

## Foreword

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THE 1915 DECLARATION OF PRINCIPLES, approved by the American Association of University Professors (AAUP) at its initial annual meeting, was the first comprehensive statement on academic freedom in the United States. Almost a century later, the Declaration remains the intellectual foundation for the defense of academic freedom and the primary guide for determining whether it has been violated. Composed by a committee of fifteen eminent professors, the 1915 Declaration made bold claims about academic freedom. These claims asserted substantially more protection for the speech of professors than provided by existing law. Employment law allowed employers to fire employees "at will," for almost any reason at all. The First Amendment, which courts overwhelmingly construed to permit the regulation or punishment of speech for its alleged "bad tendency" on the public welfare, provided little security to political dissent by citizens and virtually none to speech by public employees. Yet the 1915 Declaration declared that academic freedom should be understood to safeguard professors against discipline or dismissal. It identified three elements of academic freedom: "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action."

How could such extraordinary protection of professors be justified? The answer, according to the 1915 Declaration, lies in professors' distinctive social function: to use their expertise, developed through long years of training, to advance knowledge, and to impart their findings both to students and to the general public. That function cannot be per-

formed if professors are subject to discipline or dismissal for the expression of views that upset trustees, politicians, or the public at large. The Declaration states: "To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish." Treating professors as employees, subject to the general law of employment, the Declaration concluded, manifests "a radical failure to apprehend the social function discharged by the professional scholar." Rather, professors, like federal judges, should be treated as appointees who, once appointed, cannot be fired for performing their professional functions. Just as the president is not able fire the judges he appoints when he disagrees with their legal decisions, the appointing authorities at universities should not be able to fire professors with whom they disagree. Correspondingly, just as the president is not assumed to approve the legal views of the judges he appoints, university authorities should not be held responsible for the opinions of professors.

Reflecting the actual controversies of the period, the 1915 Declaration focused on the threat to academic freedom posed by university trustees. But it recognized as well that the state could violate academic freedom. State universities, it pointed out, depend on state legislatures for funding, and some universities had succumbed to legislative pressure. After observing that trustees tend to be more conservative than professors, the 1915 Declaration speculated that legislators are often to the political left of professors. Although clearly an attempt to appear even-handed in opposing restrictions on academic freedom from all points on the political spectrum, this speculation might also have been an accurate perception of the actual dangers from legislators during the progressive era. Consistent with its general defense of academic freedom and as part of its effort to be politically neutral, the 1915 Declaration emphasized that the university should be both "an intellectual experiment station, where new ideas may germinate," even if they are "distasteful to the community as a whole," and "the conservator of all genuine elements of value in the past thought and life of mankind

which are not in the fashion of the moment." The 1915 Declaration also warned professors that the right of academic freedom entails "certain correlative obligations," including their own duty not to violate academic freedom.

Remarkably, the 1915 Declaration achieved widespread acceptance within the university community, among trustees and administrators as well as among professors themselves. A generation later, the Association of American Colleges joined the AAUP in formulating and approving the 1940 Statement of Principles on Academic Freedom and Tenure, which concisely summarized the understanding of academic freedom that the 1915 Declaration had initially proposed and defended. In subsequent decades, numerous learned societies and other educational organizations endorsed the 1940 Statement, and its protections for academic freedom have been incorporated into the governing regulations of most U.S. colleges and universities.

Yet the widespread acceptance of basic principles of academic freedom within the academic community afforded little protection to professors during the McCarthy era of the late 1940s and 1950s, when concerns about the Communist threat to national security prompted widespread investigations by the federal and many state governments into the loyalty of professors. Although they rarely initiated similar investigations, U.S. colleges and universities dismissed and blacklisted professors who had affiliations with the Communist Party and other allegedly subversive organizations, who refused to answer questions about their academic and political views and associations, or who were unwilling to reveal information about their colleagues. Even organizations previously committed to the protection of academic freedom and civil liberties, including the AAUP and the American Civil Liberties Union (ACLU), acquiesced in these dismissals for much of the McCarthy period, to their subsequent embarrassment. These investigations and dismissals intimidated numerous other professors and often inhibited their academic and political speech.

After the height of the McCarthy era and especially after its end, many Americans, both within and outside the academy, resolved to be more vigilant in resisting violations of academic freedom and civil liberties in the name of national security. The United States Supreme Court contributed to this response by transforming U.S. constitutional law. Among these transformations, the Court in 1957 for the first time included academic freedom within the protection of the First Amend-

ment, and, especially in the 1960s, it departed from prior decisions by holding that the Constitution does not permit the state to condition employment on the waiver of First Amendment rights.

The attacks of September 11, 2001, produced new concerns about national security, but they also raised the specter of the McCarthy era more prominently than at any time since its demise. In contrast to its belated response during the McCarthy era, the AAUP established the Special Committee on Academic Freedom and National Security in a Time of Crisis on the first anniversary of September 11. At the end of 2003, the Special Committee published a comprehensive report, on whose findings many of the essays in this volume rely. The report reveals a dramatically less restrictive environment than during the McCarthy era, perhaps in large part because many people both within and outside the academy remembered the McCarthy era and wanted to avoid its repetition. Most strikingly, in substantial contrast to the McCarthy era, few professors have lost their jobs as a result of their academic or political expressions or associations, perhaps only one or two. Even lesser sanctions have been quite rare. The report concludes that "policies already in place seem to have served the interests of academic freedom surprisingly well." In addition, there is no contemporary political counterpart to Senator Joseph McCarthy, university administrators and trustees have been much more vigilant in protecting controversial professors, and many organizations have defended faculty rights of academic freedom and free speech. By recognizing First Amendment rights of academic freedom and political expression that did not exist during the McCarthy era, the Supreme Court has contributed legal bulwarks against repression.

The much more fragile condition of academic freedom and political expression elsewhere in the world, as reported in several informative essays in this volume, underlines their relative protection in the United States, even in the context of the atmosphere of crisis produced by September 11. Around the world, faculty members have not just been dismissed but have been imprisoned, beaten, and even killed in retaliation for their academic and political views. Repression has come from public officials, high and low, authorized and rogue, as well as from private actors, including terrorists, sometimes acting with the tacit approval of the state. Even the substantial repression during the McCarthy era pales in comparison to these reports from abroad. In contrast to the United States, moreover, many foreign countries have much weaker legal safeguards for speech, lack even the most rudimentary definitions of aca-

demic freedom, and have no organizations devoted to its protection. Many foreign governments are much more directly involved in university life than either federal or state governments in the United States, making it easier for them to restrict the expression of professors.

The relative protection of academic freedom and free speech in the aftermath of September 11 compared to the McCarthy era and conditions abroad should not, however, induce complacency. As the AAUP Special Committee and several essays in this volume report, substantial pressures on controversial views by professors, in support of as well as in opposition to the official positions of the government, have occurred since September 11. Although these pressures have overwhelmingly been resisted within the academy, their existence itself is troubling. Members of the U.S. House of Representatives, state legislators, university trustees, alumni, administrators, students, members of the general public, and sometimes faculty members themselves have called for restrictions on controversial speech by professors and visiting speakers on campus. Some universities took actions against faculty and student speakers that they later withdrew or modified. And, in some instances, universities did suspend or reprimand faculty and student speakers and withdrew invitations to controversial outsiders. Provisions of the Patriot Act have been invoked to demand the records of patrons of libraries, bookstores, and Internet service providers; under the Patriot Act, foreign scholars have had difficulty obtaining visas to attend academic conferences, and government contracting officers have attempted to include provisions allowing them to review research results before publication and to prevent the disclosure of "sensitive" but unclassified information. Another terrorist attack on the United States, as many commentators have observed, could easily increase pressures on academic and political expression that have mostly been resisted to date.

The judicial extension of First Amendment protections after the McCarthy era, moreover, may be fragile and reversible. It is important to remember that at the height of the McCarthy era, after years of construing the phrase "clear and present danger" to limit government restrictions on speech, the Supreme Court redefined that phrase in ways that made it much easier to obtain convictions. Similar restrictive transformations of current First Amendment analysis could easily occur in another period of perceived dangers to national security. Even before September 11, the Supreme Court had not developed an elaborated definition of the constitutional meaning of academic freedom and its relationship to general rights of free speech. Some cases both before and

after September 11, particularly in the lower courts, have construed academic freedom narrowly and have limited the protected speech of public employees by defining much of it as unrelated to “matters of public concern” and therefore outside the scope of the First Amendment.

The definition and defense of academic freedom set forth in the AAUP’s 1915 Declaration of Principles remain valid today. Measured by the standards of the 1915 Declaration, academic freedom has been largely protected in U.S. colleges and universities since September 11, 2001, particularly in comparison to the McCarthy era, although understandably heightened concerns about national security have produced additional, and occasionally successful, pressures to restrict it. Even in periods when threats to national security have not been at the forefront of national consciousness, attacks on academic freedom persist, from both traditional and novel sources, within and outside the academy. The protection of academic freedom and free speech require constant vigilance, the kind of vigilance that has contributed thus far to the relatively fortunate experience since September 11, 2001.