Academic Freedom and the Research University[1]

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WHEN WE IMAGINE creating the modern research university *de novo*, the first cornerstone to be laid is that of academic freedom. The American idea of academic freedom originated in Europe; it was faculty trained in European universities who brought with them the concept to American universities. About half of the members of the 1915 American Association of University Professors (AAUP) Committee that first articulated a statement of academic freedom in the United States were graduates of German universities.

Academic freedom was critical in enabling faculty first to free themselves from sectarian, religious domination and later to resist secular, political control. The modern research university could not have emerged absent this commitment to academic freedom. However, I believe that the principles upon which academic freedom is founded must be elaborated and modified in ways that are relevant to the responsibilities and circumstances of today's universities.

In spring of 2003 I proposed that the University of California adopt a new statement on academic freedom. The policy was approved by the Assembly of the Academic Senate on 30 July 2003 by a vote of forty-five to three, and became official university policy thereafter. This new policy is both traditional and innovative. It respects tradition in that it affirms the three components of academic freedom—freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. It breaks new ground in that it explicitly recognizes the means of maintaining those freedoms. The policy embraces the concept of the faculty as members of a profession with distinctive competencies and responsibilities; this concept is essential for the university to carry out its fundamental mission and essential to our policy on academic freedom.

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[1] An earlier version of this paper was presented at the Glion Colloquium titled "Reinventing the Research University" held in Glion, Switzerland, June 2003.

Course on Palestinian Poetics

The new policy emerged from debates sparked by a recent and heated controversy over a course on Palestinian literature. In spring 2003, a graduate student instructor at the Berkeley campus posted a description of his freshman composition course on the English department's Web site. The title of his course was "The Politics and Poetics of Palestinian Resistance." The course description explained that students would examine how Palestinians created literature "under the brutal weight of the Israeli occupation." The instructor's description made it clear that he was a staunch supporter of Palestinians. His course description ended with the suggestion that "conservative thinkers are encouraged to seek other sections" of the course.

On its face, the instructor's course description was outrageous. It raised several immediate concerns: departmental oversight of the course; senior faculty supervision of graduate student instructors; the bases on which an instructor may limit enrollment; student rights and how they are protected. Berkeley chancellor Robert M. Berdahl, working closely with the Academic Senate, resolved these questions quickly and skillfully. Senior faculty spoke with the instructor to ensure that he understood his obligations and responsibilities as an instructor at the university. The course description was changed. Students taking the course were advised that they had the right to express themselves and have their work evaluated without discrimination or harassment. They were also informed that they could bring concerns to the chair of the English department. A senior faculty member sat in on all class meetings to ensure that the course was consistent with academic norms. In the end, the students who took the class gave outstanding ratings to both the course content and the instructor. (For a full account of the issues the course raised and how they were addressed, see the May–June 2003 issue of *Academe*, the bulletin of the American Association of University Professors.)

Sproul Statement on Academic Freedom

The incident, however, revealed a fundamental weakness in the university's policies. When my colleague Patrick Hayashi and I examined UC's academic freedom policy, we found that President Robert Gordon Sproul had first articulated it in 1934; it was formally adopted as university policy in 1944. The policy is published in the Academic Personnel Manual and referred to as "APM 010—Academic Freedom":

> *The following announcement was originally made by the President of the University before the Northern Section of the Academic Senate on*

August 27, 1934, and is to be regarded as setting forth the principles which guide the President in these matters and accordingly stand as, in a certain sense, the policy of the University.

The function of the university is to seek and transmit knowledge and to train students in the processes whereby truth is to be made known. To convert, or make converts, is alien and hostile to this dispassionate duty. Where it becomes necessary, in performing this function of a university, to consider political, social or sectarian movements, they are dissected and examined—not taught, and the conclusion left, with no tipping of the scales, to the logic of the facts.

The University is founded upon faith in intelligence and knowledge and it must defend their free operation. It must rely upon truth to combat error. Its obligation is to see that the conditions upon which questions are examined are those which give play to intellect rather than to passion. Essentially the freedom of a university is the freedom of competent persons in the classroom. In order to protect this freedom, the University assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda. It therefore takes great care in the appointment of its teachers; it must take corresponding care with respect to others who wish to speak in its name.

The University respects personal belief as the private concern of the individual. It equally respects the constitutional rights of the citizen. It insists only that its members, as individuals and as citizens, shall likewise always respect—and not exploit, their University connections.

The University of California is a creature of the State and its loyalty to the State will never waver. It will not aid nor will it condone actions contrary to the laws of the State. Its high function—and its high privilege, the University will steadily continue to fulfill, serving the people by providing facilities for investigation and teaching free from domination by parties, sects, or selfish interests. The University expects the State, in return, to its own great gain, to protect this indispensable freedom, a freedom like the freedom of the press, that is the heritage and the right of a free people.

When President Sproul made this statement, California and the university were in turmoil. America was struggling with the Great Depression. There was tremendous labor unrest, often leading to large-scale demonstrations and strikes that ended in violence. A "Red scare" over a possible Communist takeover of the nation alarmed citizens and public officials alike. At that time the traditional view of collegiate life reflected a belief that students, faculty, and administration were all part of a collegial family. However, some professors and students had a different view. They openly questioned the nature and purpose of American universities, arguing that, far from being the agents of advancement and democracy, they assisted in maintaining an oppressive status quo.

University of California faculty and students spoke out against the many problems facing the nation—poverty, corporate greed, racism, imperialism, and militarism. This activism offended powerful state politicians and civic leaders and, consequently, threatened the university's political and budgetary support. That was the context in which President Sproul issued his directive on academic freedom. Faculty would limit themselves to the "dispassionate" task of dissecting "the logic of the facts." In return, the state would "protect" the "indispensable freedom" of the university to "transmit knowledge." Political neutrality was the *quid pro quo* for political support—a bargain that enabled President Sproul to navigate the turbulent political waters of his time.

But the Sproul policy is not simply a relic of another generation's political wars. It also contains statements about academic freedom that few would disagree with, for example, the condemnation of using the classroom to make converts to a particular political view or using the university as "a platform for propaganda." Yet when we looked to it for guidance on resolving the conflict over the Palestinian poetry class, the Sproul statement was unsatisfactory in important respects. "Neutrality," the principle that undergirds the Sproul policy, does not constitute a sufficient criterion on which to decide cases of academic freedom. "The logic of the facts" can and does lead different people to dramatically different conclusions. Who decides what is partisan and what is not? Without criteria to make such distinctions, judgment must be made on other grounds. History has shown that those judgments are often based on whether or not the content of a faculty member's writings or remarks offends specific groups.

Furthermore, there is no necessary correlation between effective scholarship and "neutrality," however the concept of neutrality may be defined. Faculty frequently hold strong viewpoints, many of which challenge prevailing orthodoxies. They routinely contribute to public discourse on a wide range of politically controversial subjects ranging from environmental hazards, welfare economics, and abortion policies, to human cloning, religious doctrine, and affirmative action. Academic norms require that faculty stand ready to revise their conclusions in the light of new evidence. And experience has shown that faculty members can and do combine strong commitments to a particular point of view with the highest professional standards of teaching and research.

Academic freedom is concerned with protecting the conditions that lead to the creation of sound scholarship and good teaching, not with maintaining political neutrality. Indeed, the Sproul policy's effort to spell out a single criterion that would apply in all disputes over academic freedom was one of its weaknesses. Further, by formulating the issue in political terms, the policy suggested that the university's administration

or the governing board should judge whether neutrality had been violated. Such an approach would not be consistent with our current understanding of shared governance, the role of peer review in judging research and teaching, or the division of authority among faculty, administration, and the governing board.

In sum, the Sproul policy is outdated because of its political agenda and because it is insufficiently helpful as a guide for resolving cases of academic freedom. For these reasons, we concluded it should be replaced.

Other Policies on Academic Freedom

We began by considering other policies on academic freedom put forth by the AAUP and a number of American universities. Many of these policies conceive of academic freedom, in part, as an extension of First Amendment rights expressed in the U.S. Constitution. However, this conception does not provide a sufficient basis for defining academic freedom. First Amendment rights are about individual freedoms relative to the state. The state cannot tell individual faculty members—or anyone else—that their ideas are wrong or inadequate. However, while the state may not pass judgment on the content of the speech of individual faculty members, universities judge the speech of faculty all the time. Universities award tenure, promotions, and salaries based upon an evaluation of the academic quality of faculty expression. A professor cannot rely on the First Amendment to protect him/her from the judgment of colleagues that his/her research or teaching is professionally inadequate.

The various policies that we reviewed tended to focus on the rights and privileges of a faculty member. Invariably, they inserted a reference to the special obligations and responsibilities of the faculty member. But there was neither clarity about the standard for defining responsibilities nor a procedure for judging whether or not a faculty member met that standard. This matter concerned us, because we believe that a standard of judgment should exist before a crisis or controversy arises.

New UC Policy on Academic Freedom

After concluding that existing policies did not provide an adequate basis for defining academic freedom, we enlisted Professor Robert Post to undertake the responsibility of formulating a new policy for the university. Professor Post is one of the nation's foremost experts on academic freedom, has served as general counsel for the AAUP, and is now a member of the AAUP's Committee on Academic Freedom and Tenure.

I asked him, in consultation with Professor Gayle Binion, chair of the UC faculty senate, and James Holst, UC general counsel, and his associates David Birnbaum and Steven Rosen, to draft a new policy for consideration.

In a letter dated 12 March 2003, Professor Post conveyed a draft of a three-paragraph academic freedom policy. That draft has been reviewed and modified by various faculty committees and our general counsel, but its substance is fundamentally unchanged. The revised statement follows:

> *The University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. These freedoms enable the University to advance knowledge and its faculty to transmit it effectively to their students and to the public. The University also seeks to foster in its students a mature independence of mind, and this purpose cannot be achieved unless students and faculty are free within the classroom to express the widest range of viewpoints in accord with the standards of scholarly inquiry and professional ethics. The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty. These duties are set forth in The Faculty Code of Conduct (APM 015).*
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> *Academic freedom requires that teaching and scholarship be assessed only by reference to the professional standards that sustain the University's pursuit and achievement of knowledge. The substance and nature of these standards properly lie within the expertise and authority of the faculty as a body. The competence of the faculty to apply these standards of assessment is recognized in the Standing Orders of the Regents, which establish a system of shared governance between the Administration and the Academic Senate. Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to appropriate review by the Administration, and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care.*
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> *Members of the faculty are entitled as University employees to the full protections of the Constitution of the United States and of the Constitution of the State of California. These protections are in addition to whatever rights, privileges and responsibilities attach to the academic freedom of university faculty.*

The first and third paragraphs of the new policy substantially reflect current understandings of academic freedom expressed most fully in

principles proposed by the AAUP. Paragraph two, however, proposes a procedure for assessing the obligations and responsibilities of a faculty member, a procedure that has not been advanced in any of the other policies we have examined.

Explanation of the New Policy

The first paragraph begins with the traditional definition of the mission of the university, that of "discovering and disseminating knowledge to our students and to the public." It follows the AAUP statement and refers to the tripartite division of academic freedom derived from this mission: "freedom of inquiry and research, freedom of teaching, and freedom of expression and publication." These freedoms for individual faculty members are part of the AAUP's "General Report of the Committee on Academic Freedom and Tenure" (1915), and are also referenced in the AAUP's 1940 "Statement of Principles on Academic Freedom and Tenure"; they have been widely accepted and endorsed. The right to freedom of expression and publication refers to the right both to speak in public as a scholar and a citizen, and also to speak as a participant in the university's affairs.

In one respect, however, the first paragraph goes beyond the AAUP principles by addressing the relationship between academic freedom and teaching. It states that one essential aspect of faculty teaching is to instill independence of mind in their students. Post, in his letter of transmittal, explained this: "Academic freedom in teaching is sometimes justified solely in terms of the need to disseminate to students the fruits of scholarly research; . . . But in my view academic freedom in teaching also depends on the need to attain the distinct educational objective, characteristic of universities, of fostering in our students the ability to think for themselves as mature adults."

To fulfill this objective, faculty members themselves must have the freedom to model intellectual independence in the classroom. Further, they must create a classroom environment in which students have freedom to express their own perspectives and question those of others without fear of negative consequences for their grades or academic standing.

The third paragraph of the revision makes clear that university faculty enjoy constitutional rights under the Constitution of the United States and the constitution of the state of California, just as other citizens enjoy such rights.

The second paragraph is where the policy departs from more traditional statements. It addresses the relationship between academic freedom and the professional autonomy of the professoriate. Post explained:

> The historical roots of academic freedom lie in this autonomy. The basic idea is that what counts as knowledge, scholarship, and teaching, turns on the application of professional standards of judgment. This idea has many implications. The most important is that the quality of faculty work is to be judged only by reference to professional standards of academic judgment. It is not to be determined by reference to the political decisions of the electorate, the priorities of financial donors, or the managerial priorities of the administration. Academic freedom historically developed in this country precisely because of the need to insulate faculty from these inappropriate bases of judgment.
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> A second important implication of the idea that the mission of the university depends upon the application of professional standards is that faculty have the responsibility both to assess the work of their peers and also to submit to the assessment of their peers. This responsibility is what underlies decisions concerning hiring, promotion, awarding tenure, approval of course descriptions, evaluations of teaching, and so forth. A third implication is that faculty must undertake to comply with professional standards in the performance of their duties. In the realm of teaching, for example, professional standards require that faculty accord students the right to think freely and to exercise independent judgment; that they evaluate students solely on the merits of their work; and that they not penalize students merely because of their political, ethical, or religious perspectives. If academic freedom implies professional autonomy, it also implies professional responsibility. Academic freedom does not shield faculty from judgment or evaluation if they act in ways that are professionally unethical or incompetent. We specify the nature of the professional responsibility of faculty in § 015 of the APM (Faculty Code of Conduct).

This new policy makes clear that academic freedom does not rest principally on the First Amendment rights of individual faculty, nor is it contingent on the sufferance of the state. Rather, academic freedom is rooted in notions of the faculty as members of an academic profession that has distinctive competencies essential for the functioning of the modern university. The faculty, as members of this academic profession, set their own standards governing how knowledge is created, assessed, and advanced.

Implications of the New Policy

This new policy does not seek to change in any way the authority of the Board of Regents to govern the University of California, or the responsibility of the administration to perform its appropriate role in governance. It *is* intended to clarify something that has not been

explicitly stated in any of the other policies we have examined; namely, that primary responsibility for issues involving academic freedom rests with the faculty. If a faculty member is working on a question germane to his/her discipline and addresses that question in an academically responsible way (adhering to the standards of his/her discipline), the institution has no basis for sanctioning the individual, no matter how controversial that person's viewpoint may be. Still, while the prerogatives of the university are limited, faculty are bound by professional standards and are subject to professional review and sanction. Faculty cannot violate professional standards and defend their conduct on the basis of academic freedom.

The reliance on peer review is fundamentally important. Without peer evaluation, the modern university could not function. Without the freedom to explore within the parameters of academic competence and professional norms, the university could not achieve its mission of advancing knowledge. That is why academic freedom is afforded special protection in American universities. At the same time, the new policy describes how the rights of the faculty are accompanied by broad responsibilities regarding the conduct of teaching and research, the assessment of evidence, and the regard that must be given to alternative viewpoints. Because of their professional expertise and their wide experience with the daily realities of teaching, research, and public service, the faculty have distinctive competencies that make them the members of the university community most qualified to judge on issues of academic freedom.

The new policy has disappointed some people who prefer to see a codification of what behavior is permitted and what is prohibited. I understand this desire. However, we already have a statement governing faculty behavior in APM 015—the Faculty Code of Conduct. The code, for example, forbids discrimination against a student on political grounds:

> As teachers, the professors encourage the free pursuit of learning of their students. They hold before them the best scholarly standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure their evaluations of students reflect each student's true merit. . . . They avoid any exploitation, harassment, or discriminatory treatment of students. . . . They protect their academic freedom. (APM 015, Section 2.A., p. 4)

The code sets forth ethical principles and provides examples of unacceptable faculty behaviors that are subject to university discipline. No such list of examples can ever be complete; the code simply illustrates

the types of unacceptable conduct that can be derived from the ethical principles.

Our new policy on academic freedom affirms the principle that faculty conduct will be assessed in reference to academic values and professional norms, an inherently broad and flexible standard that is properly left to the determination of the faculty. This articulation of academic freedom implies that the key to proper governance and responsible faculty conduct lies in the careful recruitment and advancement of faculty based on academic values, reliance on faculty to govern themselves wisely, and the expectation that they will fulfill their responsibility to discipline faculty members who violate the norms of the academic profession.

Faculty governance, peer review, and academic freedom gave rise to the research university as we know it today. We would be wise to anticipate that boundaries will change between disciplines, and between the university and other institutions. How research is conducted and how education takes place will change. Sources of support will become more volatile and varied. Professional and political relationships will become more complex. The challenges facing the research university will only expand.

If we wish to meet these challenges wisely and responsibly, we must reaffirm the importance of academic freedom and the accompanying responsibilities of the faculty. This requires that universities rely, not on increasingly elaborate rules and regulations constraining faculty behavior, but rather on the values and norms that must govern faculty professional conduct. This, in turn, requires reaffirmation that modern universities can flourish only when there is a system of shared governance in which faculty are given authority, with accompanying freedom and responsibility, over academic matters.