

# ACADEMIC FREEDOM AND POLITICAL INDOCTRINATION

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## INTRODUCTION

The wall of separation between academic freedom and political indoctrination was once firmly established within the academic profession. Academic freedom, it was understood, applied to teaching, research, and study but not to political advocacy or indoctrination. This principle is enshrined, for example, in the canonical 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* (the 1915 Declaration) of the American Association of University Professors (AAUP), which emphasizes that an instructor who addresses “controversial matters” should present “the divergent opinions of other investigators” and “above all” should “remember that his business is not to provide his students with ready-made conclusions, but to train them to think for themselves, and to provide them access to those materials which they need if they are to think intelligently”<sup>1</sup>

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1. AM. ASSN. OF UNIV. PROFESSORS, DECLARATION OF PRINCIPLES ON ACADEMIC

In recent years, however, this wall has increasingly eroded, and influential figures and institutions have resisted efforts to reinforce it. This can be seen in the most recent pronouncements of the AAUP and in the academic work of influential legal scholars like Matthew Finkin and Robert Post. The trend is also well illustrated by the recent decision of the Pennsylvania State University (Penn State) Senate Committee on Faculty Affairs to amend that university's academic freedom policy to delete language that provided: "It is not the function of a faculty member in a democracy to indoctrinate his/her students with ready-made conclusions on controversial subjects."<sup>2</sup>

The conflation of academic freedom with political advocacy is most apparent in academic treatments of the Middle East. In 2006, for example, the U.S. Commission on Civil Rights observed that, "many university departments of Middle East studies provide one-sided, highly polemical academic presentations and some may repress legitimate debate concerning Israel."<sup>3</sup> Some commentators have argued that academic freedom has been abused as a means of justifying virulent criticisms of Israel which would otherwise be dismissed as intellectually unsupportable.<sup>4</sup> At the same time, there is now a significant sub-genre of scholarly writing consisting of essays about the putative threat to academic freedom posed by charges that many academic treatments of the State of Israel lack scholarly merit and that some are tinged with anti-Semitism.<sup>5</sup> The AAUP President, Cary Nelson, who devotes a full chapter of his volume on academic freedom to the Middle East conflict, acknowledges that, "there is one area where tension and misrepresentation reign supreme: campus incarnations of the

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FREEDOM AND ACADEMIC TENURE 298 (1915), available at <http://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf> [hereinafter *Declaration*].

2. SENATE COMMITTEE ON FACULTY AFFAIRS OF THE PENNSYLVANIA STATE UNIVERSITY, REVISIONS TO POLICY HR64: ACADEMIC FREEDOM (2010), available at <http://www.senate.psu.edu/agenda/2010-2011/dec2010/appd.pdf> [hereinafter SENATE COMMITTEE].

3. U.S. COMM'N ON CIV. RTS., FINDINGS AND RECOMMENDATIONS OF THE U.S. COMMISSION ON CIVIL RIGHTS REGARDING CAMPUS ANTI-SEMITISM (Apr. 3, 2006), available at <http://www.usccr.gov/pubs/050306FRUSCCRRCAS.pdf>. The author served as staff director of the Commission at this time and was the principal author of this document.

4. See, e.g., Tammi Rossman-Benjamin, *Anti-Zionism and the Abuse of Academic Freedom: A Case Study at the University of California, Santa Cruz, Post-Holocaust and Anti-Semitism*, JERUSALEM CTR. FOR PUBLIC AFFAIRS (Feb. 1, 2009), <http://jcpa.org/article/anti-zionism-and-the-abuse-of-academic-freedom-a-case-study-at-the-university-of-california-santa-cruz/>; Leila Beckwith and Tammi Rossman-Benjamin, *Academic Freedom and the Anti-Zionists*, AMERICAN THINKER (Mar. 14, 2009), [http://www.americanthinker.com/2009/03/does\\_academic\\_freedom\\_have\\_lim.html](http://www.americanthinker.com/2009/03/does_academic_freedom_have_lim.html).

5. See, e.g., ACADEMIC FREEDOM AFTER SEPTEMBER 11 (Beshara Doumani ed., 2006).

Arab-Israeli conflict.”<sup>6</sup> This tension is illustrated in the uproar surrounding charges that emails sent by Professor William Robinson to his undergraduate University of California at Barbara students were insensitive to Jewish students. Despite the apparently inflammatory character of Professor Robinson’s communication (discussed below), Robinson received enormous support from professors who argued that his academic freedom was violated by even the commencement of an investigation to assess the validity of the claims made against him.<sup>7</sup>

The erosion of the wall between academic freedom and political indoctrination is deeply problematic. This paper argues, in Part II, that the vitality of the academic freedom doctrine requires that it be limited to core academic functions (II-A), that efforts to exceed those limitations entail significant risks for the doctrine (II-B), and that a firmly circumscribed but vigorous conception of academic freedom can avoid these risks (II-C). In Part III, this paper argues that political indoctrination cannot be considered academic because it exhibits five characteristics that are inconsistent with the academic function: non-educativeness, controversy, extraneousness, imbalance and bias. Moreover, recent efforts to redefine these five concepts in narrow terms are inconsistent with the basic values that academic freedom is intended to support. Finally, Part IV will apply this five-fold understanding of academic freedom to the William Robinson case, demonstrating that only a robust conception of these five strands can properly illuminate the issues at stake in that case.

## I. THE FUNCTIONAL ARGUMENT

### A. The Scope of the Academic Function

Academic freedom can best be understood in terms of the professional function that it protects. Specifically, this doctrine protects professors to the extent that they advance the college or university’s function of advancing and disseminating knowledge.<sup>8</sup> Professors serve this function through instruction and research pursuant to academic norms and standards. Many commentators have argued that the college or university should pursue other functions, including the preparation of students for participation or leadership in a democratic society. It is overly restrictive, according to this argument, to limit academic freedom to this narrow sense of the academic function, since professors properly pursue an array of other functions. The

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6. CARY NELSON, NO UNIVERSITY IS AN ISLAND: SAVING ACADEMIC FREEDOM 109 (2010).

7. The case is instructively discussed in Arthur Gross-Schaefer, *Academic Freedom: Moving Away from the Faculty-Only Paradigm*, SCHOLARS FOR PEACE IN THE MIDDLE EAST (Feb. 2011), [spme.net/cgi-bin/articles.cgi?ID=7593](http://spme.net/cgi-bin/articles.cgi?ID=7593).

8. See William Van Alstyne, *The Specific Theory of Academic Freedom and the General Issue of Civil Liberty*, in THE CONCEPT OF ACADEMIC FREEDOM 59, 61-63 (Edmund L. Pincoffs ed., 1972).

problem with this argument is that it confuses the academic function with the various nonacademic functions which academics may properly pursue. Regardless of whether colleges and universities could or should pursue broad democratic purposes, these goals have nothing to do with academic freedom because they are not academic in nature.

The faculties of colleges and universities may engage in sundry other tasks, from hosting sporting events to providing career counseling, but these tasks are not central to the institution's academic mission. The University of California at Berkeley's legendary president, Clark Kerr, once remarked that the function of a college or university is to provide "parking for faculty, sex for the students, and athletics for the alumni."<sup>9</sup> Whatever the veracity of Kerr's observation, one would not argue that parking, sex and sports are now therefore academic functions to which the doctrine of academic freedom applies. In a somewhat more serious vein, Stanley Fish has bemoaned the extraordinary mission creep that has characterized modern colleges and universities. "Pick up the mission statement of almost any college or university," Fish has observed, "and you will find claims and ambitions that will lead you to think that it is the job of an institution of higher learning to cure every ill the world has ever known: not only illiteracy and cultural ignorance, which are at least in the ballpark, but poverty, war, racism, gender bias, bad character, discrimination, intolerance, environmental pollution, rampant capitalism, American imperialism, and the hegemony of Wal-Mart... ."<sup>10</sup> Whatever the merits of the pursuit of such goals by academic institutions, they are similarly distinct from the academic mission.

To be sure, prominent authorities have argued that preparation of students for democracy is an important function of American colleges and universities. For example, several hundred college and university chiefs endorsed the 1999 *Presidents' Declaration on the Civic Responsibility of Higher Education*, which identifies "a fundamental task to renew our role as agents of democracy" which "is both urgent and long-term."<sup>11</sup> These leaders pledged "to take responsibility for helping [students] realize the values and skills of our democratic society and their need to claim ownership of it." Similarly, the U.S. Supreme Court has emphasized "the overriding importance" of higher education's role in "preparing students for work and citizenship," relying upon past Court decisions "describing education as pivotal to 'sustaining our political and cultural heritage' with a

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9. Former UC President Clark Kerr, a National Leader in Higher Education, Dies at 92, UC BERKELEY NEWS (Dec. 2, 2003), [http://berkeley.edu/news/media/releases/2003/12/02\\_kerr.shtml](http://berkeley.edu/news/media/releases/2003/12/02_kerr.shtml).

10. See generally STANLEY FISH, SAVE THE WORLD ON YOUR OWN TIME 10–12 (2008).

11. *Presidents' Declaration on the Civic Responsibility of Higher Education*, CAMPUS COMPACT (1999), available at <http://www.compact.org/wp-content/uploads/2009/02/Presidents-Declaration.pdf>.

fundamental role in maintaining the fabric of society.”<sup>12</sup> At first blush, these authorities appear to give credence to the view that the academic function should be construed broadly to encompass social or political concerns.

That reading would be erroneous. Indeed, political indoctrination is arguably even more inconsistent with the mission of preparing students for participation in a democratic society than it is with the mission of advancing and disseminating knowledge, since indoctrination communicates an authoritarian disposition. Moreover, even if every college or university president were to pledge his or her institutions to pursuing this mission, it would not render the mission *academic*; it would merely indicate that academic leaders were universally adopting certain non-academic goals. College and university presidents certainly may choose to pursue these goals by academic *means*, for example, by redoubling their commitment to the effective teaching of critical reasoning skills or by enhancing their course offerings in such fields as political science, economics, philosophy and economics. Nothing in the presidents’ statement however justifies the use of classroom political indoctrination.

#### B. Some Consequences of Abandoning the Academic Function

Some academics will think that this notion of the academic function is unnecessarily stingy and may argue that an expansive interpretation would better reflect the importance of the value that it serves. In fact, nothing could be further from the truth. It is precisely the importance of the academic function that counsels extreme caution as to efforts to expand its domain. This can be seen most clearly in recent battles over politically controversial academic hiring, tenure and promotion cases. The academic establishment, led by the AAUP, repeatedly insists that academic personnel decisions must be protected against external political influences. This position, however, is undercut by the AAUP’s own efforts to eliminate barriers between politics and academia. It is only the public perception of a wall between academic freedom and political indoctrination that precludes greater public intervention into the politics of public colleges and universities. To the extent that this perception fades, it will be difficult to maintain that universities should be insulated from external intrusions.

This conflict can best be seen in the AAUP’s most recent report, *Ensuring Academic Freedom in Politically Controversial Academic*

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12. *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (quoting *Plyler v. Doe*, 457 U.S. 202, 221 (1982)). This opinion has not been without its critics. For example, Paul Horwitz observed that it “sits uneasily with the Court’s approach elsewhere in First Amendment jurisprudence, and it fails to acknowledge the difficulty in enshrining in the First Amendment any particular vision of education or academic freedom when those values are deeply contested outside the courts, in the very communities at issue.” Paul Horwitz, *Grutter’s First Amendment*, 46 B.C. L. REV 461, 589 (2005).

*Personnel Decisions*.<sup>13</sup> In this report, the AAUP laments the intrusion of external political influences into academic personnel decision-making.<sup>14</sup> In particular, the AAUP is concerned about the treatment of professors who express politically controversial views concerning the State of Israel. The AAUP correctly maintains that the intrusion of such political influences can, under some circumstances, amount to a violation of academic freedom. There may be room for disagreement as to the extent of this problem, the even-handedness of the AAUP's analysis, or the wisdom of the organization's proposed solutions.<sup>15</sup> Two propositions are however indisputable. First, academic personnel decisions should be based upon academic merit. Second, the application of political criteria in such cases represents a breach of academic integrity. Unfortunately, these propositions fundamentally conflict with positions which the AAUP and others in the academic establishment are taking with respect to the relationship between classroom instruction and political indoctrination.

The premise upon which these propositions are based is that the university serves a distinctly apolitical mission upon which the intrusion of external political considerations represents a serious taint. After all, if classroom instruction were inherently political, then the public could reasonably insist upon having a say as to the political bent which it pursues. In a democratic society, this demand would represent a minimum expectation for public institutions. It would also presumably amount to a significant departure at many institutions, given the substantial differences between public opinion and professorial attitudes on controversial topics, such as the politics of the Middle East. If political indoctrination were a proper function of higher education, then democratic electorates could appropriately demand that university faculties be, for example, as conservative and as pro-Israel as the public is, particularly in fields where the tendency to indoctrinate is most salient (*e.g.*, the humanities and social sciences).

In fact, such demands would be grossly inappropriate because political indoctrination is *not* a legitimate function of professorial work. Ironically, this understanding of political indoctrination, once widely held by advocates of academic freedom, is now increasingly contested precisely by

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13. AM. ASSN. OF UNIV. PROFESSORS, ENSURING ACADEMIC FREEDOM IN POLITICALLY CONTROVERSIAL ACADEMIC PERSONNEL DECISIONS (Aug. 2011), available at <http://www.aaup.org/NR/rdonlyres/5F6ABEED-D344-4C61-808F-AD53CF6AC3D8/0/EnsureFreedomReportFinal.pdf> [hereinafter, ENSURING ACADEMIC FREEDOM].

14. *Id.*

15. For the author's substantive comments on this proposed AAUP policy see Kenneth L. Marcus, *IJCR response to draft "Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions," by the American Association of University Professors, Feb. 18, 2011*, INSTITUTE FOR JEWISH AND COMMUNITY RESEARCH (2012), available at <http://www.jewishresearch.org/v2/2011/articles/anti-semitism/AAUP-IJCR-letter.htm>.

the institutions and individuals who insist that the academy be provided with a sphere of decision-making autonomy safeguarded against external political intrusion.

### C. The Prophylactic Argument

There is one plausible practical argument in favor of extending academic freedom protections to at least some forms of classroom political advocacy and even to some borderline cases of instructional political advocacy. This is the prophylactic argument, which posits that “the line between professional and aprofessional speech may be controversial, and that protection for clearly aprofessional speech is needed to give ‘breathing room’ to the professional speech that is the special subject of academic freedom.”<sup>16</sup> In other words, institutions should be overly inclusive about protecting instructional academic freedom, because otherwise they might inadvertently become underinclusive and might therefore encroach upon certain activities that properly should be protected under this basic doctrine.<sup>17</sup>

There are several problems with this prophylactic argument. Michael Olivas has identified a couple of them. First, the practical necessity of this prophylactic measure is at best unnecessary, since the same function could be served by a generous definition of the professorial function. Second, this approach risks drawing resentment towards professors, who might be seen as enjoying special privileges which are not fully justified by the requirements of academic work.<sup>18</sup> Third, institutions that protect aprofessional instructional speech may be perceived as endorsing this speech. This can be seen by analogy in religious proselytizing cases.<sup>19</sup> For example, in *Bishop v. Aronov*, the Eleventh Circuit rejected claims brought by an exercise physiology professor whom the University of Alabama warned to discontinue expressing his religious beliefs in optional after-class sessions linking Christianity and physiology.<sup>20</sup> The court held that a university may broadly exercise authority over faculty and that even a professor’s classroom speech can be taken as representative of the school.<sup>21</sup> Most importantly, overly expansive interpretations of professorial prerogatives become suspect when they entail equally restrictive interpretation of student rights. The attractiveness of broadly construing professorial interests in free expression may seem appealing when it is

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16. Michael A. Olivas, *Reflections on Professional Academic Freedom: Second Thoughts on the Third “Essential Freedom,”* 45 STAN. L. REV. 1835, 1846–53 (1993).

17. This is analogous to the Talmudic notion of “building a fence around the Torah.” The idea is to create a protective barrier or “fence” of rules to protect against unintended encroachment of a body of law which is considered sacred.

18. Olivas, *supra* note 16, at 1846.

19. *See id.* at 1835.

20. *Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991).

21. *Id.* at 1073.

balanced against the institutional interests of the university but less so when balanced against the interests of the students whom this doctrine protects against indoctrination.

## II. ACADEMIC FUNCTION AND POLITICAL INDOCTRINATION

The principle distinction between academic activity and mere indoctrination is that the former serves a professional educative function and the latter does not.<sup>22</sup> Stanley Fish has expressed this point with characteristic bluntness:

The moment a teacher tries to promote a political or social agenda, mold the character of students, produce civic virtue, or institute a regime of tolerance, he or she has stepped away from the immanent rationality of the enterprise and performed an action in relation to which there is no academic freedom protection because there's nothing academic going on.<sup>23</sup>

Why is there “nothing academic going on”? Classroom political indoctrination abandons academic content in any of five ways: by abandoning the educative objective (non-educativeness), by generating unreasonable controversy (controversy), by intruding material outside the scope of course instruction (extraneousness), by failing to provide appropriate consideration of contrary views (imbalance), or by presenting instruction in a manner which evinces an inappropriate bias among students (bias). These five characteristics are basic to an understanding of what political indoctrination is and why it should not be protected under the doctrine of academic freedom.

Each of them has come under criticism lately from within what might be called the academic freedom establishment. The AAUP and its defenders have tried in various ways to minimize or restrict these five concepts in ways that would drain them of meaning and further blur the boundary between academic freedom and political indoctrination. As this section will show, those efforts have been misguided.

### A. Non-educativeness

“The essential point,” as Robert Post correctly observes, “is that a professor’s pedagogical approach must educate, rather than indoctrinate, students.”<sup>24</sup> In John Dewey’s influential formulation, Dewey states that it is an abuse of “freedom in the classroom” for an instructor to “promulgate as truth ideas or opinions which have not been tested.”<sup>25</sup> This has been

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22. FISH, *supra* note 10, at 81.

23. *Id.*

24. Robert Post, *The Structure of Academic Freedom*, in *ACADEMIC FREEDOM AFTER SEPTEMBER 11*, *supra* note 5, at 61, 81.

25. John Dewey, *Academic Freedom*, 23 *EDUC. REV.* 1, 8 (1902).



understood to mean that professors must avoid presenting opinion as if it were truth. As the 1915 Declaration states, the purpose of higher education is “not to provide. . .students with ready-made conclusions, but to train them to think for themselves, and to provide them access to those materials which they need if they are to think intelligently.”<sup>26</sup> Thus, the doctrine protects professorial classroom speech which meets professional pedagogical standards and which results from academic training, specialized expertise, and adherence to scholarly methodology.<sup>27</sup> One problem with classroom political indoctrination is that it does not attempt to meet such standards, both because it seeks different goals and because it uses different methods.

More recently, the AAUP has tended to erode the distinction between education and indoctrination by defining political indoctrination very narrowly. For example, the AAUP’s 2007 report, *Freedom in the Classroom*, provides that “[i]ndoctrination occurs when instructors dogmatically insist on the truth of [dogmatic] propositions by refusing to accord their students the opportunity to contest them.”<sup>28</sup> This formulation defines indoctrination much more narrowly than is commonly understood. Indeed, it condones instructors’ use classroom instruction time to impose political views on students as long as the students have an opportunity to present contrary views. Under this formulation, there is nothing indoctrinating about a professor who espouses controversial opinions in the classroom, and insists that they are true, as long as the professor does not preclude the possibility of a student rebuttal.<sup>29</sup>

There are numerous problems with this approach, which ignores students’ vulnerability to professorial retaliation, assumes that students and professors have no power imbalance within the classroom, and implies that the only way to indoctrinate a student is to prevent the student from responding.<sup>30</sup> While the distinction between education and indoctrination is highly contextual, classroom instruction is indoctrinating when an instructor engages in political advocacy, regardless of whether a theoretical opportunity exists for students to reject the instructor’s position.

### B. Controversy

Similar problems arise when instructors introduce controversial opinions into classroom teaching.<sup>31</sup> The AAUP has long recognized the dangers

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26. DECLARATION, *supra* note 1, at 298.

27. See Olivas, *supra* note 16, at 1844.

28. AM. ASS’N OF UNIV. PROFESSORS, FREEDOM IN THE CLASSROOM (2007), available at <http://www.aaup.org/AAUP/comm/rep/A/class.htm>.

29. See ENSURING ACADEMIC FREEDOM, *supra* note 13, at 13–28.

30. For a useful discussion of the relevance of classroom power imbalances to the doctrine of academic freedom, see Gross-Schaefer, *supra* note 7.

31. When political indoctrination is also conducted on a partisan basis additional legal and ethical issues arise, especially at public institutions, because it may entail the

inherent in controversial teaching material but has protected professorial prerogatives by defining in very narrow terms the scope of controversial teaching that is deemed objectionable. Under long-standing AAUP guidance, controversial teaching materials are objectionable only if they are also extraneous, and even then only if they *persistently intrude* upon the classroom. More recently, even this narrow limitation has come under criticism, as the AAUP has pulled back from the standard of “persistent intrusion.” This apparent pullback would be unwise, as the notion of academic freedom would lose meaning if it protects unlimited professorial advocacy on matters unrelated to course instruction.

The “persistent intrusion clause” is a gloss on the AAUP’s 1940 *Statement of Principles on Academic Freedom and Tenure*, which provides rather plainly that “teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter that has no relation to their subject.”<sup>32</sup> In other words, instructors deviate from their academic function when they introduce material that is both controversial and extraneous. In 1970, the AAUP pulled back significantly from this principle when it announced that the problem was not with controversial and extraneous materials *per se* but with their *persistent intrusion* into the classroom:

The intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid *persistently intruding* material which has no relation to their subject.<sup>33</sup>

Even this quite modest “persistent intrusion” standard now has begun to seem too restrictive to the AAUP. The AAUP’s proposed 2011 report, *Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions*, argues that “[t]he danger in the use of the persistent-intrusion standard lies precisely in the tendency to focus on and seek to constrain controversial subject matter.”<sup>34</sup> Indeed, this new report goes so far as to insist that “exclusion of controversial matter, whether under the persistent-intrusion clause or in the name of protecting students from challenges to their cherished beliefs, stifles the free discussion necessary for academic freedom.”<sup>35</sup>

When this last sentence is unpacked, it reveals an abandonment of basic

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use of public funding to advance a political candidate or party.

<sup>32</sup> AM. ASS’N OF UNIV. PROFESSORS, STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE 3 (1940), available at <http://www.aaup.org/NR/rdonlyres/EBB1B330-33D3-4A51-B534-CEE0C7A90DAB/0/1940StatementofPrinciplesonAcademicFreedomandTenure.pdf>.

<sup>33</sup> *Id.* at 5.

<sup>34</sup> ENSURING ACADEMIC FREEDOM, *supra* note 13, at 13.

<sup>35</sup> *Id.* (citation omitted) (italics omitted).

principles without which the notion of academic freedom becomes untenable. Recall that the AAUP has long maintained that occasional reference to controversial topics is pedagogically appropriate, even if the topics are extraneous, as long as instructors do not do so *persistently*. Here the AAUP argues that the “free discussion necessary for academic freedom” requires that universities condone even the *persistent intrusion* of extraneous controversial materials (this is what is meant by the “persistent intrusion clause”). This argument is different in kind from the long-standing principle that permitting occasional use of controversial materials may help to attract students’ interest and attention.<sup>36</sup> The AAUP’s new notion apparently is that instructors must be permitted to devote *unlimited* class time to controversial topics that are not related to the subject matter of the course. Indeed, the AAUP argues that academic freedom cannot exist unless professors are permitted to do so. Evidently, there has been no academic freedom at the countless institutions that have adopted the AAUP’s prior statements, including the “persistent-intrusion clause.” Clearly the AAUP’s newest ideas stretch to absurdity the prerogatives that it would assign to classroom instructors.

### C. Extraneousness

As we have seen, under the AAUP’s classic expression, even the persistent intrusion of controversial materials into the classroom is protected under the doctrine of academic freedom unless those materials are extraneous to course objectives. The classic example is repeated criticism of Israeli foreign policy during a calculus class. Under the standard account, extraneous content is excepted from the doctrine of academic freedom on the ground that it dilutes course content and fails to advance the pursuit of instructional objectives. The extraneousness principle is now under assault from both radical and mainstream thinkers. Ironically, the greater danger lies within what is currently the academic mainstream.

Judith Butler, a leading figure in critical theory, has argued that standard accounts of extraneousness fail to appreciate the evolving and contested nature of academic standards. Interestingly, her critique turns out not to be as subversive as it may seem at first blush; indeed, it may promote more nuanced understandings of the limits of academic freedom. Ironically, it is Robert Post, Yale Law School Dean, who provides the more disruptive intervention in his recent co-authored attempt to restrict the notion of extraneousness to the point where it is no longer meaningful. Given Post’s position in the academy, his and Matthew Finkin’s recent analysis of extraneousness threatens to drain this basic concept of meaning.

Judith Butler has provided an interesting challenge to the extraneousness

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36. See MATTHEW W. FINKIN AND ROBERT C. POST, FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM 93–94 (2009).

argument.<sup>37</sup> To begin with, she argues the academic function is historically and socially contingent. What counts as legitimate academic work is a matter of evolving historical norms subject to continual revision. Indeed, intellectual positions initially rejected as unacceptable later become central to new fields of knowledge. The problem is not merely that answers once considered wrong may later be considered right. More fundamentally, entire modes of inquiry once rejected as outside the scope of proper academic inquiry may later be accepted as prevailing scholarly paradigms shift. If academic freedom is extended only to professorial work that conforms to existing professional norms, scholars will not be able to pursue the transformative kinds of scholarly innovation which have driven intellectual progress. Moreover, it is not enough merely to suspend professional standards to allow for innovation, as these standards are themselves subject to continuous reinterpretation, evolution, reformulation, challenge and abandonment. It is often the case that academic norms are not consensually established, clearly formulated, and available for ready application. Instead, the very existence and nature of particular norms within specific disciplines may be a matter of intense disagreement within and between academic departments.

Butler does not, however, reject the establishment of academic norms or the notion that academic work must be evaluated against proper standards. “To allow that the specific academic norms that govern particular fields have a historicity, change under pressure, are revised in response to intellectual challenges, undergo paradigm shifts,” she explains, “is *not the same* as disputing the relevance of professional norms, but is only to ask which norms ought to be invoked and for what reasons and to concede that debates of this kind precede any possibility of the ‘application’ of these norms.”<sup>38</sup> In Butler’s view, then, we should not fall into the Hobson’s choice of deciding between the rigid, authoritarian enforcement of dogmatic academic norms on the one hand and, on the other, the “reckless freedom” that comes with rejecting academic norms altogether.<sup>39</sup> The notion that enforcement of academic norms is inherently suspect “makes a serious critical debate into an adolescent complaint.”<sup>40</sup> Butler instead recommends “a critical inquiry in which norms are appropriately invoked in order to judge a piece of academic work.”<sup>41</sup> This is an entirely reasonable amendment.

Matthew Finkin and Robert Post by contrast, although writing from a position well within the academic mainstream, have proposed a theory of

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37. Judith Butler, *Academic Norms, Contemporary Challenges: A Reply to Robert Post on Academic Freedom*, in *ACADEMIC FREEDOM AFTER SEPTEMBER 11*, *supra* note 5, at 107.

38. *Id.* at 114.

39. *Id.* at 116.

40. *Id.*

41. *Id.*

classroom academic freedom under which practically anything goes. Finkin and Post argue that the trend towards interdisciplinarity demonstrates the difficulty in dividing knowledge into what Finkin and Post derisively characterize as “hermetically disconnected domains.”<sup>42</sup> They maintain that such efforts are mere folly, since— as Finkin and Post approvingly quote Conrad Russell—“all knowledge can be related to all other knowledge (given enough ingenuity) and what background knowledge any teacher finds necessary to the understanding of his subject may depend on his approach to that subject.”<sup>43</sup> Of course, if “all knowledge can be related to all other knowledge,” then *nothing* is educationally extraneous.

Under Finkin and Post’s proposed reformulation of extraneousness, *any* pedagogical intervention would be deemed educationally relevant if:

It assists students in better understanding a subject under consideration, either in the sense of acquiring greater cognitive mastery of that subject or in the sense of acquiring a more mature apprehension of the import of that subject, which is to say, an improved ability to experience and appreciate the significance of the subject.<sup>44</sup>

Finkin and Post’s point is that virtually anything can be relevant, even if it bears no relation to the topic of instruction and does not increase the students’ mastery of the subject, if it helps the students to “experience and appreciate” the subject’s importance. Applying this standard, Finkin and Post lambaste the suggestion, made by a student advocacy organization, that if the subject of a course is not the war in Iraq, then professors should not make statements about the war in class. According to Finkin and Post, this “misses entirely the heuristic necessity of actively arousing student attention and interest.”<sup>45</sup> In other words, professors should enjoy complete academic freedom to advocate their positions on any issue that they think students should find interesting, no matter how put off the students may actually be by this intrusion on their instructional time. In fact, this is not a conception of the relevancy requirement but a covert attempt to eliminate it.

The traditional AAUP standard is actually a very modest one: instructors should not persistently intrude extraneous controversial matters into instructional class time. This should be the very least that is expected of university professors. Indeed, it allows unlimited discussion of relevant discussion of controversial topics, wide discretion as to irrelevant topics that are not controversial, and occasional discussion of topics that are neither relevant nor uncontroversial. The current assault on the concepts of

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42. FINKIN AND POST, *supra* note 36, at 92–93.

43. *Id.* at 93.

44. *Id.* at 92.

45. *Id.* at 94.

educational relevancy and extraneousness, like the simultaneous attacks on the persistent-intrusion concept, would ultimately drain the notion of academic freedom of content by sending the message that “anything goes.” This is a dangerous message for the academy to send. If instructors are demanding freedom to engage in conduct that is not consistent with meaningful professional norms, then the case for public deference becomes very weak.

#### D.Imbalance

Classroom instruction is imbalanced when an instructor neglects to provide students with contrary views on contested subjects or fails to expose students to alternative points of view. Imbalanced presentations tend to have an indoctrinating effect, because the students are taught to think only in the preferred manner, and contested opinions are given the appearance of universally accepted truths. This basic understanding of imbalance has been challenged recently by the AAUP and its supporters. In *Ensuring Academic Freedom*, the AAUP takes the position that academic balance can only be “based on the standards of the pertinent disciplines.”<sup>46</sup> This position has been given a robust academic defense by Finkin and Post. In fact, this narrow conception of academic balance would drain the concept of meaning in an age in which academic disciplines have too often become one-sidedly imbalanced. The refusal to look beyond disciplinary boundaries, even in an age of interdisciplinarity, can only serve to insulate academic departments from appropriate review and oversight.

The AAUP and its supporters have fiercely opposed efforts to ensure that classroom instruction is properly balanced. Finkin and Post have led the academic attack on the notion, advanced by several critics of the contemporary academy, that instructors should evenhandedly present all sides of ideologically or politically controversial issues. “Any such obligation,” they argue, “would be flatly incompatible with a scholar’s accountability to professional standards.”<sup>47</sup> To support this argument, they point out that it would require biologists to give equal time to the theory of intelligent design. This is a somewhat extreme formulation of the notion of political balance. Few critics would actually require that precisely equal time be assigned to all intellectual theories regardless of their scholarly merit. Nevertheless, the extent to which Finkin and Post recoil from the idea of teaching intelligent design is also telling: “To require a biologist to give equal time to a theory of intelligent design, simply because lay persons who are politically mobilized believe this theory, is to say that a scholar must in the name of political balance present as credible ideas that the scholarly profession repudiates as false.”<sup>48</sup> Instead, scholars should “use

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46. ENSURING ACADEMIC FREEDOM, *supra* note 13, at 13 (italics omitted).

47. FINKIN AND POST, *supra* note 36, at 103.

48. *Id.* at 103.

disciplinary standards, not political standards, to guide their thinking.”<sup>49</sup> This is because “the concept of balance makes sense in the context of academic freedom only by reference to the professional norms of a relevant scholarly community.”<sup>50</sup>

This discipline-centric notion of balance has been adopted by the AAUP as a means of further insulating classroom instruction from oversight to ensure the absence of political indoctrination. In *Ensuring Academic Freedom*, the AAUP adopts a strong position limiting the requirement of balance to the notion that instructors must only present those arguments that are considered “essential” within their discipline and, even then, insisting that the final decision must be left to the discretion of each instructor:

Whether a specific matter or argument is essential to a particular class or what weight it should be given is a matter of professional judgment, based on the standards of the pertinent disciplines and consistent with the academic freedom required if the disciplines themselves are to remain capable of critical self-reflection and growth.<sup>51</sup>

The AAUP/Finkin-Post argument provides a convenient means of minimizing the “balance” requirement to the point of meaninglessness. The idea that “balance” could properly be assessed only within the norms of a particular discipline presumes that all academic disciplines are themselves fully balanced. To the extent that many disciplines have become ideologically imbalanced, as numerous studies have shown, the AAUP/Finkin-Post argument becomes a license for politicized academic communities to permit only the leeway that their own ideological commitments support.

To understand the way in which Finkin and Post have drained the concept of meaning, it is best to consider a discipline, like Middle East studies, which has been widely criticized for the serious ideological imbalances within the discipline. Under the Finkin-Post doctrine, Middle East studies departments need never provide balanced presentations of any topic within their discipline as long as they follow three simple steps: first, establish dominant ideological positions within the discipline; second, refuse to provide any concessions to dissenting viewpoints; third, limit new faculty hires to scholars who share the discipline’s dominant ideological positions. As long as these three steps are consistently followed, the Finkin-Post doctrine will insulate the discipline from any requirement of balance, since the notion of balance is defined in terms of the discipline’s professional norms. Indeed, the more thoroughly the discipline stamps out dissent, the less susceptible it is to the challenge that it lacks academic

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49. *Id.* at 104.

50. *Id.* at 101.

51. ENSURING ACADEMIC FREEDOM, *supra* note 13, at 13 (italics omitted).

balance. The best part of the Finkin-Post doctrine is that those who work most adamantly to stamp out dissent from within the discipline are seen as the champions of academic freedom, while those who seek balance can be derogated as enemies of the doctrine.

#### E. Bias

The final salient characteristic of political indoctrination is instructional bias. This issue is subtly different from academic balance, although the two issues often overlap. Instructional bias, in this sense, occurs when an instructor creates an atmosphere which is objectively offensive to some students based upon their intellectual point of view. In extreme cases, hostile environments are maintained for students who disagree with the professors' positions. This instructional bias must be distinguished from the situation that exists where instructors properly subject students' ideas to intense, even withering criticism, in an even-handed and professional manner. Instructional bias tends to be indoctrinating, because it tends to foster conditions in which students accept professorial pronouncements on controversial topics without the possibility of meaningful engagement or dissent.

Here again, the AAUP has worked to undermine the concept of professorial bias and to insulate classroom instruction from oversight to ensure unbiased activity. Historically, the AAUP recognized the importance of mutual intellectual respect within the classroom. For example, the AAUP's *On Freedom of Expression and Campus Speech Codes* requires instructors to "foster an atmosphere respectful of and welcoming to all persons."<sup>52</sup> Thus, for example, the AAUP acknowledged that it is a "breach of professional ethics" for an instructor to ridicule a student in class for advancing an idea grounded in religion or politics.<sup>53</sup> Since its report on *Freedom in the Classroom* (2007), however, the AAUP has rebuffed efforts to hold instructors accountable for biased classroom presentations, even when the instructor goes so far as to create a hostile environment for students. Indeed, the AAUP has attacked the very idea of a "hostile learning environment," as if it were the concept itself and not its various manifestations that were the graver threat to academic freedom:

[T]he current application of the idea of a "hostile learning environment" to the pedagogical context of higher education presupposes much more than blatant disrespect or harassment. It assumes that students have a right not to have their most cherished beliefs challenged. This assumption contradicts the central purpose of higher education, which is to challenge

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<sup>52</sup> AM. ASS'N OF UNIV. PROFESSORS, ON FREEDOM OF EXPRESSION AND CAMPUS SPEECH CODES (1994), available at <http://www.aaup.org/file/freedom-of-expression-campus-speech-codes.pdf>.

<sup>53</sup>. See FREEDOM IN THE CLASSROOM, *supra* note 28.



students to think hard about their own perspectives, whatever those might be.<sup>54</sup>

This objection confuses the concept of a “hostile learning environment” with certain alleged but unspecified abuses of the concept. It creates a straw-man argument which can readily be defeated, rather than confronting the more difficult problem that arises when professorial bias *discourages* students from thinking hard about their perspectives rather than challenging them to do so.

### III. THE ROBINSON CASE

The need to distinguish academic freedom from political indoctrination can be illuminated by a deeper examination of the William Robinson case, which is briefly introduced above. Robinson is the sociology professor at the University of California at Santa Barbara (UCSB) who became a national cause célèbre after sending students in his undergraduate course on Sociology of Globalization an email entitled, “Parallel images of Nazis and Israelis,” which at least two of his undergraduate students found to be both anti-Semitic and deeply offensive. The email juxtaposed photographs of Israeli soldiers in Gaza with those of Nazi soldiers during World War II, commenting that “Gaza is Israel’s Warsaw—a vast concentration camp that confined and blockaded Palestinians”—and that “We are witnesses to a slow-motion process of genocide.”

One of Robinson’s students filed a complaint with UCSB’s Academic Senate, saying that when reading Robinson’s email, she “felt nauseous that a professor could use his power to send this email” and felt that she “had to drop the class.”<sup>55</sup> Another student, referring in his complaint to his family’s experience in the Holocaust, asked rhetorically, “How could one continue to participate in this professor’s class?” and disclosed that, “I felt as if I have been violated by this professor.”<sup>56</sup> Upon receiving the students’ charges, the university’s Academic Senate began but then hastily abandoned an investigation to determine whether Robinson’s actions violated UCSB’s Faculty Code of Conduct.<sup>57</sup> The dismissal was enthusiastically applauded within the higher education community, and an

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54. *Id.*

55. *First Student Complaint*, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, sb4af.wordpress.com/robinson-case/charges-responses/first-student-complaint/ (last visited Oct. 31, 2012).

56. *Second Student Complaint*, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, sb4af.wordpress.com/robinson-case/charges-responses/second-student-complaint/ (last visited Oct. 31, 2012).

57. MIT’s Noam Chomsky, for example, scolded Santa Barbara’s Chancellor Yang that “[i]t is, in my opinion, entirely improper that the charges in this case should even be considered, let alone be submitted for investigation.” Letter from Noam Chomsky to Chancellor Yang, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, sb4af.wordpress.com/letters-of-support/letters-from-professors (last visited Oct. 31, 2012).

investigation was then commenced to determine why the inquiry was brought in the first place.<sup>58</sup> Some of Robinson's defenders went so far as to insist that acquitting Robinson was not enough and urged public condemnation of the complainants.<sup>59</sup>

It is a sad commentary on the state of academic freedom discourse that Robinson's supporters see no irony in their efforts to publicly condemn students for speaking out against professorial abuse. In this case, the allegations against Robinson, if true, reflect several of the characteristics of political indoctrination. First, it is at best unclear as to whether Robinson's intent was educative and whether he saw these materials as being relevant to course objectives. One student complainant asked Robinson why he had distributed the now-infamous email: "I just wanted to know what this information was for?" She asked, "Is it for some assignment or just information that you put out there for us?" According to the student, Robinson responded, "Rebecca, just for your interest . . . I should have clarified."<sup>60</sup> To the extent that Robinson means that this information was not intended to advance instructional objectives—which is certainly one plausible interpretation of this ambiguous exchange (for which we have only the student's account)—his response could be taken as an admission that it was extraneous to the course and, perhaps, that it was not even intended for educative purposes. There can be no question that Robinson's email addressed a controversial topic from a one-sided perspective. More information would be required to determine whether his course content, taken as a whole, involved a persistent intrusion of such interventions and whether balance might be discerned when this communication is viewed in

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58. The American Association of University Professors, for example, applauded the dismissal of charges, noted that the academic senate investigation was handled, and admonished the administration rather scoldingly to "cooperate fully with the as it proceeds with its study." Letter from Anita Levy, Assoc. Sec'y, AAUP, to Henry T. Yang, Chancellor, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, *available at* <http://sb4af.wordpress.com/letters-of-support/letters-from-scholarly-orgs/>. Numerous academics criticized the perceived role of the Anti-Defamation League in advocating on behalf of the two students. *See, e.g.* Letters from Professors, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, <http://sb4af.wordpress.com/letters-of-support/letters-from-professors/> (last visited May 17, 2013).

59. For example, UCLA anthropologist Sondra Hale argued that it is "not enough to dismiss the charges," urging that "the attack on Professor Robinson's academic freedom. . . be publicly condemned." Letter from Sondra Hale to Professor Joel Michaelson, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, *available at* [sb4af.wordpress.com/letters-of-support/letters-from-professors](http://sb4af.wordpress.com/letters-of-support/letters-from-professors). Similarly, Professor Alan Nasser of Evergreen State College argued that "[t]his condemnation is essential to preserve full and fair discussion within the most important of the U.S.'s civic institutions. . . . Further, the attacks must be condemned to protect faculty and students from wasting valuable time and energy defending themselves against frivolous allegations and political repression." Letter from Alan Nasser To Whom It May Concern, COMM. TO DEFEND ACAD. FREEDOM AT UCSB, *available at* [sb4af.wordpress.com/letters-of-support/letters-from-professors](http://sb4af.wordpress.com/letters-of-support/letters-from-professors).

60. *First Student Complaint, supra* note 55.

the broader context of the course as a whole. Finally, it must be emphasized that the allegations here are not merely that Robinson presented material in an imbalanced fashion but that his inflammatory approach created a hostile environment for at least some of his students.

Absent a full investigation, it is impossible to determine whether any of these criteria are met. What is striking, however, is the vehemence with which so many academics challenged even the notion that these claims should be investigated. If the allegations are true, then Robinson's communication to his students was apparently tendentious, polemical, extraneous, one-sided and inflammatory. These characteristics should, under a traditional analysis, exempt them from the doctrine of academic freedom. The modern tendency to ignore these characteristics—if not indeed to celebrate them—has given plausibility to the claim that Robinson was merely exercising his academic freedom.

#### CONCLUSION

Political indoctrination is different from academic instruction in ways that matter. Recent efforts by the AAUP and others to efface these differences can only do damage to the doctrine of academic freedom. Other collateral damage will include a lessened focus on critical reasoning skills, dilution of instructional programs, a coarsening of intellectual discourse, and an increasing bias in higher education. Unfortunately, the trend towards conflating academic freedom with political indoctrination has only accelerated in recent months. As we have seen, late last year Penn State's Senate Committee on Faculty Affairs moved, subject to the president's approval, to delete the explicit exception for political indoctrination from Penn State's exceptionally strong policy. The Penn State case provides in microcosm a view of the problem now brewing across American academia. The proposed amendment would delete this seemingly unobjectionable statement on political indoctrination: "It is not the function of a faculty member in a democracy to indoctrinate his/her students with ready-made conclusions on controversial subjects."<sup>61</sup> The amendment then deletes the following language from the document:

No faculty member may claim as a right the privilege of discussing in the classroom controversial topics outside his/her own field of study. The faculty member is normally bound not to take advantage of his/her position by introducing into the classroom provocative discussions of irrelevant subjects not within the field of his/her study.<sup>62</sup>

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61. SENATE COMMITTEE ON FACULTY AFFAIRS OF THE PENNSYLVANIA STATE UNIVERSITY, REVISIONS TO POLICY HR64: ACADEMIC FREEDOM (ADVISORY AND CONSULTATIVE) 1, 4–5 (Dec. 10, 2010), *available at* <http://www.senate.psu.edu/agenda/2010-2011/dec2010/appd.pdf>.

62. *Id.* at 5.

It should be emphasized that this proposed amendment would leave untouched various other provisions which serve similarly beneficial purposes and that the policy as amended would be far from the worst in higher education. It would just no longer be one of the best.

Critics of the academic establishment have described Penn State's long-standing academic freedom policy, HR 64, as a "model" policy,<sup>63</sup> the "most powerful statement of the meaning of academic freedom at any university,"<sup>64</sup> and even "the only academic freedom provision . . . worthy of the name."<sup>65</sup> The substantive HR 64 provisions have a particular punch at Penn State, where students have enjoyed an unusual procedural right to assert their own academic freedom rights against faculty encroachments. Among the academic establishment, Penn State's policy has been viewed rather less favorably. Indeed, Cary Nelson has fumed that "Penn State had one of the most restrictive and troubling policies limiting intellectual freedom in the classroom that I know of."<sup>66</sup>

HR 64, as previously amended in 1987, defines "academic freedom" as "the principle of self-direction in inquiry and in the acquisition of knowledge in research, teaching, and learning, so long as this is undertaken within the framework of established scholarly methodology and professionalism."<sup>67</sup> The policy stresses faculty obligations "respecting the rights of others to learn"<sup>68</sup> and emphasizes that each "faculty member agrees at all times to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to make every effort to indicate that he/she is not an institutional spokesman."<sup>69</sup> Moreover, the policy provides that faculty members are "responsible for the maintenance of appropriate standards of scholarship and teaching ability, and for not persistently intruding material which has no relation to their subjects."<sup>70</sup> The proposed amendment would retain all of these provisions.

Nevertheless, the proposed amendment would delete this seemingly unobjectionable statement on political indoctrination: "It is not the function of a faculty member in a democracy to indoctrinate his/her students with

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63. Sara Dogan, *Letter from the National Campus Director*, STUDENTS FOR ACAD. FREEDOM (Sept. 10, 2007), <http://www.studentsforacademicfreedom.org/letters/2515/welcome-back-to-campus>.

64. *Id.*

65. Stanley Fish, *We're All Conservatives Now*, N.Y. TIMES, Dec. 20, 2010, (quoting David Horowitz), available at <http://opinionator.blogs.nytimes.com/2010/12/20/were-all-conservatives-now/>.

66. Ashley Thorne & Steve Balch, *Free to Indoctrinate: The AAUP Applauds Penn State's Retreat from Academic Freedom*, NAT'L ASS'N OF SCHOLARS (Dec. 14, 2010), [http://www.nas.org/articles/Free\\_to\\_Indoctrinate\\_The\\_AAUP\\_Aplauds\\_Penn\\_StatesRetreat\\_from\\_Academic\\_Fr](http://www.nas.org/articles/Free_to_Indoctrinate_The_AAUP_Aplauds_Penn_StatesRetreat_from_Academic_Fr).

67. SENATE COMMITTEE, *supra* note 2.

68. *Id.* at 3.

69. *Id.* at 4.

70. *Id.* at 4.

ready-made conclusions on controversial subjects.”<sup>71</sup> The amendment then deletes the following language from the document:

No faculty member may claim as a right the privilege of discussing in the classroom controversial topics outside his/her own field of study. The faculty member is normally bound not to take advantage of his/her position by introducing into the classroom provocative discussions of irrelevant subjects not within the field of his/her study.<sup>72</sup>

This language, which the proposed amendment would jettison, has served as an important protection for student academic rights. As Provost Rodney Erickson has explained the policy, “Students must be free to express their opinions without fear of ridicule, intimidation, or retaliation by any instructor.”<sup>73</sup> For this reason, the provost cautioned that “[i]nstructors should be mindful of their relationship to students and, consistent with HR 64, avoid political or philosophical statements or appearances that may be interpreted by students as biases or proselytizing.”

The thrust of these changes is to insist that academic freedom—the “cornerstone of the university as a community of scholars”—includes not only the “acquisition of knowledge in research, teaching, and learning” as those terms are traditionally understood, but also (and equally) those classroom practices which can fairly be described as political indoctrination on controversial subjects which are outside the professor’s field of expertise and irrelevant to the course of study.<sup>74</sup> Within Penn State’s faculty senate, faculty members debated the precise language in the proposed amendment at length, yet there were reportedly “no substantive disagreements” as to whether the changes should be made.<sup>75</sup> Within the broader academic community, the changes have been cheered by those who consider Penn State’s long-standing policy to be too restrictive. Cary Nelson has claimed that the language the proposed amendment would

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71. *Id.* at 4–5.

72. *Id.* at 5.

73. Rod Erickson, Message from the Executive Vice President and Provost, dated August 22, 2008, available at <http://www.sociology.psu.edu/faculty%20and%20staff%20information/Teaching%20Resources/HR64%20SenatePolicy20-00-Academic%20Freedom.pdf>.

74. *Id.* at 1, 4–5.

75. Professor Thomas Beebee, who co-chairs the subcommittee that managed the amendment through the Faculty Senate, has reportedly claimed that he agrees with the statement on political indoctrination which his subcommittee deleted but that he and his colleagues believed that it would be better to retain only the policy’s more general expression of this principle. See Anne Danahy, *PSU Reworks ‘Academic Freedom,’* CENTRE DAILY TIMES, Jan. 8, 2011, available at <http://www.centredaily.com/2011/01/08/2441361/psu-reworks-academic-freedom.html#ixzz1AplihJ95>. This rationale, if correctly reported, is patently disingenuous, since it makes no sense to actively delete a clear and specific statement which one believes to be correct on the grounds that you prefer a broader and vaguer formulation—unless one has something to hide.

remove is “the normal human capacity to make comparisons and contrasts between different fields and between different cultures and historical periods. The revised policy is a vast improvement.”<sup>76</sup> Similarly, one higher education blogger called some of the HR 64 provisions “absolutely appalling attacks on academic freedom,” and argued that the policy as amended would be “dramatically improved.”<sup>77</sup> The National Association of Scholars (NAS) shot back that this apparent AAUP endorsement of Penn State’s amended policy shows that the organization “no longer understands” academic freedom, which is “its primary ideal.”<sup>78</sup> NAS argues “that the revisions are a troublesome invitation to faculty members to engage in conduct that serves students poorly and ultimately undermines academic freedom.”<sup>79</sup>

Sadly, NAS may have gotten the better of this argument, but they remain very much an isolated voice of dissent. The academic establishment today is moving quickly in the wrong direction when it comes to the problem of political indoctrination. If this trend continues, the idea of academic freedom, as interpreted by its academic expositors, will become so broad, thin and diffuse as to become indefensible by any but the truest believers and unpalatable to an American public which has previously been disposed to support it.

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76. Thorne & Balch, *supra* note 66.

77. John K. Wilson, *Penn State Senate Moves to Restore Academic Freedom*, COLLEGE FREEDOM BLOG (Dec. 12, 2010, 5:28 PM), <http://collegefreedom.blogspot.com/2010/12/penn-state-senate-moves-to-restore.html>.

78. Thorne & Balch, *supra* note 66.

79. Peter Wood, *Is Academic Freedom a License to Indoctrinate?*, THE CHRON. OF HIGHER EDUC. (Dec. 23, 2010), available at <http://chronicle.com/blogs/innovations/is-academic-freedom-a-license-to-indoctrinate/28198>.

