"A Place Dedicated to Openness of Mind": Why Academic Freedom Protects "Distasteful" Extramural Speech

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Abstract This article explains why academic freedom protects "distasteful" extramural speech, including social media posts outside of a scholar's area of expertise. Initially, I explain why using the First Amendment to protect academic freedom jeopardizes the latter. Next, I describe how German philosophers and American pragmatists expounded academic freedom to protect a community of strong-willed scholars. Then, I note that the AAUP has backed away from defending the Enlightenment-Romantic conception of the good supporting academic freedom. Finally, I argue that academic freedom should protect both Plato and Diogenes, polite and confrontational scholars.

Keywords Academic freedom, extramural speech, First Amendment, Wilhelm von Humboldt, AAUP

Of what use for us is a man who, although he has long practiced philosophy, has never yet upset anyone?

—Diogenes the Cynic

Vignette one. Maura Finkelstein was a professor of anthropology at Muhlenberg College and a vocal critic of Israel, including after October 7, 2023, when she earned the ire of groups on and off campus. On January 17, 2024, the provost contacted her and said that the US Department of Education's Office for Civil Rights had opened an investigation at the college about a "Jewish anti-Zionist professor." That evening, Finkelstein reposted on social media a message from the Palestinian American poet Remi Kanazi that said: "Do not cower to Zionists. Shame them. Do not welcome them in your spaces. Do not make them feel comfortable." According to administrators, this extramural speech violated the faculty handbook's stipulation that "an academic staff member must always be informed, accurate, discreet, and respectful toward the opinions of others." On May 30, 2024, the provost wrote to Finkelstein informing her that an adjudication panel

had recommended that she be fired for just cause. The American Association of University Professors (AAUP) argued that the college violated her right to freedom of extramural speech, but this line of argumentation did not lead to her keeping her job. According to the *New York Times*, "Maura Finkelstein is one of many scholars discovering that the traditional protections of academic freedom are no longer holding."[1]

Vignette two. Thomas Alter was an associate professor of history at Texas State University. He participated in the 2025 online Revolutionary Socialist Conference and said: "Without organization, how can anyone expect to overthrow the most bloodthirsty, profit-driven, mad organization in the history of the world: that of the U.S. government?" On September 8, 2025, a self-identified "anticommunist fascist" posted videos of Alter's comments on social media and, after a public uproar, the university president said that the professor's public statements "amounted to serious professional and personal misconduct" and "inciting violence is directly contrary to the values of Texas State University." Lawyers have argued that firing a public employee for constitutionally protected speech is "First Amendment retaliation," but that did not stop the university president from terminating Alter's employment.[2] According to the union president, the university's actions send "a chilling message to every faculty member, staff member, and student: your livelihood can be taken away if political actors don't like what you say on your own time."[3]

Vignette three. Charles Negy is an associate professor of psychology at the University of Central Florida. On June 3, 2020, shortly after George Floyd's murder, he posted on social media: "Black privilege is real: Besides affirm. action, special scholarships and other set asides, being shielded from legitimate criticism is a privilege." There was instant backlash on social media, and the university announced, "being actively anti-racist means calling out and confronting racist comments…. We are reviewing this matter further while being mindful of the First Amendment." In January 2021, UCF administrators called him a "safety risk" and fired him without the normally required six-month notice period. Negy sued the administrators for First Amendment retaliation. His court case is proceeding, and he still has his job. According to a vice president of the Foundation for Individual Rights and Expression (FIRE), "Negy's entire career has been what I'd describe as punk rock pedagogy: he didn't care if you loved it or hated it, as long as you remembered the show." He added, "the pursuit of truth is enhanced by that kind of teaching."[4] Other members of the university community disagreed.

The ideal of academic freedom, including the right of faculty to say provocative things in public, needs a robust defense today. Popular support for higher education, particularly among conservatives,

is plummeting.[5] Politicians, administrators, and interest groups—primarily in red states—are proposing laws that gut academic freedom.[6] Trustees think that they, and not protesting faculty or students, own the campus.[7] Many people do not understand why governors, regents, or college presidents cannot just fire faculty for saying controversial things of dubious scholarly merit. The German research university model and its attendant ideal of *Lehrfreiheit* needs a full-throated defense to survive in the long run. We also need to explain why adjunct or temporary faculty deserve academic freedom, and why higher education should create more of the tenure-track jobs that are the best protection of academic freedom.[8]

This article addresses the question of whether academic freedom covers controversial extramural speech outside of a professor's area of expertise. The 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*—hereafter, "the *Declaration*"—distinguishes the freedom of the student (*Lehrnfreiheit*) and the freedom of the teacher (*Lehrfreiheit*), the latter of which includes freedom of inquiry and research, freedom of teaching, and freedom of extramural utterance. College students get expelled for social media posts.[9] Professors provoke outrage for their scholarship.[10] Students record instructors in class, share the videos, and get instructors fired.[11] Business interests have often tried to shape the college curriculum.[12] There are many sites in the battle over academic freedom, including in countries that are beyond the scope of this article.[13] This article focuses on the question of whether academic freedom protects faculty members who say controversial things that have no direct connection to their scholarship. The *Declaration* famously answered "yes" to that question, but many people do not seem to understand the rationale and thus are not well equipped to say why academic freedom protects an astronomer discussing a protective tariff—to share an example from an early critic of the *Declaration*.[14] The *Declaration* says academic freedom must cover scholars, particularly social scientists, who articulate ideas "distasteful to the community as a whole."[15] This article opens with three vignettes, but there are many examples of professors who have lost their jobs for extramural speech, including comparative literature scholar Steven Salaita, political theorist George Ciccariello-Maher, and academics who were fired because of social media posts about conservative political commentator Charlie Kirk.[16] My hope is that reconstructing canonical articulations of the idea of academic freedom may help us explain why it covers professors who say "distasteful" things. Academic freedom advances the end of creating a society that has lively debates about every topic under the sun, which requires professors to speak fearlessly without the risk of losing their employment. Academic freedom shields Plato, but it also covers Socrates's other, ill-mannered disciple: Diogenes.

Section 1 presents law professor David Rabban's argument for why academic freedom does not cover extramural speech outside a professor's area of expertise. Rabban understands why academic freedom protects scholars doing scholarship, but he seems perplexed why academics deserve any more protection for public speech than anyone else under the First Amendment. Unfortunately, the First Amendment will not protect academic freedom if the courts rule that academic employers may regulate the speech of their faculty employees. Section 2 revisits one of the founding documents of the modern notion of *Lehrfreiheit*—namely, Wilhelm von Humboldt's 1809 *On the Internal Structure of the University in Berlin and its Relationship to Other Organizations*, hereafter "*Internal Structure*." I argue that Humboldt envisioned academic freedom as protecting the strong-willed, many-sided individuals he celebrated in his earlier book, *The Limits of State Action* (hereafter "*Limits*"). Section 3 shows that the *Declaration* brings Humboldt's ideal to the American context and uses tenure as a policy to guarantee academic freedom. Academic freedom protects scholars contributing to objective knowledge and the common good, but it also covers scholars who dissent from the tyranny of public opinion. Section 4 maintains the 1940 *Statement of Principles on Academic Freedom and Tenure*—hereafter "the *Statement*"—achieved brevity at the cost of explaining why academic freedom matters, and this hamstrung efforts to justify academic freedom to the public, including the AAUP's defense of UCLA philosophy instructor Angela Davis. Section 5 suggests academic freedom should protect Plato and Diogenes, well-mannered and ill-mannered scholars. The conclusion argues that academics need to "sell" higher education as an invigorating place where people participate in the thrilling clash of ideas, and that a healthy university or college environment will have its fair share of punks, bohemians, freaks, conspiracy theorists, firebrands, characters, and extremists on the left and right. For higher education to serve its role as "a place dedicated to openness of mind," according to the *Declaration*, it must be willing to tolerate academics who prompt students "to think about heresies" and the "occasional error."[17] The purpose of academic freedom is to create a utopian community of free-thinking individuals who press each other and the community to experiment with new ideas and ways of life.

1. Why the First Amendment may not protect academic freedom

Many battles over academic freedom are fought in the courts, and several of the most prominent scholars of academic freedom are law professors.[18] Rabban teaches at the University of Texas School of Law, served as general counsel of the AAUP, chaired its Committee on Academic Freedom and Tenure, and wrote *Academic Freedom: From*

Professional Norm to First Amendment Right. He argues the *Declaration* made a mistake covering extramural speech outside a scholar's area of expertise. Reading his book reveals why it is risky to rely on the First Amendment to protect academic freedom and why it is necessary to defend the ethico-political ideal that undergirds *Lehrfreiheit*.

According to Rabban, the *Declaration* and the *Statement* avow academic freedom only covers academics communicating their scientific research in a responsible manner. The *Declaration* "defined academic freedom as the freedom of professors to perform their essential function of pursuing knowledge and conveying the results of their expert study to students, colleagues, and the broader society."[19] The *Statement* told academics that they "should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution."[20] Rabban is willing to fight for academic freedom to protect the job security of scholars writing, teaching, and publicly communicating about their research: "Professors who meet academic standards have more protection than other employees because the university employer cannot direct the topics they investigate or the conclusions they reach, even if those conclusions lead to public hostility and financial hardship for the university."[21]

His book, however, is filled with admonitions about what academic freedom does *not* cover. The drafters of the *Declaration* convincingly argued that academic freedom should protect scholars contributing to humanity's pursuit of the truth and the common good. What they failed to do, he maintains, is explain why academic freedom should cover academics speaking in public about things about which they have no expert knowledge. The *Declaration* emphasizes that "academic freedom does not immunize professors from discipline for expression that violates academic standards."[22] But "it nowhere explained how extramural speech by professors on subjects outside their own specialties relates to this justification."[23] According to Rabban, academic freedom does not protect professors who criticize university policies about athletics, ethnic holidays, fundraising efforts, or land acquisition, "nor should it protect language that is unprofessional, false, threatening, or harassing."[24] One could argue that higher education demands that academics must clear hurdles such as comprehensive exams, a dissertation defense, or go through peer review to publish articles as evidence that they have earned the role to hold a social position that permits them to speak fearlessly about things even if they do not research them *per se*. Rabban says that this argument is elitist: "I am not convinced that people who are college graduates are better democratic citizens and leaders than those who are not."[25]

Professors speaking outside of their area of expertise, Rabban says, "should be governed by the First Amendment law of free speech

that applies to all citizens and the employee-speech jurisprudence that applies to all public employees."[26] The catch, he explains, is that employee-speech jurisprudence empowers employers to curtail the speech of their employees. The 2006 Supreme Court case *Garcetti v. Ceballos* ruled statements by public employees made "pursuant to their official duties" are not protected by the First Amendment.[27] If public universities treat academics as employees, then they could conceivably regulate what instructors say in the classroom, which is what the Florida legislature attempted with the Stop WOKE Act. Supreme Court cases—including *Sweezy v. New Hampshire* and *Keyishian v. Board of Regents*—insist that the First Amendment protects academic freedom.[28] But the Supreme Court has never defined academic freedom, and lower courts have differed on whether the state may regulate classroom instruction in public universities.[29] The law is not settled, which is in part why Rabban wrote his book explaining what academic freedom does and does not cover. My concern is that his argument extends academic freedom exclusively to scholars discussing their expertise as determined by faculty review boards—which might not protect any of the faculty discussed at the start of the article. Rabban lays the ground for universities and colleges to invoke employee-speech jurisprudence to fire professors who say controversial things that they cannot prove to fellow academics are directly related to their scholarly expertise.

Take Salaita. The University of Illinois at Urbana-Champaign reneged on his appointment as associate professor in the Program of American Indian Studies (AIS) after alumni and trustees objected to his criticisms of Israel on social media.[30] According to Rabban, Salaita's tweets violated the AAUP's admonition to professors to exercise restraint and respect in their public pronouncements: "A good example is the tweet: 'Zionists, take responsibility: if your dream of an ethnocratic Israel is worth the murder of children, just f**cking own it.'"[31] Rabban says, "in the educational interest of maintaining a healthy learning environment, a university should be able to prohibit some offensive speech that is currently protected by the First Amendment."[32] To be clear, he wants faculty committees to decide whether a professor's public pronouncements are beyond the pale of scholarly discourse. But he also appears to justify public and private universities firing academics for "offensive speech," including, it appears, harsh critiques of the State of Israel.

Many disputes about academic freedom end up in the courts, and Rabban's book reveals that First Amendment jurisprudence may not always protect professors who say things distasteful to politicians, administrators, trustees, or the public.[33] My assignment in the rest of the article is to explain the utopian vision that inspired German and American philosophers to advocate *Lehrfreiheit*, even when professors say things that provoke outrage. The secret of academic freedom is that

it advances the ethico-political goal of creating a society of freethinking individuals, not the accumulation of knowledge as such.

2. Humboldt on academic freedom

To understand the philosophy of academic freedom, we need to go back to its most important modern advocate: Wilhelm von Humboldt (1767–1835). Humboldt was an ambassador, scholar, and the bureaucrat in charge of renovating the Prussian education system, and his *Internal Structure* is widely considered the founding document of the research university and *Lehrfreiheit*. Though Humboldt was concerned about advancing systematic science (*Wissenschaft*), I contend he envisioned universities as providing a home for a community of intellectually courageous, many-sided individuals: "magnificent rebels"—Andrea Wulf's term for the world-famous philosophers, natural scientists, and poets in Humboldt's milieu in early nineteenth-century Jena.[34]

The first thing to note about the *Internal Structure* is that the purpose of the university is to help individuals grow into the best versions of themselves. Humboldt opens the essay as follows:

> Higher academic institutions are the pinnacle of a nation's moral culture. The notion follows from the calling of such institutions to pursue knowledge [*Wissenschaft*] in the broadest and deepest sense of the word and devote themselves to the use of knowledge not as material arranged according to particular external purposes, but rather as the autonomous, self-arranging material of intellectual and ethical formation [*Bildung*].[35]

Universities store and accumulate objective knowledge and preserve the nation's finest cultural and scientific accomplishments. But there is no preexisting plan for what this body of knowledge looks like. Human beings decide for themselves how to collect and arrange objective knowledge. The collection of knowledge serves the *telos* of intellectual and ethical self-formation. Humboldt is influenced by the Enlightenment and Romanticism, and he thinks higher education's purpose is to enable the individual to decide for themselves what to think and feel. There is a fundamental difference between the medieval university and the modern research university: The former aims to disclose God's plan for humanity; the latter empowers individuals to chart their own course in an open universe.[36] For Humboldt, higher education is a means for human beings to prune their own character like a bonsai bush: "for what matters. . . is not merely knowing and talking but character and action, and only the kind of knowledge that comes from within and can be cultivated within transforms character."[37] Or, as he said in *Limits*: "the true end of man…is the highest

and most harmonious development of his powers to a complete and consistent whole."[38] Like Aristotle, Humboldt thinks that every human being has a *telos;* unlike Aristotle, Humboldt envisions each individual fashioning themselves in a unique way. He is, in Robert S. Taylor's felicitous phrase, a "plural perfectionist."[39]

Humboldt believes everyone is responsible for pruning their own character *and* strong-willed individuals need right kind of community to grow into their most beautiful form. "The intellectual labor of humankind," he says, "needs collaboration in order to flourish." It is not merely that universities divide labor for efficiency's sake; it is that universities provide individuals with an audience that applauds, challenges, and competes with them: "The internal organization of our higher academic institutions must foster and sustain a free, uninterrupted, self-revitalizing, open-ended collaboration."[40] Humboldt laid the groundwork for the modern research university that hosts lecture series, seminars, public talks, and social events where academics can discuss with each other their research (*Forschung*). Again, he made this point in the *Limits,* where he said it is "through a social union . . . based on the internal wants and capacities of its members, that each is enabled to participate in the rich collective resources of all the others."[41] Humboldt, in Luise Papcke's words, offers a "distinctly *social* individuality" that recognizes that individuals express their uniqueness through friendly, loving, and cooperative interactions with other people.[42]

We now see why Humboldt advocates academic freedom. To protect a community of self-fashioning individuals, "the state has to ensure that these men have the freedom they need to be effective."[43] Professors must have the freedom to choose what to teach within their area of expertise (*Lehrfreiheit*), and students must have the freedom to choose what courses to take (*Lehrnfreiheit*). The root of academic freedom is a vision of a good life: namely, one where everyone develops their intellectual and ethical character in friendly competition with other people pursuing their own life projects. Here, Humboldt may be thinking of a distinction proffered by his friend, Friedrich Schiller, in his inaugural lecture at the University of Jena in 1789. The purpose of higher education is not to master a scientific literature and make modest contributions to the warehouse of knowledge: This is the destiny of the *Brotgelehrte*—the "bread scholar"—who has lost sight of the academic vocation. Instead, the university should be a home for *der philosophische Kopf*—the philosophical mind—in whatever academic discipline: "Where the careerist scholar divides, the philosophical mind unites…. All his efforts aim at the perfection of his knowledge: nobly impatient, he cannot rest until all his ideas have been integrated into a harmonious whole, until he stands at the center of his art, his

science, and can survey his domain from there with a satisfied gaze."[44] Intellectually brave individuals need the freedom to chart their own course, not so much to accumulate knowledge as to develop their own admirable characters.

Humboldt envisions academic freedom as protecting a kind of person rather than the accumulation of knowledge per se. To be sure, *Internal Structure* asserts "the primary standpoint must be that of knowledge alone, and "the teacher is not there for the students' sake; rather, they are all there for scholarship and knowledge's sake."[45] On my reading, this insistence serves the purpose of explaining who deserves academic freedom: namely, somebody who works relentlessly to master humanity's accumulated wisdom on a topic and then bravely charts a new path to add to that wisdom. In *Limits*, Humboldt says, "the grand, leading principle towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity."[46] He was an aristocrat, and his vision of academic freedom has an elitist ring. But it is, in principle, an elitism open to anybody who can proceed through the comprehensive public education system he designed as Prussian minister of education.

The root of academic freedom is a utopian vision of strong-willed, many-sided individuals in a community that blends the Enlightenment and Romantic ideals of the laboratory and the art studio, reason and the imagination, the sciences and the humanities, learning and self-fashioning. In *Limits*, Humboldt asks us to imagine

> a picture of a people in the enjoyment of absolute, unfettered freedom, and of the richest diversity of individual and external relations;… a state in which energy would keep pace with refinement and richness of character, and in which, from the endlessly ramified interconnection between all nations and quarters of the globe, the basic elements of human nature themselves would seem more numerous.[47]

Scholars have noted the irony—or maybe contradiction—of Humboldt arguing in his youth for the state to minimize its role in education, and in his adulthood leading a state ministry charged with creating a university. But his utopian vision stayed roughly the same even if his attitude towards the state changed slightly.[48] He celebrated unique, energetic individuals who brought something new into the world, and he realized that brilliant people need a community that reads drafts, asks questions, shares jokes and meals, and offers companionship. The state could help launch the University of Berlin, but Humboldt wanted it to achieve financial independence so that it would not be vulnerable to meddling politicians. Higher education should be a place where

people from around the world pursue their individual passions and inspire those around them. The ticket to enter this world is a fierce dedication to *Wissenschaft*, but Humboldt, like his reader John Stuart Mill, thinks that examples of individual excellence enrich everyone in the nation. My undergraduate philosophy professor used to say that my college, at its best, was a community of cooperative nonconformists. That, I take it, was Humboldt's vision, which for its actualization requires an assurance that scholars will be protected from the ire of the community or its powerful members. It has inspired countless academics in Europe, the United States, and elsewhere, though *Lehrfreiheit* has always been a fragile accomplishment.[49]

3. The AAUP on academic freedom

The next main chapter in the history of academic freedom occurred in the United States, when the AAUP published a document that extended academic freedom to extramural utterances and identified tenure as its guarantor. In 1915, John Dewey, the American pragmatist philosopher and president of the AAUP, convened the AAUP's Committee A to write the *Declaration*.[50] The leading lights of the committee included Edwin R. A. Seligman, an economist at Columbia University, and Arthur O. Lovejoy, a philosopher at Johns Hopkins University. It is the most important document in the modern American history of academic freedom. This section explains why the *Declaration* stretches academic freedom to cover the extramural expression of ideas "distasteful to the community as a whole."[51] Like Humboldt, the drafters of the *Declaration* presented a utopian vision of a community of energetic scholars that needed academic freedom as a wall to protect itself from external assault.

The *Declaration* describes the kind of person who deserves academic freedom and tenure. This ideal type has two sides. One side is a mild-mannered scientist who carefully studies the past and uses the scientific method to add to humanity's warehouse of knowledge. This person is "trained for, and dedicated to, the quest for truth"; embodies "the dignity of the scholar's profession"; does not enter academia to become rich but wants an "honorable and secure position"; reaches conclusions that are "the fruits of competent and patient and sincere inquiry"; and shares those conclusions "with dignity, courtesy, and temperateness of language." One thinks, here, of the photos of Dewey wearing a suit and tie, spectacles, and hair neatly parted down the center. Academic freedom stops people from thwarting scholars working in their lab, archive, or office accumulating objective knowledge. "The claim to [academic freedom] is made in the interest of the integrity and of the progress of scientific inquiry; it is, therefore, only

those who carry on their work in the temper of the scientific inquirer who may justly assert this claim."[52] This is the kind of person whom Rabban wants academic freedom to cover; it is also the kind of person who rarely needs the shield of academic freedom today.

The other side of the ideal type described in the document is "a strong and independent character" who teaches and exemplifies the importance of thinking for oneself; who follows their investigations no matter where they go or "to what extent they may come into conflict with accepted opinion." This person is unafraid to research natural science, social science, philosophy or religion, the latter branch of knowledge where "we are still far from a comprehension of the final truths, and from a universal agreement among all sincere and earnest men."[53] One person whom the AAUP founders may have had in mind was Edward Allsworth Ross, an economics professor at Stanford University who antagonized Jane Stanford, the widow of founder and railroad magnate Leland Stanford and the sole trustee of the university. Ross supposedly told his students that "a railroad deal is a railroad steal," and he also delivered a speech in 1900 at the United Labor Organization calling for the expulsion of Japanese immigrants who he felt had undercut the labor market by constructing railroads in the American West.[54] Academic freedom means defending the right of professors to say things that contemporaries and posterity may find problematic.

The *Declaration* describes the university as "a place dedicated to openness of mind."[55] In language that could be taken from Alexis de Tocqueville or John Stuart Mill, the *Declaration* warns against "the tyranny of public opinion" that can emerge in democratic societies:

> An inviolable refuge from such tyranny should be found in the university. It should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world.[56]

We see here why the *Declaration* extends the coverage of academic freedom from the journal and the classroom to a professor's utterances in public. Dewey et al. envision scholars bravely extending the boundaries of human knowledge and challenging conventional beliefs in the natural sciences, social sciences, philosophy, and theology. To research or teach well, professors need to listen to their scholarly conscience and refuse to stop at arbitrary borders identified by trustees, administrators, politicians, religious leaders, a social media mob, or anyone else. The *Declaration* treats the freedom to teach and the freedom of extramural speech as nearly the same thing, because in both cases the

professor is speaking to members of the public who are not members of the scholarly guild. Creating an isolated academy never makes sense, but certainly not in a democratic society where higher education can "help make public opinion more self-critical and more circumspect," "check the more hasty and unconsidered impulses of popular feeling," and "train the democracy to the habit of looking before and after."[57] The *Declaration* insists academics alone should determine whether a professor's extramural speech indicates that they are unfit to teach in the classroom.

My reading of the *Declaration* differs from scholars who emphasize its promise that academic freedom will help the creation of scientific knowledge or advance the common good.[58] The *Declaration* includes a remarkable quote from a college president arguing that a professor's charisma is arguably more important than their expertise, at least in the classroom:

> We can afford to forgive a college professor what we regard as the *occasional error* of his doctrine, especially as we may be wrong, provided he is a contagious center of intellectual enthusiasm. It is better for students to *think about heresies* than not to think at all; better for them to climb new trails, and stumble over error if need be, than to ride forever in upholstered ease in the overcrowded highway. It is a primary duty of a teacher to make a student take an honest account of his stock of ideas, throw out the dead matter, place revised price marks on what is left, and try to fill his empty shelves with new goods.[59]

The *Declaration* presents a Humboldtian-Millian utopia of enthusiastic professors challenging their students to question inherited ideas, keep an open mind, and maybe live a different life than their parents intended. According to Mill, "teachers and learners go to sleep at their post, as soon as there is no enemy in the field," and the *Declaration* likewise sees the value of forcing young people to encounter contrarians *even if most scholars in that area disagree with them*.[60] I once had an evangelical Christian student take my seminar on Nietzsche, and when I asked him why, he said, quoting Proverbs 27:17: "Iron sharpens iron." That is a fine motto for why universities should create space for academics and guest visitors to court controversy.

In sum, we now see why the *Declaration* extended academic freedom to extramural speech. Universities can be a home for scholars with a rebellious streak, and to protect that home it is necessary to protect their jobs even if they antagonize the community or elites. The *Declaration*'s defense of academic freedom relies on the reader's attraction to a vision of a community of hard-working, brilliant, rebellious scholars fashioning themselves and their students as free

thinkers—what Nietzsche called *Freidenker*. Many people do not find this vision compelling and wonder why families, alumni, or the public pay colleges and universities to employ eccentrics, which may partly explain, as I argue in the next section, why academics have stopped articulating the vision in public.

4. The reluctance to justify academic freedom

In 1940, the AAUP and the Association of American Colleges revisited the *Declaration* and published the *Statement*, a more concise document that institutions of higher education across the country have adopted. If a university has put the *Statement* into its faculty handbook or the collective bargaining agreement, then professors may sue for wrongful termination on the grounds that their academic freedom has been violated. The *Statement* is a kind of *de facto* law that faculty can cite to sue their employers for breach of contract.[61] Above, we saw Rabban quote the *Statement*'s passages enjoining scholars to be restrained and respectful in their public pronouncements, but professors have tended to treat this as an exhortation rather than as a requirement for employment, and in 1964 the AAUP announced that "extramural utterances rarely bear upon the faculty member's fitness for continuing service."[62]

The *Statement* is less than one-tenth as long as long as the *Declaration*. Why is there no discussion of the kind of people who deserve the employment protection of academic freedom or the kind of communities that form when scholars can say out loud what they think? Why did the *Statement* cut most of the utopianism of the *Declaration*? Here is my inference in the language of John Rawls's *Political Liberalism*. The *Declaration* defends academic freedom on the comprehensive moral doctrine of *Bildung* or, in Dewey's terms: growth. The notion of *Bildung* originated in medieval Christianity, but Humboldt, like his friends Goethe and Schiller, inflected it into a naturalistic vision of the good life that prized "many-sidedness" and a relentless desire to experience new things.[63] Though one should appreciate the distinctions between Humboldt, Mill, and Dewey, they all believed that a life of intellectual adventure and self-fashioning was richer than one that was content with inherited habits and wisdom.[64] The problem, from a Rawlsian perspective, is that public universities are part of the basic structure of society, and *Bildung* does not provide a public basis of justification for academic freedom.[65] For a Rawlsian, it is unreasonable to ask taxpayers to support institutions in terms that are not drawn from the public political culture. A Rawlsian could justify public funding of universities on the grounds of promoting equal basic rights and liberties and fair equality of opportunity, but it is unreasonable to appeal to

a comprehensive moral doctrine such as Enlightenment liberalism or Romanticism to justify hosting political debates on campus, inviting controversialists to campus, or employing professors who are uncivil on social media.[66] My concern is that refusing to articulate the deepest philosophical arguments for the German research university and *Lehrfreiheit* means that people will never learn why it covers controversial extramural speech.

Consider, for example, the AAUP's 1971 report on the case of Angela Davis.[67] Davis was working on her dissertation at the University of California, San Diego and had secured a temporary appointment as an instructor in the philosophy department at the University of California, Los Angeles. On July 9, 1969, the *San Francisco Examiner* published a story identifying Davis as a Maoist and a member of the Black Panthers. Upon a request for clarification from the vice chancellor, she replied, "I am now a member of the Communist Party," and "as a black woman I feel an urgent need to find radical solutions to the problems of racial and national minorities in white capitalist United States." Governor Ronald Reagan said that academic freedom does not cover inciting trouble on college campuses, and the provost's *ad hoc* committee said her public speeches are "so extreme, so antithetical to the protection of academic freedom and so obviously deliberately false in several respects as to be inconsistent with qualification for appointment to the faculty of the University of California." The AAUP argued primarily on First Amendment grounds that her speech was protected and that it violated a recent state law to deny reappointment to faculty members because of political party affiliation. The courts ruled that the Regents were not allowed to fire her because of her party membership, but the courts deferred to the university administrators who did not renew her appointment in 1970.[68]

One thing that stands out in the AAUP report on Davis's case is the refusal to engage with the philosophical rationale for academic freedom: "The present is not the place for philosophical disquisition on the normative force of the standards which have been developed by the AAUP over the years for the conduct of both academic staff members and the educational institutions which employ them. It must suffice to say that the AAUP has devoted a great deal of attention to the formulation of such standards."[69] Writing in *Academe Magazine*, law professor Emily Houh said that after reading the AAUP report she found herself "wanting something more than its legalistic statement of facts and background or even its impressive analysis and application of AAUP standards."[70] I agree, even if I am not as sympathetic as Houh to Davis's critique of higher education as an "outmoded feudal institution." My view is that the AAUP may not have needed to get into the philosophical issues in this report, but deferring the philosophical

issues for too long means that they may be forgotten. The AAUP could have argued that college campuses will be more exciting if they include firebrands like Davis and that even capitalists would benefit from her provocations. The AAUP could have argued higher education will produce a better learning environment if there is a meaningful clash of ideas on campus, and students should *want* to go to campuses where they will hear and participate in debates about important issues of the day. In my perspective, the AAUP missed a chance to educate the public about why academic freedom protects philosophers voicing ideas that offend people on and off campus. We academics need to say confidently: Our civilization should create space for unruly geniuses, and that place should be colleges and universities, and ideally the norm of speaking freely spreads throughout society.

5. Why academic freedom should cover Diogenes and not just Plato

The idea of academic freedom evokes Plato's Academy and the need to protect Socrates from the wrath of the city. Plato's Academy demanded that scholars master geometry, and it produced one of the most famous scientists in world history: Aristotle. Rabban thinks that academic freedom applies first and foremost to the kind of scholars who labored in Plato's Academy, but he does not think that it should provide job protection for scholars who say provocative things in public outside of their expertise. However, it is important to know that Socrates originated another tradition of philosophy, the Cynic school, that practiced an aggressive form of philosophy that challenged people of all walks of life to reflect upon the artificiality of norms and the importance of reconnecting to nature. I suggest we extend academic freedom to Socrates's wild children, the Cynics, who flaunt social norms and attack cherished beliefs.

Here are a few apothegms and anecdotes that illustrate the Cynic philosophy as a way of life. Diogenes walked into a theater while everybody else was leaving. When asked why, he said: "This is what I have been doing all my life." Diogenes walked backwards through a public arcade and when people laughed, he said: "Aren't you ashamed to blame me for walking backwards, when you are walking in the wrong direction your whole life through?" Diogenes interrupted a lecture by Anaximenes by waving a salted fish to mock the rhetorician's appetite, praised tyrannicides, and told Alexander the Great to move because he was blocking the sun. He defended—but did not necessarily recommend—incest because other animals did it, and he did not mind when Aristotle and others tried to insult him by calling him a dog, which is where the word Cynic originates. [71] Michel Foucault calls Diogenes a practitioner of *parrēsia*, "fearless speech," who believed "there should

be a kind of interconnection between a visible, spectacular, provocative, and sometimes scandalous way of life and a truth which could be made accessible to everyone by examples and the explanations associated with those examples."[72] Socrates taught Antisthenes who mentored Diogenes who in turn taught Crates who influenced Zeno, a founder of Stoicism.[73] Though the Stoics minimized the scandalous aspects of the Cynic tradition, the Cynic tradition left an imprint on the European intellectual tradition.

Diogenes and Plato were apparently friends who squabbled with each other in public. Plato defined the human being as a featherless biped, and Diogenes brought a plucked chicken into a lecture hall and said, "Here's Plato's man!" Plato was discussing Ideas and Diogenes said, "I can see a table and cup, but in no way this tableness and cupness," upon which Plato replied: "Of course not, because you have the eyes that are needed to see a cup and table, but lack the intellect through which tableness and cupness can alone be beheld." Diogenes asked Plato for some figs, and when Plato sent a bushel, the Cynic replied: "The same old story—ask him one thing and he'll reply with a thousand." Diogenes appreciated Plato's critique of tyranny, but he reprimanded him for trying to reform the Sicilian tyrant Dionysios. Plato told Diogenes, "If you paid court to Dionysios, you wouldn't need to be washing vegetables," and the Cynic replied calmly: "Yes, and if you washed vegetables, you wouldn't need to be paying court to Dionysios."[74] Many of the stories of Plato and Diogenes take place over meals or in conversations, which leads one to suspect that they had agonistic respect for each other. Plato and Diogenes were Socratics, but they took Socrates' legacy in different directions. According to Jean-Manuel Roubineau, "with Diogenes, unlike Socrates, there was no room for politeness when it came to attaining virtue: he deliberately sought to give offense. This was philosophy with no holds barred."[75] Or, as Foucault put it: "whereas the Socratic dialogue takes a circuitous path from ignorant knowledge to the knowledge of ignorance, you can see that the Cynic dialogue is much more like a fight, a battle, a way, with peaks of great aggression and some moments of peaceful calm, of nice exchanges—which, of course, are traps for the interlocutors."[76] Plato said that Diogenes was "Socrates gone mad."[77] Diogenes returned the insult in a remark about Plato: "Of what use for us is a man who, although he has long practiced philosophy, has never yet upset anyone?"[78]

The dispute between Plato and Diogenes anticipates the modern debate about academic freedom. Plato learned from Socrates' execution that it was better to hide in the Academy and teach things to a small group of students that should not be shared with the public—which anticipates the *Declaration*'s insistence that classroom utterances

should not be recorded and shared with the public. Diogenes, however, practiced philosophy as a way of life that intensified Socrates's gadfly role; in fact, Diogenes said that Socrates was a hypocrite who lived a life of luxury that included owning a house with a couch and sandals (!).[79] Plato is the scholar who carefully chooses words that do not unnecessarily offend; Diogenes is the philosopher who wounds the pride of people he encounters, including by calling Alexander a bastard. Foucault observes: "In this fight there is a permanent danger and the parrhesiast accepts this danger, confronting Alexander himself from beginning to end."[80] Millenia before the invention of the Internet, Diogenes expressed himself in ways that infuriated the public that subjected him to physical abuse, but that also sheltered him and fixed his abode—a jar next to the marketplace—after a young boy broke it.[81] It is easy to defend the academic freedom of scholars like Plato who follow the AAUP's admonition to use temperate, respectful, careful language in public. It is harder to defend the words and actions of philosophers like Diogenes who intentionally provoke people to wake up from lives of hypocrisy. I doubt that there has ever been a social media post as inflammatory as Diogenes walking with a lamp in full daylight saying, "I'm searching for a man."[82]

Academic freedom should cover Diogenes as well as Plato, the disreputable philosopher as well as the buttoned-up scholar. Critics of the *Declaration* say that it "stretched the cloth of protection over an area in which academics proved to be most exposed," as if that is a sign of intellectual malpractice.[83] As this article has shown, however, both the German architects of the research university and the American pragmatists envisioned academic freedom as protecting intellectual rebels prone to challenging public opinion or the ruling class. The Academy should have room for ill-mannered scholars who intensify the Socratic attack on ignorance and folly.[84] I would love to overhear Diogenes talk with Plato or Aristotle. Wouldn't you? We think and laugh better when higher education has room for idiosyncratic individuals who walk in the marketplace with a lamp or use profanity and insults on social media. You do not have to be a Cynic to see the value of having them around on a college campus.

Conclusion

This article opened with vignettes of professors saying things that generated controversy and calls for their termination. We then considered the argument that academic freedom does not cover extramural utterances outside of a scholar's area of expertise; it only protects scholars seeking the truth, contributing to the common good, and exercising scholarly habits in public. To be fair, both the *Declaration* and

the *Statement* contain such language, and I advise academics to raise the level of intellectual discourse when they speak in public.[85] But this article has also argued higher education needs to defend the right to extramural speech to ensure that the college campus is "a place dedicated to openness of mind." Monitoring faculty and student expressive activities makes college a boring, fearful place.[86] We academics should work with the administration and residential life to create a college campus buzzing with ideas, debates, teach-ins, encampments, and protests. And hopefully academic freedom on campus generates a norm of free expression that spreads to other locations and occupations.

Academics may regulate the speech of their colleagues in the process of peer review or for purposes of hiring, tenure, or promotion. In *Democracy, Expertise, Academic Freedom: A First Amendment Jurisprudence for the Modern State*, Yale law school professor Robert C. Post argues universities should not envision themselves as marketplaces of ideas because that implies that they should be well-stocked with bad but marketable ideas. "Universities are essential institutions for the creation of disciplinary knowledge," he explains, "and such knowledge is produced by discriminating between good and bad ideas."[87] I agree that academic communities should determine who enters or advances within the guild. Humboldt and the drafters of the *Declaration* emphasized that scholars earn their role in society by proving their mettle through peer-reviewed research. According to Judith Butler, scholars should be alert to the "dynamic and historical life of academic norms," but that "is *not the same* as disputing the relevance of professional norms."[88] Likewise, Joan Wallach Scott recognizes that disciplinary authority both constrains the formation of new ideas and "permits the organization of knowledge" and "authorizes the knowledge producer."[89] Butler and Scott think scholars in the critical humanities can expand the canon, challenge disciplinary norms, and intersubjectively agree to academic standards. I share Lisa Siraganian's concern that politicians and interest groups may take advantage of the contestable nature of academic standards to demand "viewpoint diversity" on college campuses. This demand could lead to interference with academic self-governance, departments' prerogative to choose who they hire, and the freedom of professors to write their own syllabi.[90]

Nevertheless, the "marketplace of ideas" metaphor can explain why academic freedom should protect extramural speech outside a scholar's area of expertise. Universities are where our culture debates ideas, including ideas that academics in those areas might not support. Few academic economists today take seriously the ideas of Ayn Rand or Karl Marx, but I see the value of professors and students forming clubs or journals to discuss those ideas. The *Declaration* describes higher

education as the "home of beaten causes," and this conveys the idea that college campuses can be a place where people preserve books, ideas, authors, traditions, and so forth that might have a renaissance someday.[91] Rabban thinks that it is elitist to say that academics deserve more speech rights than anyone else. My response to this argument is not that professors are smarter or more virtuous than anyone else, but that our society has entrusted academics to perform a variety of roles, one of which is speaking fearlessly about topics that other people may be afraid to touch because they could lose their jobs. And my hope is that the norm of speaking freely migrates from the academy to the government, civil society, and families.

Universities should be the site of public debates that academics may consider settled, pointless, or traps. Take the case of Charlie Kirk, the conservative pundit who visited college campuses as part of Turning Point USA and dared liberals to "prove me wrong." The *New York Times* documented how Kirk used hyperbole and quips, silenced his supporters to seem reasonable, played to the crowd, and laid rhetorical traps.[92] To which I say: whatever. Socrates's critics accused him of making the weaker argument appear the stronger, and Kirk looks polite compared to Diogenes, who brought a plucked chicken to another speaker's lecture. Academics look like and are hypocrites if they only defend provocative speech on campus with which they agree. Kirk was a controversialist, and academic freedom does not cover controversialists. Nevertheless, the rationale for academic freedom covering extramural utterances is the same rationale for inviting controversialists to speak on campus: to make higher education a place for raucous intellectual and political debate—including foreign students on visas who criticize Kirk.[93] In this respect, my argument for academic freedom differs from scholars such as Siraganian who argues "viewpoint diversity functions in direct opposition to the pursuit of truth, the principal aim of academia."[94] Again: Scholars regulate the speech of their colleagues through peer review, and academic self-governance requires the guild deciding who may teach college courses. I strongly oppose efforts by politicians to enforce viewpoint diversity by fiat in higher education. But anybody who attends academic talks knows that smart people disagree with each other about nearly everything, and we should be wary of anyone who says "once a consensus of the truth of [any particular topic] has been established, viewpoint diversity on that topic is rightly, habitually, dismissed."[95] I disagree. A thriving college campus creates space to debate nearly everything, and efforts to stifle unpopular positions and clubs harm the learning environment on campus. College campuses should create opportunities for students to attend events organized by Turning Point USA and Students for Justice in Palestine.

At its best, academic freedom nurtures a community of open-minded, many-sided individuals who challenge each other to think harder and grow into the best version of themselves. Philosophy begins, Deleuze says in *Difference and Repetition*, "with an individual full of ill will…with the necessary modesty not managing to know what everybody knows, and modestly denying what everybody is supposed to recognize."[96] Academic communities need skeptics, cynics, contrarians, and gadflies to challenge common sense, and academic freedom means that these people can serve their social role without the risk of losing their livelihood. That is why we should defend the right of academics to infuriate trustees, community members, politicians, and other academics.

In the fall of 2025, the Trump administration pressured institutions of higher education to sign a compact stating that "academic freedom is not absolute."[97] It is possible that the Department of Education may lean on universities to regulate the speech of faculty it considers discriminatory or harassing—including speech it deems antisemitic, an ironic accusation given that this campaign has targeted Jewish academics such as Finkelstein and Butler.[98] We academics need to have the courage to say: Universities are an awesome place where young people expand their mental horizons, meet intellectually adventurous professors, and participate in the most important debates of our day—and all these good things happen only with academic freedom.

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