

COMMENTARY

ACADEMIC FREEDOM AND THE MISSION OF THE UNIVERSITY

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ABSTRACT

The utility of academic freedom depends on the particular mission of a university. In a system in which institutions of higher education are dedicated to truth-seeking and the advancement and dissemination of human knowledge, then robust protections for academic freedom for scholars and instructors are essential to effectuating that mission. As American universities adopted this as their central mission, the groundwork was laid for the development of ideas and practices of academic freedom in the United States. Academic freedom is much less useful, or even counterproductive, if universities prioritized some other mission over truth-seeking. Other ideals than truth-seeking have frequently jostled for predominance, including those centering the polis, the consumer, or a set of shared values. The elevation of other guiding principles in universities would bring with it a reconsideration of the continued value of academic freedom and the erosion of universities as bastions of intellectual ferment and progress.

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We protect academic freedom because it serves a particular set of goals within a particular institutional environment. Academic freedom, it is thought, is useful for advancing and disseminating knowledge in a context in which ideas are controversial and unsettled. Modern American universities attempt to situate themselves on the frontiers of human knowledge, and they invite scholars to question, challenge, and upset received wisdom in order to advance those frontiers. Academic freedom sets up a protective umbrella over those activities so that scholars will not be deterred or barred from casting doubt on popular but unfounded ideas and beliefs.

On this conception, academic freedom is only a contingent, instrumental good. It is not an intrinsic element of human dignity. It is not a necessary feature of individual human flourishing. It is not a useful feature of all types of human institutions. There is no comparable norm of academic freedom that shapes the professional lives of police officers or elementary school teachers or salesclerks or accountants or professional football players.

Significantly, there would likewise be no norm of academic freedom if we conceptualized the work of university professors and the mission of a university differently. Academic freedom is a relatively modern innovation, making headway in the United States only in the twentieth century. It followed from a revolution in American higher education in the last decades of the nineteenth century that reoriented the nature and purpose of colleges, repositioning them as engines of intellectual exploration and discovery. The revolution was never complete, however, and always contested. Other ideals, other values, other missions have frequently jostled for predominance. The elevation of other guiding principles in universities would bring with it a reconsideration of the continued value of academic freedom and the erosion of universities as bastions of intellectual ferment and progress.

I. ACADEMIC FREEDOM AND THE TRUTH-SEEKING
MISSION OF A UNIVERSITY

In my book *Speak Freely*, I took as a given that the central mission of a modern, American university is to preserve, advance, and disseminate knowledge.¹ Given that starting point, I think it follows that academic freedom is an important good that needs to be preserved if the university is to function properly. Why should we think that is true? Start with the transformation of the mission of a university.

American universities have not always been places where new ideas were welcomed. The long-serving president of Williams College left his post in 1872 with the warning that the “accumulation of materials and books” and “a large number of teachers” was hardly a benefit for the college student.² Similarly, the president of Amherst College aimed to provide his students with “[r]everence for the aged, veneration for parents, for sacred institutions, for wisdom and goodness in character.”³ The president of Harvard University cautioned that the “intellectual powers” should be “most carefully watched and guarded” so as to “preserve the freshness and tenderness of youth, to keep the heart open for simple and refining pleasures, to guard against the false excitements which exhaust the soul, to foster the pure and holy emotions of filial piety, and draw the heart toward communion with a Heavenly Father.”⁴ Such men were determined to ensure that there would not be too much intellectual activity on college campuses. Universities were not to encourage the skeptical, the inquisitive, the quarrelsome. A mission of turning out fine young gentlemen who were properly pious and reverential sharply circumscribed intellectual life on a mid-nineteenth century university campus.

Such ideas were sharply challenged in the latter half of the nineteenth century, and over the course of decades American higher education was transformed into something quite different

1. KEITH E. WHITTINGTON, *SPEAK FREELY: WHY UNIVERSITIES MUST DEFEND FREE SPEECH* 12–16 (2018).

2. LAURENCE R. VEYSEY, *THE EMERGENCE OF THE AMERICAN UNIVERSITY* 7 (1965) (quoting Mark Hopkins).

3. *Id.* at 7–8 (quoting William A. Stearns).

4. Thomas Hill, *The Powers to Be Educated*, 14 *AMER. J. ED.* 81, 89 (1864).

than what it had been before.⁵ The mission of old institutions was reconceptualized. New institutions of higher learning were established on new foundations. Opening the campus gates to a wider array of people and ideas became the new goal. Skepticism and critical inquiry became more highly valued qualities than reverence and deference.

The educational reforms of the turn of the twentieth century fought to make universities more inclusive and intellectually interesting places. When James Angell assumed his duties as president of the University of Michigan in 1871, he urged the political leaders of the state to allow it to become a great institution of higher learning.⁶ A great university should “not become the refuge of dawdling *dilettanti* or of curious pedants” nor should it “shut itself off from living sympathy and contact with the great body of honest, toiling men who help sustain it.”⁷ It should be imbued with the same “Christian spirit, which pervades the laws, the customs, and the life of the State.”⁸ But a great university should also be “catholic and unsectarian.”⁹ It should be seeking simultaneously to grow and improve, setting both the “requirements for admission” and the “scale of work” as high as possible.¹⁰ It should “shed its blessings upon all classes and professions of men,” making itself accessible “to the poor as well as to the rich.”¹¹

A great university should have the independence necessary to prioritize learning.

Again, the University cannot do its work with the highest success unless it have a certain degree of independence and self-control. It has therefore a right to expect that this privilege will be conceded to it. Written law or the unwritten law of common consent should shield it from the sudden outbursts of partisan passion and from the assaults of designing men. . . . The general nature and the details of its work should be determined by those who are charged with the immediate responsibility of administering its affairs. . . .

5. VEYSEY, *supra* note 2, at 57–180; JONATHAN R. COLE, *THE GREAT AMERICAN UNIVERSITY* 16–28 (2009).

6. JAMES B. ANGELL, *SELECTED ADDRESSES* 3 (1912).

7. *Id.* at 29.

8. *Id.*

9. *Id.*

10. *Id.* at 21.

11. *Id.* at 31.

No undue restraints should be laid upon the intellectual freedom of the teachers. No man worthy to hold a chair here will work in fetters. In choosing members of the Faculty the greatest care should be taken to secure gifted, earnest, reverent men, whose mental and moral qualities will fit them to prepare their pupils for manly and womanly work in promoting our Christian civilization. But never insist on their pronouncing the shibboleths of sect or party. So only can we train a generation of students to catholic, candid, truth-loving habits of mind and tempers of heart.¹²

Andrew Sloan Draper cut his teeth running public primary and secondary schools before taking his place as the president of the University of Illinois in 1894.¹³ He thought a new breed of “western” universities were reshaping American higher education.¹⁴ The old schools in the east might be willing to graduate their students so long as they “will be polite to the professors and pay the term bills,” but the “western people” had different expectations.¹⁵ At new schools like Illinois, “every one must have his chance” and “if he ‘flunks out’ after having had his chance it is his fault, and no one is going to worry about it.”¹⁶ The emerging American universities would serve a far broader constituency than ever before. “Women are going to have the same rights as men to the higher learning. Boys will not always go to a university because their grandfathers went there.”¹⁷ The American university “must exhibit catholicity of spirit; it must tolerate all creeds; it must inspire all schools.”¹⁸ The successful universities of the future “must put away all exclusiveness They must not try to keep people out; they must help all who are worthy to get in.”¹⁹ The new breed of American university “will preserve the freedom of teaching” (though “it will not tolerate freakishness”) and will make space for “research as

12. *Id.* at 30–31.

13. *Chronology of Andrew S. Draper’s Life and Career*, U. ILL. ARCHIVES, <https://files.archon.library.illinois.edu/uasfa/0204020.pdf> [<https://perma.cc/5HMN-X6RU>] (last visited Mar. 22, 2022).

14. ANDREW S. DRAPER, *AMERICAN EDUCATION* 196 (1909).

15. *Id.* at 196–97.

16. *Id.* at 196.

17. *Id.* at 197.

18. *Id.*

19. *Id.* at 198.

well as instruction,” for “discovery” is central to the American spirit.²⁰

Benjamin Ide Wheeler was among the new generation of scholars who had received advanced training in Germany, where new ideas about academic disciplines and academic freedom were being pioneered.²¹ As president of the University of California, he offered a vision of university democracy to his students.²²

A university is a place that rightfully knows no aristocracy as between studies, no aristocracy as between scientific truths, and no aristocracy as between persons. All that can make one man’s study better than another’s will be the devotion and clear-headedness with which he pursues it. All that can make one doctrine nobler than another will be its deeper reach toward a solid foundation in those eternal verities on which the world stands. The light-house, not the wind-gauge, is our symbol. All that can make one student better than another is cleanness of soul, cleanness of purpose, cleanness of thought, and cleanness of life.

. . . The university is democratic, not because there is within it no diversity of talents and of worth, but because all are judged by higher standards than those of blood or birth or influence, because every man has a man’s chance, and all are united in ideal loyalty to real truth.

. . . Let the university be what it is set to be, the home of the intellectual democracy. Do not bring in here and do not suffer anyone to bring in here any ghostly similitudes of those discriminations which divide people in the outer world according to prejudice of family, riches, race, and occupation.²³

Such sentiments were not exclusive to the schools of the west or the emerging state universities. They were being fought for in the east as well, though not without setbacks. Daniel Coit Gilman had served as president of the University of California before being enticed back east to launch Johns Hopkins University.²⁴ His inaugural address to the trustees encapsulated the new thinking.

20. *Id.* at 199.

21. Christian K. Anderson, *University Control: The Struggle for Faculty Governance in American Universities and the Creation of Faculty Senates*, in 31 SHAPING THE AMERICAN FACULTY 15, 37 (Roger L. Geiger ed., 2015).

22. Benj. Ide Wheeler, *University Democracy*, 4 UNIV. CHRON. 1 (1901).

23. *Id.* at 2–3.

24. VEYSEY, *supra* note 2, at 159–60.

The Institution we are about to organize would not be worthy the name of a university, if it were to be devoted to any other purpose than the discovery and promulgation of the truth; and it would be ignoble in the extreme if the resources which have been given by the founder without restriction should be limited to the maintenance of ecclesiastical differences or perverted to the promotion of political strife.

As the spirit of the University should be that of intellectual freedom in pursuit of the truth and of the broadest charity toward those from whom we differ in opinion it is certain that sectarian and partisan preferences should have no control in the selection of teachers, and should not be apparent in the official work.²⁵

The philosopher Alexander Meiklejohn was eventually forced out of the presidency of Amherst College, not least because his preferred mode of instruction tended to make both parents and students uncomfortable. He had a tendency “to lead the students into original inquiry and speculation rather than to preach dogma to them,” which some students likened to “ordeal by battle.”²⁶ Meiklejohn thought “the aim of the American college” should be as follows:

[T]o broaden and deepen the insight into life itself, to open up the riches of human experience, of literature, of nature, of art, of religion, of philosophy, of human relations, social, economic, political, to arouse an understanding and appreciation of these, so that life may be fuller and richer in content; in a word, the primary function of the American college is the arousing of interests.²⁷

A good college education was the rejection of doing things “by habit, by custom, by tradition, by rule of thumb, just as they always have been done.”²⁸ It prepared individuals for a life “of study, of investigation, of ideas and principles by which men attempt to discover and to formulate knowledge.”²⁹

25. ERWIN CHERMERSKY & HOWARD GILLMAN, *FREE SPEECH ON CAMPUS* 57 (2017) (quoting GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF* 151 (1994)).

26. WHITTINGTON, *supra* note 1, at 22.

27. Alexander Meiklejohn, *College Education and the Moral Ideal*, *EDUCATION*, Sept. 1907–June 1908, at 552, 558.

28. ALEXANDER MEIKLEJOHN, *THE LIBERAL COLLEGE* 25 (1920).

29. *Id.*

This new vision of an American university committed to intellectual openness and critical inquiry paved the way for a new commitment to academic freedom. If university professors were to be guardians of received wisdom and purveyors of pieties, then they needed to be tethered to orthodoxy and removed from the campus when they strayed from those narrow bounds. If universities were to be places of intellectual experimentation and discovery, then professors needed the freedom to explore.

At root, academic freedom protects freedom in teaching and research against encroachments by university officials.³⁰ The freedom of research includes the right to research and publish scholarly work without fear of censor or sanction by a university employer.³¹ The freedom of teaching includes the right to teach controversial ideas and materials that are germane to the subject of a course and professionally fit.³² In addition, academic freedom principles in the United States have been understood to include the freedom of professors to engage as citizens in debates, on and off campus, on matters of public concern without fear of reprisal by university administrators for the content of their opinions.³³

Providing such protections to scholars and instructors rests on an assessment that such protections will best advance the truth-seeking function of the university. If professors' research is suppressed by university officials or teaching is constrained by administrative interventions, open inquiry will be hampered. Flawed ideas will be artificially propped up because scholars are discouraged from subjecting them to critical analysis. Students will not be challenged to honestly examine difficult ideas because introducing divisive concepts into the classroom could result in persecution, sanction, and termination. Unconventional thinking will expose professors to professional punishments. Safety will require going along with predominant opinion, or at least going along with the opinion of those who are well-positioned to impose costs on dissenters.

30. On the theoretical underpinnings of academic freedom, see generally MATTHEW W. FINKIN & ROBERT C. POST, *FOR THE COMMON GOOD* (2009).

31. *Id.* at 53–54.

32. *Id.* at 87–88.

33. On the relationship between the core of academic freedom in teaching and research and this broader protection for professorial free speech, see generally Keith E. Whittington, *Academic Freedom and the Scope of Protections for Extramural Speech*, *ACADEME*, <https://www.aaup.org/article/academic-freedom-and-scope-protections-extramural-speech> [https://perma.cc/2RSM-RFH4] (last visited Mar. 22, 2022).

The scope of shelter provided by traditional academic freedom protections is admittedly narrow. Howls of outrage by students, parents, alumni, donors, or politicians are decoupled only from official action by university officials. Unorthodox thinkers might still be shunned and ignored by their peers. Intellectual conformity might still be the most assured path to professional success and social acceptance. Academic freedom protections provide no guarantee that students will be challenged to reexamine their assumptions or that the flaws in weak ideas will be exposed. Nonetheless, the boundaries of acceptable thought on campus will be drawn in more tightly and policed more forcefully if university officials can sanction those who step out of line and offend some powerful constituency. Truth-seeking will be a secondary concern, and pleasing those with power will be the ultimate imperative.

II. IMPLICATIONS OF QUALIFYING THE TRUTH-SEEKING MISSION

There is no shortage of alternative visions of the mission of a modern university. The university as a place where ideas can be freely explored has never been perfectly realized and has always been contested. Interested constituencies from politicians to students and parents to donors have often resisted the implications of this ideal, frequently finding a free-ranging debate over ideas threatening to cherished values and interests. Other values, from their perspective, should qualify and hem in free inquiry. Academic freedom would be qualified accordingly.

If academic freedom is an instrumental value meant to aid the quest to expand the scope of human knowledge in universities, then it has less value if that quest is not central to what a university should be doing. Academics need the freedom to test ideas if the goal is to push the boundaries of human understanding, but such freedoms are expendable, or even counterproductive, if that is not the priority. If the highest priority of the university is instead to reaffirm the status quo, to advance a particular political agenda, or make students happy, then professors who pursue discomforting ideas are not just superfluous but threatening. Academic freedom becomes irksome to the new institutional mission.

A. *The University and the Polis*

Education reformers of the late nineteenth and early twentieth centuries believed in the fundamental compatibility of

the truth-seeking university and the democratic polis.³⁴ A democracy would be strengthened by having and supporting universities that were constantly subjecting ideas to critical scrutiny and training students to do the same.

An educated and well-informed citizenry was understood to be essential to preserving a free society and encouraging national improvement.³⁵ An abiding concern of many American intellectuals in the late nineteenth and early twentieth centuries was the possibility that the voters—and political party leaders—might not be up to the task of maintaining a working democracy.³⁶ Many worried that a dramatically expanded and more diverse electorate would be incapable of making the kinds of political and policy choices that would keep the country on an even keel.³⁷ The classical fear of democracies being torn apart by corruption and demagogues had never quite gone away. The response to this fear took many forms, some more admirable than others. For some political reformers, the experience of the Gilded Age suggested the need for shrinking the electorate through new voting rules.³⁸ For many of the education reformers who were restructuring American universities, the situation called for a more educated electorate. Both the voters and their leaders needed the better intellectual training that a revitalized system of higher education could provide. Andrew Sloan Draper, for example, celebrated “the progressive will of an intelligent people” as “better than the hereditary and arbitrary power of kings,” but “[t]he moral sense of the people” and “the nation’s greatness” depended on a broad-based educational system that pushed individuals to the limits of their natural ability.³⁹

Beyond uplifting and educating a democratic citizenry, universities could also inform a democracy. But they could serve that critical role only if scholars were free to rigorously test ideas. The American Association of University Professors’ (AAUP) 1915 declaration of principles pointed to an emerging function of

34. SOPHIA ROSENFELD, *DEMOCRACY AND TRUTH* 73–75 (2019).

35. ROBERT C. POST, *DEMOCRACY, EXPERTISE, AND ACADEMIC FREEDOM* 35–36 (2012).

36. See, e.g., JON GRINSPAN, *THE AGE OF ACRI-MONY* 99–101, 129–30, 208–09, 247–49 (2021).

37. See J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS* 52–53, 52 n.15, 57 (1974).

38. *Id.* at 47–57, 60, 62; MICHAEL E. MCGERR, *THE DECLINE OF POPULAR POLITICS* 6–9 (1986); ALEXANDER KEYSSAR, *THE RIGHT TO VOTE* 77–80 (2000); GRINSPAN, *supra* note 36, at 99–102.

39. DRAPER, *supra* note 14, at 15.

universities in the twentieth century “to develop experts for the use of the community.”⁴⁰ In order to provide the kind of necessary clear-eyed advice that a modern society would need, however, it was essential that “the scholar must be absolutely free not only to pursue his investigations but to declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion.”⁴¹ But “[t]o be of use to the legislator or the administrator,” the scholar “must enjoy their complete confidence in the disinterestedness of his conclusions.”⁴²

Scholars could not just be yet another partisan or special interest jostling for influence. They needed to be able to offer the fruits of their expertise and their best judgment. Alexander Meiklejohn hoped that colleges could provide “the intellectual leadership of a people” in a democracy but thought they could do so only if “the people trust them.”⁴³ In order for the college to “command the confidence of every one who comes to it for judgment[,] [i]t may not be of any party, any sect, or any creed. It may not be committed to any interest, any cause or any class. It must in some sense stand apart, aloof”⁴⁴ A successful society needed a college with “no list of dogmas or doctrines which it seeks to teach[,] . . . no catalogue of things to be believed, nor any list of problems which should not be discussed.”⁴⁵ As the AAUP concluded,

it is highly needful, in the interest of society at large, that what purport to be the conclusions of men trained for, and dedicated to, the quest for truth, shall in fact be the conclusions of such men, and not echoes of the opinions of the lay public, or of the individuals who endow and manage universities.⁴⁶

The public needed to hear from someone guided only by “their own scientific conscience.”⁴⁷ The public needed the truth, or at least the

40. *General Report of the Committee on Academic Freedom and Academic Tenure*, AM. ASS’N OF UNIV. PROFESSORS, Dec. 1915, at 15, 28.

41. *Id.* at 29.

42. *Id.*

43. MEIKLEJOHN, *supra* note 28, at 80.

44. *Id.*

45. *Id.* at 91.

46. *General Report of the Committee on Academic Freedom and Academic Tenure*, *supra* note 40, at 25.

47. *Id.* at 25–26.

best approximation of it that we could get. Universities would be failing their duty to advance the public interest if their scholars shaded the truth and offered only dogma.

This is not the only way of imagining how the university and the polity should relate to each other. One might, for example, argue that democratic citizens are best served by a more patriotic education. Why should democracy itself not be a dogma to which American universities are committed and to which American scholars are constrained? And if democracy, why not other traditional American values that have been fundamental to the American creed? In the mid-twentieth century, such arguments could be used to justify the purge of professors who taught “anti-American” doctrines that might weaken rather than strengthen American democracy or that might subvert the American way of life. If American democracy has dogmatic commitments, then the polity might not welcome having those commitments questioned. If patriotism requires adhering to rather than challenging creedal commitments, then universities could be best understood to serve the polity by curtailing the intellectual freedom of the faculty. The conservative writer William F. Buckley Jr. charged Yale University, and other postwar American universities, with hypocrisy for excluding Communists from the ranks of their faculty.⁴⁸ The universities seemed willing to sacrifice academic freedom if the scholarly exploration of ideas stepped too far outside the mainstream and challenged too many political orthodoxies. If they were willing to do it in the case of Communists or racists, conservatives like Buckley wondered, then why should they not be willing to do it in other cases when the alumni or mainstream American society thought the professors had gotten out of line? If American society had decided that democracy or capitalism or Christianity were good and true, then why should they tolerate scholars who taught that such things were bad and false? Educators have a “democratic responsibility” to be on the right side of the great political struggles, and academic freedom should give way in the face of that imperative.⁴⁹

More superficially, universities might simply be understood to be extensions of the state, which is to say the immediate interests of those who happen to have influence at the moment. The AAUP anticipated that “definite governmental policy” and “a

48. WILLIAM F. BUCKLEY, JR., *GOD AND MAN AT YALE* 150 (1951).

49. *Id.* at 153–56, 160–61.

strong public feeling on economic, social, or political questions” would always seek to bring pressure to bear to suppress countervailing opinions.⁵⁰ Where universities should “help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling, to train democracy to the habit of looking before and after,” the “tyranny of public opinion” could instead force universities to divert from that essential mission.⁵¹

The leadership of the University of Florida has recently surrendered to that more limited vision of the university’s role in a polity. When members of the faculty sought permission to serve as expert witnesses in a lawsuit against the State, they were refused by the university administration on the grounds that serving in that role would be a conflict of interest.⁵² The “best interest” of the university was said to be coextensive with the immediate interests of incumbent government officials whose policies would be threatened by the lawsuit and the testimony that the professors might provide.⁵³ The university claimed the right to “deny its employees’ requests to engage in outside activities when it determines the activities are adverse to its interests.”⁵⁴

Such an interpretation of the interests of the university is a betrayal of the vision of the role that a university could serve in a democracy that was being developed over a century earlier. Unsurprisingly, the possibility of scholars serving as “critics,” as Meiklejohn characterized them, is not always welcomed by incumbent powerholders.⁵⁵ Constructive criticism might be in the long-term best interest of the polity, but it is rarely easy to hear—and it might not be in the short-term interest of those who currently hold power. The Supreme Court has noted that as a general matter, “[v]igilance is necessary to ensure that public employers do not use authority over employees to silence

50. *General Report of the Committee on Academic Freedom and Academic Tenure*, *supra* note 40, at 31.

51. *Id.* at 32.

52. Michael Wines, *Florida Bars State Professors from Testifying in Voting Rights Case*, N.Y. TIMES, <https://www.nytimes.com/2021/10/29/us/florida-professors-voting-rights-lawsuit.html> [<https://perma.cc/N7PR-CGJS>] (Nov. 4, 2021).

53. *Id.*

54. Danielle Ivanov, *UF Professors Could Testify in Voting Rights Case if They Are Unpaid, Spokeswoman Says*, GAINESVILLE SUN, <https://www.gainesville.com/story/news/education/campus/2021/10/31/university-of-florida-spokeswoman-three-professors-could-testify-if-unpaid/6223947001/> [<https://perma.cc/DJ7Z-2HKY>] (Nov. 1, 2021, 6:58 PM).

55. MEIKLEJOHN, *supra* note 28, at 80.

discourse, not because it hampers public functions but simply because superiors disagree with the content of employees' speech."⁵⁶ If this is true of government employment in general, it is especially true in the context of faculty employed by a state university. Incumbent politicians might be tempted to think scholars are an arm of the state with a duty to serve the interest of those who currently hold government office, but academic freedom is premised on the belief that the function of scholars is to serve the public broadly and to do so by providing their best scholarly judgment.

Universities are valued because their mission serves the interests of the polity. The contested question is how they do that. A robust conception of academic freedom depends on a claim that society as a whole is better off in the long run if universities do not serve the partial interests represented by particular interests or predominant public opinion but rather engage in a mission of free critical inquiry. That is a claim that has largely guided how American higher education has operated since it was revolutionized in the decades after the Civil War, but one that could always be reexamined or rejected.⁵⁷

B. The University and the Consumer

Increasingly, universities have encouraged a consumerist mindset when it comes to higher education. This is a longstanding challenge, though what the consumers are demanding when it comes to university life might have evolved. Universities have been inclined to sell themselves to the public as offering a consumer good, and they should not be surprised if the public takes them at their word and treats them accordingly. The ramifications for academic freedom and the mission of the university as an intellectual enterprise are potentially serious.

One dimension of this consumerist sensibility is an overriding emphasis on higher education as a pathway to career success.⁵⁸ (This view of higher education is often accompanied by an emphasis on universities contributing to economic development as well.) It is, of course, true that many students seek a college degree

56. Rankin v. McPherson, 483 U.S. 378, 384 (1987).

57. Craig Calhoun, *Free Inquiry and Public Mission in the Research University*, 76 SOC. RSCH. 901, 902–03 (2009). For one accounting of recent threats to this ideal, see JOHN K. WILSON, PATRIOTIC CORRECTNESS 27–28 (2008).

58. WESLEY SHUMAR, COLLEGE FOR SALE 73–74 (1997).

precisely because they hope that will position them to reach a better standard of living, and this is a valid and important reason for going to college. The difficulty comes when this is taken to be the *raison d'être* of the university rather than an important byproduct of university education. If economic success is the sole goal, then there is an inevitable temptation to turn universities into certification factories that churn out necessary credentials. There is the risk of overriding pressure to reorient the academic components of the university to its most immediately marketable elements. Academic considerations that conflict with the pursuit of that goal become hindrances to be shed.

Unsurprisingly, academic freedom has little traction in such an environment. Academic standards can stand in the way of providing the credentials that students want, and so academic standards will need to be sacrificed. The sociologist Robert Bellah characterized this philosophy as one of “consumer sovereignty.”⁵⁹ If students are conceptualized as consumers rather than as, well, students, then the teacher–student relationship is fundamentally transformed. As Bellah reports, the consumerist spirit can lead college students to confront instructors with demands for higher grades, arguing “I’m paying for this course,’ as though they felt they weren’t getting the value paid for.”⁶⁰ “[A]ngry students” approached Bellah himself complaining “that [he] had no right to mention so many names they had never heard of” in his class lectures.⁶¹ They had not bargained on the idea that a university education might mean being exposed to Thomas Hobbes or John Locke. That was not in the brochures. One survey of undergraduate students found robust agreement with such sentiments as “[i]f I’m paying for my college education, I’m entitled to a degree,” “I would take a course in which I would learn a little or nothing but would receive an A,” and “[i]t is the instructor’s responsibility to keep me attentive in class.”⁶²

The consumerist approach to higher education that has put pressure on the academic enterprise for many years (Alexander Meiklejohn might correct that to say, for many decades) has been

59. ROBERT N. BELLAH, *Freedom, Coercion, and Authority*, in THE ROBERT BELLAH READER 410, 415 (Robert N. Bellah & Steven M. Tipton eds., 2006).

60. *Id.* at 416.

61. *Id.*

62. Michael Delucchi & Kathleen Korgen, “We’re the Customer—We Pay the Tuition”: *Student Consumerism Among Undergraduate Sociology Majors*, 30 TEACHING SOCIO. 100, 103–04 (2002).

bolstered by the more recent therapeutic culture.⁶³ Students might demand not only grades and degrees in exchange for their tuition dollars but also comfort and hospitality. Campus administrators are increasingly dedicated to maximizing student “engagement” by fostering a sense of “belonging.”⁶⁴ The University of Maryland recently adopted a new mission statement that married its goal of “[a]chieving excellence in teaching, research, and public service” with a commitment to provide “a supportive, respectful and inclusive environment.”⁶⁵ Not satisfied with that, the university adopted a separate “Values Statement” that proclaimed the university’s aspiration to “become a community that is: United, Respectful, Secure and Safe, Inclusive, Accountable, and Empowered and Open to Growth.”⁶⁶ One has to look elsewhere to discover that the university also values the “free exchange of ideas” and the discovery and dissemination of knowledge.⁶⁷ Maryland is hardly alone in elevating respect, safety, and inclusivity to a preeminent place in the university. The University of Missouri, for example, lists “[r]espect” and “[r]esponsibility” before “[d]iscovery” and “[e]xcellence” in its statement of values.⁶⁸ Such statements of university “values” are sometimes reduced to a “pledge” or “creed” that directly become tools for reducing the scope of intellectual disagreement. Auburn University threatened to fire an adjunct instructor for expressing sentiments critical of the police that some university officials thought were “antithetical to the Auburn Creed,” which included such things as “I believe in obedience to law because it protects the rights of all,” “I believe in the human touch, which cultivates sympathy with my fellow men and mutual helpfulness and brings happiness for all,” and “I

63. See Meiklejohn, *supra* note 27, at 559.

64. Ruth Lefever, *Exploring Student Understandings of Belonging on Campus*, 4 J. APPLIED RSCH. HIGHER EDUC. 126, 137 (2012); Cari Gillen-O’Neel, *Sense of Belonging and Student Engagement: A Daily Study of First- and Continuing-Generation College Students*, 62 RSCH. HIGHER EDUC. 45, 48, 66 (2021); Megan Louise Pedler et al., *A Sense of Belonging at University: Student Retention, Motivation & Enjoyment*, J. FURTHER & HIGHER EDUC. (July 29, 2021), <https://doi.org/10.1080/0309877X.2021.1955844> [<https://perma.cc/E332-EL4G>].

65. UNIV. OF MD., COLL. PARK, UMD MISSION STATEMENT 1 (2018), <https://provost.umd.edu/sites/default/files/2019-09/Mission-Vision.pdf> [<https://perma.cc/X4LA-7CDE>].

66. *Statement on University Values*, U. MD., <https://policies.umd.edu/statement-university-values/> [<https://perma.cc/AT8Y-MVLD>] (last visited Jan. 3, 2022).

67. *Statement of Free Speech Values*, U. MD., <https://policies.umd.edu/statement-free-speech-values/> [<https://perma.cc/H9MK-WBSF>] (last visited Jan. 3, 2022).

68. *Mission and Values*, U. MO., <https://missouri.edu/mission-values> [<https://perma.cc/HF7S-9T3M>] (last visited Jan. 3, 2022).

believe in my Country, because it is a land of freedom and because it is my own home, and that I can best serve that country by ‘doing justly, loving mercy, and walking humbly with my God.’”⁶⁹ Ohio State University drew the ire of a free speech group for requiring members of the campus community to sign a “Together as Buckeyes Pledge” that affirmed a belief in the importance of embracing “diversity in people and ideas” and fostering “the inclusion of all Buckeyes.”⁷⁰ The attorney general of the State of Louisiana urged the president of Louisiana State University to take action against a professor for calling one of his staff attorneys a flunkie.⁷¹ To bolster his case for censuring the professor with whom he was having a public spat about pandemic policies, the attorney general pointed to the university’s “[c]ommitment to [c]ommunity,” which pledged that all members of the university community would “[p]ractice justice, equality, and compassion in human relations” and “[r]espect the dignity of all persons and accept individual differences.”⁷²

When the truth-seeking mission of the university is pushed into the background, students and others are likely to object when they encounter ideas that make them uncomfortable on a college campus. At Duke University, a group of incoming students pushed back against a summer reading assignment of a graphic novel that dealt with sexuality, “fear[ing] that reading it would ‘compromise [our] personal Christian moral beliefs.’”⁷³ In the summer after the attacks of 9/11, “the University of North Carolina assigned a book

69. Keith E. Whittington, *Extramural Speech at Auburn*, REASON: VOLOKH CONSPIRACY (Aug. 3, 2020, 9:52 PM), <https://reason.com/volokh/2020/08/03/extramural-speech-at-auburn/> [<https://perma.cc/W6KZ-E4RQ>]; *The Auburn Creed*, AUBURN U. (quoting *Micah* 6:8), <http://www.auburn.edu/main/welcome/creed.php> [<https://perma.cc/Y468-HSK2>] (Oct. 13, 2016).

70. Alex Morey, *FIRE Objects to Ohio State Belief Pledge Students and Faculty Must Sign*, FIRE (Aug. 4, 2020), <https://www.thefire.org/fire-objects-to-ohio-state-belief-pledge-students-and-faculty-must-sign/> [<https://perma.cc/GD2K-932R>].

71. Keith E. Whittington, *A State Attorney General Demands that a Professor Be Held “Accountable” for a Tweet*, REASON: VOLOKH CONSPIRACY (Dec. 11, 2021, 12:52 PM), <https://reason.com/volokh/2021/12/11/a-state-attorney-general-demands-that-a-professor-be-held-accountable-for-a-tweet/> [<https://perma.cc/LJY9-PMKN>].

72. Aubry Procell, *Jeff Landry Tries to Have LSU Professor Censured over Tweet Calling Assistant AG a ‘Flunkie’*, WRKF (Dec. 10, 2021, 1:29 PM), <https://www.wrkf.org/news/2021-12-10/ag-landry-tries-to-have-lsu-professor-censured-over-tweet-calling-assistant-a-g-a-flunkie> [<https://perma.cc/NF4X-W5N7>]; Letter from Jeff Landry, Att’y Gen., State of Louisiana, to William F. Tate, IV, President, Louisiana State Univ. (Dec. 9, 2021), <https://twitter.com/LesterDuhe/status/1469077246346412033> [<https://perma.cc/9M9E-XAGE>].

73. WHITTINGTON, *supra* note 1, at 75 (alteration in original) (quoting Claire Ballentine, *Freshman Skipping ‘Fun Home’ for Moral Reasons*, DUKE CHRON. (Aug. 21, 2015)).

of commentary on the Koran as the summer reading for incoming students.”⁷⁴ The choice of readings set off a political firestorm as conservative students, parents, and interest groups asserted that such an assignment “infringed on the religious freedom of Christian students.”⁷⁵ At Christopher Newport University, students called for an instructor to be fired for a tweet questioning whether comic books should have bisexual characters that made them “uncomfortable and scared in a place we are supposed to call our home.”⁷⁶ Old Dominion University gave in to the demands of students and politicians and removed from campus a sociologist who studied “minor-attracted persons,” which some students thought “sounds gross” and made them feel “uncomfortable to know that someone’s like that on campus.”⁷⁷ Such objections have been echoed of late in political debates over removing books from public school libraries.⁷⁸ No matter what one thinks about proposals to remove objectionable material from school libraries serving minors, similar sensibilities can be found at the university level and reflect a disturbing disregard for the intellectual mission of higher education.⁷⁹

74. *Id.* at 75–76.

75. *Id.* at 76; see Keith E. Whittington, *Free Speech and the Diverse University*, 87 FORDHAM L. REV. 2453, 2462–63 (2019); see also Christopher Buck, *The Controversy of Teaching Islam: The University of North Carolina Qur’an Controversy*, in OBSERVING THE OBSERVER: THE STATE OF ISLAMIC STUDIES IN AMERICAN UNIVERSITIES 137, 154–56 (Mumtaz Ahmad et al. eds., 2012).

76. Chelsea Donovan, *CNU Students Protest over Scholar in Residence’s Controversial Tweet*, WTKR, <https://www.wtkr.com/news/cnu-students-protest-over-scholar-in-residences-controversial-tweet> [<https://perma.cc/G24H-3KR9>] (Oct. 25, 2021, 5:35 PM).

77. Joshua Rhett Miller, *Virginia Prof Under Fire After Saying Sexual Attraction to Children Isn’t Always Immoral*, N.Y. POST (Nov. 15, 2021, 3:14 PM), <https://nypost.com/2021/11/15/allyn-walker-says-attraction-to-children-isnt-immoral/> [<https://perma.cc/Y4ES-AS6J>]; Emma Colton & Tyler O’Neil, *Old Dominion University Places Professor on Leave After Interview Defending ‘Minor-Attracted Persons,’* FOX NEWS (Nov. 16, 2021, 9:21 AM), <https://www.foxnews.com/us/old-dominion-professor-statement-minor-attracted-persons> [<https://perma.cc/AKB6-AUPF>]; Jennifer Smith, *Fury as Old Dominion University REFUSES to Fire Trans Professor Who Said Pedophiles Can’t Help Their Urges and Should Be Given Child Sex Dolls*, DAILY MAIL, <https://www.dailymail.co.uk/news/article-10212633/Trans-professor-placed-leave-defending-pedophiles.html> [<https://perma.cc/7YUU-67PG>] (Nov. 17, 2021, 5:07 PM).

78. Brooke Migdon, *Movement to Ban—or Even Burn—School Library Books Gains Momentum*, HILL (Nov. 11, 2021), <https://thehill.com/changing-america/enrichment/education/581134-movement-to-ban-or-even-burn-school-library-books-gains> [<https://perma.cc/S729-E9S7>].

79. See, e.g., Kelly Anderson, *GU Removes Offensive Books from Reynolds, McCarthy Libraries*, HOYA (Feb. 7, 2020), <https://thehoya.com/gu-removes-offensive-books-from-reynolds-mccarthy-libraries/> [<https://perma.cc/8VA8-9BDH>].

Universities have been eager to characterize themselves as homes and families and launch pads for careers. They have been much less eager to advertise themselves as arenas of intellectual debate and critical inquiry or havens for the countercultural and unorthodox. Students enticed to campus with promises of parties, unity, and safety might prove less than tolerant of those who push the boundaries of popular opinion or question deeply held values. An intellectually and emotionally “safe” campus is at odds with an intellectually vibrant campus. If the customer is always right, a university that elevates consumerism will find itself needing to sacrifice academic freedom.

C. The University of Shared Values

The inclination of universities to supplement their mission statements with new statements of values, creeds, and pledges reflects a budding desire to rest universities on the firm ground of shared values. Of course, universities do require some shared values. To adhere to a mission of advancing human knowledge, they require a community that shares a commitment to truth-seeking, critical inquiry, and openness to doubt. There are rules and practices that arise out of that mission and that are useful to facilitate it. Protections of academic freedom are among them, but so are policies prohibiting disruptive activities on campus, the harassment of or violence against individuals on campus, or academic dishonesty. These are the thin values that allow a diverse community with heterogeneous ideas and commitments to work together in a common venture to preserve, disseminate, and advance human knowledge.

Some colleges are not content with that thin set of shared values and have sought something thicker. Traditionally, these have consisted of a shrinking set of religious institutions.⁸⁰ Increasingly isolated from the mainstream of American higher education, some private colleges have voluntarily chosen to qualify the scope of free inquiry allowed on their campuses.⁸¹ Those who join such campus communities are required to make attestations

80. Beckie Supiano, *A Closer Look at Christian Colleges' Statements of Faith*, CHRON. HIGHER EDUC. (Jan. 7, 2016), <https://www.chronicle.com/article/a-closer-look-at-christian-colleges-statements-of-faith/> [<https://perma.cc/BD7M-8WCR>].

81. Colleen Flaherty, *Faith and Freedom*, INSIDE HIGHER ED (Jan. 14, 2016), <https://www.insidehighered.com/news/2016/01/14/can-statements-faith-be-compatible-academic-freedom> [<https://perma.cc/SY6K-QUBU>].

of faith in some robust set of shared beliefs.⁸² Those shared beliefs are not to be questioned, interrogated, revised, or discarded. Those thick shared values are beyond the scope of the skepticism that is characteristic of the modern university. To the extent that some ideas are taken to be unquestionable truths, then the *truth-seeking* mission of a university is compromised, and the scope of academic freedom is necessarily limited.

The religious colleges requiring statements of faith are few and far between in the contemporary landscape of American higher education, but the desire to adopt shared orthodoxies is gaining steam at a wider array of institutions.⁸³ The new statements of faith are rarely as explicit as the old, and they are secular and political rather than religious in nature.⁸⁴ But they have the same key quality of circumscribing the range of acceptable critical inquiry on a university campus, and by necessity they require compromising commitments to academic freedom.⁸⁵

It is not terribly surprising that some universities are heading in that direction. Universities have seen a steady decline in the range of ideological diversity on their campuses.⁸⁶ It is predictable, though hardly guaranteed, that an increasingly like-minded community that as a descriptive matter shares a robust set of political commitments will find itself thinking that those commitments ought to be normative and constitutive of the community. Heterodox ideas are disruptive, threatening, dangerous. It is easy to grow intolerant of such challenges to the widely shared orthodoxy. All the easier when the ideas are not only widely shared but also cherished.

82. Supiano, *supra* note 80.

83. For one account, see Nicholas Meriwether, Opinion, *The Truth About My Stand Against a University's Enforced Orthodoxy*, HILL (Sept. 28, 2020, 4:30 PM), <https://thehill.com/opinion/civil-rights/518531-the-truth-about-my-stand-against-a-universitys-enforced-orthodoxy> [<https://perma.cc/7CDV-9882>].

84. Brian Leiter, *The Legal Problem with Diversity Statements*, CHRON. HIGHER EDUC. (Mar. 13, 2020), <https://www.chronicle.com/article/the-legal-problem-with-diversity-statements/> [<https://perma.cc/WB8U-54XC>].

85. JOANNA WILLIAMS, *ACADEMIC FREEDOM IN AN AGE OF CONFORMITY* 66–67, 71–80 (2016); FRANK FUREDI, *WHAT'S HAPPENED TO THE UNIVERSITY?* 167, 171–81 (2017).

86. Keith E. Whittington, *The Value of Ideological Diversity Among University Faculty*, 37 SOC. PHIL. & POL'Y 90, 92 (2020).

III. CONCLUSION

Academic freedom has been widely accepted as the ideal that ought to govern the operation of American universities, but it has not always been realized in practice. Like the related principle of free speech, academic freedom is much easier to endorse in the abstract than to implement on the ground. Concrete instances of controversial speech test our tolerance for disagreeable ideas and come freighted with substantive disputes that arouse passions and interests.

Modern American universities have struggled to live up to their own ideals, and our current polarized environment will make living up to those ideals harder rather than easier. The educational reformers of the late nineteenth century understood that if universities were to serve their proper purpose of bringing the benefits of knowledge to society, the experts that the university had to offer would have to be broadly trusted. They could not be perceived as just another set of partisans entering into familiar political battles. That is a hard position to achieve. To the extent that society is divided into distant warring camps, it is all the more difficult to bridge that divide. Scholarly judgment might be vilified and dismissed rather than welcomed. But modern universities were launched with a goal of standing above such divides. Their best chance of doing so requires taking scrupulous care to be intellectually open and nondogmatic, standing above the fray rather than diving into it, and protecting dissident ideas rather than suppressing them.