

Book Review

Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom*. New Haven: Yale University Press, 2009, pp. 272, \$27.50.

Reviewed by David S. Tanenhaus

I used to think that the brain was the most wonderful organ in the body.

But then I thought, who's telling me this.¹

Thinking seriously about academic freedom, including reading Matthew W. Finkin's and Robert C. Post's provocative *For the Common Good: Principles of American Academic Freedom*, is an existential experience. As they note, "Academic freedom, if it is to do the hard work of protecting faculty from the waves of repression that periodically sweep through the American polity, must explain why scholars ought to enjoy freedoms that other members of the public do not possess" (44). They argue that academics should not make an individual rights-based claim to justify this additional freedom. Instead, they demonstrate that the benefits and responsibilities of academic freedom derive from membership in a professional community of scholars committed to the cultivation and dissemination of knowledge. "Academic freedom," they stress, "is not the freedom to speak or to teach just as one wishes. Rather, it is the freedom to pursue the scholarly profession, inside and outside the classroom, according to the norms and standards of that profession" (149). Rather than being free to be you and me, we're free to be us. But who are we?

Finkin and Post turn to history, not constitutional law, to answer this question of professional identity. Emphasizing that "we address *professional understandings* of academic freedom, rather than the *constitutional law* of academic freedom," (9) they survey the origins of the concept of academic freedom, the creation of a foundational text (i.e., the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*), and its later codification and explication. Separate chapters then analyze the four domains of modern academic freedom: protecting freedom of speech and publication, freedom in the classroom,

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1. Quoted in N. Katharine Hayles, *How We Became Posthuman: Virtual Bodies in Cybernetics, Literature, and Informatics* (University of Chicago Press 1999).

freedom of intramural speech (i.e., faculty speech about his or her institution's practices), and freedom of extramural speech (i.e., a faculty member speaking in his or her capacity as a citizen). This slim volume is essential reading.

Finkin and Post provide an exceptionally American answer to the question of who we are. After tracing the origins of the concept of academic freedom from the suppression of ideas in the book of *Exodus* to the crystallization of the German ideal of *akademische Freiheit* in the 18th and 19th centuries, they demonstrate why this German concept could not be transplanted in American institutional soil. The German ideal, which "combined autonomy for the university as a self-governing body and freedom of teaching and learning," assumed that professors were highly esteemed civil servants entrusted to cultivate knowledge (22). Their American counterparts did not share this exalted status. They were considered employees of institutions, most of which were governed by boards of trustees. This meant that non-scholars, in many instances, could determine "what should and should not be taught, what should and should not be published" (24-25). The American scholar, especially one who challenged the tenets of laissez-faire capitalism in the Gilded Age, risked unemployment.

The ensuing struggle to redefine the place of the scholar in the United States led to the American Association of University Professors' 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*. Drafted primarily by economist Edwin R. A. Seligman and philosopher Arthur O. Lovejoy, this document served "as the first systematic articulation of the logic and structure of academic freedom in America" (30). A Progressive Era paean to expertise, science, and the organic nature of modern civilization, the declaration asserted that scholars, by creating the knowledge necessary for progress and social betterment, worked for the public good. To do this vital work properly, they required more protections in the workplace than a factory worker or even the president of a university. Significantly (and ironically in light of early 20th century campaigns to rein in the power of judges), the declaration argued that scholars should be treated like federal judges. Once appointed, a scholar should have freedom of thought and utterance. Just as a federal judge worked in a judicial system and followed specific rules, the scholar, too, was part of a system with norms. It was the responsibility of academics, as the declaration contended, to police the necessary conditions to produce knowledge.

It is worth noting how comfortably this declaration of principles fit with early 20th century American conceptions of citizenship. As Christopher Capozzola has argued, "In the years before the [First World War], voluntary associations—clubs, schools, churches, parties, unions—organized much of American public life. Such groups provided social services, regulated the economy, policed crime, and managed community norms. Schooled in this world of civic voluntarism, Americans formed their social bonds—and their political obligations—first to each other and then to the state. Indeed, in the absence of formal federal institutions, these voluntary associations sometimes

acted as the state.”² Americans of this era, including academics, structured their lives around collective undertakings. This included a strong belief in the obligation of responsible speech, especially during perilous times. Thus, the core components of academic freedom in the United States took root before the later creation of modern First Amendment jurisprudence.

Many of the core principles from this Progressive Era declaration were later codified in the 1940 *Statement of Principles of Academic Freedom and Tenure*, which more than 200 organizations now endorse, and which has helped to nationalize standards and practices in the United States. Today, a scholar who moves from a small college to a large university can expect his or her new institutional home to have a familiar commitment to academic freedom.

The problem, according to Finkin and Post, is that “American principles of academic freedom have become a victim of their own success” (5). We no longer debate whether academic freedom should exist, but instead treat these principles as “a ‘folkway,’ a warm and vaguely fuzzy privilege assumed by faculty as a ‘God-given right’ without careful attention to its hard requirements and logical implications” (6). Moreover, many academics either assume or believe that academic freedom has always been or should be an individual right rooted in the First Amendment. Finkin and Post argue that this individualistic rationale for academic freedom would undermine public support and destroy the socially constructed and legally enforced conditions necessary to produce knowledge. Consequently, they ask their fellow academics to reject this dangerous path and instead revisit the foundational principles of American academic freedom.

This splendid book is much more than a careful parsing and celebration of a canonical text from the Progressive Era. It also introduces the reader to the decisions of Committee A of the American Association of University Professors. Since 1915, this committee has been investigating and reporting its findings on alleged violations of academic freedom. After the adoption of the 1940 Statement, Committee A has been responsible for interpreting its meaning. “As the reasoned conclusions of an especially knowledgeable body, the opinions of Committee A offer an usually rich resource for understanding the meaning of academic freedom in America” (51). “These decisions,” Finkin and Post argue, “provide a rich and useful common law of academic freedom” (6). Although these decisions do not bind judges or university administrators, they argue that academics should treat them as valuable precedents. Thus, almost a century after American academics compared themselves to federal judges, now academic lawyers are leading the campaign to educate their fellow scholars about academic freedom. This development alone speaks volumes about the place of the law school in the research university.

Freedom of research and publication, according to Finkin and Post, demonstrate the success of the idea of academic freedom as well as its gravest threat. Although there is public support for freedom of inquiry and speculation

2. Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* 7 (Oxford University Press 2008).

as essential ingredients in the process of creating new knowledge, they fear that a culture of antinomianism encourages faculty to think about academic freedom as an individual right instead of a collective right of professional exploration. Embracing an individual rights defense, they argue, would needlessly jettison a tried and true defense of academic freedom against public regulation. As they explain:

The external defense of academic freedom will collapse if faculty lose faith in the professional norms necessary to define and generate knowledge. The traditional ideal of freedom of research and publication can be sustained only if those who exercise the prerogative of peer review interpret disciplinary standards in a manner that maintains the internal legitimacy of these standards. The interpretation of these norms will thus predictably and appropriately be influenced by the need to preserve sufficient social cohesion within the profession to sustain the authority of these norms. As a practical matter, successful institutions of peer review will therefore maintain a sensible and wise equilibrium between innovation and stability. The ultimate constraint, however, is whether peer reviewers apply disciplinary norms that over time produce credible forms of knowledge (60-61).

This is a powerful and pragmatic argument about the importance of professional standards to maintain the integrity of knowledge production. It also reflects academic life in the modern law school, in which many faculty members now publish in peer-reviewed journals and many also hold Ph.D.'s in other disciplines.

It is also fascinating to see academic lawyers discuss undergraduate teaching, including the selection of topics, calls for more political balance in the classroom, and concerns about creating hostile teaching environments. Since their method uses the investigations of Committee A to shed light on fundamental principles, their findings remind us that the past is a prolonged and often painful prologue. The overall lesson is simple: "Academic freedom obligates scholars to use disciplinary standards, not political standards, to guide their teaching" (104). Yet, the academic socialization of students can be a brutal business. For example, they declare, "Faculty must respect students as persons, but they needn't respect ideas, even ideas held by students. In higher education no idea is immune from potentially scathing criticism. If a student identifies with his own ideas, he might well experience ruthless critique of these ideas as a personal assault. But it is precisely the pedagogical purpose of higher education to introduce critical distance between students and their own ideas" (105). There are, of course, different pedagogical approaches to teaching an introductory undergraduate course and torts. And differences between a law student and a freshman!

Intramural and extramural expressions constitute the final two domains of academic freedom. The former focuses on a faculty member discussing his or her institution's policy, but does not involve disciplinary expertise. This freedom allows for academics to participate actively in the governance of

their institutions and is the cornerstone of the ideal of faculty governance. It is also the shortest and most straightforward chapter in *For the Common Good*. Finkin and Post tell the story of the concept's emergence, crystallization, and culmination in the 1966 *Statement on Government of Colleges and Universities*.

The freedom of extramural expression, as Finkin and Post acknowledge, is "the most theoretically problematic aspect of academic freedom" (127). "Why should faculties," they ask, "be free to speak in public in ways that damage their institutions, even if such speech is by hypothesis unprotected by freedom of research or intramural expression?" (131) To cite a personal example, I appeared on *The O'Reilly Factor* in the fall of 2008 to explain why I signed a petition in support of William Ayers.³ Teaching at a public university in a state that was a battleground during the presidential election with many strong feelings on both sides, I knew that my appearance might anger some. According to the 1915 and 1940 *Declarations*, I should have been cautious before making such an appearance. Both declarations approached extramural speech from the perspective of the responsible speech tradition. For instance, the 1940 *Declaration* announced:

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 (quoted on 131).

It was not until 1970 that the American Association of University Professors and the Association of American Colleges revised this language. It now reads: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty members' fitness for the position" (131). Judging from the e-mails that I received, some people believed that anyone defending Ayers was categorically unfit to teach. I should note that former University of Nevada, Las Vegas President David Ashley called me to offer his full support.

At the time that I defended Ayers on academic freedom grounds, I did not consider carefully why I had the freedom to speak extramurally. Like many of the intended readers of *For the Common Good*, I assumed that it was a First Amendment right. As it turns out, it was a good thing, institutionally speaking, that I didn't have to worry about participating in a heated story during a national election. Over time, it turns out Committee A has repeatedly

3. William Ayers, Distinguished Professor of Education and Senior University Scholar at the University of Illinois at Chicago, had been a leader of the radical anti-Vietnam War group, the Weather Underground.

emphasized that punishing faculty for their extramural speech can create a climate in which academics cannot perform their essential tasks. They worry too much about what they should or should not say. The solution, from the perspective of Committee A, is to allow only faculty, not public constituencies, to determine questions of professional competence.

I think that my own experience attests to the value of reading this sophisticated book. As academics, we should be able to articulate why we have additional freedoms. But we also want to work at institutions where we don't have to exercise our right to intramural speech to protect our extramural utterances. Yet, this is a book by academics for academics. It may help to protect academic freedom from internal threats, but as the history of Committee A suggests, there will always be another, external battle.