

# Principles of Academic Freedom

UW System HR Conference  
2021

# What is Academic Freedom?

- History

- 17<sup>th</sup> Century- earliest American colleges- subject to rule of external governing board (contrast with medieval European universities- created as autonomous guilds)
  - Faculty were hirelings doing contract labor
- Early 19<sup>th</sup> century- First modern research universities created in Germany
- Mid 1800's- USA
  - Beginning of rapid changes in US higher education system (professionalization of college instruction)
  - First Doctoral degree awarded in US- 1860
- Founding of John Hopkins University in 1876
  - First purely graduate institution in US
- Beginning of 20<sup>th</sup> century- Growing number of true universities (most prominent at the time were Johns Hopkins, Cornell, Columbia, Harvard, Yale, and the universities of Chicago, Wisconsin, and Michigan.)
- German trained scholars returning to US brought with them the concepts of "*lehrfreiheit*" and "*lernfreiheit*" roughly translated as freedom of teaching and freedom of learning.

# The Ely Case (1894)

- Richard Ely- University of Wisconsin professor of Economics
  - Criticized factory working conditions, child labor and suppression of unions.
- Oliver Wells- newly elected superintendant of public education- writes a letter to The Nation accusing Ely of being a socialist.
  - He claimed that Ely's classes exemplified "the teaching and the practice of the University of Wisconsin" which encouraged "attacks upon life and property."
  - Sought Ely's termination
- College holds trial, result yields UW Board of Regent's famous statement on academic freedom:
  - "Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great State University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found."



# AAUP is Born (1915)



- Academic Freedom is a founding concern of the AAUP.
- 1915- First statement on Academic Freedom
- 1925- Second statement on Academic Freedom
- 1940- AAUP releases the current version of its Statement on Academic Freedom
  - “The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.”

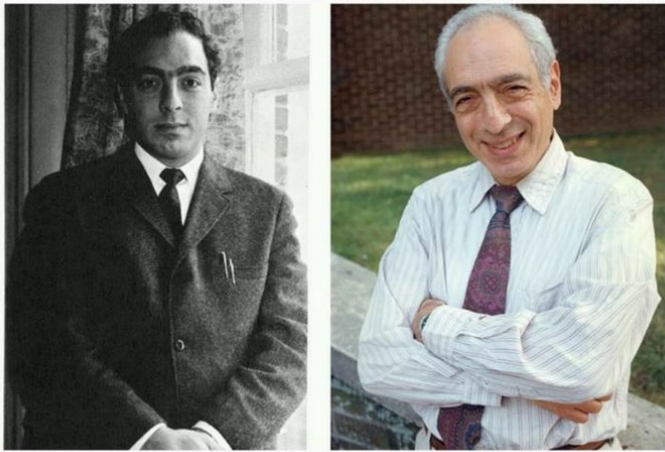
# AAUP's 1940 Statement

## Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence 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.

# Keyishian v. Board of Regents of Univ. of State of NY (1967)

- Justice Brennan issued one of the most famous statements in the lore of free thought:
- Academic freedom...is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.... The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection.

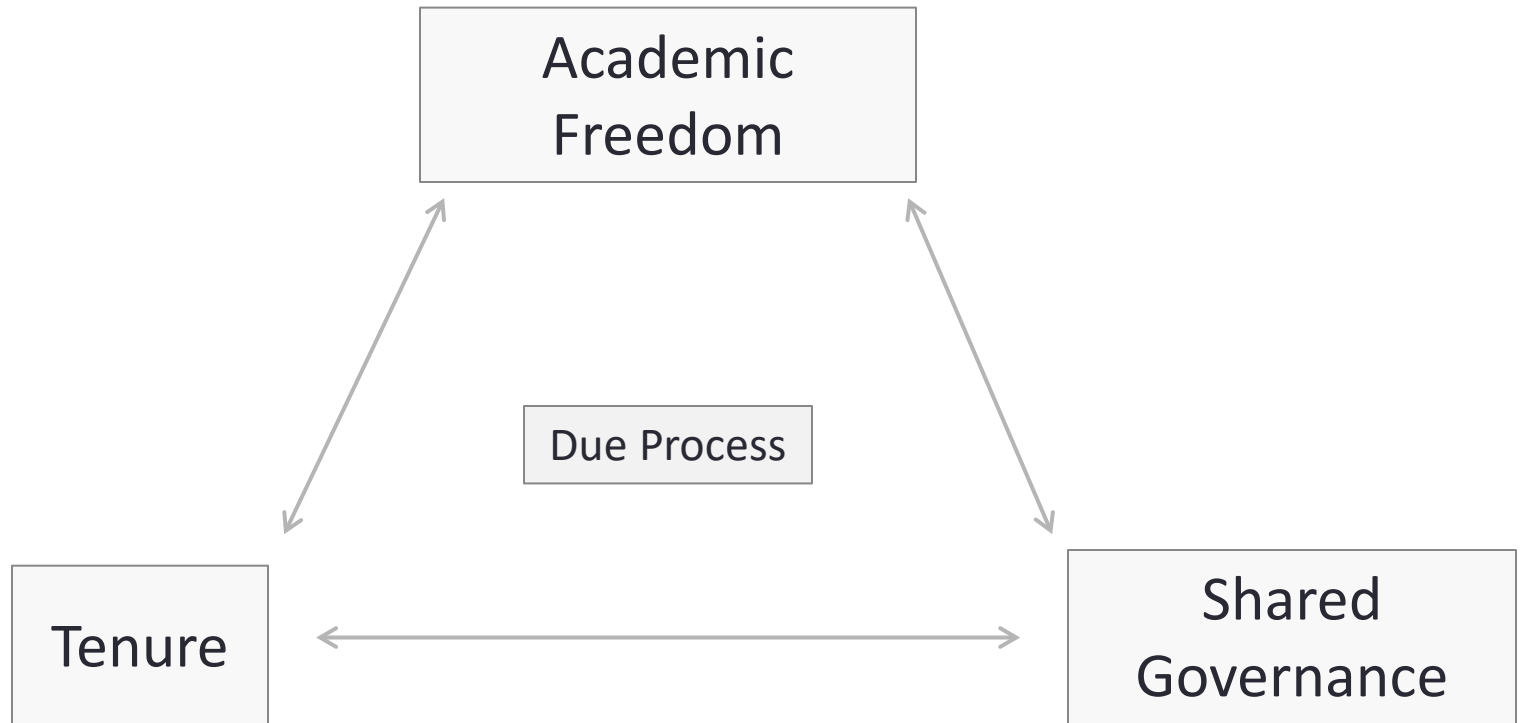


Photos courtesy of Fairleigh Dickinson University.

## Quick facts

Court was asked to decide if instructor Harry Keyishian and 3 other professors could be fired for refusing to sign a loyalty oath, certifying that they were not communists. Oath was required under NY State law, along with a prohibition against “treasonous or seditious speech or acts”.

# Academic Freedom (Extended AAUP Model)



# Academic Freedom – 4 parts

- Faculty members
  - Free Speech
    - Inside of Class
    - Outside of Class
  - Instructional Content
    - Substantive content
    - Conclusions
  - Research
- Academy
  - Discipline-specific “truth”
  - Peer review
  - Tenure review
- Institution
  - Who may teach
  - What may be taught
  - How it shall be taught
  - Who may be admitted to study
- Students
  - Freedom from discrimination
  - Reasonable accommodations
  - Student Free Speech

See also: Contractual rights



# Balancing Tests in the Law

- Faculty right to determine what is taught in classroom
- Faculty right to free speech inside classroom
- Faculty right to grieve institution
- Faculty right to discuss controversial topics

-vs-

- Institution's right to determine curriculum (+ "Legitimate pedagogical interests")
- Student's right to be free from discrimination or harassment
- Institution's right to choose employees and maintain order
- Faculty responsibility for professional conduct

## Regent Policy Document 4-21

### Commitment to Academic Freedom and Freedom of Expression

- Academic freedom includes the freedom to explore all avenues of scholarship, research, and creative expression, and to reach conclusions according to one's own scholarly discernment.
- Freedom of expression includes the right to discuss and present scholarly opinions and conclusions on all matters both in and outside the classroom.
- These freedoms include the right to speak and write as a member of the university community or as a private citizen without institutional discipline or restraint, on scholarly matters, or on matters of public concern.
- The UW System is committed to these principles and provides all members of the university community the broadest possible latitude to explore ideas and to speak, write, listen, challenge, and learn.

# Regent Policy Document 4-21

## Commitment to Academic Freedom and Freedom of Expression

### 1. Commitment

- Restates the UWS philosophy and principles of Academic Freedom

### 2. Conduct on University Lands; Student and Employee Discipline

- Restrictions on disorderly protests

### 3. Freedom of Expression

- Orderly protests permitted

### 4. Restriction of Expression

- Violations of state or federal law.
- Discriminatory harassment.
- Sexual harassment.
- True threats.
- An unjustifiable invasion of privacy or confidentiality.
- An action that materially and substantially disrupts the function of an institution.
- A violation of a reasonable time, place, and manner restriction on expressive activities.

### 5. Accountability

- Annual report to the Board required

### 6. Neutrality

- Students and employees can not be required to express a particular view on a public policy issue

### 7. New Student Orientation

- Institutions must include info about freedom of expression at orientations

### 8. Notice

- All enrolled students must receive notice of this policy annually.

### 9. Inconsistent Policies

- This policy supersedes and nullifies any inconsistent institution policies.

## Garcetti v. Ceballos (2006)

- In *Garcetti v. Ceballos*, the court held that an assistant district attorney could be punished by his office for complaining in a memorandum that the office had been submitting too many affidavits for warrants that were unsupported by probable cause.
- Even though Ceballos' comments raised important questions about an important public office, the court concluded that he was not speaking as a private citizen, but rather was speaking pursuant to his official duties as an employee. Consequently, his speech did not merit First Amendment protection. In order for employee speech to be protected by the First Amendment, the person must be speaking as a “private citizen” about a “matter of public interest.” Ceballos fell short because he was speaking pursuant to his official duties.
- *Garcetti v. Ceballos* narrowed the First Amendment protection of public employees who make statements critical of their employers. In the past, the court applied a First Amendment balancing test to public employee speech that addressed a “matter of public concern.” *Garcetti v. Ceballos* withdrew this protection if an employee is speaking as part of his or her official duty—a term that is broadly defined for most faculty members.
- In response to *Garcetti*, many colleges and universities (including UW-Madison) amended their Academic Freedom Policies to specifically include protection for faculty speaking on matters related to their professional duties and the function of the institution (including Shared Governance).

# What is Critical Race Theory?

Origins- grew out of Critical Legal Studies. The field originated in 1970s and grew throughout the 80s and 90s.

*Critical Legal Studies- a school of legal analysis that argued the law is not objective or apolitical- theorists recognized that the law was not always objective, neutral, principled and disassociated from social or political consideration, but rather could be complicit in maintaining an unjust social order. (Itself evolved from Critical Theory- social philosophy originating among Frankfurt School theoreticians in the 1930s.)*

Critical Race Theorists study how race and social inequality are reproduced through the law.

## **A loose set of propositions about law and race:**

- Racism is structural and built into the law
- Race is a social construction
- Racial progress is not inevitable
- Reject the idea that USA is post-racial society or “colorblind”
  - Undermines analysis of racial bias in law and social policy
  - Validates stubborn endurance of the structures of white dominance.

# “Critical theory” is a type of analysis that crosses many academic fields

- Example: From Introduction to Labor Relations – The 4 primary theories of labor

## **The Mainstream Economics School**

- Supply and Demand
- Competition ensures efficiency and equity
- Labor problems are self correcting via market operation

## **The Human Resource Mgmt School**

- Labor problems stem from poor mgmt.
- Problems can be solved by aligning interests of workers and company
- Sound human resource management policies meet employee needs for justice, security, respect and voice.
- Create workers who are motivated, engaged and productive

## **The Industrial Relations School**

- Labor problems result from unequal bargaining power
- Labor market is imperfect and inefficient
- Unequal power = autocratic and authoritarian employers
- Unions help equalize bargaining power

## **The Critical Industrial Relations School**

- Capitalist institutions created by society
- Dominant groups design and control these institutions to serve their own interests (e.g. ALEC)
- Strategies by dominant groups are designed to undermine labor solidarity
- Cause of labor problems is control of society's institutions.

# The Study of Race & Ethnic Relations

(Where does Critical Race Theory fit in?)

## Functionalism Theory

- Racial inequality serves some function or is the result of some social condition that is/was useful to society
1. Assimilation Theories- melting pot assumption
  2. Pluralism Theories- multiculturalism
  3. Biological Theories- sociobiology
  4. Human Ecology Theories- social Darwinism

## Conflict Theory

- Racial inequality the result of domination and exploitation
1. Caste Theories- prejudice and stereotypes created to legitimize slavery
  2. Colonialism Theories- nation dominates another
  3. Split-labor market theory- partition of labor markets
  4. Split class theory- workers vs. owners
  5. Middleman minority theory- splits within class

## Theories of Discrimination

### Types of discrimination

- Intentional, Explicit Discrimination
- Subtle, Unconscious, Automatic Discrimination
- Statistical Discrimination and Profiling
- Organizational Processes

### Source Points for Discrimination

- Labor markets, Education, Housing, Criminal Justice, Health Care

Episodic vs. Dynamic Definitions of Discrimination: The role of cumulative disadvantage