

Some thoughts on the Academic Freedom Alliance

Dan Carpenter, 20210308

Late last year my long-time political science colleague (and one-time co-author) Keith Whittington asked me if I would join in him in a new organization he was founding, the [Academic Freedom Alliance](#), an organization whose public launch occurs this week. The idea as I understood it was an organization narrowly dedicated to the academic freedom of *professors*, not one involved in every campus speech or expression debate. I discussed the matter with Keith (those conversations shall remain confidential), deliberated and then agreed to join him in this group, without knowing any of the other members at the time. I am now what is known as [a Founding Member of the group](#). Here are some reflections on why I have joined and what it means to me to do so, and the kind of work that I hope the organization will protect.¹

We live in a time of fragility for democratic republics, witnessed nowhere more starkly in recent times than in the United States. Democratic republics depend heavily upon a free and vibrant university sector.² Academic freedom for professors – which I regard as the liberty to speak, write, teach, collaborate, conduct research, engage and work, all in lawful ways,³ on matters and with content of a professor's choosing – is a core part of a vibrant university sector, necessary but not sufficient for healthy universities. Academic freedom is under threat in many countries. I also believe it is under threat in the United States, and I fear that with the authoritarian turn in U.S. politics it may be threatened more in the years to come.

Professors occupy an office (that is to say, a formalized position with compensation and duties) and have membership on a faculty body. Academic freedom protects those offices and that membership, subject to the performance of the known duties. (Many a Dean has threatened, and rightly, a professor with non-payment of salary for failing to teach the required number of courses.) The position of professor, whether tenured or not, should come with protections for the core set of things that professors do – teach, write, speak, collaborate, conduct research, advise. Academic freedom should provide those protections, and it is my expectation and hope that the Academic Freedom Alliance will do so.

¹ There is, of course, an academic literature on academic freedom. I'm keeping this memorandum casual and refraining from engagement, for now, with that literature collectively or in part.

² If you doubt that, check out what is going on in Hungary, India or Turkey right now. These were once far freer nations whose governments are targeting universities and university scholars as they also suppress minorities and marginalized populations, including racial and ethnic minorities, and persons who are gay or lesbian and/or have alternative gender identities. I'm also gravely worried about developments in Poland.

³ The possibility of unjust laws restricting research, teaching and expressive academic activities might render this clause problematic, but I am confining this discussion confined to the United States, where in general (I believe) our laws do not restrict research, teaching, scholarship and the like. A professor's expression that directly and specifically incited violence against a certain population, person, or organization (as opposed to say, the promulgation of a doctrine of just war or just rebellion) would be one example of activity that I would be less likely to see as protected by academic freedom per se.

I do want to specify, though, what I regard as the appropriate *champ de jeu* for endeavors like this. It will, surely, include the defense of people being punished for things they say in public fora or on a medium such as Twitter. Two widely discussed examples are the public statements of former University of Colorado Professor Ward Churchill after the terrorist attacks of September 11th, 2001 (referring to those who perished in the towers of the World Trade Center as “little Eichmanns”), and University of Pennsylvania Law School Professor Amy Wax, who reportedly said that [the United States will be better off with an immigration policy that brings “more whites and fewer non-whites.”](#) For what it is worth, I have never met either individual. Without rendering any judgment of equivalence, each remark was reprehensible, irresponsible and damaging. Professor Churchill’s inhumane remark brutalized the victims of a mass murder (I knew at least one of them), and may have implicitly justified the killing of people he regarded as technocrats. Professor Wax’s remarks and writings express a white supremacist ideology, give a sophistic legitimacy to racist fears of a “great replacement,” and fly in the face of both scientific accuracy and values of diversity, anti-racism and inclusion. Nonetheless, academic freedom as I understand it should protect professors from losing their positions, which includes their *place on a faculty*, for making statements like this, or for writing articles that endorse these views.

So the *champ de jeu* will include tweets, conference remarks, writings and things like that. For what it’s worth, in the two examples I just listed, [only Churchill actually lost his job](#). The ostensible reason was for research misconduct, though the timing of the charges and the Board of Regents’ rejection of the University of Colorado committee’s recommendations leaves me (and many, many others) appropriately suspect of the true motivations. (More on Wax’s case in a moment; I think Penn Law and its Dean Theodore Ruger did the right thing by removing all students from any obligatory educational contact with her, and that Ruger’s decision to do so is not a violation of Professor Wax’s academic freedom.)

Engaged Scholarship. That said, academic freedom has to mean something more than the set of freedoms protected under the First Amendment to the U.S. Constitution. I dearly hope that in our larger discussions of academic freedom we do not become so captured by the moment that our dialogue is driven by Twitter incidents.

Academic freedom as I understand it also means to freedom to teach and design courses according to one’s own judgment. It means the freedom to conduct research and teaching that engages with particular communities and [seeks to aid them in appropriate and legal ways, much as the historian Garrett Felber \(again, whom I do not know\) appears to be seeking to do at the University of Mississippi, which recently terminated his employment](#). Without knowing all of the facts of that case, I am pleased and relieved to see [the Foundation for Individual Rights in Education has issued a statement of protest about the matter and appears to be looking into legal action](#). (I just became aware of an open letter calling for his reinstatement, calling for an investigation into the case, and pledging not to speak at the University of Mississippi until justice is served in the matter. I have signed it.)

In my own teaching and scholarship, I do a lot of work with Indigenous nations and multi-tribal Indigenous communities. I also work with a range of other professors and organizations who work with those nations and communities. The work includes things such as conducting collaborative historical and archival research on their political histories, including petitions, their governance of landscapes and waterscapes, histories of litigation and regulation, etc. For one of my new courses, this includes assisting Indigenous peoples in their navigation of government regulations as they

attempt to live observe traditional cultural and nutritional practices. In part because I worry about a world where authoritarian state legislatures and will try to outlaw these kinds of professorial engagements, I expect and hope that those who defend academic freedom will defend these arrangements.

So suppose Professor Y at University X collaborates with a Native American government or with First Nations in Canada to help its citizens better understand a complex of national, provincial and local regulations so that they can practice what they call “food sovereignty.” Suppose in so doing Professor Y’s students learn about what that concept means (both generally and for a particular tribe), about what federalism means in the “real world,” and that the class’s Indigenous collaborators learn more about their rights under American or Canadian law. Newly empowered with this knowledge these Indigenous partners bring a suit, of their own accord, against a logging company that they believe is preventing them from practicing their traditional ways, and in so doing violating their legal and treaty-protected rights. But the wealthy founder of a logging company and a major donor to University X, dismayed that Professor Y’s course has facilitated Indigenous knowledge of their rights, asks University X to stop funding Professor Y’s course, to stop Professor Y from teaching it, or to refuse grants from foundations that might fund this work (see the Felber case). Or the wealthy founder asks the state legislature of a similarly-situated colleague at a state university to prohibit such pedagogy. I regard it as University X’s responsibility, the responsibility of anyone who says they value academic freedom, and that of the Academic Freedom Alliance, to take a serious look into such a matter and to support (unless there are particular factual or legal reasons suggesting against it) Professor Y in the continuance of such teaching and research.

The response that Professor Y’s course is not really an “academic endeavor” in that the Professor isn’t writing or speaking something here is entirely unpersuasive. It risks the reduction of “academic freedom” to a purely First Amendment exercise – speech, writing. We have the First Amendment for those things, for one. For another, the penumbra of academic freedom really has to mean a set of commitments made by those who hire professors to do what professors do, and professors have for centuries done a lot more than tweet. Even the First Amendment does not generally prohibit a private company from terminating the contract of any employee or contractor for offensive speech, nor does it prohibit a media platform from terminating someone’s account after having violated terms of service. Presumably academic freedom means much more than the ability of a professor to tweet, just as what professors do with engaged scholarship is probably of greater educational and scholarly value than anything conveyed in the content of their tweets.

To be sure, there are appropriate limits to any such collaboration. Where engaged scholarship addresses matters that pertain to a bill before a legislature, then standard lobbying regulations and restrictions upon non-profit activity apply. So too, I don’t think it is necessarily protected by academic freedom to do just any work for political campaign or a partisan organization *in one’s capacity as a professor*. Once I join a campaign or party I leave my university affiliation at the relevant organizational door. Similarly, I generally allow any student to take a moment to tell their fellow students about a cause in class (e.g., the Harvard Votes Challenge, Montana Women Vote), but I tell my students that I do not permit such an announcement if the group is explicitly affiliated with a political party.

Academic Freedom and Professional Consequences. Let me then advance a second point about the *champ de jeu*, specifically, on the set of punishments that might be at risk of curtailing academic freedom and that might be legally or socially contested by those defending academic

freedom. I do think academic freedom protects people's offices, which includes not only their terms of employment but again their membership in a collective body that is holistically (and whose members are, individually) endowed with the rights concomitant with academic freedom. The cases of Ward Churchill and Garrett Felber (I am not equating them in any sense but to note that both had their employment terminated) are problematic because it seems plausible that their employment contracts and attendant benefits were terminated for reasons having far more to do with the content and controversy of their expressions than for reasons relating to their performance, and because they were removed from a *body of faculty* where those rights are embedded and productively enjoyed and used.

I think a different set of questions arises when the individual professor in question occupies, in addition to her or his professorship, another position of authority and/or power. One such position can be an office (a formalized position governed by known and published rules), while another such position can consist of rents in (at the extreme, an implicit monopoly over) an academic subfield or educational pathway.

Academic Freedom and Auxiliary University Office. Most professors occupy an official position defined by its duties (*officii*) and governed by known and published rules: we must teach some minimum number of courses or fulfill the fundamentals of a service requirement.⁴ These core university offices are positions that academic freedom protects most. But sometimes we hold more than one office, a phenomenon I will call "auxiliary office" here. One such example would be a professor who also holds a decanal position, where the individual's latter office has immense direct authority (hiring and firing), direct and indirect agenda control, and/or veto power over things such as budgets and positions. (Most professors will acknowledge the reality that little such direct authority or agenda power comes with the title of professor, nor as accessory to any membership in a faculty body.) If for example a dean with massive control over divisional or college budgets writes or expresses anti-Semitic or anti-Black racist views, then faculty, students and staff in the Departments of Jewish Studies and/or the Department of African and African-American Studies would fairly wonder whether their requests for positions and dollars are being treated with equanimity, much less rigor. Such perceptions of lack of equanimity, assuming they were plausibly founded, would *alone* make it difficult for the individual to serve effectively in the decanal office occupied. Net of some due process considerations (hearing what the individual actually said, seeing what the individual wrote, offering the person a chance to explain or respond or even apologize), academic freedom does not constrain a university as strongly here. Maybe another way of saying this is that the academic freedom of a professor does not translate straightforwardly, in my reading, into the "freedom" of the same person to be a provost or a dean, to be a department chair, to head a powerful committee, or to occupy any other auxiliary office.

Rents, Monopolies, Pathways. While an ethic of academic freedom should protect the professorial position, it cannot be interpreted to protect all of the implicit authorities and powers enjoyed by the individual occupying that position, especially where these implicit powers confer considerable and asymmetric advantages upon some persons as exercised over and above others (students, untenured faculty). Were a professor to write an article defending the intellectual position of Professor Wax, I

⁴ I'm relying here upon a generalized Weberian notion of office (see his classic essay "Bureaucracy"), though I have some (scholarly) concerns with Weber's deployment of the concept and am pursuing separately, in my work on administrative government, a study seeking to enrich our understanding of the term and the phenomenon.

think academic freedom has to mean that such professor does not lose their job nor their ability to offer a course that they have been offering. But what more does academic freedom mean?

Suppose that the position of power that a professor occupies is no longer described by an office but by a *rent* that they have. The power they have is not official but comes from their habitual, acknowledged position as a teacher of a course required for a degree, or as evaluator for a kind of research skill that is highly valued (a certificate of proficiency in Korean, say, or certification of ability in a certain kind of computer programming). Like the bauxite in a mountain owned by one person or firm, the source of this rent may rest appropriately and legally with the expertise that this person possesses *a priori* or has acquired through diligence and risk-taking. An expert on property law or torts surely is a person to place in the additional position of teaching a required 1L course on these matters at a school of law. An accomplished microeconomic theorist is an appropriate person to place in charge of a required price theory course in a graduate or undergraduate economics sequence. For those who teach these courses, academic freedom protects their faculty position and its concomitant benefits. The question is whether academic freedom protects the rents they enjoy from this additional positioning within an academic or disciplinary sequence. My initial disposition on this question is that academic freedom does not protect such rents, or that it protects them far less than it protects professorial office.

Put simply, academic freedom protects professorial office, the rights of a faculty position (professor of x, lecturer in y) and membership on the associated faculty body. I don't believe it protects professorial rents. (However, other institutions, whether laws like a patent statute or norms or policies against plagiarism might, separately, protect rents or the benefits derived from them).

The case of Professor Wax at Penn is instructive here. I am not going to weigh in on the full set of things that Professor Wax has said, nor on the full set of things that the University of Pennsylvania has done in her case. After Professor Wax reportedly said that [the United States will be better off with an immigration policy that brings "more whites and fewer non-whites,"](#) the Dean of her school, Professor Theodore Ruger, [acknowledged Professor Wax's academic freedom to serve as a professor at the School of Law \(the faculty of which she is a member\) but removed her from teaching a required first-year course.](#) The concern, as I read it (I have not discussed the matter with Professor Ruger) was that students who could rightly feel that she devalues their ability or endeavor based upon their race would nonetheless find themselves in a position where they would be compelled to take a course from her. This power was not formally coupled to her professorial office but came from her position as someone with expertise in the area and/or experience teaching.

Put differently, what I understand of Dean Theodore Ruger's decision at Penn is that he removed the monopoly rights that Professor Wax had on a course, such that at least some students had to take the course to get a law degree from the school. The course in question remained mandatory. The change was such that the student who had to take the course no longer had to take it with Professor Wax. In my reading, Dean Ruger's move is *not* a violation of Professor Wax's academic freedom. (A more complicated discussion might address the issue of whether Professor Wax could teach a course with the same or similar title that students were permitted to take if they so chose.) Particularly when the social, economic and organizational dynamics that follow from expertise rents convey power upon a professor, that power is not protected by academic freedom in the same way that their core professorial office is.

Conclusion

I'll stop these reflections here for the moment. I am honored to join the Academic Freedom Alliance. There are risks, of course, in any endeavor such as this. I've worried that such an organization could serve goals that are disproportionately weighted toward one side of a political and philosophical spectrum, and/or that it would consistently side with, and protect, scholars who have entrenched advantages as they engage in behavior that marginalizes and demeans others, especially those who, due to their biology, their indigeneity, their race, their ethnicity, their religion, their gender identity or their ideology, need academic support. I think anti-racism is an important value, indeed a virtue central to the stability and flourishing of a democratic republic, and I worry that an ideologically tilted weaponization of academic freedom could undermine appropriate commitments to that goal.

In the end, I think the Academic Freedom Alliance is valuable, deeply needed and a risk worth taking. I'm joining because I know some of the past in questions of academic freedom, and even more because I fear what's coming in the future. In part I am joining because I trust Keith Whittington, someone I've known a long time and one of the most sober and thoughtful scholars I know. And I am pleased to see that other Harvard faculty from whose writings I have learned a lot on First Amendment issues and on university governance – Professor Jeannie Suk Gersen and Professor Janet Halley (I've met neither, to my recollection) – are involved.

That said, given the AFA plans to use my name as a Founding Member, I want to be clear now about the views I have, both generally and on the kinds of cases that might come before the Alliance. And I will of course reserve my right to disagree with its actions, as I do with any association I join.