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## Foreword

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## Foreword

### Erratum

Note: This Early Winter issue replaces the normal Fall issue of the Indiana Law Journal.

## Foreword

STEVE SANDERS\*

One hundred years ago this year, a group of prominent American professors came together to form the American Association of University Professors (AAUP). As a crucial part of this endeavor, they drafted a manifesto on academic freedom and tenure that set forth what must have been viewed, at the time, as revolutionary propositions about the role of the scholar vis-à-vis the university and the role of the scholar and the university together vis-à-vis the larger society.

The AAUP's 1915 "Declaration of Principles on Academic Freedom and Academic Tenure"<sup>1</sup> represented nothing less than the dawning and assertion of a new professional consciousness and sense of identity among American college and university professors. The "conception of a university as an ordinary business venture, and of academic teaching as a purely private employment," it announced, "manifests also a radical failure to apprehend the nature of the social function discharged by the professional scholar."<sup>2</sup> "That function," it went on to explain, was "to deal at first hand, after prolonged and specialized technical training, with the sources of knowledge; and to impart the results of their own and of their fellow-specialists' investigations and reflection, both to students and to the general public, without fear or favor."<sup>3</sup>

Strikingly, the Declaration analogized the relationship between professors and their institutions' boards of trustees to that between federal judges and the president. Faculty members, it said, "are the appointees, but not in any proper sense the employees," of university trustees.<sup>4</sup> For professors, as for judges, independence is essential to the job. "University teachers," the Declaration said, "should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees, than are judges subject to the control of the President, with respect to their decisions . . . ."<sup>5</sup>

The rationale for academic freedom, according to the Declaration, was ultimately not moral or legal, and there was no suggestion that the Constitution was involved. Rather, the rationale was instrumental and public-regarding. Society's welfare and progress depend on the work universities and their faculties do. And so as part of the bargain, society is obliged to keep its hands off as much as possible because scholarship best flourishes under conditions of free thought and experimentation where communities of academicians are allowed to govern themselves to the greatest extent possible. "A university," the Declaration explained, "is a great and

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1. Comm. on Academic Freedom & Academic Tenure, Am. Ass'n of Univ. Professors, *General Report of the Committee on Academic Freedom and Academic Tenure*, 1 BULL. AM. ASS'N U. PROFESSORS 15 (1915).

2. *Id.* at 24.

3. *Id.* at 25.

4. *Id.* at 26.

5. *Id.*

indispensable organ of the higher life of a civilized community,”<sup>6</sup> and thus “any restriction” on professors’ teaching or research “is bound to react injuriously upon the efficiency and the morale of the institution, and therefore ultimately upon the interests of the community.”<sup>7</sup>

Obviously, American higher education is a much different enterprise today than it was in 1915, whether our lens is legal, sociological, economic, or epistemological. But even if some of its conceptions might strike us today as quaint and outdated, it is widely acknowledged that the 1915 Declaration remains the starting point for any serious discussion of the theory of American academic freedom.

To mark the Declaration’s 100th anniversary, this symposium presents articles by three leading scholars of academic freedom, each considering a facet of how the 1915 Declaration applies to problems of American colleges and universities today. Shorter versions of these articles were originally presented on a panel in January 2015 at the annual meeting of the Association of American Law Schools in Washington, D.C.

In his article *The Social Value of Academic Freedom Defended*, J. Peter Byrne seeks to reinforce the foundational premise of American academic freedom: that the work professors do is valuable to the larger society because, for example, it provides the necessary facts and analysis for competent policy making and democratic self-government. This idea has come under attack most prominently by Stanley Fish, an advocate of the “minimalist” view of academic freedom, which holds that the primary end of academic work is little more than the self-gratification of those who engage in it. Professor Byrne argues why Professor Fish’s view is both wrong and harmful.

Amy Gajda’s article, *Academic Duty and Academic Freedom*, addresses a related point: that lawmakers, judges, and the general public will not continue to tolerate a high degree of autonomy in decision making by colleges and universities if academics do not hold up their end of the bargain to contribute to society by making the products of academic work accessible and relevant. After a review of recent court decisions that reflect this erosion of autonomy, Professor Gajda calls for universities to place greater value in their tenure standards and reward structures on their professors’ public outreach and engagement work.

Another essential premise of the 1915 Declaration’s exposition of academic freedom is that the academic profession can and must police itself according to rigorous standards of professional ability evaluated through peer review. In his article *The Regrettable Underenforcement of Incompetence as Cause to Dismiss Tenured Faculty*, David Rabban argues that institutions have become too reluctant to dismiss professors who have grown chronically unproductive as scholars and ineffective as teachers. Addressing such “dead wood,” he argues, would “restore tenure to its legitimate function, increase popular support for it, and improve faculty morale.”<sup>8</sup>

These articles by no means exhaust the range of contemporary issues and controversies surrounding academic freedom. But at least they remind us, on the 1915 Declaration’s centenary, that academic freedom cannot be taken for granted.

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6. *Id.*

7. *Id.* at 29 (emphasis omitted).

8. David M. Rabban, *The Regrettable Underenforcement of Incompetence as Cause To Dismiss Tenured Faculty*, 91 IND. L.J. 39, 40 (2016).

Society is dynamic, and higher education constantly changes and adapts. And so it is always necessary to consider how foundational principles apply to contemporary realities.

