAUP) with John Dewey as its first president. Dewey initially envisioned this group of university professors “as an association representing the interests of American university teachers, comparable to the American Bar or Medical Associations.” Professor Dewey did not envision the association as a labor union and, interestingly, did not consider the protection of academic freedom a top priority of the AAUP. He believed the role of the association was to promote scholarship to the American public.

In his inaugural address to the AAUP, Dewey rejected the notion that of chief importance to the association was the need to investigate violations of academic freedom. Nevertheless, during its first two years the AAUP dealt with over 30 cases of infringements on academic freedom. Dewey subsequently acknowledged his initial misconception. He also recognized that an investigation was not simply intended to remedy a specific incident. Rather, Dewey understood that infringing upon an individual’s academic freedom was tantamount to an attack on the academy itself. Consequently, the AAUP codified a statement to ensure that an individual’s ability to conduct teaching and research without interference would not be violated. The document has become enshrined as a hallmark declaration for American higher education and reads, in part, as follows:

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either individual teacher or the institution as a whole. The common good depends upon the free speech for truth and its free exposition. Academic freedom is essential to these purposes.

The acceptance of the importance of academic freedom for the health of U.S. higher education had at least two important consequences. First, to protect academic freedom, the idea of tenure became a mainstay so that at the start of the 21st century over 95 percent of traditional postsecondary institutions in the United States had tenure for at least a third of their full-time faculty.
States had some form of tenure. The assumption throughout the 20th century was that tenure provided critical protection for academic freedom. The individual could not be distracted from seeking the truth if his or her job was secure. Administrators or external agents could not threaten faculty if the threat had no “teeth,” such as the loss of one’s job. Tenured faculty also had a particular responsibility: to protect academic freedom as a central idea within the academy. In their professional life and on their campuses the assumption was that a tenured cadre of faculty would stand up against intrusions on academic freedom.

Second, a particular definition of academic freedom took hold. Academic freedom, although an institutional concept, was vested in the individual professor. If an individual said something and faced sanctions, then presumably his or her academic freedom had been abridged. Such an assumption fits within modernist notions of science and the “free competition of ideas.” From this perspective, knowledge is a neutral product that awaits investigation and discovery. Although there is much to agree with in such a formulation, we have written previously of our own misgivings of a strictly modernist notion of knowledge. The examples that we provided above fit within the traditional framework. Specifically, when a professor said something pertaining to his or her academic specialty, someone became upset, and that person was fired.
To assume that academic freedom’s infringement only exists when someone speaks out and faces recrimination is to assume a neutral world where knowledge is presumably objective. Baez makes a similar point in his analysis of diversity when he points out the importance of understanding the struggles “over the power to legitimate classifications of the social world through the production of [the] knowledge of difference.” A battle of ideas assumes that an atmosphere exists where such battles may occur. If one looks at the infringements on academic freedom that the AAUP investigated, for example, from its inception until 1990,

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no case will be found where an openly gay or lesbian professor was fired for having advocated on behalf of gay rights or for having studied the topic and come up with an alternative formulation. But would anyone actually argue that gay and lesbian scholars felt free to investigate such a topic in the 1950s, much less in the 1930s? Simply because there are no cases in which rights were infringed upon ought not to imply that academic freedom exists and that faculty are unencumbered by political constraints.

As Aaron Schutz notes, “Every person is always subjected to multiple, overlapping, and often inseparably intertwined forms of control, even if one or another may predominate at a particular time or place.” We agree with Schutz that to assume a singular interpretation of modernist concepts such as the “common good” or “truth” is to overlook that communal life is rarely organized around a single substantive idea. Relations of power always determine the conditions and constraints for knowledge production. Some individuals are silenced and others are not. Such silencing occurs not only by attempts to fire a professor when he or she speaks out. A culture of silence can be created that is pervasive to such an extent that individuals do not even consider speaking out. We are suggesting, then, that individuals need to think of knowledge production—the central work of the academy—from a cultural perspective that assumes knowledge is never neutral, never pre-existent, and never “up for grabs.”

By advancing a notion of cultural politics, we are arguing that abstract concepts such as knowledge and, of consequence, academic freedom are inevitably related to power and ideology. Knowledge production is not simply the addition
of facts, one upon the other, divorced from the researcher or larger societal contexts. Instead, following Foucault, we are suggesting that institutions, individuals, and the constantly shifting forces of society combine to determine what accounts for knowledge at a particular moment in history.

An investigation of academic freedom needs to include not only examples of individuals who faced sanction or dismissal because they had a particular viewpoint and were penalized, but also a consideration of the larger social and cultural contexts in which academic institutions are embedded. The obligation of those

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who seek to protect and advance academic freedom is to focus not only on individual infringements but also on cultural and social contexts that lead to the weakening of the ability of individuals to search for this contested concept called “truth.” Accordingly, we turn now to four examples that have arisen in the initial years of the 21st century that are deeply troubling and have significant implications for the future of academic freedom.

**THE PATRIOT ACT’S RAMIFICATIONS FOR COLLEGE CAMPUSES**

In their effort to root out terrorists, Congress passed a bill, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, which has quite specific implications for campus life. Federal law officials may now collect with far fewer restraints extensive information about students from the National Center for Educational Statistics. Government officials may now access voice-mail stored on campuses without wiretap authorization. A search warrant is still needed, but the standard for issuance of the warrant is much looser than what had been the case for wiretaps. It is much easier for the government to obtain court orders for electronic surveillance on campuses.

Similarly, federal law officials can obtain a record of the books that students, faculty, and staff check out of the library. And a gag order prevents librarians from disclosing to library patrons the existence of the government’s request or that the
records were released. In other words, with much of the Patriot Act there is no way of tracking its implementation. Indeed, the overall thrust of the Act is to enhance the powers of the government to intrude on the work of academics—faculty and students—on the one hand, and to circumscribe the rights of scholars to gain access to information to understand controversial and/or scientific issues, on the other hand. The free exchange of ideas means something entirely different at the start of the 21st century than it did only a decade ago.

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THE CHILLING OF SPEECH ON CAMPUS

In 2002, the North Carolina House of Representatives moved to cut the budget of University of North Carolina because a fall reading list for freshmen included a book about the Koran. In the same year, the governor of Colorado and state legislators denounced the University of Colorado for inviting Hanan Ashrawi, a Palestinian spokesperson and educator, to speak on campus. The legislature in Missouri sought to cut funding in 2002 from the University of Missouri’s budget because the director of the public television station located on the Columbia campus decided that personnel should not wear flag pins on camera. In October of 2001, Leonard Peikoff took out a full-page ad in The New York Times to let readers know that the greatest obstacle to a U.S. victory in the war against terrorism was “our own intellectuals . . . and multiculturalists rejecting the concept of objectivity.” A year after the September 11th attacks, a Philadelphia think tank established a Web site to monitor faculty and institutions that were critical of U.S. actions in the Middle East. Individual faculty were listed on the Web site as “hostile” to America; as a result, the professors identified were spammed with thousands of angry e-mails.

Following the September 11 attacks, the American Council of Trustees and Alumni (ACTA) condemned some faculty members for not adequately voicing their support for the Bush Administration. In a report, ACTA stated that many faculty “invoked tolerance and diversity as antidotes to evil.” Out of the almost 4,000 colleges and universities in the United States, ACTA cited 115 instances of
what they called “unpatriotic comments.” Statements such as “we have to learn to use courage for peace rather than war” by a professor of religious studies at Pomona College came in for criticism. ACTA is not a fringe group. Lynne Cheney, former Governor Dick Lamm, William Bennett, Joe Lieberman, and the late David Reisman have been on their various boards. The report went on to observe that the faculty voice was mute in its condemnation of the terrorist attacks and insufficiently patriotic.

In February 2004, a subpoena was served on Drake University that sought

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records about a conference it had held in the fall of 2003. The conference had sessions that discussed the roots of terrorism and the American tradition of civil disobedience. The organizers were decidedly against the invasion of Iraq. The subpoena sought information about the organizers, the purpose of the conference, the participants, and any recordings that might have been kept. A gag order was issued to prevent the institution from speaking about the subpoena. After an ensuing brouhaha, the gag order was withdrawn and the court squashed the subpoena.

**FEDERAL INVOLVEMENT IN ACADEMIC AFFAIRS**

The government also has moved on what appear to be several related fronts. The Solomon Amendment allows the government to deny federal dollars to colleges and universities that do not provide military recruiters on-campus access to students. If one school or college at a university bars army recruiters because of military policies that discriminate on the basis of sexual orientation, the university will lose its federal monies. Two institutions to face such pressure in 2002 were Harvard University and the University of Southern California (USC). The Law School at USC went to great lengths to ensure that students interested in the military as a possible career could meet with recruiters outside the Law School. But, because of its principled stance, the Department of Defense began proceedings to remove federal funding from the entire university. USC gave in, and the DOD may now recruit students through the Career Services Office at the Law School. With regard to Harvard University, the U.S. Court of Appeals for the Third
Circuit halted enforcement of the Solomon Amendment in December of 2004. Shortly thereafter, Harvard Law School announced that it would once again ban military recruiters from campus.

On another front, in October of 2003, the House of Representatives passed the International Studies in Higher Education Act, H.R. 3077. The act increases funding for international studies and supports the extension of all 10 Title VI programs—but the legislation also proposed the creation of an International Education Advisory Board that would monitor how international study funds were to be spent. In addition, this seven-member advisory board was to provide recommendations to the Secretary of Education and Congress on international education issues pertaining to higher education.

The legislation would have seriously eroded the traditional independence of free scholarly inquiry by potentially infringing upon a college or university’s decision-making process regarding curriculum. As one individual noted, the advisory board “seems to be set up to ‘investigate’ rather than ‘advise’ the higher education community.”

In February of 2005 Patrick J. Tiberi (R-Ohio) re-introduced the bill to Congress as H.R. 509; it is currently under consideration with the House Committee on Education and Workforce.

In 1998, the U.S. State Department implemented the Visas Mantis program, which “performs security checks on foreign students and scholars who study any of the roughly 200 scientific fields that are on the government’s Technology Alert List.”

Heightened security measures put into place after 9/11 have dissuaded many international students from applying to U.S. colleges and universities. A study released in February 2004 by the Council of Graduate Schools found that the number of applications from foreign graduate students dropped by 28 percent from the previous fall. Two major factors contributed to the sharp decline: increased capacity from abroad and visa restrictions imposed on international students by the federal government. In 2005, applications once again dropped by an additional 5 percent compared to 2004. The fields most impacted by the decline were engineering and the physical sciences.

There is great concern in the higher education community that current poli-
cies for reviewing visas could have a long-term effect on the country’s ability to attract foreign students and scholars. A constituency made up of 25 national groups in the higher education, engineering, and scientific communities issued a list of six proposed changes in 2004 that would speed up existing procedures for processing visas for foreign students and scholars. The group warned that existing procedures hampered international exchange and collaboration among scholars, and contributed to the recent drop in foreign-student applications to U.S. colleges and universities. Although new procedures have been implemented by the

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federal government to assist international students to obtain visas more quickly and easily, foreign student applications have not rebounded.

**THE EROSION OF ACADEMIC INDEPENDENCE**

In 2004 the Ford and Rockefeller Foundations added new antiterrorism language to their funding policies. The new provisions are intended to prevent the use of grant money to support terrorist groups and their sympathizers. On the surface, the new provisions seem logical and appropriate. However, upon closer examination, the Ford Foundation policy, similar to the Rockefeller policy, states that the foundation will withdraw its funds if any of a university’s expenditures are used to promote “violence, terrorism, bigotry or the destruction of any state, no matter what the source of the funds” or “make subgrants to any entity that engages in these activities.” Provosts from nine of the nation’s top institutions challenged the new language, stating that it was vague, open to multiple interpretations, and could jeopardize funding for numerous campus events. Colleges and universities risk losing funds simply by supporting campus lectures, film festivals, conferences, and other activities that express controversial views or generate highly-charged debates on issues such as the war with Iraq or the Israeli-Palestinian conflict.

Similarly, an “Academic Bill of Rights,” authored by David Horowitz, also raises concerns about academic independence. Horowitz claims the bill, which has garnered a great deal of attention from both politicians and the media and has
already been introduced into several state legislatures, is intended to create intellectual diversity in colleges and universities. He claims the intent of the bill is to encourage “balance” in academic appointments. For instance, the bill requires that: “All faculty shall be hired, fired, promoted and granted tenue on the basis of their competence . . . with a view toward fostering a plurality of methodologies and perspectives.” Another requirement is that “academic disciplines should welcome a diversity of approaches to unsettled questions.” Although there is much to agree with in the document, there is also a great deal that is disconcerting.

**Academic disciplines should certainly welcome a diversity of approaches to unsettled questions. But who decides whether a question is unsettled?**

Academic disciplines, for example, should certainly welcome a diversity of approaches to unsettled questions. But who decides whether a question is unsettled? The vast majority of scientists accept evolution as fact. Presumably, if a legislature is to decide what questions are unsettled, then creationists should also have their say. For over a generation the American Psychological Association has declassified homosexuality as a mental illness. How would the state legislature of Mississippi answer such a question? Should they have the right to weigh in on such scientific matters? Global warming is accepted by the vast majority of the scientific community as fact, but the Bush administration does not. Should the natural sciences be populated by individuals who produce questionable science?

Similarly, although the call for a diversity of methodologies and viewpoints may be well intended, who should decide the hiring patterns for a department? It seems a long reach indeed for a state legislature to proclaim that one or another anthropology department needs an additional quantitative methodologist or that a department of religion must add a scholar of Buddhism. Indeed, many of the departments that have gained notoriety and made significant intellectual breakthroughs in their disciplines in the 20th century did not take a Noah’s ark approach to hiring. Instead, they were narrowly focused on a particular area of inquiry with the intent of working from a similar perspective in order to solve a pressing theoretical or practical concern.

It is the responsibility of the academic to voice opposition against the dismantling of basic rights, whether it takes place through legislative actions such as the
Patriot Act and the Academic Bill of Rights, or through individual assaults like those on Sami Al-Arian, a professor of computer science at the University of Southern Florida who fell victim to the government’s post-9/11 efforts to contain Muslim academics. Jonathan Cole, former provost of Columbia University, writes, “I have been struck by (and dismayed at) the near deafening silence of the expected voices of dissent on the great university campuses, and by the absence of a sustained debate over the fundamental issues and tension—the balancing act—between the needs for national security and the protection of basic, individual, constitutional liberties.”

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The engaged intellectual has a responsibility to speak out against the erosion of academic freedom. The voice of the academic is vitally needed today.

Dewey wrote, “The university function is the truth function.” Even postmodernist views of truth will acknowledge Dewey’s message. The freedom to investigate the “truth,” no matter where it may take an individual, is an essential component of academic life. The voices of professors like Sami Al-Arian or conferences such as those held at Drake need to be protected so that they may be heard. The academy enables their voices to be heard, not because they are friends or in agreement with them, but because the search for truth should not be cordoned off when individuals disagree with other individuals.

Not only did Dewey recognize the need for academics to have the freedom to search for truth, he understood the importance of developing ethical standards that addressed obligations to the public. Professors are not afforded academic freedom to pursue their own self-interests; they have a responsibility to the public in the same way that trustees have a responsibility to the university community. The individual and group liberties afforded to those in academia currently are being threatened. Now more than ever there is a need for the intellectual to protest against current infringements on academic freedom, just as Dewey’s colleagues did a century ago.
THE IMPORTANCE OF INTERNAL GOVERNANCE AND COMMUNICATION

Unquestionably, faculty, administrators, and boards of trustees will have areas of healthy disagreement. From time to time on particular campuses, a board or administration also will act in a manner that necessitates a strong faculty response, and perhaps even sanction. However, on issues of such central importance as the protection of academic freedom, faculty must seek ways to work with the administration and board to ensure that external encroachments do not threaten the vitality of a particular campus. A recent AAUP report suggests:

> Academic freedom ought to be thought as located in a contested zone that is mediated by what we have termed cultural politics.

It may be especially valuable in perilous times for faculty to establish substantially closer ties with several campus offices with which they may be unfamiliar—the offices of the dean of students ... and the university legal or general counsel. Where an administration or a governing board has firmly defended academic freedom against external threats, faculty commendation and support would be not only welcome within the institution, but also highly visible beyond the campus.

We concur. Indeed, the point should not simply be to support the administration or board after they have acted to protect academic freedom, but to engage in sustained conversations with them before an actual threat occurs. No one could have predicted, for example, that the administration at Drake University would be subpoenaed for allowing an anti-war meeting to be held, or that officials of the Army would surreptitiously attend a conference and interview attendees at the University of Texas at Austin. To the extent that the faculty foment engaged conversations on campus with one another and with individuals from the administration and to a certain extent the board, is all to the better.

We have argued here for an expansion of how academic freedom is conceptualized. A singular notion of academic freedom as an infringement on an individual’s right to speak out, as evidenced by sanction or dismissal after the person has spoken, is circumscribed by modernist notions of truth and knowledge that fall short in these times. Such conceptions ignore the socio-cultural framework in which academic organizations and individuals reside. Instead, academic freedom...
ought to be thought as located in a contested zone that is mediated by what we have termed cultural politics. Academic freedom needs to be protected not only after an individual has been wronged; instead, faculty need to develop campus cultures that nurture and expand basic freedoms.

During another turbulent period in American history, in 1935, when legislators and alumni attacked the faculty of the University of Chicago, Robert Hutchins noted, “The answer to such charges against a university is not denial, not evasion, nor apology. It is the assertion that free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, that without it they cease to be universities, and that such inquiry, and hence universities are more necessary now than ever.”29 The University of Chicago’s Board of Trustees supported President Hutchins, and the faculty’s ability to speak out on controversial issues remained. One hopes that a half century from now future students of higher education will be able to look back at another troubled time and state that during the beginning years of the 21st century faculty stood fast and expanded the notion of academic freedom, rather than seeing it evaporate before our eyes.  

ENDNOTES

2 Hofstadter and Metzger, “The development of academic freedom,” Veysey, “The emergence of the American university.”
4 Slaughter, “Academic freedom and civil liberties,” 52.
5 Metzger, “Academic freedom in the age of the university,” 201.
7 Dewey, “Introductory address to the American Association of University Professors,” 102.
13 Mouffe, “Radical democracy or liberal democracy,” 62.
18 Ibid., 17.
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