

## CHAPTER 6

# THE FUTURE OF ACADEMIC FREEDOM

Let's begin the case for a new senate committee by revisiting the outrage with which another such proposal was met. Faculty seem to be operating under the delusion that academic freedom and discrimination issues can be neatly separated, the former handled by faculty within the discipline-specific processes already established and the latter by human resources or Department of Equity and Inclusion offices. This half-conscious presumption is surely behind the hyperbolic response to the Princeton Faculty Letter's proposal for an antiracism committee that we discussed in our introduction. When the Princeton Faculty letter signatories suggested a committee to evaluate alleged racism among faculty, the reaction was swift and definitive: *this is utterly unacceptable*. The strong reaction to an antiracism committee suggested that many faculty believe either that racism *isn't* already being adjudicated with punitive consequences on campuses across the nation, or that if it is, such adjudication occurs only with regard to clearly circumscribed incidents handled by nonacademic officers conversant with workplace discrimination laws.

The Princeton Faculty Letter was one of many campus documents issued in summer 2020 as the nation reckoned with the af-

termath of George Floyd's murder, but it received disproportionate attention from the media. On July 4, over four hundred Princeton faculty and staff sent an open letter to President Christopher Eisgruber and other top administrators calling for antiracist reforms. The letter makes numerous demands that will be familiar to faculty at campuses across the country, such as "Implement administration- and faculty-wide training that is specifically anti-racist in emphasis with the goal of making our campus truly safe, welcoming, and nurturing for every person of color on campus—students, postdocs, preceptors, staff, and faculty alike" and "Reward the invisible work done by faculty of color with course relief and summer salary." (You will recall critical race theorists' account of faculty of color "struggling to carry the multiple burdens of token representative, role model, and change agent in increasingly hostile environments" [*Words That Wound* 7].) The twenty-seventh demand is for Princeton "to constitute a committee composed entirely of faculty that would oversee the investigation and discipline of racist behaviors, incidents, research, and publication on the part of faculty, following a protocol for grievance and appeal to be spelled out in Rules and Procedures of the Faculty. Guidelines on what counts as racist behavior, incidents, research, and publication will be authored by a faculty committee for incorporation into the same set of rules and procedures." Throughout summer and then fall 2020, these 72 words were plucked out of the 4,172-word letter and denounced with apparently universal rage.

It will surprise no one that Bruce Gilley tweeted that the idea was an "Astonishing act of totalitarianism. . . . Every signatory should be fired." But the categorical rejection of it by liberal academics, often in similarly exaggerated terms invoking the Red Guards' struggle sessions or the Jacobins' guillotine, *is* a bit of a surprise. When signatories to that statement were contacted by *Atlantic* writer Conor

Freidersdorf, a few of them walked back or withdrew their support for that specific proposal. Others, cognizant of Friedersdorf's angle and the already-formed consensus, refused to comment. Undoubtedly, it was hard to defend the idea in the face of attacks that presumed to know the exact nature of such a committee before it had been created. Indeed, it *is* hard—and it *should* be hard—to make the case for disciplining faculty for what might be understood by some as political expression. But that it is hard does not mean that a case cannot or should not be made.

In “The Problem with Princeton’s Racism Committee Proposal” on the AAUP *Academe* blog, John K. Wilson wrote that “a separate system to punish faculty for racism is an awful idea that threatens academic freedom.” When Jennifer commented in support of what she called a committee “to look at racist research and design guidelines for how to think about what such research might be,” Henry Reichman answered:

Unfortunately, the letter does NOT propose a committee “to look at racist research and design guidelines for how to think about” that research. It proposes a committee to “oversee the investigation and discipline” of racist behaviors, incidents, research, and publication. In short, a committee that could discipline (i.e., punish) a faculty member if it deemed her publications unacceptable. Not a tenure and promotion committee, making legitimate assessments on the basis of clear criteria, but a special committee designed to sniff out (investigate) and punish (discipline) whatever it deems “racist.”

Reichman suggests that faculty bodies like promotion and tenure committees are acceptable but a “special committee designed to sniff out (investigate) and punish (discipline) whatever it deems ‘racist’ is

not.” Fair enough. The overwhelming majority of commentators—not just on the blog, but everywhere—took this tack: a special committee (read: mob) subjecting faculty to struggle sessions over racism is unacceptable. But did we all somehow forget—or simply not know—that these special committees already exist on every campus across the country? They are called offices of diversity, equity, and inclusion. (Or, on some campuses, they are creatures of human resources.) If someone has not been personally under investigation for discrimination at their university, it is possible that they don’t know or didn’t quite realize the full extent of these offices’ power to investigate and recommend punishment. It is also possible that because these investigations all happen out of faculty view (other than that of the faculty respondent’s, of course) and outside faculty governance, with no guarantees of transparency or due process, we vaguely know of and fear them but tend to repress their existence when debating issues in the faculty-dominated arenas with which we are more familiar.

But yes, faculty are already routinely punished for speech found to be discriminatory. Human resource departments, offices of diversity, equity and inclusion, and other bureaucracies of the university pursue these investigations, and with steadily increasing frequency and severity of consequence over the last decade. When faculty and staff are investigated for discrimination at Portland State University, the Office of Global Diversity and Inclusion produces a report and recommends discipline if it has “findings” (that is, it determines that discrimination occurred). It is then up to the administrator (typically, dean, provost, or president) to decide on disciplinary sanctions, which can range from an oral reprimand to termination. At most places, all of this happens without a scintilla of shared governance: there is no faculty input whatsoever. At a few institutions, typically

those with exceptionally strong faculty senates or strong collective bargaining chapters, a mechanism has been created to ensure that a faculty member or academic professional who is subject to any consequences more severe than a written reprimand can request a panel of peers to weigh in before discipline is imposed. In effect, the committee proposed by the Princeton letter would make this option *the* default process—not something that might kick in as a last resort after a faculty member has already been subjected to what is usually an extremely protracted investigation. In Jennifer’s three years of experience as her union’s representative for respondents accused of discrimination, investigations have taken from three months to nearly two years to conclude and entail a great deal of limbo punctuated by sessions when the respondent is interviewed. (A respondent might be interviewed one to four times before an investigator finishes their report.)

One response to Wilson’s post came from someone who was punished in one of these types of investigations and, as a consequence, sees the merits of a faculty committee. “At least,” Frank P. Tomasulo wrote, “there would be a ‘rule book’ by which professors would know what was verboten and what was acceptable. In theory, such a list of ‘deplorable’ acts might also be able to spell out the penalties for violating the ‘laws’ and might make distinctions between egregious behavior and an inadvertent MICRO-aggression.” Not only might there be some clarity under a model in which a faculty committee was under an obligation to offer clearer guidelines than any faculty currently receive; more important, it would not be lawyers or HR personnel alone judging events that unfolded in places most of them rarely inhabit—like classrooms. The diversity officers’ expertise notwithstanding (and that expertise is considerable, we know), are not faculty better positioned to understand the nuances and complexi-

ties involved in teaching and research? As the person who accompanies faculty respondents, Jennifer has witnessed a number of investigations in which the diversity officer's lack of experience in the classroom was a problem for a fair investigation. To give you one example: a student cites as one piece of evidence of disrespect—and, thus, discrimination—that the professor interrupted them during a class presentation. The diversity officer takes this at face value and is skeptical when the respondent explains that the class was on a tight schedule and the complainant had exceeded their allotted time. The investigator has not experienced the pressures of time management in the classroom and imagines that the student could easily have been allowed to finish. Ordinarily we would not have to emphasize so basic a point, but it is routine to stop a student who has gone over time in order to make sure others have a chance to do their presentations and the class stays on schedule. This situation will sound hard to believe to those of you who have not been investigated, but we assure you this kind of disconnect occurs.

More to the point perhaps is that investigations can and do stray into academic freedom territory—particularly with regard to academic and professional judgment. Because investigators are looking for evidence that a student has been treated differently than other students, they ask to look at grades given to other students, emails exchanged with students in the same class or similar classes as the complainant, and anything else that they think might help them determine differential treatment. There are no restrictions, in Jennifer's experience, on what information an investigator may request. In the hands of someone looking for evidence that a student was treated unfairly, emails lose the rich context within which the instructor operates, and a permissive email to a student with a long record of conscientious effort looks sinister next to the stern email to a student

with a history of avoidance. Investigators *are* second-guessing faculty judgment at times in these investigations, which is precisely what they are not supposed to do. There is no easy solution to this reality, given the messiness and degree of subjectivity necessarily involved in even the best-run investigations, but clearer limits about what documents investigators may demand combined with actual faculty governance involvement in the process could considerably reduce the potential for arbitrary outcomes.

We want to underline our belief that all members of a university must have the right to file discrimination complaints and have them investigated. Real harm is done by unwitting and sometimes witting professionals who use disparaging language, or in any number of other ways demonstrate bias, when performing their roles in the university community. Indeed, we've named a few of these people in this book. It is undeniable that some respondents deserve the sanctions and trainings meted out to them. In this book, we've been emphasizing the academic illegitimacy of white supremacist and colonialist arguments rather than their potential for harm for two reasons, both of which stem from conversations with some of our colleagues of color. The first is that reliance on the term "harm" can invite what one colleague of color calls "trauma porn," in which students or faculty of color are compelled to testify to the harm they have suffered as a result of racist utterances or displays (ranging from scholarly articles on the inferiority of nonwhite peoples to the annual appearance of Halloween blackface), on a scale from microaggressions to macroaggressions. The second, even more disturbing reason is that the invocation of harm often provokes the response that the source of the harm derives not from the falseness of the statements but from their truth. This is, as we have noted above, how racists and assorted trolls ply their trade: they say outrageous and un-

founded things, and in response to criticism, cast themselves as brave truth-tellers fighting the good fight against feel-good liberal group-think. Take for example the *Wall Street Journal* op-ed in which Amy Wax replied to her critics: “The mindset that values openness understands that the truth can be inconvenient and uncomfortable, doesn’t always respect our wishes, and sometimes hurts. Good feelings and reality don’t always mix” (“The University of Denial”). The reason nonwhite people are hurt by statements about their inferiority, in other words, is that those statements are true. That trollish response is an insult to intelligence—literally an insult upon injury.

Our earlier point is simply that investigations run by one diversity officer risk outcomes that directly infringe on academic and professional judgment. Once an investigation has concluded, faculty are punished behind the scenes in ways that the rest of us might or might not agree with but will never know about. It’s bad enough that our current reality is one that subjects our community members to a largely invisible and intimidatingly mysterious process that was designed without any faculty input, but for our purposes in this book, here’s what is perhaps even worse: we—and our students—are *still* forced to live in perpetuity with that faculty member whose discriminatory actions are *not* unintentional. The rare but recognizable faculty member who *is* an ideologue who opposes efforts related to diversity and inclusion and trumpets his contempt for racial-justice work or the dignity of transgender people: this person is rarely disciplined. And if he is, he is disciplined with significantly less severe consequences than are others. This is because he implicitly or explicitly threatens lawsuits and engages right-wing organizations with deep pockets to back him—all with the leverage of his claim that his academic freedom is being violated. This claim effectively derails the case precisely because diversity officers, human resource professionals, and/or a few



administrators do not possess enough credibility to adjudicate academic matters on their own. They need faculty for that. A claim at this point of a violation of academic freedom brings the bureaucratic machinery to a full stop. Diversity officers might want to see these actors disciplined, but they are overridden by university administrators who consider the risks of public warfare too great.

And here's where even the most libertarian faculty member should have sympathy for the people working in these offices. The burnout rate for diversity officers is unusually high, because demoralization inevitably sets in when diversity officers repeatedly find that their recommended sanctions are enforced for the relatively disempowered members of the academic community but not for the powerful ones with tenure, money, and/or significant public visibility. It does not feel good to see your recommendation for the adjunct or academic professional readily adopted but not the recommendation for the full professor. It feels even worse to be asked to modify (that is, soften) reports on powerful university figures but rarely, if ever, on others all the while still being expected to tell complainants and respondents alike that you do not represent the university's interests and are completely impartial. In consultation with the office of general counsel, the office of the provost or president makes the final decision, and this often means that, even though less litigious or less protected faculty and staff have received severe sanctions in comparable circumstances, the litigious and well-connected professor will not. In these cases, it is clear to us that a faculty-led committee (which could, and should, include professionals with expertise in diversity, equity, and inclusion) could pressure the university to uphold its values more powerfully than can the diversity officer alone.

In sum, racist (and other discriminatory) behavior and incidents are routinely investigated but unevenly disciplined. To repeat, the

variation in punishment is not the fault of the diversity and inclusion (or equity and compliance) officers but that of the administrators to whom they report. The investigators in these offices, we believe, strive to be impartial and they have needed expertise in their areas, but they are not eligible for tenure and do not enjoy the protections of academic freedom. They work directly for provosts and presidents. They are hired by them, promoted by them, and fired by them. They may or may not do their (very demanding) jobs fairly and professionally, but they cannot be accused of hypocrisy. That accusation must be reserved for the provost or president who, usually after consultation with the office of general counsel, decides against risking a lawsuit.

**IN A BLISTERING** indictment of these offices in *Inside Higher Education*, “Farewell to DEI Work,” Tatiana McInnis explains what she calls the “ever-expanding acronym” of these offices: “While once campuses focused only on diversity, many institutions have broadened that focus to include equity and inclusion, so it now commonly refers to all three, as in the Office of Diversity, Equity and Inclusion, or DEI.” Having recently quit her job in one of these offices, the disillusioned McInnis continues, “These words, and the intentions they seek to express, are well and good, yet they fall flat as offices fail and refuse to address systemic white domination, anti-Blackness, misogyny or any group-specific violence in their mission statements.” These offices are what she later calls “spaces of impossibility” because “they are not empowered to hold community members accountable when they fail to uphold stated investments in equity.”<sup>1</sup>

I. See also Brown, “College Diversity Officers Face a Demanding Job and Scarce Resources” and Mangan, “The U. of Iowa Keeps Losing Diversity Officers.”

Most faculty, we believe, want to see discrimination laws enforced. They do not want to see anyone—student, staff, or faculty—discriminated against on the basis of disability, race, sex or gender identity, country of national origin, religion, or marital status. They want bad actors held accountable. At the same time, most faculty have a reasonable mistrust of these offices and a reasonable mistrust of the administrators who oversee them. Some of the mistrust of these offices stems from the sense that the personnel in them do not understand our jobs and have too low a bar for launching investigations. Some mistrust stems from the sense that BIPOC and white women are investigated in disproportionate numbers because students’ own biases can mean they are both more critical of these faculty and more confident in their power to lodge complaints against them. And some mistrust comes from the impression that these offices are institutional window-dressing that advertise diversity on behalf of the administration without truly supporting the BIPOC people working in the university.<sup>2</sup> Faculty need to get involved in holding one another accountable for both disinterested and self-interested reasons. If review procedures can be incorporated in some form in faculty handbooks or bargaining contracts, faculty can have some role in making

2. In “Why Was it So Easy for Jessica Krug to Fool Everyone?”, Jason England writes: “The DEI sector becomes a hothouse of symbolic progressivism, where progressive and radical (and sometimes inane) ideas can be given lip service while institutions and systemic racism remains largely unchanged. Cliché programming, focus groups, town halls, anti-racism reading lists, testimonials of hurt, and confessions of guilt touch deep nerves and emotional wells in each of us as individuals, summoning up sadness, self-righteousness, love, and hate. But there is no measurable progress to be found as a result of these undertakings.” See also Cathryn Bailey, “How Diversity Rhetoric Obscures Structural Inequities in Higher Education.”

sure that the diversity rhetoric of brochures bears some relationship to reality and that administrators do not shrink from the professed values of the university when faced with litigious actors or angry politicians. And, for self-interested reasons, faculty need to get involved to protect ourselves from the potential for misunderstandings of diversity officers regarding the nature of our jobs or simply the dangers of having one person—one attorney, often—make a recommendation to administrators that can have serious consequences.<sup>3</sup>

We'll return to this question of hypocrisy in the office of the president, but first let's circle back to Wilson's post and the question of faculty governance over charges of racism. Arguing with one commentator, Wilson poses a simplified and simplifying opposition between what he calls "my idea of freedom" and "your embrace of censorship for the university." A commentator going by the handle of "Not John Deane or Doane" gets closer to the stakes of the Princeton Faculty Letter when they write:

I disagree with Wilson on the overlap between free speech and academic freedom. As I read the AAUP documents on academic

3. We highly recommend the *New York Times Magazine* feature, "The Accusations Were Lies. But Could We Prove It?", detailing the ordeal experienced by Marta Trecondor and her partner Sarah Viren (the article's author) when Marta became the respondent of a malicious sexual discrimination complaint. The degree to which everything for this couple rested on one lawyer's ability to grasp a bewildering culturescape in which social media intersected with tenure-track job scarcity is terrifying. Such complex situations cannot be left to one lawyer and then the sometimes arbitrary decision-making of administrators who apply policies unevenly (and thus unfairly) and may be ignorant of the complexities of an issue when it touches on elements outside their own particular fields.

freedom, the goal is to assure that faculty have total freedom to pursue research, and that freedom attaches to many different parties: to the individual first and foremost, but also to departments, institutions, and professional associations. right now, for example, many fields close to biology consider eugenics, very broadly speaking, to be unacceptable. here, academic freedom rightly attaches to disciplines and departments. disciplines are doing their jobs when they say that eugenics is racist pseudoscience. there are still problems: there are subdisciplines (“evolutionary psychology” is one such now) that develop specifically to advance racist ideas that are unacceptable in the main disciplines they are part of. this remains a real problem, though institutions have, in my opinion, the academic freedom and governance responsibility to decide whether or not to allow programs in those fields to flourish. that is *\*already\** a kind of “star chamber” that exists well distributed in the administration of universities. historic racism is one of the areas that it does address, and should.

For this commentator who, like us, finds terms like “star chamber” hyperbolic distractions, there is no need for such a committee as far as academic research is concerned because the necessary oversight it would provide is already embedded within the university, in offices devoted to research integrity (and its opposite, research fraud). His rejoinder to Wilson makes a great deal of sense to us; we know such review committees exist, and Michael has chaired one, involving an academic integrity case. But there is ample evidence, accumulating over the course of the past few decades, that our existing infrastructure for internal review is not enough.

When universities respected the integral relationship between job security and academic freedom, and the majority of faculty were

tenure-line, these processes worked for the most part. Before fundamental changes to American news outlets, social media, and democracy in the first two decades of the twenty-first century, changes that led to the profound polarization of the electorate and the proliferation of phrases like “alternative facts,” these processes were adequate. When there was a more or less shared reality (rather than one in which the Sandy Hook massacre occurred and one in which it didn’t), these processes sufficed and, indeed, were great accomplishments of the twentieth century (thanks to the AAUP). With fundamental changes to the environment both inside (with the erosion of tenure) and outside (with the erosion of a shared reality) of the university, they no longer appear to.

The most obvious examples of how the current infrastructure no longer suffices to regulate the integrity of faculty expression and ensure its protection—that is, academic freedom—are not necessarily the Lawrence Meads and Bruce Gilleys who earned tenure before anybody could stop them from, respectively, recycling debunked racist stereotypes and calling for Western European countries to recolonize African ones. They are the Jeff Klinzmans.<sup>4</sup> Klinzman had been an adjunct English professor at Kirkwood Community College for over 16 years when a comment he made on an Iowa Antifa Facebook page was picked up by a local news outlet. When someone on the Facebook page shared a barely coherent Trump tweet calling Antifa protesters “gutless Radical Left Wack Jobs who go around hitting (only non-fighters) people over the heads with baseball bats,” English professor Klinzman responded in more coherent syntax, “Yeah, I know who I’d clock with a bat.” *Inside Higher Education* quoted

4. See Reichman, “Do Adjuncts Have Academic Freedom? Or Why Tenure Matters” for more cases.

Kirkwood President Lori Sundberg, who said that Klinzman's opinions have "drawn considerable attention from many inside and outside of the Kirkwood community just as we embark on a new school year" (Flaherty, "Pro-Antifa Professor Out"). Under pressure to fire Klinzman, Sundberg succeeded in forcing his resignation. After first claiming that Klinzman's comments conflicted with the community college's mission, Sundberg later professed that Klinzman's removal from the classroom was not punishment for his speech but an attempt to ensure the campus's and his own safety. After the case was publicized, and FIRE and others got involved, a settlement was reached through a mediator. According to FIRE's website, "Although Klinzman will not return to work at Kirkwood, the school agreed to pay \$25,000, which is approximately the amount it would have paid Klinzman to continue teaching for over three and a half years" ("Victory").

Would the situation have played out differently had Klinzman been tenured? Undoubtedly so. Either Klinzman's job would be safe or, if administrators were doggedly determined to appease external forces, the "settlement" reached would have been to the tune of six or seven figures rather than \$25,000. And this strikes us as deeply hypocritical. The very same speech act will lead to two fundamentally different judgment calls by the office of the president depending on the job status of the person making it. Klinzman's case is but one of hundreds of reminders that the professoriate writ large has a very serious academic freedom problem *when adjunct instructors make up 70 percent of the college workforce* and it is this easy to get rid of them when they create a headache—more accurately, when partisan news outlets turn them into a headache—for administrators.

Had there been a previously agreed-upon mechanism by which Kirkwood faculty might turn to an academic freedom committee,

they might have redirected some degree of authority over the handling of Klinzman's case from the panicked president to themselves and ensured due process.<sup>5</sup> Would terminating Klinzman over extramural political speech violate his academic freedom? Did that speech shed light in any way on his fitness to teach his subject? "Yes" and "no" might well have been such a committee's considered conclusion. Next time around, when an adjunct instructor becomes a public headache and a pusillanimous administration encourages a chair to claim simply that the courses that person teaches are no longer needed, that same committee might at the request of the concerned adjunct instructor convene to determine whether the chair's reason for nonrenewal is plausible or if the issue at heart is, again, academic freedom. All else being unequal, in this polarized climate in which administrators cannot be trusted to ensure due process, such a committee would be a welcome addition to the cause of academic freedom.

**THE PRINCETON LETTER** calls for a racism committee, not an academic freedom committee. But might the latter fulfill much the same purpose in addition to the others we've just outlined? Oberlin has already demonstrated this, after all, with the committee it convened to adjudicate the question of fitness raised by the anti-Semitism and sheer irrationality of Joy Karega's claims. How many times have universities and colleges instead been reduced to either tolerating

5. A more recent case at Cypress Community College involving an adjunct instructor removed from her class by administrators is also an excellent example of one that needed to be handled by a faculty committee, not by anxious administrators. See Jaschik, "Cypress Suspends Adjunct over Her Comments on Police."



professorial unfitness out of apparent helplessness (think Gregory Christainsen) or reaching a settlement with the offending faculty member, thereby facilitating the flow of millions of dollars from higher education to conspiracy theorists, racists, serial harassers, and other varieties of the academic opportunist? A faculty committee that respects due process by constituting a panel of experts in the area in question would carry a lot of weight in a courtroom and might protect higher education's coffers (tuition-paying students, and, in the case of public institutions, taxpayers as well). Such a committee's judgment would wield influence because it would establish a context that precludes the "both sidesism" to which a judge or jury might otherwise be likely to default.

After Charlottesville, Trump famously commented that there were "very fine people on both sides." "Both sidesism" has come to refer to the tendency to treat two opposing groups or ideas as if they were equivalent when they patently are not. Trump attempted to do this with Antifa, of course, redirecting the public's attention from the ongoing violence of white supremacist organizations to antifascist groups by suggesting that the latter are just as dangerous, if not more so. This flies in the face of ample research showing that white supremacist organizations are historically and currently responsible for far more violence and exponentially many more deaths than are left-wing organizations.<sup>6</sup> Yet because the common sense of "impartiality" or "neutrality" still has considerable hold on the American public (thankfully, in certain respects, but annoyingly when political commentators pretend that Democrats and Republicans are both to

6. See, for example, the description of a report by the Center for Strategic and International Studies in the *New York Times* article by Jenny Gross, "Far Right Groups Are Behind Most Terrorist Attacks, Report Finds."

blame for dysfunction in Washington), the temptation is always to believe that both sides of an argument need to be heard. This principle sometimes then slides into the presumption that both sides also need to be understood to possess equal value. We've gotten past this trap on precious few topics: flat-earthers' arguments do not carry the same value as round-earthers; Holocaust denial no longer gains a hearing; creationists do not deserve equal airtime with evolutionists. But is that it? Is that all we've managed to establish?

In chapter 4, we looked to Mark S. James, a Black professor in the English department at Molloy College, for an analysis of what "both sidesism" meant for BIPOC faculty and students in the classroom during the Trump years, but even some white, conservative professors found themselves unable to participate in the bad faith of alleged neutrality. For example: Mark Rupert in the political science department at Syracuse University wrote a powerful letter to his administration titled "Teaching in the Time of Trump" because he anticipated "that Syracuse University administrators will hear complaints of partisanship about my teaching."<sup>7</sup> Rupert's letter was prompted by Chancellor Kent Syverud's remarks before the Faculty Senate, remarks that in Rupert's opinion encouraged precisely the kind of "institutionalized affect" of neutrality that James identified in his essay. Rupert wrote:

7. It should have been an open letter, in our opinion, because many faculty across the nation would have recognized in it a helpful framing of their own cognitive dissonance. It's worth noting here the way open letters have played such an outsized role in academe during the Trump era. To our minds, this is implicit confirmation that the academic infrastructure has proved inadequate or, more precisely, incomplete. It must be overhauled, prompted to undertake internal reforms that will become a permanent part of shared governance in American universities.

I agree with Chancellor Syverud that [teaching in a deeply polarized national environment] is an extremely important professional challenge that faces each of us individually, and all of us collectively. . . . My own approach to these challenges starts from the notion that my most basic commitment to my students is honesty. I must tell them what I believe to be true about our political and social lives. My interpretations are of course fallible, but they are not simply personal opinions insofar as they are based on decades of study and professional experience as a professor of political science. . . .

I understand the modern conservative movement to be a confluence of libertarian tendencies emphasizing individuals' rights to make choices regarding their lives, and social or religious conservatives emphasizing the importance of traditional values and faith traditions in helping us to distinguish right from wrong and to use our freedom to make morally reflective decisions. These I believe are both intellectually respectable positions and historically significant in the foundation of the contemporary conservative movement . . . [and] deserve to be critically examined and their strengths as well as their weaknesses explored with students. . . . But this is not the same as assuming that the contemporary Republican party is acting in good faith in its political practices. It has been well documented by historians and scholars of politics that the GOP has systematically used coded racial appeals to mobilize white voters since the era of the Civil Rights and Voting Rights Acts. President Trump's politics and policies are the culmination of a decades-long process of embracing racial divisiveness, hatred and fear as a partisan political tool. . . . This pedagogical challenge is now compounded by a President, and the political party supporting him, who have openly embraced racism and mendacity as the core of

their politics. From the moment he stepped off the escalator to announce his candidacy, Mr. Trump has deployed racial stereotypes and scapegoating as political tools. . . . To pretend that this form of politics is as respectable, or no more reprehensible, than that practiced by others would not be objectivity but a distortion of the truth in order to avoid controversy, a cowardly abdication of my most basic professional responsibility for which I don't think I could forgive myself.

Having distinguished what he does in the classroom from the kind of classroom experience invoked by the phrase “marketplace of ideas,” Rupert concluded his letter by saying that he hoped his administration would not mistake his well-considered speech in the classroom “for unreflective partisanship or personal opinion.”

Rupert differentiates between the exercise of free speech (which makes room for “unreflective partisanship” and “personal opinion”) and that of academic freedom (which takes evidence and reason into account). In an ironic twist that is now familiar to many of us, Rupert expected to be accused of some kind of bias or discrimination because he was prepared to name this difference and its implications in the classroom. He feared that students who favored Trump would accuse him of some form of intolerance. Did this happen during the Trump years? It most definitely did but not very often, we suspect, to white conservative-identified professors like Rupert. It happened more often to BIPOC faculty who, like Rupert, insisted on teaching honestly, come what may. It would be incredibly useful to get solid nationwide demographic data on this so as to discern patterns: what category of complaint is most often filed? What are the demographics of the complainant and the respondents? What are the ranks and employment categories of respondents?

Faculty senates need to get involved. In its many statements and policies regarding academic freedom, due process, and discrimination, the AAUP has for decades recommended faculty review processes overseen by senates or other duly elected bodies. But with the rise of DEI and HR offices, investigations around discrimination have largely proceeded without faculty involvement. As we mentioned earlier, some exceptionally strong senates and collective bargaining chapters have language that can be mobilized to demand some degree of faculty review. But they are often tethered to specific issues, such as conflicts with regard to the promotion and tenure process, academic integrity, or termination for cause (such as dereliction of duties), and have not been framed so as to capture the array of issues that have arisen with increasing frequency over the last decade. An academic freedom committee that included and/or consulted relevant experts and provided a university-wide layer of review would redirect some authority over the cases from administrators.

Administrators would be wise to embrace this idea. Deferring to the recommendations of such a committee might just save them from, or in, potentially crushing lawsuits. Administrators in possession of a senate committee recommendation accompanied by an informed report that preempted the false equivalencies to which a judge or jury might otherwise resort would be in a stronger position to defend the university's decisions than those without. Take the case of the late Michael Adams, who was a tenured professor of criminology, at the University of North Carolina–Wilmington (UNCW). In 2004, after Adams was denied promotion from associate to full professor, he sued the university, naming his department chair and others in the suit. The department had recommended against promotion on the basis that his research was thin, but he alleged that this was a pretext

for retaliation over his Baptist religion and his right-wing political positions. In his dossier for promotion, Adams included nonreferenced work—essays, op-eds, and appearances he’d made promoting various conservative viewpoints on abortion, free speech, diversity, etc. He also included *Welcome to the Ivory Tower of Babel*, a book he’d published with the far-right Regnery Press, and another book he had coauthored that was under consideration—*IndoctriNation: How Universities Are Destroying America*. The UNCW legal team argued that these public-facing works outside the field of criminology were non-referenced and so could not be counted toward scholarship. Had they kept it at that, they may have kept some of the issues raised in the case separate and managed to prevail.

In rebutting Adams’ claim of retaliation, however, legal counsel felt they needed to bolster their arguments by invoking *Garcetti v. Ceballos* (2006) so as to invalidate these external writings as unprotected employee speech when considered in the context of promotion.<sup>8</sup> Adams’s political opining, they argued, may be protected under the First Amendment when expressed in public forums, but it converted to unprotected speech when submitted as part of a dossier for promotion. This was not an entirely unreasonable way to signal that the work was thus subject to rigorous academic evaluation rather than to the much less exacting standards of the First Amendment. The judge ruled for UNCW but he fastened on *Garcetti* in his judgment, and by doing so, sparked another round of litigation. The AAUP, FIRE, and the Thomas Jefferson Center for the Freedom of Expression jointly

8. *Garcetti* held that public employees do not enjoy First Amendment protection for statements they make in the course of their duties as employees, and the Court did not exempt professors at public universities from this decision.

filed an amicus brief agreeing with the judge that Adams had not proven discrimination on the basis of religion but arguing that the issue of viewpoint discrimination was not yet decided because the ruling had tripped up when it invoked *Garcetti*. Protected speech cannot morph into unprotected speech, these organizations argued. The Fourth Circuit demanded the case be remanded and retried. The judge punted the retrial to a jury with no patience for questions of disciplinary procedures, refereed versus nonrefereed publications, etc. They found Adams's colleagues' emails expressing disgust with his various offensive op-eds evidence that they may have retaliated against him for his viewpoints.<sup>9</sup> The court demanded that UNCW promote Adams to full professor, award him back pay for the years

9. As suggested by the following passage in the joint amicus brief, this outcome is likely not the one hoped for by the groups involved in filing it, least of all the AAUP:

*Amici* also take no position on whether or not Adams actually suffered retaliation for his speech; that is a fact-oriented inquiry best entrusted to the district court, undertaken by appropriately considering the complex issues and implications of the case. This requires application of the correct analytic framework and proper consideration of all of the special issues in academia—a consideration that cannot be made properly through summary judgment or reliance upon the inapposite “official duties” framework articulated for most public employee speech in *Garcetti*.

Therefore, *amici* respectfully urge this court to recognize the Supreme Court's exception for academic speech, and to remand this case to the court below for a proper analysis of the unusually complicated facts in light of precedent, the longstanding principles of academic freedom, and the reservation for academic speech articulated in the majority's opinion in *Garcetti*. (*Adams v. Trustees* 24)

of the suit during which he'd been paid as an associate, and pay his hefty legal fees.

After another handful of painful and contentious years during which Adams subjected the community to what the university rightly called “vile” and “hateful” tweets and writings, the university paid him to retire, offering to continue his salary for five years so long as he did not earn it through teaching and service (see Li). UNCW chancellor Jose V. Sartarelli said that under the circumstances he (the chancellor) had had only three options:

1) Have him continue as a faculty member and accept the ongoing disruption to our educational mission, the hurt and anger in the UNCW community, and the damage to the institution. 2) Attempt to terminate him, and face drawn out, very costly litigation, that we might not win, which was the case when Dr. Adams sued UNCW and won a First Amendment retaliation lawsuit in 2014. That legal process lasted 7 years and cost the university roughly \$700,000, \$615,000 of which was for Dr. Adams' attorneys' fees. Losing a similar lawsuit today could cost even more. 3) Negotiate a settlement when, as part of a conversation with me about his conduct and future at UNCW, I learned Dr. Adams was interested in retiring. This approach allows us to resolve the situation quickly, with certainty, and in the most fiscally responsible way. This is the best option for our university and our community. (Jaschik)

We applaud UNCW for rejecting option one, which would have meant continuing, however reluctantly, to give Adams a comfortable perch from which to spew bigotry. We just wish it had not come at such a steep cost to a cash-strapped public institution. We also worry that the precedent set here has generated the perverse but distinct



possibility that some faculty may calculate that persisting in, and even escalating, attacks on their own university communities may result in their own golden parachutes. It would be nice to receive a handsome retirement and then, by virtue of the publicity generated by the conflicts over the years, land a gig with a conservative think tank for the remainder of one's work years.<sup>10</sup>

**IN A POLARIZED** America, there is no foolproof way to protect universities from such calculations. But if UNCW had developed its own internal university-wide academic freedom committee to which Adams had been obliged to turn *before* turning to the courts, might the outcome have been different? Academic freedom is a concept intended to shield faculty and their institutions from external coercion, and this means protecting not only the individual professor's speech but also the collective speech professors necessarily undertake in the course of their jobs when they evaluate one another. The situation to be most avoided is one in which this collective speech—the speech involved in discriminating high-value from low-value work—finds itself at the mercy of a judge or jury with no experience distinguishing between free speech and academic freedom. A judge or jury is very likely to fall back on free speech's premise of viewpoint neutrality and find it difficult to admit claims regarding high- and low-value speech. Making distinctions between the democracy-legitimizing principle of free speech and the principle of academic freedom can be hard enough after all even for faculty members who, unlike the public, are intimately familiar with the disciplinary procedures organ-

10. This was not Adams's path, though. His took a much sadder turn. Tragically, after settling with the university to retire, Adams committed suicide in the summer of 2020.

izing their careers. Surely, though, faculty members are better prepared to grasp the complexities. And just to make sure they are, we'd want any academic freedom committee to undertake its work equipped with Robert Post's 2012 book, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State*. In fact, we'll personally buy a copy of the book for the first five academic freedom committees to notify us of their existence. It is an indispensable primer for understanding why academic freedom might well be a special concern of the First Amendment, in the oft-quoted words of the Supreme Court, but for that very reason cannot be considered identical to it. We have insisted throughout this book on the difference between free speech and academic freedom, and we want to close the deal by returning to Post's definitive grounds for the distinction.

Post distinguishes “democratic legitimation,” which is why we have the First Amendment, from “democratic competence,” which is why we have universities. He developed these terms, as he explained in a 2012 interview, after “notic[ing] that First Amendment protections can function to debase knowledge into mere opinion and thereby to undercut the very political conversation that the First Amendment otherwise fosters.”<sup>11</sup> “The continuous discipline of peer judgment, which virtually defines expert knowledge, is quite incompatible with deep and fundamental First Amendment doctrines that impose a ‘requirement of viewpoint neutrality’ on regulations of speech,” he writes (9). Indeed, he says, “Expert knowledge requires exactly what normal First Amendment doctrine prohibits” (9). He writes:

11. Kip M. Hustace, “Elevating the Discourse: An Interview with Robert C. Post.”

To theorize the value of democratic competence is to confront a seeming paradox. Democratic legitimation requires that the speech of all persons be treated with toleration and equality. Democratic competence, by contrast, requires that speech be subject to a disciplinary authority that distinguishes good ideas from bad ones. Yet democratic competence is necessary for democratic legitimation. Democratic competence is thus both incompatible with democratic legitimation and required by it. This is an awkward conclusion that should prompt us to think hard about how democratic competence can be reconciled with democratic legitimation. (34)

The two can be reconciled if we understand the relationship between academic freedom and the value of democratic competence. Democratic competence—the knowledge and insight made available to society through its universities—can be ensured when academic freedom, not free speech, is the ruling principle:

Academic freedom protects scholarly speech only when it complies with “professional norms.” It is for this reason that universities are free to evaluate scholarly speech based upon its content—to reward or regulate scholarly speech based upon its professional quality. Universities make these judgments whenever they hire professors, promote them, tenure them, or award them grants. (67)

And now we’re back to where we started in this chapter—with our contention that these academic judgments, as they are already routinely made at most institutions, *would* be infrastructure strong enough to uphold academic freedom if we were living in the university as it existed forty or fifty years ago. But in a changed context involving social media, tenure erosion, and political polarization em-

boldening white supremacism, they patently are not. Court cases like *Adams*’s prove as much. A state of affairs in which academic freedom is conflated with free speech “virtually invites the state to suppress knowledge practices to short-term political and ideological interests,” Post writes, since “standard First Amendment jurisprudence . . . tends to reduce complex speech to opinions that can neither be true nor false” (98).

Universities are critical institutions in democratic countries because the work they perform—discriminating between opinion, on the one hand, and reasoned argument, on the other—inhibits the development of alternate realities rooted in power, special interests, and conspiratorial delusions. Post claims that the guarantee of “competence” provided by universities is poorly understood because democratic legitimation is so central to our identities as freedom-loving Americans—the idea that everyone has a right to speak their mind. Post goes on to argue that while “it is not intelligible to believe that all ideas are equal,” Americans gravitate to free speech over the cognitive ideal embedded in academic freedom because “Americans are committed to the equality of persons” (10) and “the deep egalitarian dimension of the First Amendment resonates far more with this ethical value than with any cognitive ideal” (10). He’s undoubtedly right in one sense, but in another, we suspect that this one of those moments when white faculty pay homage to American ideals not borne out by reality: *Americans are committed to the equality of persons? All persons?* We have to wonder whether this part of Post’s argument has aged well in the eight years since it was published. It seems more plausible to say, after witnessing the Trump years and surveying the terrain we have covered in the previous two chapters, that *some* Americans are committed to the equality of persons. To return to the words of Mark James from chapter 4, the fiction that everyone is making a good-faith

effort to find a way to share this country has become impossible to sustain. Acknowledging this reality and ensuring that white supremacy or white nationalism in any form does not gain legitimacy in the academy is work white faculty must do if they want the university to commit to the ideal Post imagines all Americans do.

A democratic government has legitimacy if it is accountable to all its citizens, not only to one group or a powerful few. Post's project takes for granted the concept of "democratic legitimation" so that his book can illuminate the dimly understood but fundamental role of democratic *competence*. Our project in this book has been to argue that the *democratic* element in the conception of academic freedom that underwrites democratic competence needs to be better understood as well. A robust theory of academic freedom must be grounded in the common good. The common good is an intelligible concept only if what Charles Mills calls non-ideal (that is, not colorblind and abstract but historically and reality-based) forms of equality and justice are as highly valued as is freedom. If we do not presume the equal dignity and value of all humans, we will inevitably create regimes of abstract "freedom" that privilege some groups over others in the name of a specious universalism. Academic freedom committees would operate with a high degree of clarity around the distinction Post makes between democratic legitimation, for which the First Amendment is necessary, and democratic competence, for which faculty review processes are necessary. They would also, we hope, understand that academic freedom's justification is to serve the common good, which is not one and the same as the abstract pursuit of an ever-contested truth.<sup>12</sup> If universities are to offer their societies *democratic* compe-

12. See also Tracy Fitzsimmons's appeal to "a commitment to bettering humanity" (rather than the usual "the pursuit of truth") in this passage from her

tence, which is their *raison d'être* according to Post, they must consider whether the competence they cultivate serves all citizens not just one subset of them.

The report of a new faculty senate committee that understood its charge in these terms—around evaluating competence in standard disciplinary terms and also in its democratic valence—could be presented as evidence in the event that a case is taken to trial. Judith C. Areen, Georgetown law professor and executive director and CEO of the Association of American Law Schools, makes an argument very similar to Post's. Areen writes:

The governance dimension of academic freedom has been overlooked by most legal scholars who have written on the First Amendment's application to academic freedom, or reduced to a right that belongs only to the governing board or administration of a college or university. Debate over whether academic freedom is an individual or an institutional right has claimed a disproportionate share of the scholarly literature, yet for the most part that literature has failed to consider whether faculty involvement in an academic governance decision should affect the level of constitutional protection provided for that decision. (947–48)

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essay "Enough!": "Finally, we should abandon any pretense that all ideas are equal. They are not. We should demand that ideas are articulated and defended in meaningful ways that are grounded in science, data, knowledge of history and a commitment to bettering humanity." We would replace "bettering humanity" with "furthering democracy." No terms are, of course, immune to conflicting interpretations but the different emphases terms carry are significant, and we want specifically to emphasize the relation between academic freedom and democracy. Professor Fitzsimmons is the president of Shenandoah University. We hope more university presidents join her in issuing such statements.

Areen sketches what she calls “the government-as-educator doctrine” in which “if a university shows that its disciplinary decision was supported by the faculty (or by an authorized committee of the faculty), a court should presume that the decision was made on academic grounds and defer to it” (995). In situations in which the existing disciplinary procedures are contested (such as in Adams’s case) or are inadequate when a conflict arises (such as in Klinzman’s case), an academic freedom committee under the auspices of faculty senate might provide a needed and valuable level of governance to which the courts would be predisposed to defer. “Following *Ewing*,” Areen writes, “courts should defer to an academic decision made by the faculty as a body (or a standing committee of the faculty) unless the plaintiff is able to show that the decision was ‘such a substantial departure from accepted academic norms as to demonstrate that the faculty did not exercise its professional judgment’” (995).

In some cases, such as that of Scott Atlas and Stanford’s Hoover Institution, faculty senates are already getting involved. In the latter half of 2020, Atlas achieved fame as Trump’s anti-Fauci, appearing frequently on Fox News to urge Americans not to wear masks or practice social distancing. On October 20, 2020, *Stanford News* reported that “differences of opinion about the best approaches to fighting COVID-19 have prompted concerns among faculty members about how policies regarding academic freedom at the university should be applied and about Stanford’s relationship to the Hoover Institution” (Chesley). What happens—or should happen—when Atlas parades his Stanford credentials while promoting as a scientific position an opinion that has been proven false by his academic peers? And does so while commanding the attention of the entire country? In the last chapter, we made the point that one major reason to hold people like Amy Wax accountable is precisely because her bad ideas

are catnip to some groups of policymakers and government officials. Atlas makes that point incontrovertible.

On September 9, 2020, on “Stanford Medicine” letterhead, ninety-eight physicians and researchers, microbiologists and immunologists, epidemiologists and health policy leaders declared they had a “moral and an ethical responsibility to call attention to the falsehoods and misrepresentations of science recently fostered by Dr. Scott Atlas, a former Stanford Medical School colleague and current senior fellow at the Hoover Institute at Stanford University” (“Open Letter”). The signatories gave not only their names but also all of their degrees and all of their current and former academic titles. This was not a display of elitism but a shorthand for the credibility conferred upon them by the very academic infrastructure whose legitimacy is called into question by opportunists like Atlas. An impressive number of impressively vetted academics were contesting the views of one individual. To be sure, Atlas has degrees and titles (not in epidemiology, we note), but the point is that a significant number of his equally vetted peers were passing judgment. Again, this is what differentiates academic freedom from free speech: this horizontal work of peers policing one another. It is what justifies the professoriate’s refusal to let that policing be pursued by the state or by moneyed interests (two forces that too often are one and the same).

At Stanford’s October 22 faculty senate meeting, professor and associate chair of the Department of Psychiatry and Behavior Sciences David Spiegel asked the president and provost whether Atlas’s words and actions merited university sanctions. “Atlas’s conduct,” he said, “is not merely a matter of expressing an opinion—it is a violation of the American Medical Association’s Code of Ethics,” and, he continued, a probable violation of the Stanford Code of Conduct.



Stanford's president deflected the challenge by invoking Atlas's academic freedom, citing the university's statement on academic freedom, which includes strong language about the desirability that "viewpoints" be "free from institutional orthodoxy and from internal or external coercion." When asked to comment by *Stanford News* on the president's response, David Spiegel expressed his dissatisfaction this way: "There are limitations to academic freedom. What you express has to be honest, data-based, and reflect what is known in the field. If you are going to claim academic freedom, you better be academic, as well as free" (Chesley).

Atlas responded to his peers' open letter by threatening to sue the signatories. He engaged an attorney who sent a letter to each of them, demanding that they "immediately issue a press release withdrawing your letter and that you contact every media outlet worldwide that has reported on it to request an immediate correction of the record." The letter required, according to *Inside Higher Education*, "satisfactory written proof" that the professors comply, or Atlas and his attorney would take "necessary and appropriate actions to enforce our client's rights, seek compensatory and punitive damages for the harm you have caused, and vindicate his reputation in court" (Flaherty, "Not Shrugging Off Criticism"). The signatories did not comply, yet some of them did apparently feel the need to engage an attorney of their own in response. This bears emphasizing. Quite apart from the time, money, and psychological duress involved in lawyering up, the faculty facing counterattacks like Atlas's testify to how difficult and dangerous it can be to call out a colleague by name. There are very good and obvious reasons why an individual faculty member cannot casually name the people whose work and actions seem to them to violate basic academic and/or ethical standards: these are the people who will instantaneously alert Campus Reform and other organizations, launching a campaign of harassment. Additionally, they are likely to

demand that administrators discipline the whistleblower under the professional code of conduct, and/or sue them personally for libel. Many of us have been aggressively discouraged from addressing concerns that cry out to be discussed on our campuses and in the public sphere, precisely because of the near certainty that doing so will backfire in some way when we're dealing with actors with deep pockets (or access to them) and large appetites for using media outlets to proclaim their martyrdom and further their cause. Private individual faculty members cannot raise the alarm (or when they do, they can do so only in the questionable protection of a collective, as with the open letters); this is one of the reasons why there needs to be shared governance mechanisms for doing so.

Yet another open letter, "COVID-19 and the Hoover Institution: Time for a Re-Appraisal," initiated by Stanford professor of comparative literature David Palumbo-Liu and signed by over a hundred Stanford colleagues in a wide range of disciplines, redirected Stanford's conversation about Atlas from one in which administrators are asked about disciplinary sanctions to one over which the faculty senate itself presided. This, we think, is an excellent intervention: the senate, not the office of the president, is where conversations like these need to reside. The signatories of this letter assert:

The production of unbiased scientific facts is one of the most important roles of a university, and one in which Stanford has excelled—we are regarded as a trusted source of knowledge worldwide. Thus, we are profoundly troubled by this distortion of our role, and by the university's name being used to validate such problematic information. We find this antithetical to Stanford's commitment to serving the public good through responsible scholarship and teaching. Let us be clear—this is not a partisan issue—it is a matter of science and facts.

No “both sidesism” allowed, in other words. Faculty Senate Chair Linda Goldstein welcomed the open letter’s intervention, believing that “Faculty Senate is the right place for the issue of academic freedom to continue to be discussed.” “Our work,” she told *Stanford News*, “is subject to oversight by the professional organizations in our disciplines. When published, we have confidence in our research. But when you are doing public policy, I don’t know that the university has established any guardrails akin to the oversight of professional organizations” (Chesley).

The implication of the Atlas case, for us (and quite possibly for people like Goldstein), is that it is time to establish one such guardrail in the form of faculty senate standing committees on academic freedom that design review procedures that include consulting the relevant professional organization, and its standards of professional ethics, when appropriate. Such a committee would not only provide the stopgap now needed to prevent what might be called the abuse of academic freedom in cases like Atlas’s; it would also offer a degree of due process lacking now for others deserving of academic freedom protections (namely, non-tenure-track faculty). That such a committee would meet with the American Association of University Professors’ approval is likely, since this principle is central to the 1994 AAUP statement, “On the Relation of Faculty Governance to Academic Freedom”:

It is the faculty—not trustees or administrators—who have the experience needed for assessing whether an instance of faculty speech constitutes a breach of a central principle of academic morality, and who have the expertise to form judgments of faculty competence or incompetence. As AAUP case reports have shown, to the extent that decisions on such matters are not in

the hands of the faculty, there is a potential for, and at times the actuality of, administrative imposition of penalties on improper grounds. (125)

What would such a guardrail look like and how might it be designed to consider the sometimes very disparate cases involving academic freedom? Here, we've discussed cases involving adjunct non-renewal, tenured faculty accused of intolerance for speech likely deserving protection, and faculty members using their credentials to promote specious information in the public sphere. There are a number of other possibilities, and the very range of possible issues makes it difficult to imagine an appropriate body for their adjudication for all campuses—as the examples we've offered here clearly demonstrate.

Nevertheless, we can report that on Jennifer's campus, the Portland State AAUP chapter has begun work in conjunction with the Portland State faculty senate to imagine such a committee and how it might be written into senate bylaws and into bargaining contracts. The concept paper for the committee reads:

In the last few years, there have been growing concerns about the disproportionate responsibility placed on Administration to adjudicate academic freedom issues and determine actions. There is a need for a more robust process of shared governance to engage appropriate expertise and responsibility. For example, although the CBA [collective bargaining agreement] commits the institution to uphold academic freedom, disputes that may implicate academic freedom will often be matters of “academic judgment” and thereby excluded from the dispute resolution process that operates for other guarantees in the contract.

The proposal to design a committee names the ways in which a committee might require engagement with other groups or individuals on campus. “When disputes arise in relations to academic freedom, the remit of an academic freedom committee would probably require some engagement with promotion and tenure and continuous appointment reviews, disciplinary processes (e.g., concerning the faculty code of conduct or matters handled by the Office of Diversity and Inclusion or Equity and Compliance), and contract (non)renewals.” Senates may well develop an academic freedom committee along different lines—a standing committee or one convened by senators on an ad hoc basis, one with permanent members or one that assembles a new panel tailored for each specific case, etc.—but however it is ultimately comprised and defined, such a committee should be written into handbooks, constitutions, bylaws, and bargaining contracts (where applicable). For faculty at institutions with a historically inactive senate or one that is overly deferential to administrators, then AAUP chapters committed to racial justice and adjunct protections, whether they be collective bargaining or advocacy chapters, are sites where organizing to create such a committee could occur. More and more, unions are taking a lead in pushing their universities towards greater racial and social justice—but we are aware that many faculty work in institutions where, because of so-called right-to-work laws, unionization is not an option. For that reason, we are proposing something that can be created on any campus in the United States and that would help to strengthen shared governance after decades of erosion as a result of what is commonly referred to as the corporatization of the university.

Faculty at institutions with strong traditions of shared governance understand the power of university-wide faculty committees, but they may harbor doubts about our proposal nonetheless.

They do not labor under the illusion that some *other* body, one not made up of peers, is gifted with a degree of clarity and insight that eludes faculty, but they still have reason to wonder if we can trust each other. We, the faculty, lose academic freedom the moment we search for recourse in any authority but our own but, then again, who are *we*? *We* exist in the same typically predominantly white institutions that have housed Christainsens and Gilleys for years. *We* are the people who have been unable or unwilling to integrate what Mills and other colleagues of color have pointed out repeatedly. *We* are also the people who jealously guard any apparent infringement on absolute autonomy, willing to protect those we abhor if we think it makes our own protection more invincible.

The faculty are still dominated by a “we” for whom the traditional and largely libertarian defense of academic freedom remains persuasive. *But only by a slight margin.* These traditional defenders have grown increasingly alarmed by what they interpret to be the younger generation’s ignorance regarding academic freedom’s purpose and importance. Surveys have been piling up over the last five years that purport to document that senior faculty understand academic freedom while junior faculty do not. Their evidence is, for example, that graduate students and junior faculty appear to support human subjects review boards while senior faculty see them as intrusive.<sup>13</sup> These surveys give us hope. This is not nearly as paradoxical

13. For one example, see “Academic Freedom: A Pilot Study of Faculty Views” by Jonathan R. Cole, Stephen Cole, and Christopher C. Weiss. They found that faculty in earlier stages of their careers tended to approve more of disciplinary actions and/or interference in the complete autonomy of researchers and instructors than did faculty in the later stages of their careers. This tendency appeared to be unrelated to tenure status, as senior faculty

as it sounds. We have suggested throughout the book that traditional defenses of academic freedom are failing to grasp how insights from the last eighty years of American history should prompt us to rethink what academic freedom should and should not mean. “Colorblindness” has not cured America of white supremacy; social media, as Sarah Repucci has noted, “give far-right parties and authoritarians an advantage”; and the gig economy (and academy) has not been a boon to laborers but has undermined collective security and rights.<sup>14</sup> An academic freedom worth championing protects and promotes *democratic competence*, with an emphasis on both the terms of this phrase. It does not traffic in theory of the kind that prescribes what should be in an ideal world, but rather takes into account existing reality and its history, its power and economic asymmetries, its ongoing and compounding injustices and inequities.

Shaken out of their—our—complacency by the Trump years, no small portion of older white liberal faculty are also ready to consider a conception of academic freedom based on democratic competence. More and more of us recognize that American structural racism is a home-grown form of fascism, and that the historical and ongoing abuse of knowledge to rationalize that racism destroys democracy.<sup>15</sup> The academic freedom we champion, therefore, pre-

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without tenure responded similarly to senior faculty with tenure. They interpret this to mean that junior faculty don’t understand academic freedom when it is just as likely (more likely, in our opinion) that these faculty understand better than senior faculty academic freedom’s role in ensuring democratic competence.

14. See Repucci, “Media Freedom: A Downward Spiral.”

15. The work of Sarah Churchwell is exemplary in this regard. See, e.g., “American Fascism: It Has Happened Here” and “The Return of American Fascism.” See also Alberto Toscano’s “The Long Shadow of Racial Fascism,”

sumes the equality of persons, not the equality of ideas. Accordingly, we see democracy—and we encourage you to see democracy—not as an unfortunate obstacle to academic freedom but as its very reason for being. As Judith Butler wrote, the struggle for academic freedom is the struggle for democracy; but that struggle must be predicated on the belief that academic freedom is a matter of democratic competence, not a license to say and believe anything and everything imaginable. We hope that someday, someday soon, academe will hold that truth to be self-evident.

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where Toscano credits the generations of Black activists and scholars who have long recognized the persistent form of fascism native to America.



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