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COMMENTARY ON BUTTRESSING THE DEFENSE OF ACADEMIC FREEDOM

Jordan E. Kurland

I address this subject as the chief academic freedom staff officer of the American Association of University Professors (AAUP), which over most of this century has been the leading agency in higher education in developing the principles and standards governing the relationships of academic life. The AAUP was founded in January 1915 to deal with the second of Neil Hamilton's seven "waves of zealotry," the "unfettered capitalism of trustees and regents," which resulted in notorious cases such as those of Ely at Wisconsin, Ross at Stanford, and Nearing at the University of Pennsylvania. The philosopher Arthur Lovejoy at Johns Hopkins was the AAUP's organizing force, and the philosopher John Dewey at Columbia was its first president.

The infant AAUP promptly established its first committee—known through the decades as Committee A, chaired initially by Columbia's E.R.A. Seligman, and having the likes of Wisconsin's Ely and Harvard Law School's Roscoe Pound as its charter members. Committee A promptly formulated the eloquent, seminal 1915 Declaration of Principles, the parent of the 1940 Statement of Principles on Academic Freedom and Tenure and grandparent and great-grandparent of a large array of derivative policy documents and position papers on academic freedom, due process, and related matters. The founding fathers naively assumed that their promulgation of the principles of academic freedom would result, in a year or two, in general acceptance of those principles by the academic community and the sponsoring citizenry, leaving the new organization free to address other professional concerns.

† This article is based on a speech given by Mr. Kurland at the Academic Freedom Symposium.
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Such, however, was not to be. The AAUP became involved almost immediately not only with rhetoric but also with actual cases. In the spring of that first year, Lovejoy persuaded Dewey to let him travel to distant Utah to investigate news of professional firings and mass resignations. Investigation followed investigation, and case report followed case report. At the end of that first year, President Dewey reported to AAUP's second annual meeting as follows:

Some have expressed to me fear lest attention to individual grievances might crowd out attention to those general and "constructive" matters which are the Association's reason for existence. . . . The investigations of particular cases were literally thrust on us. To have failed to meet the demands would have been cowardly; it would have tended to destroy all confidence in the Association as anything more than a talking body. The question primarily involved was. . .whether the Association was to have legs and arms and be a working body.2

Ironically, those AAUP founders who in 1915 and 1916 rose to the defense of professors dissenting against political and economic orthodoxies would not lift a finger to defend the professorial victims of Neil Hamilton's third "wave of zealotry," the patriotism of the First World War.3 By 1918 they were stating candidly that, in the all-out effort to make the world safe for democracy, academic freedom had to give way.

I became active in the AAUP when it was grappling with McCarthyism, the fifth of the seven Hamilton waves.4 I served through the sixth, student activism,5 and I am now coping with the seventh,6 to which I shall turn without further ado.

A wave of zealotry that can be called the Fundamentalist Academic Left certainly exists, and it is perhaps the dominant wave of our time. Also present, however, are other waves, and they coexist in a sea which is quite different from that which

3. See HAMILTON, supra note 1, at 14-17.
4. See id. at 19-31.
5. See id. at 31-43.
6. See id. at 55.
was the setting for the McCarthyist wave and the student activist wave. In the previous setting, problems involving academic freedom developed by and large over political, economic, and societal issues in broad and impersonal terms. This past decade, however, has witnessed a remarkable shift. The earlier issues remain, but they are being treated in the academic world with less intensity, less intolerance of opposing views. To the fore now are issues involving personal expression and personal relationships: artistic, ethical, religious, sexual, racial, and ethnic. Individual sensitivities in these areas have become intense, with occasional waves of zealotry in particular areas from the Academic Right showing that intolerance is by no means the exclusive property of the Academic Left.

Neil Hamilton in his *Zealotry and Academic Freedom* correctly notes that the AAUP has not come forth with prompt and clear policy guidelines on some of these recent issues. It depends, of course, on the issue. On some issues, it has been relatively easy for us to identify and condemn the assault on academic freedom; loyalty oaths, speaker bans, and furtive surveillance come to mind in this regard. With several key current issues, however, ones with zealots in the academic community on both sides, we have found it very difficult to strike a proper balance that will command acceptance by the AAUP’s membership and by the academic community as a whole. There are legitimate ongoing needs for protections against discrimination, sexual harassment, insulting invective, and the like. The protections can, and on occasion do, raise problems for academic freedom. The AAUP, given its historic and most basic mission, in responding to specific controversies must and does tilt toward academic freedom, but it also has to and does pay heed to the other values that are at stake.

Let me close by saying some things about two current parallel waves from the Right, those involving respectively religion and ethics (faith and morals, if you will). With regard to religious doctrine, back in 1970 we had stated, naively, that most church-related institutions no longer needed or desired to place a limitation on academic freedom on religious grounds. The past decade, however, has witnessed severe limitations imposed by certain religious denominations. I call your

7. *Id. at 244-47.*
attention to three major AAUP investigations: at the Catholic University of America, where the distinguished liberal theologian Charles Curran was barred from teaching Catholic theology after the Church authorities in Rome decreed that he was not competent to do so; at the Southeastern Baptist Theological Seminary, where the Radical Right of the Southern Baptist Convention gained control of the governing board, drove out a moderate president and dean, and saw to it that faculty appointments would henceforth go only to biblical inerrantists in the strictest sense; and at Concordia Theological Seminary, where officials of the Lutheran Church Missouri Synod dismissed a senior professor for teaching "false doctrine" after he questioned whether biblical references to the inferior status of women remain applicable 2000 years later.

With regard to morality, the AAUP files contain an abundance of recent or current cases in which the straight-laced guardians from the Right have clamped down on faculty members seen as coming from the permissive Left. Three examples (which, I realize, could be seen as assaults on personal freedom rather than academic freedom) will suffice. We investigated a case at a college sponsored by the Christian and Missionary Alliance where the governing board terminated the services of a professor (and of the college president when he defended her) after she was spotted with a small button on her bookbag saying "Support Gay Rights." We investigated a case at a Roman Catholic university where the president summarily dismissed a tenured professor of English after an anonymous informant revealed that she had remarried after a Catholic marriage, fourteen years earlier, had ended in civil divorce. Finally, one of my favorites, we investigated a case at a college sponsored by an evangelical Protestant church where the president terminated the services of a young faculty member after he was seen having coffee with a female student at McDonald's (we never did learn whether the objection was to socializing with the student, drinking coffee, or going to McDonald's).