Buttressing the Neglected Traditions of Academic Freedom

Neil W. Hamilton

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol22/iss2/13

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.
© Mitchell Hamline School of Law
BUTTRESSING THE NEGLECTED TRADITIONS OF ACADEMIC FREEDOM†

Neil W. Hamilton‡‡

I. INTRODUCTION

In his speech, "Culture, Politics and McCarthyism: A Retrospective from the Trenches," Irving Louis Horowitz gives a clarion call that we as intellectuals of the world and as university professors must unite to protect our interests. This essay explores the reasons why university professors fail to unite to protect our interest in academic freedom and makes a number of proposals for educational programs to buttress academic freedom.

Zealots, whether from the Right, the Left, religion and the church, the government, boards of trustees, administrators, students, or faculty colleagues, will continue to assault heretical thought and speech. This seems inevitable. It is critical that the faculty foster and defend competent voices of dissent during a period of zealotry because it is upon such dissent, however unpopular, that the advancement of our knowledge depends.¹ "It is not sufficient," Professor Paul Walters said, "to support the rights of those who share our political and social ideas. We must stand for openness and for the right of all honestly held opinions to be heard."² The culture of an institution is largely defined by the faculty. Where there is a faculty culture that honors academic freedom's correlative duty that the faculty as a

† This essay is based in part on a speech Professor Hamilton gave at the Academic Freedom Symposium. The speech and this essay borrow from chapters nine and twelve of Professor Hamilton's book ZEALOTRY AND ACADEMIC FREEDOM: A LEGAL AND HISTORICAL PERSPECTIVE, published in 1995 by Transaction Publishers (New Brunswick, New Jersey, 08903). The William Mitchell Law Review appreciates the willingness of Transaction Publishers to permit the use of this material.
‡‡ Neil W. Hamilton is Trustees Professor of Regulatory Policy at William Mitchell College of Law in St. Paul, Minnesota.

549
collegial body publicly defend its members against zealotry, then attacks on thought and speech will be moderated, and academic freedom exists.

Faculties often poorly defend academic freedom of alleged heretics during a period of zealotry. During each wave of zealotry, most egregiously during the last three since the 1940 statement, the faculty as a collegial body and the administration of many universities frequently failed both to address the zealotry and to protect the academic freedom of alleged heretics. Few faculty members gave public support to the accused. The faculty’s usual public response of silent acquiescence to coercive tactics was the ballast of the ideological zealotry in each period. By repeatedly condoning the coercion and intimidation, Professor Schrecker writes, the professorate lost its nerve and self-respect during the McCarthy era. Many faculty members lost both nerve and self-respect again in the 1960s and in the late 1980s and early 1990s. The failure of so many colleagues to provide expected public support has created sad and sometimes bitter memories for the targets of zealotry.

II. WHY IS THE FACULTY’S PUBLIC DEFENSE OF PROFESSIONAL ACADEMIC FREEDOM IN THE FACE OF ZEALOTRY OFTEN SO WEAK?

Despite a number of periods of zealotry and seventy-five years of development of the rights of professional academic freedom, the academy’s public defense of academic freedom in the three most recent waves of zealotry has been weak. It is puzzling how a small number of zealots can often successfully coerce and intimidate others in a university setting, yet a strong tendency to accommodate and acquiesce has characterized many academics in every wave of zealotry. Why is there so little collegial public defense of freedom of academic thought?

There are a number of tentative possible explanations for this faculty accommodation and acquiescence in the face of zealotry: (1) inadequate preparation; (2) ambivalence about publicly defending the right of dissent; (3) fear of damage to reputation and career; (4) reprisal based on personal grudges;

---

4. See id. at 308-09.
common traits of academics; and (6) the focus of university administrators on public relations.

A. Adequate Preparation

Many professors have an extremely limited understanding of the tradition and meaning of academic freedom. A 1987 Carnegie Foundation survey confronted professors with the topic of academic freedom by stating that “Academic Freedom is important to the profession. What does it mean in your work?” The responses indicate a very limited and generalized understanding of the rights of academic freedom and no recognition of the correlative duties of academic freedom. In discussions with my law students, I find that students assume that there must be a course or a series of courses on “Being a Professor.” They are startled that no such formal training exists. Neither of the two law faculties on which I have served had a strong remembered tradition of academic freedom during my affiliation with them.

Many professors also grossly underestimate the strength of the human instinct to suppress and censor the “wrong” thoughts and speech of others. They seem both unaware that waves of zealotry have occurred often in American higher education and uninformed about the duty academic freedom imposes on the collegial body to defend publicly the academic freedom of individual professors. When the ethics of academic freedom are not well established, both faculty and administration bend quickly to whatever political winds are blowing the strongest. Without awareness that waves of zealotry could occur during their career, and what tactics to expect, faculty members are

5. See Burton R. Clark, The Academic Life: Small Worlds, Different World 134-39 (1987). Reflecting on fifty years of teaching at Harvard, Professor Oscar Handlin observes a major change in the university: “In the vast playing field that the multiversity has become, numerous people scurry about, all doing their job, with only a few unifying links inherited from the past. Inertia, vague sentimental traditions, and catchphrases whose origins few recall trickle through among the players.” Oscar Handlin, A Career at Harvard, AM. SCHOLAR, Winter 1996, at 58.

6. Schrecker, supra note 3, at 12-13. Writing in 1969, Harvard Professor Nathan Glazer observed that when confronted with coercion of academic speech, many professors who believed it to be wrong had simply forgotten the answers necessary to defend academic freedom. Glazer urged the professorate to remember what was forgotten and to answer publicly in order to defend the university. Nathan Glazer, Remembering the Answers 293-94, 306 (1987).
unprepared for and easily overwhelmed by well-organized and highly vocal zealots. They do not know how to resist zealots’ tactics of coercion.

The cognizance of zealotry’s threat to academic freedom that exists at any given moment appears to be backward, not forward looking. The professorate is on guard against zealotries that have become widely recognized as wrong. For example, it took three waves of zealotry over a forty-year period motivated by superpatriotism for a wide consensus to form in the society and among the professorate that this suppression from the far Right was wrong. Similarly, because of the long struggle against religious fundamentalism in the late 1800s, the professorate has some sensitivity to coercion from religious zealotries. Thus, the generations of professors maturing from the 1960s to the present are conditioned to see the principal threats to academic freedom as the far Right and religious fundamentalists outside the walls. Many are not prepared and not yet willing to recognize coercion from the Fundamentalist Left inside the walls.

Without information defining the rights and correlative duties of professional academic freedom, many faculty members believe academic freedom means a right of absolute immunity from employment consequences for whatever faculty zealots say or do; and many seem largely unaware that the concept imposes correlative duties on both individual professors and the faculty as a collegial body. This ignorance and confusion lead faculty members to do nothing in the face of coercive tactics. They pursue a strategy of avoidance and apathy.

This problem of ignorance and confusion about the correlative duties of professional academic freedom has become worse in recent decades as traditional understandings of the obligations of faculty citizenship have deteriorated. In his 1990-1991 Annual Dean’s Report, Harvard Dean Henry Rosovsky observes that the “FAS [faculty of arts and sciences] has become a society largely without rules, or to put it slightly differently, the tenured members of the faculty—frequently as individuals—make their own rules . . . there is no strong consensus concerning duties and standards of behavior.”

The joint AAC and AAUP Commission on Academic Tenure

7. Harvard University Faculty of Arts and Sciences, Dean’s Report (Harvard Univ., Cambridge, MA), 1990-91, at 12.
in Higher Education observed in 1973 that historically, institutions were able "to rely on individual self-discipline and the informed correctives of collegial association" to ensure that general professional standards were enforced. However, the commission found that the campus turmoil in the late 1960s presented "acute problems of professional conduct, for which broad general professional standards and traditional reliance upon individual self-discipline" were inadequate. The Commission believed that "the vast and rapid growth of the profession in recent years has surely weakened the force of professional tradition."8 The data bear out a dramatic expansion of the professorate in the last fifty years (see table 1). From 1940-1990, the professorate increased its numbers 677,000 or five and one-half times, with the largest increase of 225,000 occurring in the 1970s.9

**TABLE 1**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>FACULTY (# in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1899-1900</td>
<td>24</td>
</tr>
<tr>
<td>1909-1910</td>
<td>36</td>
</tr>
<tr>
<td>1919-1920</td>
<td>49</td>
</tr>
<tr>
<td>1929-1930</td>
<td>82</td>
</tr>
<tr>
<td>1939-1940</td>
<td>147</td>
</tr>
<tr>
<td>1949-1950</td>
<td>247</td>
</tr>
<tr>
<td>1959-1960</td>
<td>381</td>
</tr>
<tr>
<td>1969-1970</td>
<td>450</td>
</tr>
<tr>
<td>1979-1980</td>
<td>675</td>
</tr>
<tr>
<td>1989-1990</td>
<td>824</td>
</tr>
</tbody>
</table>


Many faculty members apparently believe that graduate students and inexperienced professors will learn professional values, ethical standards, and academic traditions through informal interaction with and informal instruction by senior faculty members during collaborative work. This education, it is assumed, occurs through "osmosis-like diffusion." Osmosis-like diffusion breaks down when the professorate dramatically increases in number.

During the current wave of zealotry, faculty ignorance about the liberal intellectual system itself is undermining professional academic freedom. The idea has taken hold that the liberal intellectual system is a kind of anything goes pluralism in which all ways of believing are created equal and the major rules are to be sensitive and to be nice. While the system historically has recognized the importance of civility in discourse, it totally rejects the notion that civil discourse in the pursuit of knowledge should not hurt people's feelings. Indeed, the breakthrough of the liberal intellectual system is its recognition that the productive advancement of knowledge depends upon the possibility of "falsifying" every certainty to discover error. Knowledge claims must always be seen as tentative and subject to constant checking. This checking process is painful, offensive, and not nice to those whose truth is being questioned. This will be true for religious, political, social, or oppressed groups holding strong ideologies. Their natural instinct will often be to prohibit the checking process and to suppress heretics. They will claim that their pain is more important than the productive advancement of knowledge. Faculty who understand the liberal intellectual system will expect this and will be prepared to defend the system.

B. Ambivalence About Publicly Defending Academic Freedom for Opposing Ideas

Many professors seem highly ambivalent about speaking publicly to protect the expression of viewpoints that oppose their own. In their 1975 study, *The Divided Academy*, Professors Everett

10. See Judith P. Swazey et al., *The Ethical Training of Graduate Students Requires Serious and Continuing Attention*, CHRON. HIGHER EDUC., Mar. 9, 1994, at B1, B2.
12. See id.
Ladd, Jr. and Seymour Martin Lipset found that “the political thinking of academics is exceptionally ideological” and that faculty members are particularly susceptible to ideological division.13 These ideological dimensions appear across a range of intramural as well as national issues.14 “The ideological character of professorial thinking,” Ladd and Lipset concluded, is of particular importance to understanding “the bitterness expressed against those of differing orientations.”15 Former Yale dean and provost Georges May concurs that academic disputes tend to be heated because professors believe they are engaged in the search for truth, and those who claim to seek the truth are quick to find infidels. “The university is the daughter of the church,” May concludes. “We have inherited from it the costumes, the vocabulary and the concern for truth, and when the truth is at stake you may regard someone who disagrees with you as a heretic.”16 When professors share passions, sentiments and viewpoints with the zealots, their self-interest is served by permitting zealots to harass and intimidate competent opposing views. This ideology of solidarity with the zealots is predictable.

The lust to censor opposing views is very strong. Recognizing the existence of a countervailing duty to protect the academic freedom of opposing views, some academics employ a utilitarian analysis to rationalize their response of avoidance, appeasement, or facilitation of the zealots' coercive tactics. The rationalization is that such tactics are for a good cause, and the speaker will not publicly oppose them even though privately the speaker does not fully approve of the tactics. Thus, during McCarthyism, many professors were strongly opposed to Communism, leading to silence about protecting the academic freedom of the alleged proponents of Communism.17 Analyzing extensive questionnaire and interview data about faculty opinions in the 1960s, Professors Everett Ladd, Jr. and Seymour

13. LADD & LIPSET, supra note 9, at 199.
14. Id. at 42-44.
15. Id. at 51.
17. SCHRECKER, supra note 9, at 311-12. Those professors opposed to Communism did not generally speak up to protect academic freedom. Conservative professors reported only one-half the level of concern about threats to academic freedom as did liberal professors. See PAUL LAZARSFELD & WAGNER THIELENS, THE ACADEMIC MIND 154 (1958).
Martin Lipset concluded that the general ideological predisposition that faculty brought to political issues was a major determinant to the way they responded to student radicals. The more liberal to left a professor was on wider political and social issues, the more likely he or she was to give at least tacit, and sometimes active support to student radicals. The association between a left-of-center postures in politics and relatively high support for the student protests of the 1960s was extremely close. During the current wave of zealotry, liberal faculty members share an ideology of solidarity with the Fundamentalist Academic Left. It is not in their self-interest to protect the academic freedom of those voicing heretical views. They may adopt strategies of avoidance, appeasement or actual facilitation of the zealots' coercive tactics.

This ambivalence to protect the academic freedom of opposing ideas becomes an acute problem when a faculty is dominated by those sympathetic to the goals of the zealots. Because few people will defend vigorously the rights of others to speak thoughts for which the listener has no sympathy, monolithic thought and little diversity of opinion on a faculty is inherently dangerous for rights of professional academic freedom. A number of faculties in the humanities and social sciences in the contemporary university are places of deep conformity in terms of ideologies to the left of center.

C. Fear of Damage to Reputation and Career

Professors know that mere accusations of moral turpitude scar a reputation, limit career possibilities, impose substantial costs of time, energy, and money necessary for defense, and result in social ostracism. In the public's perception, teachers are guilty of such charges until proven innocent. Many professors also know that zealots operate within an advocate's morality in making such accusations. Guilt by association has been a tactic in the three recent waves of zealotry. Many professors thus fear possible adverse consequences to their reputations and careers if they speak out in defense of the academic freedom of those who express heretical views; they know that they may also

18. LADD & LIPSET, supra note 9, at 210.
20. LADD & LIPSET, supra note 9, at 43-44.
be vilified in retaliation for their public support of the accused's academic freedom. Fear of these consequences suppresses public support.

The group of colleagues who see themselves as just trying to do a job and support a family has no active malice toward the heretic, but they are highly influenced by fear of personal harm and by peer pressure. They want first to escape unnoticed, but if pushed many seek to please those who seem to be dominating developments. Lazarsfeld and Thielens found that during McCarthyism, many professors reported a willingness to join a support movement, but very few were willing to lead one because of the fear of being singled out for punishment. They also found that for another group of faculty, association with accused colleagues was thought to bring stigmatization and danger. This group will pursue avoidance or appeasement of the zealots. Some of them may repudiate the heretic for causing ideological unpleasantness.

The group of professors motivated principally by personal prestige and reputation will be even more paralyzed by fear of career damage. They are extremely unlikely to risk career opportunity to support a principle like professional academic freedom.

Some faculty members are highly concerned about the reputation of the faculty or university itself; this group strongly disapproves of heretics who are the cause of external criticism of the university. For example, when a small group of academics at the University of California-Berkeley refused during McCarthyism to subscribe to a loyalty oath because they regarded it as an infringement on academic freedom, they were bitterly castigated by some colleagues for "creating a fuss" and endangering the position of Berkeley in public opinion.

For some professors held hostage by their desire for respectability and propriety, the possibility of not "seeming anticommunist" or not "seeming sensitive to diversity" is enough. The risk that others may think that they condone unpopular

21. LAZARSFELD & THIELENS, Supra note 17, at 104, 233-34.
22. Id.
views with which they personally disagree silences them.  

D. Reprisal Based on Personal Grudges

Professor Owen Lattimore's experience during McCarthyism was that some colleagues who failed to protect his academic freedom were nursing old grudges. "There is always the additional danger that people with old personal grudges will give aid and comfort to a witchhunt. . . . You are defenseless against the man who is trying to work off a grudge, because everything depends upon how mean-spirited he is and how far he is willing to go." A colleague nursing substantial personal grudges would tend to facilitate the coercive tactics of the zealots.

E. Common Traits of Academics

Common traits of persons who choose the academic life also explain the lack of public support for the targets of zealotry. Many academics are extremely independent with a focus on intellectual creativity. They value a secure and stable environment where they can do their work alone. Personal autonomy is highly valued. They focus on their specific, immediate responsibilities of teaching and scholarship. This group's general rationale is "we have our work to do and these issues don't affect us," or "let's live and let live and just do our work without getting involved in controversy." They shield themselves from an awareness of what is happening. They do not want to become involved and may hold it against a colleague who seeks their help. Lazarsfeld and Thielens found that during McCarthyism many respondents preferred to escape unnoticed and exercise caution. The fact that perhaps only three or four of every thousand professors would ever have occasion to say or write things that would bring them into conflict with zealots explains to Professor Fritz Machlup "why it is sometimes difficult to rally all faculty members to the vigorous support of academic freedom. There are always a good many professors in 'safe'  

27. Id. at 19.
29. Lazarsfeld & Thielens, supra note 17, at 104.
subjects or with ‘safe’ ideas who resent the activities of the ‘troublemakers’ on the faculty.”

Similarly, some academics, at least in law schools, opted out of the practice world because of an aversion to confrontation and conflict. More generally academia may draw many people who are theoretically brilliant and assertive but timid on the level of personal conflict. They are highly susceptible to be cowed by intimidators and bullies. This leads to a natural aversion to conflict with zealots and the adoption of accommodation and appeasement as a principle, even in the face of extremely abusive and coercive conduct. The appeasement argument will start with the conclusion that “we should come to terms with the zealots in order to bring peace.” It then works backward to find a suitable premise. Of course those faculty members who want to get on with their own work are also drawn to accommodation and appeasement of zealots in the belief that this will resolve the immediate conflict and allow the campus to quickly return to normal.

In an analogous vein, the “moderate” faculty member sometimes has a conviction that the solution to any problem always lies somewhere between two “extremes.” The target of zealotry immediately becomes one “extreme.” Lazarsfeld and Thielens found that during McCarthyism, one faculty group’s reluctance to back accused colleagues was the product of an inclination to follow the “middle of the road” and to disprove of unconventionality.

This desire to accommodate, appease, and find middle ground leads some colleagues to blame the victim of zealotry for not accommodating the zealots. Victims who raise issues of principle and the collegial duty of defense of academic freedom become “extremists on the other side,” whose intransigence is causing unpleasantness. There is a sense that those being targeted by zealots for unpopular thoughts are getting their just desserts.

Those advocating appeasement of zealots seem generally unaware that appeasement rarely works because the demands of zealots flow not from evidence and reasoned analysis but from

90. Machlup, supra note 1, at 181.
91. LADD & LIPSET, supra note 9, at 205.
92. LAZARSFELD & THIELENS, supra note 17, at 104, 233-34.
considerations of power. Zealots want to control the university and to eliminate heretics. Ideological zealots from the New Left in the 1960s and from the Fundamentalist Academic Left today also will continue to escalate demands to provoke confrontation. This will demonstrate the oppression of the university. Concessions flowing out of appeasement policy will be trumpeted to the media as admissions of guilt and a reason to further expose the hidden structures of oppression. Adverse media attention further weakens the negotiating position of the appeasers. During the current wave of zealotry, the power of the oppressed status groups rests to a significant degree on their ability to demonstrate victim status. These groups cannot acknowledge satisfaction of their demands and concede their status as victims; their principle recourse is to raise further demands that cannot be met.

The academic tendency to intellectualize problems is another trait leading to avoidance and apathy and inhibiting public support for the targets of zealotry. Academics are, relative to others, particularly adept at self-delusion through rationalization. This leads to inaction in the face of moral duty. Intellectuals are also prone to see the target’s distress as an abstraction. Having compared those who protected Jewish persons in World War II with those who, given the opportunity, did not, Humboldt University Professors Samuel and Pearl Oliner conclude that “the emphasis on autonomous thought as the only real basis for morality continues to enjoy widespread acceptance.” It is the vision of the moral hero who arrives at conclusions of right and wrong after internal struggle, guided primarily by intellect and rationality, that underlies much of Western philosophy. Unfortunately, the Oliner study, and numerous others, find “that few individuals behave virtuously because of autonomous contemplation of abstract principles.” Such individuals often do “not in fact extend themselves on behalf of people in danger or distress. Ideology, grand vision, or abstract principles may inure them to the suffering of real people.”

Some academics also may discount the harm imposed by coercive tactics out of a belief that people should develop

fortitude for assaultive rhetoric. This has some merit in principle, but vulnerable groups of people—especially, for example, newer and untenured faculty or faculty from a group with protected status, or students—may not have developed an extremely thick hide. Are the vulnerable to be left without protection? The real issue for discourse within academia is whether the discourse is competent and professional, not whether the listener should develop an extremely thick skin against personal abuse.

For all of these reasons, generally only a handful of faculty will publicly defend academic freedom in the face of zealotry. Courage has been in short supply in the professorate. University of Minnesota professor David Bryden observes that “in twenty-five years of teaching law, I have known at most two or three colleagues who took principled positions in the face of sharp disapproval from the law school community, and they all paid a price for doing so.”

F. Administrative Neglect of Professional Academic Freedom

Many university presidents and deans have inadequately protected professional academic freedom in the last three periods of zealotry. Since a great number of them served earlier in their careers as faculty members, their acquiescence in tactics of zealotry has the same underlying causes as those described earlier for faculty members.

In addition, many senior administrators see their own career advancement and the university’s need for both students and public and private resources as dependent upon favorable public relations. The principal threat to good public relations would be for some crisis to blow up on their watch. Thus, they want to avoid crisis and negative publicity at all costs. This fear of negative publicity made many senior administrators extremely vulnerable to the coercive tactics of zealots in each of the past three waves.

Georgetown Associate Dean Mark Tushnet adds that many senior university administrators today “really do not have any idea about the educational aims of their university. They see themselves as politicians and managers who happen to work in

an educational institution." Thus, "lacking a vision of what a university should be," they "bend to whatever wind happens to be blowing the strongest." Seeing themselves as politicians, they attempt to buy off and accommodate as many political pressures as they can, making inappropriate concessions to those political forces threatening the most harm.

III. MEETING THE CHALLENGE OF ZEALOTRY

Professional academic freedom requires that the faculty foster and publicly defend the academic freedom of colleagues. At many institutions in past periods of zealotry, the faculty as a collegial body and the administration have repeatedly failed both to address the zealotry and to protect academic freedom. They fail to give public support to the targets of the zealotry. The faculty response of acquiescence in coercive tactics has been the ballast of the ideological zealotry in each wave. The extraordinary facility with which faculty accommodate the coercive tactics of zealots is the most significant phenomenon.

The causes of this failure are not clear. This essay has explored several tentative explanatory hypotheses. The first is inadequate preparation. Many professors seem unaware that waves of zealotry occur regularly in American higher education and that the coercive tactics used are predictable. They also seem uninformed about the rights and duties of professional academic freedom, particularly the faculty's duty to defend publicly the academic freedom of competent academic speech. Next, there is ambivalence about publicly defending academic freedom for competent opposing ideas. The fear that public support for the accused will damage reputation and career also exists. In addition, reprisals based on personal grudges occur. The common traits of academics that inhibit public support for the target of zealotry include the desire for the quiet life of scholarship, an aversion to conflict, rationalization of inaction in the face of duty, and an excessive tolerance of coercive tactics.

The duty to foster and defend the academic freedom of colleagues is a critical cornerstone on which the rights of professional academic freedom rest. There will continue to be

37. Id. at 128.
zealots and waves of zealotry. The professorate created professional academic freedom to address this reality. The doctrine fails in the face of zealotry because of the repeated failure of many faculty to address the zealotry of the time and to give public support to defend the academic freedom of zealotry’s targets.

Faculties must both explore the causes for this repeated failure and take reasonable corrective steps to address the causes. Effective remedies seem practicable for only some of the causes proposed earlier.

Education may be the simplest and best corrective. All faculty members should have an understanding of the history of professional academic freedom, its rationale, its critical importance to the profession and to the university, its rights and its correlative duties, particularly the duty to defend academic freedom. They should also understand that there will always be strong ideologies and zealots, that waves of zealotry have occurred regularly but the direction from which the next zealotry will come is hard to predict, that zealots attack targets far beyond the circle of clear heretics for political advantage, and that similar coercive tactics have occurred in each wave. Finally, they should understand that being a bystander while zealots suppress the academic freedom of a colleague is not harmless. It is an act that condones the suppression. In light of the specific correlative duty to defend academic freedom, indifference in these circumstances is complicity.

Presently, socialization of novitiates into the ethics and traditions of the academic profession occurs essentially without formal instruction. The professorate assumes that academic tradition is passed by osmosis. At least novitate lawyers and doctors must study and know their code of ethics. Student doctors also directly observe instructor-doctors in almost all aspects of practicing professional life, and are regularly critiqued on technical, judgment, and moral error. Graduate students normally observe their professors in a narrow range of professional activities, with limited feedback on the students’ own performance in practice situations.38 New professors have very limited or no understanding of the theory and practice of

professional academic freedom. Without any education of novitiates to the profession, the remembered tradition grows weaker and weaker. This is especially true given the vast and rapid growth of the academic profession during the second half of this century. 39

There is a great need for serious and continuing attention to the transmission of professional values, ethical standards, and academic traditions. There should be explicit instruction for novitiates and continuing regular educational engagement for veteran faculty on these issues. What would effective instruction on these issues look like in specific terms? The following suggestions may stimulate faculty debate on this question.

A. Basic Educational Programs

Basic educational programs, one for faculty development and one for graduate students, should lay a foundation in terms of our heritage of academic freedom in a liberal intellectual system. A grounding in our tradition of academic freedom requires knowledge of several fundmentals such as the history of the waves of zealotry in the United States, the history of the development of professional and constitutional academic freedom, First Amendment protection for professors at public universities, and academic abstention. There must also be an understanding of the specific rights of academic freedom and the rationale supporting these rights as well as the specific correlative duties of academic freedom and the rationale supporting these duties. It is also essential to recognize the importance of the legacy of both the rights of academic freedom as well as the professorate’s individual and collegial responsibilities to honor and enforce the correlative duties of academic freedom to the legitimacy of the professorate’s work in a liberal intellectual system. Lastly, there must be an awareness of the probability that, if history repeats itself, a wave of zealotry will occur roughly each generation in higher education. The critical question in each period of zealotry is whether the faculty’s response of silent submission to coercive tactics will again be the ballast of the zealotry, or whether the faculty will be more effective in limiting the damage of the zealotry.

39. See COMMISSION ON ACADEMIC TENURE IN HIGHER EDUCATION, supra note 8, at 41-43.

http://open.mitchellhamline.edu/wmlr/vol22/iss2/13
B. Advanced Educational Programs

Building on this foundation, more advanced programs would emphasize small group peer discussion of dilemmas on realistic problems involving both the defense of academic freedom and the enforcement of the ethical and competency constraints of the discipline when individual professors do not meet them. An annual program to cover new developments and to apply the correlative duties to current problems would be useful. Faculty members should discuss the state of academic freedom within the faculty at least annually.

C. Defining Correlative Duties

Once a knowledge base concerning the rights and correlative duties of academic freedom is established, another useful step would be for the faculty to define further the correlative duties as they apply to a particular discipline and in a particular faculty. The AAUP statements and the academic traditions on which they rest are necessarily general in describing the correlative duties. Ambiguity in the application of these general principles to a specific discipline or a particular faculty may lead to the problems of lack of notice and unfairness in individual cases.

Over twenty years ago, the Commission on Academic Tenure in Higher Education created by the AAUP and college administrators urged faculties to consider and discuss the adoption of a faculty statement on professional conduct. The Commission recommended that, "The faculty of the institution . . . must be the source for the definition and clarification of standards of professional conduct and must take the lead in ensuring that these standards are enforced."40

The Commission further specified:

The Commission believes that faculties should be authorized and encouraged to develop codes of professional conduct for the guidance of their members and as a basis for sanctions against those whose conduct falls below professional norms. Such codes should reflect the broad precepts embodied in such existing formulations as the 1940 Statement of Principles and the 1966 Statement of Professional Ethics and should

40. Id. at 42.
attempt to articulate the traditional sentiments of academic persons as to the demands of their calling... The very effort to provide a statement of professional standards will serve to dramatize the faculty's own responsibility for its integrity and that of the institution.

The Commission recommends that the faculty of each institution assume responsibility for developing a code of faculty conduct and procedures and sanctions for faculty self-discipline, for recommending adoption of the code by the institution's governing board, and for making effective use of the code when it has been approved.\(^{41}\)

Both President Emeritus Kerr, and earlier Professor Eric Ashby, urge faculties to adopt a "declared professional code of practice" to address the problem of a disintegrating profession.\(^{42}\) A professional code of practice should include what conduct mentioned in the code would be grounds for sanction, the specific sanctions to be applied, and the procedures to be followed for each type of sanction. The faculty should give clear notice of what is prohibited and how violations will be punished. In all sanctioning efforts, faculty judgment should play the critical role in the context of clearly defined procedural protections.\(^{43}\)

The faculty's consideration of a code of professional conduct is itself educational. The debate that occurs during the drafting and adoption of standards will help individual professors and the collegial group understand the correlative duties of academic freedom. The faculty could revisit the statement annually to consider its effectiveness and possible amendment.

In drafting a code of professional conduct, the faculty may be able to build on the work of others. Professional societies or

\(^{41}\) Id. at 44-45.


\(^{43}\) RESPONSIBLE SCIENCE, supra note 42, at 102, 105-07.
government agencies may have already drafted guidelines that further define the correlative duties in particular contexts. For example, in 1985, the editors of nearly twenty journals published by the American Chemical Society published "Ethical Guidelines to Publication of Chemical Research." The guidelines outline the ethical obligations of authors, manuscript reviewers, and journal editors. Professional academic societies should strongly consider assisting the development of this type of guideline.

D. Department and Faculty Involvement

There is a strong argument that educational programs and statements on professional conduct should be undertaken within departments or faculties by discipline, not across faculties within the university. Over the past fifty years, common knowledge among the various disciplines has thinned, and the fields have become more self-contained. Socialization of graduate students and new professors occurs primarily within a field, and in particular the local incarnation of the field of study, the academic department. The AAUP and the professional associations in each discipline could be of great service in developing materials for educational programs, but in the final analysis it is the individual departments within the university that must provide the faculty development programs to strengthen the tradition of academic freedom.

On the other hand, a recent experience at the second annual Conference on Intellectual Freedom at Montana State University-Northern, supports an interdisciplinary approach to these issues. The common heritage of all professors is more evident in interdisciplinary discussions, and the intellectual diversity of the different disciplines makes for a more challenging discussion of the issues.

E. Results

The results of educational programs on academic freedom

---


45. Melissa S. Anderson et al., Disciplinary and Departmental Effects on Observations of Faculty and Graduate Student Misconduct, 65 J. HIGHER EDUC., 331, 332 (1994); LADD & LIPSET, supra note 9, at 56-57.
are difficult to predict. On the positive side, a solid understanding of the fundamentals should help faculty members to resist attempts to impose orthodoxy and suppress dissent. For example, education will inform the professorate that in past periods of zealotry, investigations and the empanelment of tribunals to identify and penalize dangerous speech have consistently been among the most powerful tools of suppression. Armed with this knowledge, faculty members may be more willing to resist the creation of any institutionalized apparatus for the investigation of speech. Faculty members may also understand that being a bystander while zealots suppress the academic freedom of a colleague is not harmless. It is an act that condones suppression. In the face of affirmative duties to defend academic freedom, a faculty member's indifference to the suppression of colleagues is complicity. Faculty members will also know that zealotry does not stop with suppression of clear heretics, others will also be at risk if zealots see political advantage. In addition, an increased awareness of the importance of academic freedom to the legitimacy of teaching, scholarship, and the university itself may increase faculty members' willingness to give public support to a target regardless of disagreement. Education on the tradition of academic freedom may also lead faculty members to see that academic freedom depends upon some multidimensional disagreement within a faculty. Monolithic thought or little diversity of opinion within a faculty are inherently dangerous to the rights of professional academic freedom. Few people will defend the rights of others to speak thoughts for which the listener has no sympathy.

Peer discussion concerning issues of academic freedom may create a climate of reciprocity and peer pressure to support professional academic freedom. If there is a tradition of academic freedom within a faculty, the climate of opinion may empower some faculty members who would otherwise remain silent out of fear of zealots.

Ladd and Lipset found that academics are distinguished by the intensely ideological character of their thinking on both intramural and extramural issues.\(^46\) Faculty members holding strong ideological positions may be bitter towards those of

\(^46\) LADD & LIPSET, \textit{supra} note 9, at 42-44, 46.
different orientation. 47 If their ideological predisposition is the same as that of the zealots, faculty members tend to support coercive tactics. 48 Educational programs on academic freedom may help create an ideological commitment to academic freedom that offsets professors' tendencies not to defend publicly the rights of others to express views for which the listener has no sympathy.

The same argument applies to the tendency of the faculty collegium to abdicate its responsibilities in the face of professional misconduct by a colleague. Many professors may be poorly informed on the correlative duty that the faculty as a collegial body enforce the ethical and competency constraints of the discipline when individual professors do not meet them. Education about this correlative duty and its importance in maintaining academic freedom and the legitimacy of scholarly work may help create an ideological commitment that combats the tendency of the collegium to become a delinquent community that emphasizes collegial harmony and individual autonomy in condoning professional misconduct. A study of research misconduct published in 1994 suggests that training may not have a significant impact on misconduct. Expectations should be modest. 49

Clearly a strategy of faculty development programs to strengthen the remembered tradition of academic freedom within the professorate itself is a very long-term strategy. This type of long-term educational strategy enjoyed some success with the governing boards over the past seventy-five years. Academics today have the freedom to say and do things that seventy-five years ago were the object of severe sanctions by governing

47. Id. at 57.
48. Id. at 43-44.
49. See Anderson et al., supra note 45, at 342-43. However, the authors still support educational programs on ethics. Their findings suggest that between exposure to misconduct and the absence of opportunities to discuss these issues openly, future researchers are being socialized in an environment that may create ambivalence about basic values of the academy, namely, the obligation of the scholarly community to uphold the highest standards of research behavior and to enforce the values of the broader society regarding the behavior of professional employees. Misconduct cannot, in all likelihood, be prevented but recent calls for increased opportunities for students and faculty to talk about scientific values . . . seem a minimal response.

Id. at 343.
boards and administrators. In the last forty years since McCarthyism, governing boards generally have not been infected with zealotry; this may be in part to awareness of the extensive scholarly criticism of the governing boards' role undermining academic freedom during McCarthyism. The same long-term educational strategy may work with the professorate.

A strategy of educational programs to strengthen the tradition of academic freedom within the professorate will most clearly help professors who become targets in a future wave of zealotry. Targets will take strength from the discovery that periods of zealotry have occurred frequently in higher education and that the target shares much in common with people who lived and worked, acted and suffered many years in the past. For a thinking person, a conversation with the past, Yale Professor David Bromwich notes, creates many strong feelings of solidarity. "To believe on reasonable grounds that in a given cause, though one may have few living allies, and perhaps no visible ones, somebody in a similar predicament once felt the same intuition, can be a sustaining knowledge and the beginning of a persuasive self-trust." 50

In an ideal world, faculty development programs would dramatically improve the remembered tradition of academic freedom within the professorate. A faculty with a strong tradition of academic freedom would ideally work to create an atmosphere without coercion in which all professors and students, no matter how timid or unwilling to sacrifice, would feel free to express an unpopular dissenting view.

There will always be zealots; they are small in numbers. The question is how do the others in the community respond to zealots, especially those who have some sympathy for the zealots' ideology. The critical group is colleagues whose views are most advantaged by the coercion of zealots. Do they stand up to publicly defend the right of dissent?

In the light of historical experience, these ideal results seem highly unlikely. A large part of the world, including, in the final analysis, many in academia itself, strongly resist the central premise of a liberal intellectual system that all knowledge claims are revisable. The lust to censor in the name of other higher

moralties is extremely strong. Academics occupy a salient particularly exposed to this lust. Historical experience suggests that the construct of academic freedom to protect free discourse in the university from this strong lust to censor was flawed from the beginning. The construct assumed that the human nature of faculty members would be better than it has proven to be. Hofstader and Metzger noted this problem almost forty years ago.

No one can follow the history of academic freedom in this country without wondering at the fact that any society, interested in the immediate goals of solidarity and self-preservation, should possess the vision to subsidize free criticism and inquiry, and without feeling that the academic freedom we still possess is one of the remarkable achievements of man. At the same time, one cannot but be appalled at the slender thread by which it hangs, at the wide discrepancies that exist among institutions with respect to its honoring and preservation; and one cannot but be disheartened by the cowardice and self-deception that frail men use who want to be both safe and free. With such conflicting evidence, perhaps individual temperament alone tips the balance toward confidence or despair.51

For academic freedom to have meaning and for the university to have legitimacy, there must be some academics who will enter the fray publicly to protect academic freedom for the sake of the university. There have been, there are now, and there will be individual professors who have the wisdom and courage for this challenge. The university serving its mission of seeking, discovering and disseminating knowledge is one of humankind's most remarkable achievements. One of the greatest contributions an academic can make is an honorable defense of the principles on which the university stands.
