

## THE EVOLVING SOCIAL PURPOSE OF ACADEMIC FREEDOM<sup>1</sup>

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**Abstract:** In the face of the increasing substitution of free speech for academic freedom, I argue for the distinctiveness and irreplaceability of the latter. Academic freedom has evolved alongside universities in order to support the important social purpose universities serve. Having limned this evolution, I compare academic freedom and free speech. This comparison reveals freedom of expression to be an individual freedom, and academic freedom to be a group-differentiated freedom with a social purpose. I argue that the social purpose of academic freedom behooves an inclusive approach to group differentiation.

### 1. FREE SPEECH OR ACADEMIC FREEDOM?

#### WHY THE DISTINCTION MATTERS

In recent years, there has been much talk in the media, by politicians, and indeed among academics of a campus free speech crisis. Universities, the story goes, are sacrificing free speech to civility codes and safe spaces, and university students are increasingly shutting down or de-platforming speakers they disagree with. A great deal of ink has been spilled over the question of just how accurate the characterization I have just

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<sup>1</sup> Brief portions of this paper were adapted from Dea 2018a and 2018b. Many thanks to two anonymous referees, whose helpful suggestions strengthened the final version. Thanks too to Barrett Emerick and Alice MacLachlan, and to audience members at the Canadian Society for Women in Philosophy for their comments on an earlier version of this paper, and to Kate Norlock for suggesting this special issue. I acknowledge that this research was supported by a Social Sciences and Humanities Research Council of Canada Insight Development Grant.

sketched really is.<sup>2</sup> Rather than taking a side in that debate, I argue that it is the wrong debate to have.

The current focus on campus freedom of expression trades on a conflation of free speech and academic freedom, or worse, a substitution of freedom of expression for academic freedom.<sup>3</sup> This conflation often leads to the demand that universities in particular – even those not constitutionally obliged to do so<sup>4</sup> – provide strong freedom of speech protections that are not typically expected of other types of institutions.<sup>5</sup>

The substitution of freedom of expression for academic freedom is apparent not only in the popular media, but in organizations and documents that are centered on higher education. Most notably, perhaps, the University of Chicago’s so-called “Chicago Principles” (Stone et al., n.d.) express that university’s commitment to “protect and promote free expression,” and remain silent on academic freedom.

Similarly, the mission statement for the Foundation for Individual Rights in Education (FIRE) describes that organization’s purpose as “defend[ing] and sustain[ing] the individual rights of students and faculty members at America’s colleges and universities,” which, it says, “include freedom of speech, freedom of association, due process, legal equality, religious liberty, and sanctity of conscience—the essential

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<sup>2</sup> See, for instance, Beauchamp 2018; Behrent 2019; Bollinger 2019; Lukianoff and Haidt 2019; MacDonald 2018; Sachs 2019; Semley 2019; Slater 2016.

<sup>3</sup> Throughout, I use “free speech”, “freedom of speech”, “freedom of expression” and “expressive freedom” more or less interchangeably.

<sup>4</sup> For instance, private universities in the U.S. As well, while most Canadian universities are public, not private, courts have typically found that they are not agents of the state, and hence that they do not bear *Charter of Rights and Freedoms* obligations.

<sup>5</sup> In a recent talk (Wells 2019), Ira Wells noted that while critics often demand that student newspapers offer a diversity of views, no one expects military, policy or financial publications to publish diverse perspectives. This asymmetry points to the special demands that are imposed universities but not on other types of institutions.

qualities of liberty” (Foundation for Individual Rights in Education, n.d.). The “Mission” page on FIRE’s website mentions free speech eight times and does not once mention academic freedom. A search of FIRE’s whole site turns up about five times as many hits for “freedom of speech” as for “academic freedom. FIRE’s comparative inattention to academic freedom is surprising from a foundation broadly concerned with higher education. As we shall see, however, it is not surprising from an organization devoted to *individual rights* in education.

The widespread substitution of freedom of expression for academic freedom ignores important differences between the two freedoms, and crucially overlooks the primary purpose of the university to seek truth and advance understanding. Indeed, conflating academic freedom with freedom of expression imperils the university’s core mission and the broader social purpose that is served by that mission. This risk is perhaps most evident in the recent trend toward campus free speech legislation.

By March of 2018, eight U.S. states had passed campus free speech legislation, a ninth had approved campus free speech measures without legislation, and seven more had introduced campus free speech legislation (American Association of University Professors, 2018a).<sup>6</sup> In March of 2019, then-President Trump issued an executive order mandating that federal research funds be withheld from universities that don’t protect free speech (Svrluga 2019). Two Canadian provinces, Ontario and Alberta, have imposed on post-secondary institutions the obligation to develop and implement free expression policies based on the Chicago Principles (Office of the Premier 2018; Smith 2019). A

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<sup>6</sup> The AAUP traces much of this activity to conservative think tank the Goldwater Institute, which produced model bills that formed the template for the campus free speech legislation that was tabled in state legislatures.

third province, Québec, has vowed to intervene to defend free speech on campus, but hasn't yet offered any details (Montpetit 2021). In 2021, legislators in the United Kingdom vowed to enact campus free speech legislation, after failing to follow through on two previous such promises (Syal and Mason 2017; Weale 2021).

In general, the choice between free speech and academic freedom rests on a false dichotomy. One need not choose between free speech and academic freedom. They are not the same thing, but neither are they in contest. That said, campus free speech legislation is a politically-motivated weaponization of free speech that is deeply at odds with academic freedom. Campus free speech legislation wrongly treats free speech rather than academic freedom as the freedom that is proper to post-secondary institutions. Further, it compromises academic freedom by undercutting shared governance and institutional autonomy.

In a critique of campus free speech legislation, the American Association of University Professors (AAUP) urges that “academic administration should be in the hands of academics. Where there are legitimate threats to free speech on campus, they are best addressed by campus administration and faculty—not through the imposition of statewide legislative measures” (Owens 2018). Put simply, campus free speech legislation takes decisions about the scholarly operation of universities out of the hands of scholars and puts them into the hands of politicians. As the next section makes clear, the historical precedents for such a move are very troubling indeed.

In what follows, I seek to make clear the distinctiveness and irreplaceability of academic freedom. I begin by tracing its evolution. Academic freedom evolved alongside universities. The canonical expressions of academic freedom capture the needs of the

particular university contexts for which they were developed. While these contexts and the corresponding conceptions of academic freedom have changed, a common theme has been the important social function served by universities. Having surveyed that history, I explore the distinct scopes and purposes of academic freedom and free speech. Academic freedom offers stronger protections than free speech, but to a narrower group of rights-bearers and for a broader social purpose. While free speech is an individual right intended (*inter alia*) to benefit the individual who bears it, academic freedom is a group-differentiated right, borne by individuals in the service of society. Finally, I conclude by arguing that as universities continue to evolve with an ever-lower proportion of scholarly personnel protected by tenure, we must extend the scope of who bears academic freedom beyond the tenured professoriate.

## 2. A BRIEF HISTORY OF ACADEMIC FREEDOM

Academic freedom is one of the pillars of the modern university, and yet it is a comparatively new concept. It is neither timeless nor unchanging. Its history parallels that of universities, and indeed the earliest precursors of academic freedom arose alongside the first universities. Academic freedom originated in order to support the scholarly mission of universities. As universities and their function have evolved, so has academic freedom.

While academic freedom was christened in Europe, it was arguably born further south. In particular, the universities founded in the tenth and eleventh centuries in the Middle East and North Africa fostered remarkable diversity in scholarly approaches. However, the concept of academic freedom was not codified there. Moreover, the *de*

*facto* academic freedom these institutions cultivated was destroyed in later centuries by European colonization (Scholars at Risk, 2017–2018).

### 2.1 Prussian Reform: Science, Not Training

Academic freedom re-emerged in nineteenth century Germany with the Prussian reform and the so-called Humboldtian university. Wilhelm von Humboldt's educational reforms enshrined Johann Gottlieb Fichte's concept of *Akademische Freiheit* (academic freedom), along with the companion concepts of *Lehrfreiheit* (freedom to teach) and *Lernfreiheit* (freedom to learn) (Finkin and Post 2009, 22–23; Östling 2018, 234). For Humboldt, the freedoms to teach and to learn meant that university scholars could choose for themselves what to teach and research, and how to do it, and university students could choose which courses to take and which professors to take them with. For students, this was the beginning of the broad, flexible degree requirements that are today the hallmark of a liberal arts education. So swift was the effect of this reform that by 1898, American philosopher Charles Sanders Peirce in a lecture at Harvard University unfavorably compared U.S. universities, which he described as mere training institutions, with German universities, whose commitment to advancing knowledge made them, in Peirce's words, "the light of the whole world" (Peirce 1898, 47).

The rise of the Third Reich led to the end of academic freedom and the accompanying principle of institutional autonomy in Germany. Hitler declared universal education "the most corroding and disintegrating poison." He appointed Bernard Rust, a former schoolmaster, as Minister of Education. Rust selected the rectors for German universities, and announced that "the future basis for all studies in German universities

would be the Nazi racial theories” 1500 faculty members across the country were dismissed. By 1939, 45% of German faculty members had been replaced by Nazis (Beall 1969, 486).

### *2.2 The AAUP: Extramural Expression and Duty to the Public*

By this time, academic freedom had begun to take root in America, again in parallel with the evolution of American higher education. In 1915, the nascent AAUP endorsed its “Declaration of Principles on Academic Freedom and Academic Tenure” (American Association of University Professors 1915). That declaration reprised the Humboldtian assertion of the freedom to teach and the freedom to learn, but focused on the former and adapted to the U.S. context – in particular, the American commitment to freedom of speech. On the AAUP’s (1915) account, the freedom to teach comprises three subsidiary freedoms: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action.

This third freedom was a new addition to the earlier Fichte-Humboldt model. It emerged in part because of the centrality of freedom of speech among American values, in part due to differences in employment conditions and social status between nineteenth century German professors and twentieth century American philosophers, and in part in response to punitive actions taken by some U.S. college trustees against professors in reprisal for their extramural utterances and actions.

Another important new theme that received its first full expression in the 1915 statement is the duty that professors owe to the public. The statement draws an analogy between the relationship between courts and the executive branch and the relationship

between professors and college trustees. Both the courts and professors bear professional responsibility “primarily to the public itself”, not to those who appointed them. The professor’s “duty is to the wider public to which the institution itself is morally amenable.” Just as the President ought not to intervene in court proceedings neither should college trustees intervene in professors’ performance of their scholarly responsibilities (American Association of University Professors 1915).

The 1915 statement is extraordinarily useful, but long. In 1925, the American Council on Education (which included the AAUP in its membership) formulated the shorter “1925 Conference Statement on Academic Freedom and Tenure” (American Association of University Professors 1940). From 1934 to 1940, the AAUP worked with the Association of American Colleges (now the Association of American Colleges and Universities) on a further restatement of the principles. The result of this work is the “1940 Statement of Principles on Academic Freedom and Tenure,” which remains the AAUP’s official academic freedom statement, and one of the most important and influential expressions of academic freedom worldwide. Today, around 250 scholarly and professional associations in the U.S. endorse the 1940 Statement.

The 1940 Statement retains the 1915 Declaration’s view that the three main freedoms of inquiry, teaching, and extramural expression fall under the rubric of academic freedom. Each of them in turn is addressed in the three main principles articulated in the 1940 Statement. The 1940 statement is at once pithier and more cautious than the 1915 Declaration. Finkin and Post observe that the 1940 statement “is a compact, a treaty that reflects concessions by both parties” (Finkin and Post



2009, 48). For each of the three subsidiary freedoms, the 1940 Statement first affirms the freedom and then sets out cautions and limitations with respect to that freedom.

This new hesitancy is perhaps most apparent in the domain of extramural utterance and action. The 1915 Declaration observes that “[a]ll five of the cases which have recently been investigated by committees of this Association have involved, at least as one factor, the right of university teachers to express their opinions freely outside the university or to engage in political activities in their capacity as citizens” (American Association of University Professors 1915, 292). In light of this, it urges that academic freedom must include freedom of extramural utterance and action, and discusses this freedom at some length. By contrast, the 1940 Statement narrows the scope of extramural utterance and action by conspicuously excluding action and focusing on “speak[ing] or writ[ing] as citizens.” Further, well over half of the 1940 Statement’s discussion of speaking or writing as citizens urges caution and restraint in such speech or writing.

### *2.3 A Cluster of Freedoms and a Social Purpose*

The three aspects of academic freedom that are articulated in the 1915 Declaration and the 1940 Statement – that is, the freedoms of inquiry, teaching and extramural expression – are arguably umbrellas for a larger cluster of freedoms. Academic freedom includes the freedoms to decide upon lines of inquiry; to choose research topics and methodologies; to create, curate, teach, learn and disseminate scholarship and creations; to criticize institutions (especially university administrations and governments), and to express one’s views extramurally; as well as freedom from censorship.

While discussions of academic freedom often focus on “output” – dissemination and extramural expression – the other pre-dissemination freedoms clustered under the rubric of academic freedom are equally important. Freedom of choice regarding the research questions to pursue can have enormous downstream effects on scholars, their institutions and their disciplines, and indeed on society.

Further, different aspects of academic freedom are important to different kinds of scholars in different institutional contexts, and different aspects of academic freedom become important at different scholarly stages. For instance, the freedom to teach is more important for a teaching-intensive professor employed at a small liberal arts college than it is to a star researcher at an R1 institution (that is, an institution with doctoral programs and very high research activity) who seldom teaches classes.

All of the subsidiary freedoms clustered together as academic freedom are necessary for the university to fulfill its scholarly mission to seek truth and advance knowledge and understanding. Indeed, this scholarly mission is the very reason for academic freedom. Further, the 1940 Statement is explicit that this mission – and the academic freedom protections that support it – serves society as a whole: “Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition” (American Association of University Professors 1940).

Academic freedom protections evolved as they did in order to permit scholars to pursue unpopular, risky, or impolitic research and teaching programs without fear of discipline or termination. These scholarly programs in turn make it possible for

universities to serve society by advancing knowledge on a wide array of topics. This advancement of knowledge is the important social purpose that universities serve, and indeed have a duty to defend.

There is a catch though. As Jacques Derrida observed in a 1983 talk at Cornell, the modern university is founded on a kind of paradox: it depends upon the support of society and is answerable to society, but in order to fulfill its important social mission it must remain autonomous – which is to say, independent of society (Derrida 1983).<sup>7</sup>

#### *2.4 UNESCO: Labor Conditions Amidst Political Threats*

The 1915 Declaration and the 1940 Statement were influential both within and beyond the United States in their characterization of the public good that is served by academic freedom. This theme is reflected in what is probably the most important international academic freedom standard today, the United Nations Educational, Scientific and Cultural Organization’s (UNESCO) 1997 “Recommendation concerning the Status of Higher-Education Teaching Personnel.”

The preamble of that influential document justifies academic freedom not only on the basis of individual education rights but also because “higher education and research are instrumental in the pursuit, advancement and transfer of knowledge and constitute an exceptionally rich cultural and scientific asset” and because of the contribution higher education teaching personnel make “to the development of humanity and modern society” (ILO/UNESCO 2008).

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<sup>7</sup> Hearn 2019 discusses this aspect of Derrida’s talk.

A further important theme in the 1997 Recommendation beyond the social good performed by higher education personnel is the importance of labor protections for those personnel. The centrality of this theme in the 1997 Recommendation is in part due to the influence of the 1915 Declaration and the 1940 Statement, and in part due to the distinct conditions of the 1997 Recommendation's creation. The 1997 Recommendation is a companion to The International Labour Organization (ILO)/UNESCO Recommendation concerning the Status of Teachers (1966), and while both recommendations have important implications for educational institutions and educational policy, both are primarily concerned with working conditions for teachers (ILO/UNESCO 2008).

In 1993, the UNESCO General Conference decided to devise and adopt an international standard-setting recommendation on the status of higher education teaching personnel. However, in 1984, President Ronald Reagan had withdrawn the U.S. from UNESCO. Looking for North American leadership from outside the U.S., UNESCO turned to the Canadian Commission for UNESCO, which seconded Canadian Association of University Teachers (CAUT) Executive Director Donald Savage as an expert for the project (Savage and Finn 2017).<sup>8</sup> The resulting recommendation is focused not only on academic freedom but also on the labor rights of scholarly personnel – a predictable result given that the recommendation was devised largely under the stewardship of a Canadian labor leader as an intended complement to UNESCO's earlier joint recommendation with the ILO.

In addition to its recommendations about working conditions, the UNESCO Recommendation offers a detailed articulation and defense of academic freedom, which it

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<sup>8</sup> Professors at most Canadian universities are unionized. CAUT is Canada's federation of faculty unions.

situates in the context of political challenges and in particular “the vulnerability of the academic community to untoward political pressures which could undermine academic freedom” (ILO/UNESCO 2008).

### *2.5 Scholars at Risk: Core University Values*

The background political challenges to which the UNESCO Recommendation refers similarly animate a comparatively new player in the world of academic freedom: Scholars at Risk (SAR). Formed in 1999, the U.S.-based international non-governmental organization, SAR, works to defend scholars around the world who face sanctions, including imprisonment, exile or death from their governments. In tandem with its sponsorship and advocacy programs to support such scholars, it has become increasingly active in educating academics and the public about academic freedom through reports, conferences, and a Massive Open Online Course (MOOC) it developed in partnership with the University of Oslo. In those materials, SAR elaborates a distinct conception of academic freedom as one among several core values that animate modern universities.

SAR lists academic freedom, social responsibility, institutional autonomy, accountability and equitable access as the five core values that are central to the mission of the modern university. SAR emphasizes the importance of reflecting on the core higher education values in order to defend academic freedom and both prevent and resolve conflicts over academic freedom.

SAR’s cluster of the five core values flows from the scholarly purposes described in UNESCO’s 1997 statement, but also echoes the trade-off Derrida described at Cornell. Universities have a duty to serve the public. Thus, they must be socially responsible, they must be accountable to society, and they must provide equality of access. In order to

fulfill their social functions, they possess certain freedoms that shelter them from social repercussion – academic freedom for scholars and institutional autonomy for universities.

SAR’s approach does not treat academic freedom as more fundamental than the other four core values it identifies. When tensions emerge among the five values, as they inevitably will, SAR counsels discussion and reflection to balance the competing considerations. None of the values – including academic freedom – trumps the others. In this way, SAR’s approach to academic freedom is strikingly different from common conceptions of free speech as fundamental and indispensable, and indeed as trumping other rights and freedoms.<sup>9</sup>

Whereas the other accounts of academic freedom I have surveyed in this section tend to be juridical in character, SAR’s account is restorative. Further, whereas the other accounts each capture a moment in the evolution of academic freedom, SAR’s account situates academic freedom within universities that are themselves evolving as their members navigate the tensions that inevitably arise among their core values.

This brief survey has made clear that academic freedom is evolving and complex. While there is no single monolithic account of academic freedom, it bears considerable differences from freedom of expression. It is to those differences that we now turn.

### 3. ACADEMIC FREEDOM AND FREEDOM OF SPEECH:

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<sup>9</sup> The familiar notion of free speech as trumping other rights and freedoms is common in the U.S. and promulgated abroad by U.S. media. However, outside of the U.S., many jurisdictions balance freedom of speech against other rights and freedoms. In Canadian law, for instance, expression is subject to reasonable limits if that expression is likely to result in harm to the public interest or to the rights of others (Tuttle 2019). While a similar principle is operant in U.S. law, Canadian courts tend to be much more willing to factor in the possible harms of speech than are their U.S. counterparts.

## DIFFERENCES IN SCOPE AND PURPOSE

While expressive freedom is one aspect of academic freedom and while academic freedom and freedom of speech are connected in some ways, it is important to understand the ways in which academic freedom and freedom of speech are different. The two main differences between free speech and academic freedom reside in their respective scopes and purposes.

### *3.1 Different Scopes*

Academic freedom has a narrower scope than freedom of speech in the sense that fewer people have the former freedom than the latter. However, it has a broader scope in the sense that those who possess academic freedom have more protected activities than do bearers of freedom of speech alone. Let's look at each of these differences of scope in turn.

Freedom of speech is a constitutional protection. Everyone who is protected by the Constitution has freedom of speech. That means that all residents, irrespective of their credentials or role have freedom of speech solely in virtue of their membership in society. It is worth noting that only residency, and not citizenship, is required for constitutional protection. Since the nineteenth century, the United States Supreme Court has repeatedly found that constitutional protections extend to resident non-citizens (See for instance *United States v. Wong Kim Ark*, 169 U.S. 649 (1898); and *Fong Yue Ting v. United States*, 149 U.S. 698 (1893)). By contrast, academic freedom is limited to certain scholarly personnel (typically professors) at certain kinds of higher education institutions

(typically universities). Although academic freedom protections are in some ways (ways that often become manifest in arbitration and litigation) undergirded by constitutional free speech protections, they are the proximal result not of the Constitution but of university contracts, policies, and collective agreements. The main reason for this difference in scope is that freedom of speech is regarded as a basic necessity for both individual flourishing and full participation in society, whereas academic freedom is regarded as a necessary mechanism for highly qualified personnel to play their part in the academic mission of the university, and thereby in the important social role that universities perform.

While comparatively few people have academic freedom protections, those protections can be formidable. Academic freedom allows scholarly personnel with tenure or the equivalent of tenure much more freedom in the conduct of their work than most employees enjoy. As I noted in 2.3, academic freedom is actually a cluster of freedoms, including the freedom to decide upon lines of inquiry; to choose research topics and methodologies; to create, curate, teach, learn and disseminate scholarship and creations; to criticize institutions (especially university administrations), and to express one's views extramurally; as well as freedom from censorship.

Academic freedom means that universities may not under normal circumstances dictate to their scholarly personnel how to undertake their scholarly work or, beyond standard teaching assignments, what scholarly work to undertake. Academic freedom means that a university may not fire or otherwise discipline scholarly personnel for the type of scholarship they engage in, and that universities must in various ways, including



the provision of legal assistance or additional personal security, support scholarly personnel who are attacked or sued because of their research or teaching.

The constitutional freedom of speech protections that the public enjoys are in some ways much weaker. The First Amendment and other such constitutional protections outside of the U.S. protect individuals against state interference in their speech, but they do not oblige non-state actors to permit just any speech at all. Nor do they permit persons to engage in controversial speech or speech critical of their employer with full employment protections. For instance, several participants in the August 2017 white supremacist march in Charlottesville, Virginia were fired by their employers for having participated in the march. These terminations were legal. Since the employers were private sector and not state organizations, the First Amendment did not protect the employees from termination (Gordils 2018).<sup>10</sup>

By contrast, while universities do sometimes fire professors for exercising their speech rights, they rarely do so, in large part because of academic freedom protections. In a survey of faculty terminated from U.S. post-secondary institutions because of political speech for the period 2015–2017, political scientist Jeffrey Sachs found only forty-five cases (Sachs 2018). Among these, sixteen were of non-tenure-track faculty.<sup>11</sup> Thus, only twenty-nine cases represent tenure-line faculty with contractual academic freedom protections being terminated. To put this in context, it is worth noting that the AAUP's *Annual Report on the Economic Status of the Profession, 2017–2018* includes data about 378,865 full-time faculty members at 1018 reporting institutions (American Association

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<sup>10</sup> However, some U.S. states have enacted statutes to prevent employers firing private employees for their political activity.

<sup>11</sup> Sachs notes that this number is probably lower than the reality since many cases in which precarious instructors' contracts are simply not renewed go unreported.

of University Professors 2018b), making the incidence of tenure-stream faculty being terminated for controversial speech something like 1 in 13,000. In sum, then, freedom of expression is much more widely enjoyed than academic freedom, but academic freedom offers stronger protections for those who have it.

A further difference between the two freedoms is that free speech is typically regarded as innate and inalienable, but academic freedom is neither. No one is born with academic freedom. Rather, it is acquired in virtue of one's professional position. If one ceases to hold that position, they thereby cease to enjoy academic freedom protections. The differences in the scope, force, and alienability of the two freedoms are ultimately explicable by their distinct purposes.

### *3.2 Different Purposes*

Scholars and jurists have long debated the exact purpose of First Amendment free speech protections. One classic view is Thomas Emerson's, which identifies four main purposes: (1) "assuring individual self-fulfillment"; (2) "advancing knowledge and discovering truth"; (3) "provid[ing] for participation in decision making by all members of society"; and (4) "achieving a more adaptable and hence a more stable community, ... maintaining the precarious balance between healthy cleavage and necessary consensus" (Emerson 1970, 6–7, qtd. in Redish 1982, 591). Similarly, the Supreme Court of Canada names three core values as grounding the Charter of Rights and Freedoms Section 2(b) protection of freedom of expression, to wit, "democratic self-government, the advancement of truth and knowledge and individual self-realization" (Elliot 2012, 435).

By contrast, the main international founding documents that define academic freedom identify narrower purposes for it. The AAUP 1940 statement has the following to say about the purpose of academic freedom:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.// Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. (American Association of University Professors 1940)

The preamble to UNESCO's 1997 recommendation provides a more diffuse list of the purposes of academic freedom:

[...] higher education and research are instrumental in the pursuit, advancement and transfer of knowledge and constitute an exceptionally rich cultural and scientific asset,

[...] governments and important social groups, such as students, industry and labour [*sic*], are vitally interested in and benefit from the services and outputs of the higher education systems,

[...] the decisive role of higher education teaching personnel in the advancement of higher education, and the importance of their contribution to the development of humanity and modern society,

[...] higher-education teaching personnel, like all other citizens, are expected to endeavour [*sic*] to enhance the observance in society of the cultural, economic, social, civil and political rights of all peoples... (ILO/UNESCO 2008, 46)

In short then, the AAUP statement focuses on universities' and university personnel's important social role in the advancement of truth. The UNESCO recommendation agrees with this purpose, but adds further elaboration of universities' and university personnel's role in contributing to democracy, culture, and industry.

In comparing the respective purposes of free speech and academic freedom, two similarities emerge: both freedoms are intended to support the advancement of

knowledge and the discovery of truth, and both freedoms are intended to support a well-functioning democracy. However, whereas freedom of speech directly supports democracy by permitting citizens to engage in political speech, academic freedom provides indirect support by cultivating citizens who are better able to participate in political and civil life (Post 2019).

The most striking difference between the canonical justifications for the two classes of freedoms is the absence of individual self-realization or individual self-fulfillment from the purposes of academic freedom. Thus, while freedom of expression is regarded as supporting both social and individual goods, academic freedom is intended to support only social goods, not individual ones. It is for this reason that academic freedom is adventitious and alienable. A person is entitled to academic freedom only inasmuch as in their professional capacity they play a certain part in the university's important social role. Professors have academic freedom so that they can play this part. When they are no longer in a position to do so, they cease to have academic freedom.

### *3.3 Group-Differentiated for the Common Good*

The foregoing summary of the different scopes and purposes of academic freedom and freedom of expression reveals academic freedom to be a very interesting kind of right. First, it is a *group-differentiated right*. That is, even though it is individual professors and not the collegium as a whole who enjoy academic freedom, they do so in virtue of their membership in a group – specifically, the collegium of scholars. Group-differentiated rights are inherently exclusive in that they are not extended to individuals outside of the group. They thus require special justification (Mitnick 2004).

Henry Reichman considers the various justifications that have been posited for academic freedom and broadly classes them into the “common good” approach and the “just a job” approach (Reichman 2019, 28–30). The “common good” approach relates to professors’ role in the scholarly mission of the university, and the important social function that scholarly mission performs. The “just a job” approach focuses on academic freedom as a negotiated benefit for professors as employees.

While these two approaches are in some tension with each other, there is no particular need to choose between them. Indeed, both approaches are operative in the founding academic freedom documents that we surveyed in Section 2. In particular, the various AAUP statements on academic freedom and the UNESCO 1997 Recommendation all explicitly treat academic freedom as an employment condition. However, they justify that employment condition by means of the social function that universities, and the professors who populate them, perform.

The common good justification for the group-differentiation of academic freedom brings us to the second interesting feature of academic freedom: academic freedom is at least distally other-directed. I say “distally” other-directed because in many cases professors themselves are the immediate beneficiaries of academic freedom. However, it is not the main purpose of academic freedom to furnish those individual benefits. Rather, professors in general possess academic freedom because their possession of it ultimately serves society in general.

Both the group-differentiated scope and the other-directed, social purpose of academic freedom make it considerably less individualistic than freedom of expression. Indeed, this key difference may help to explain why many classical liberals, libertarians,

and civil libertarians tend to focus on freedom of expression rather than academic freedom, even in academic contexts. Put simply, both liberals and libertarians favor individual rights over group or group-differentiated rights.

Recall my earlier discussion of FIRE's comparative inattention to academic freedom. It is significant that FIRE is the Foundation for *Individual* Rights in Education.<sup>12</sup> Much for FIRE hinges on "Individual". Moreover, while FIRE does not reveal its funding sources, tax filings reveal that a great deal of the funding for FIRE comes from libertarian and conservative sources, chief among them the Bradley Foundation, the Charles G. Koch Foundation, the Claude R. Lamb Charitable Foundation (a Koch family foundation) and Koch conduits DonorsTrust and Donor Capital Fund (Sourcewatch n.d.a).

FIRE is just one of many vehicles that libertarian and conservative foundations use to supplant academic freedom with free speech. *The Atlantic's* Koch Foundation funded "The Speech Wars" project (Charles Koch Foundation 2018), and various free speech initiatives by the Cato Institute (a Koch funded think tank) both routinely discuss campus issues in a way that centers on freedom of expression and ignores academic freedom. The Goldwater Institute, which (see n.6) created the playbook for state-level campus free speech legislation, receives substantial direct and indirect Koch funding (Sourcewatch n.d.b).

The (frequently Koch-funded) movement to supplant academic freedom with freedom of expression is not simply a neutral philosophical inclination toward individual rights rather than group-differentiated rights in support of social goods. Rather, the free

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<sup>12</sup> Emphasis mine.

speech on campus movement too often functions to force campuses to host hateful public figures. In 2017, for instance, the University of Florida was obliged by law to rent space to the National Policy Institute for a talk by NPI's President, neo-Nazi and white supremacist, Richard Spencer (Bauer-Wolf 2017). Spencer himself promoted the talk as an important blow for campus free speech. At the same time, campus free speech legislation and (quasi-) policy documents like the Chicago Principles seek to prevent students from engaging in protest, itself a timeworn form of free expression.

There are good reasons, then, to be suspicious of right-wing groups' efforts to supplant academic freedom with freedom of expression in the context of higher education. Nonetheless, it is also important with any group-differentiated right to be attentive to who is excluded from the right and who is included in order to ensure that the basis for the group-differentiation is not unjust. It is to this matter that we now turn.

#### 4: WHO'S IN AND WHO'S OUT?

I said earlier that under normal circumstances scholarly personnel have academic freedom. More and more though, academic freedom is unevenly distributed.

##### *4.1 Academic Freedom for University Employees*

Tenure or its equivalent is crucial for the protection of academic freedom. Increasingly, though, tenure-stream professors are outnumbered by adjuncts who work from contract to contract without the protection of tenure. According to a 2013 report by the AAUP, 76 per cent of U.S. college instructional staff are contingent, a 300% increase since 1975 in the proportion of post-secondary instructors outside of the tenure stream

(Curtis and Thornton 2013). Precarious scholarly personnel have very little defense against disciplinary action or termination by their employer. Moreover, for personnel who may not have the same institutional affiliation from one academic year to the next, or who divide their affiliations across multiple institutions, there is little prospect of their university providing legal or other supports when controversy surrounding their work attracts threats or legal action.

Some scholars argue that, even among the tenured, academic freedom is unevenly distributed. Sociologist Johnny Williams argues that academic freedom is in practice conditional, its protections contingent on professors' racialization and scholarly wheelhouse. In particular, he argues that Black professors who in their scholarship critique white supremacy are “harassed, physically threatened, and warned that we are in danger of losing our jobs” (Williams 2018, 5). Further, as Sheila Cote-Meek documents in her book, *Colonized Classrooms*, ongoing racism within academe reduces the participation of Indigenous scholars within universities generally as well as within particular disciplines (Cote-Meek, 2014). Indeed, some scholars argue that the very notion of academic freedom is ill-suited to certain scholars and communities. Thus, for instance, Cree-Métis scholar Chelsea Vowel criticizes the individualistic, rights-based character of academic freedom, and expresses her own commitment to scholarly norms based on the Indigenous model of mutual responsibilities within a community (Vowel 2018).

It is important to ensure that minoritized scholars have full academic freedom protections not only as a matter of justice, but also because attacks on anti-oppressive disciplines that center on minoritized scholars are being used as wedge issues to



undermine tenure and institutional autonomy (Rahman 2019). For instance, recent efforts in Brazil, Bulgaria, Hungary, and Poland to delegitimize, defund, and even prohibit gender studies programs, and the Trump White House’s 2020 memo attacking critical race theory both threaten academic freedom and collegial governance in general (American Association of University Professors 2018c; Redden 2018).

It is not only professors who play scholarly roles essential to the university’s mission. Highly credentialed scholars support the university’s work in a variety of non-faculty roles. Academic librarians are often, but not always, accorded the title of “faculty” along with the rights attendant upon that title. Other highly qualified personnel outside of the faculty complement include university research scientists and staff at writing centers and teaching centers. As these positions continue to proliferate, it will be crucial to assess and re-assess which of these roles entitle the holder to academic freedom. Certainly, some of these positions are ill-suited for the full range of academic freedom protections. However, as more and more of universities’ scholarly work happens outside of faculty streams, the lack of academic freedom protections for non-faculty scholars compromises the university’s ability to pursue its academic mission irrespective of state, corporate and popular opposition.

#### *4.2 Academic Freedom for Students*

Students’ academic freedom is likewise – at least in North America – poorly understood and weakly defended. Recall that the initial Humboldtian articulation of academic freedom was aimed at both professors and students, and included not only the freedom to teach but also the freedom to learn. It is a curious feature of academic freedom as it is

now broadly understood in the Anglo-American world that it substantially excludes students. This exclusion is no doubt largely due to the influence of the “just a job” theory of academic freedom, and the role of labor organizations in the evolution of academic freedom.

In Latin America, by contrast, it was the student movement, not the labor movement, that led to the Córdoba Reforms of 1918. For the last century, as a consequence, Latin American conceptions of academic freedom have centrally involved students (Pereira 2019). In the European context, there exist several bills of student rights, and in 1968 the AAUP in conjunction with various national student and professional associations issued a “Joint Statement on Rights and Freedoms of Students” (American Association of University Professors 1968). However, these documents lack the muscle to actually ensure that students have academic freedom.

It is not clear that students ought to have all of the same academic freedom protections as professors. However, excluding them altogether from academic freedom disregards the scholarly role they play in the university’s mission. Moreover, leaving students out of the academic freedom conversation squanders an important opportunity for solidarity between professors and students in defense of academic freedom.

### *4.3 Academic Freedom for the 21<sup>st</sup> Century*

Academic freedom is still a work in progress. Imperfect as it is, it is a crucial part of a network of principles that protects universities from state, religious, corporate, and popular interference. To substitute academic freedom with freedom of expression puts at risk that entire network, and indeed the important social function that universities serve.

To defend academic freedom, we need to understand it, and to understand that it serves not professors, but society. Academic freedom is not merely a negotiated job perquisite. Rather, it exists in support of the university's mission. Professors' roles and credentials make them essential in fulfilling this mission. While employment protections – especially tenure – make it possible for professors to undertake that work, it is the university's academic purpose and its service of the common good, not particular labor contracts, that justify academic freedom.

This is important to remember especially as a dwindling proportion of the scholarly personnel who contribute to the university's academic mission have the protection of tenure. Those of us who benefit from academic freedom have a duty to ensure that it evolves to reflect the reality of contemporary universities. We must energetically resist the demarcation between tenure-stream professors who possess academic freedom, and everyone else who doesn't.

Ongoing attacks on academic freedom can incline the professoriate to defensiveness – to digging in on existing protections in an attempt to hold our ground. But by merely holding our ground, we lose ground. For both moral and prudential reasons, we must adopt a more inclusive conception of academic freedom that offers meaningful protections not only to “tenured elites” but to all those members of the university community whose scholarship – research, teaching, and learning – advances the university's mission of seeking truth and advancing understanding.

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