

# Academic Freedom and the Liberation of the Nation's Faculty

by Michael S. Pak

Within the few decades following the creation of the National Education Association (NEA), a new expression came into use in the English language: “academic freedom.” The period spanning the last decades of the 19th century and the early decades of the 20th—falling roughly between the renaming of the National Teachers Association in 1870 as NEA and the founding of the American Association of University Professors in 1915—is often regarded as seminal to American higher education. It was in this period that the modern research university first made appearance in the United States. Also during this period, a process was set in motion whereby the faculty gained a significant measure of autonomy within universities. Central to this process was the formulation and propagation of the concept of academic freedom. It was a concept that had to be defended through battles fought on numerous fronts.

The celebrated cases that helped to define academic freedom in this period—the Richard Ely trial in 1894, the Edward Ross case, and others—have become the stuff of legend. But as often happens with legends, the actual events surrounding them have been obscured over the years. When these cases are recalled today, they are cited as examples where the faculty was persecuted by the university administration or governing board. Yet such a view—standard in most historical accounts—distorts the truth of the matter. The faculty members implicated in these cases were anything but helpless victims; in many instances, it was they who

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controlled the situation. Through skillful use of publicity, they often succeeded in turning the tables and punishing those who sought to persecute them. This was what happened, for example, in the celebrated “trial” of Richard T. Ely.

Ely and others of his generation, in fact, used such incidents as opportunities to clarify and advance the concept of academic freedom. In so doing they helped lay the foundation for its pursuit and defense in the 20th century and beyond. They were in every sense of the word the founders of academic freedom in the United States.

According to the Oxford English Dictionary, the first known use of the term

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“academic freedom” dates from 1901. This may be true for Britain but in the U.S. the term began to be used earlier. In 1885, for example, an article titled, “What Is Academic Freedom?”<sup>1</sup> appeared in *North American Review*. The American concept of academic freedom was an adaptation of the German notions of *Lehrfreiheit* and *Lernfreiheit*. Roughly translated as “freedom of teaching” and “freedom of learning,” these notions were brought to the U.S. along with another German idea which was gaining currency in late-19th-century America: that research should be the university’s principal mission. It was no coincidence that academic freedom emerged as a major issue at the same time American universities decided to embrace research.<sup>2</sup>

The dispute over faculty governance and autonomy had a long history in America, going all the way back to the 17th century. Unlike the medieval universities, which originated as autonomous guilds of teachers or students in populous urban centers, American colleges and universities were artificial creations transplanted in the “wilderness,” on the initiative of local dignitaries, magistrates, and church leaders. From the beginning they remained under the control of external governing boards, which usually delegated most of the governing duties to the administration. Under this arrangement, the faculty was liable to be treated as a body of hirelings doing contract labor. The faculty couldn’t claim to be the university, in the sense that the medieval faculty of the University of Paris could.<sup>3</sup>

So long as the focus of American colleges and universities was undergraduate teaching based on the traditional curriculum, the faculty had little leverage. Before the last third of the 19th century, the content of undergraduate curriculum was such that any well-educated amateur could easily set up shop as a college professor.<sup>4</sup> The administration or the board felt it to be within its competence to dictate

to the faculty what it could or could not teach or say.

The new emphasis on university research, however, helped turn the situation around. Professors were now required to be specialists. As the guardians of esoteric knowledge, they could make a case that they should have to answer to no one other than their specialist colleagues as to what they could and could not say in their professional capacity. The emphasis on research, in effect, gave the faculty the leverage it needed to claim a considerable measure of autonomy for itself. The landmark academic freedom cases of this period were trials of strength in which the faculty began to assert its new status and mark its territory.

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The academic freedom cases of this period usually involved economists or other social scientists who expressed controversial views on labor and capital. This was the era of the “robber barons,” the railroad magnates, the steel and oil tycoons, rapid industrialization, and militant trade unionism. The economy lurched forward with spectacular booms and equally spectacular busts. The clash between labor and capital was often violent.

What the universities were beginning to learn against this tumultuous backdrop was that their new identity as research institutions placed them in a double bind. On the one hand, they had to respect and uphold the freedom of expression of the faculty. To act otherwise was to jeopardize their credibility and reputation as research institutions devoted to the discovery of truth. On the other hand, they needed, more than ever, funding and other forms of material support. Could they afford to offend those holding the purse strings? The board and the administration might be more than willing to respect the academic freedom of the faculty—most of the time. But would they tolerate faculty members whose expressed views could potentially alienate the support base of the university? To complicate the matter, many of the new universities founded in this period were philanthropic projects funded by industrial tycoons.

The remarkable thing was not that there were so many cases in which the faculty clashed with the administration or the board but how determined and skillful the faculty proved in the fight. As the centerpiece of its strategy, the faculty enlisted the help of two powerful allies: public opinion and the press. A large segment of the American public in this period was apprehensive about the new industrial order, which was threatening to dominate an erstwhile rural republic. The public was receptive to the view that punishing professors for expressing controversial

opinions on labor and capital was tantamount to letting the industrial order manipulate freedom of expression. Universities were compelled to learn, if they did not know already, that the violation of academic freedom could have serious consequences. However damaging opinions expressed by the faculty might be for the institution's image, a greater harm could come from trying to silence the faculty.

The learning curve of universities regarding this matter is exemplified by the experiences of the University of Chicago, founded in 1892 by John D. Rockefeller. Scarcely two years into operation, the university found itself at the center of a controversy. Edward Bemis, who taught part-time at the extension school, was chastised by the university's president William Rainey Harper for his outspoken views against gas trusts, railroad concerns, and business interests in general, which he had expressed in magazines, church meetings, and local gatherings. When the university refused to renew his teaching contract, Bemis began speaking to reporters and the storm broke loose. Bemis "is playing the role of injured innocence with a good deal of energy," wrote Harper to a confidant, "and every paper in the country thinks it smart to have something to say about it."<sup>5</sup>

That the administration learned its lesson is clear from an internal memorandum issued some years later by Thomas Goodspeed, Harper's confidant:

Suppose for example we should cast Professor Foster out of the faculty because of his views as published. What would be the result? It would become known at once throughout the whole civilized world that the University of Chicago had formally suppressed freedom of speech. ... The reputation of the University as a great School of research would be utterly ruined. Graduate students would no longer flock to its halls in greater numbers than to any other institution in America, as they do now. Self-respecting professors of eminence would leave us.<sup>6</sup>



Perhaps no other academic freedom case of this or any other period has provoked as much indignation and sympathy among subsequent generations of American academics as the Ely trial. Imagine a professor at a Midwestern state university who has been summoned to defend himself before an investigative committee and an open audience against the accusation by a state official that he was a socialist. After the 1886 Haymarket bombing, the term “socialist” carried the connotations of being a terrorist or someone who condones terrorism. Worse still, in 1894, only a few months before the hearing, the Pullman strike shut down the transportation grid of the country west of Chicago, to the great annoyance of the

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public. The usual interpretation of the case of Ely, a leftist economist at the University of Wisconsin, is that it may have been among the worst infringement of academic freedom in history—a modern equivalent of Galileo’s trial.

Yet this view is misleading. The truth is that a mock trial was staged to *protect* Ely. It was as much a brainchild of Ely as anyone else. The Ely trial, thus, turns out to be something quite other than what it is usually believed to be—a striking example of the lengths to which some universities went to avoid being perceived as violators of academic freedom. It also offers a breathtaking example of faculty activism.<sup>7</sup>

The incident began when Oliver Wells, Wisconsin’s newly elected superintendent of public education, wrote 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.” The university found itself in a double bind indeed. Given the mood of the country, the charges were serious and damaging. According to the Wisconsin statute, the superintendent was also *de jure* a regent *ex officio* of the university, someone who could potentially jeopardize state funding. At the same time, under the presidency of Charles Kendall Adams, the university was firmly committed to becoming a major research institution. In fact, Ely had been recently recruited into the faculty to form the nucleus of the university’s nascent graduate program in economics. Therefore, the university had to protect Ely and assert its commitment to academic freedom—as well as let the world know that it did not condone “attacks upon life and property.”<sup>8</sup>

Under the guidance of Adams, the university decided upon the most logical course of action: go after the accuser. Formal litigation was ruled out because Ely

had been something of a *Kathedersozialist* in his early years and in the court of law his writings could be introduced as evidence corroborating Wells' claims. Hence, a public hearing, a *mock trial*, was decided upon, one whose perimeters would be controlled by Ely's friends. To begin with, the "investigative committee" was carefully chosen from the regents sympathetic to Ely. A few days before the hearing, the committee announced that it would deal only with the specific charges made by Wells—concerning what Ely taught in the classroom—and would not consider "what Dr. Ely wrote, said, thought or talked in years gone by."<sup>9</sup>

In the meantime, Ely and his colleagues launched a vigorous publicity cam-

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paign. They vindicated his cause in newspapers and public addresses, and solicited support from his former students and professional colleagues around the nation. When the hearing began, the public was decidedly on Ely's side. Realizing that he had been upstaged, Wells initially refused to show up to the hearing. Ely and his colleagues thereupon baited him with letters to the newspapers accusing him of being a coward. Wells finally presented himself—with a lawyer. The transcript of the hearing shows that if anyone was the victim, it was Wells, not Ely. The audience applauded whenever Ely spoke. According to the transcript, a complaint was indeed registered against "the proceedings of a mob"—by Wells' lawyer, who threatened to walk out with his client if the "mob" didn't restrain itself.<sup>10</sup>

One important upshot of the Ely trial was a statement by Adams in its immediate aftermath. This landmark document has been called "Wisconsin's Magna Carta of Academic Freedom." A bronze plaque displaying its core message is now found at the entrance to the building where the regents hold their meetings. It reads: "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."<sup>11</sup>

The efforts of Ely's generation to formulate, defend, and propagate the concept of academic freedom culminated in the creation of the American Association of University Professors (AAUP) in 1915. An important link in the chain of events leading to its creation was the infamous Ross case at Stanford in 1900. One of the two principal architects of the AAUP was Arthur Lovejoy, who resigned from the faculty of Stanford in protest when the Ross case erupted. The other principal architect of the AAUP was John Dewey who, in response to the Ross

case, wrote an article containing ideas that would eventuate in the founding of the association in 1915.<sup>12</sup>

It is not necessary to review the case in full detail. Suffice it to say that Ross, who was a protégé of Ely, surpassed his mentor in playing the system. For various reasons, Stanford was behind many of its peers in its commitment to academic freedom, and the university violated the principles of academic freedom with predictable results in this case. Ross became a national celebrity, putting Stanford's president David Starr Jordan on the defensive, as well as university patron, Jane Stanford, who was accused of being an overbearing autocrat seeking to keep under

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her thumb everyone who taught or worked at the university funded with her family's wealth. "I have I suppose," Ross wrote to his mother, "500 clippings from newspapers out here dealing with the subject and 29 out of 30 are with me. The mayor of San Francisco gave me a splendid dinner... I have 300 clippings from Eastern papers and they nearly all condemn Mrs. Stanford's action." His fame even helped Ross secure a contract for his first book. He went on to have a distinguished career, serving twice as the president of the American Sociological Society.<sup>13</sup>

The storm of publicity created by the Ross case was climactic in its intensity. And where some saw darkening clouds, Dewey was among those who saw a glimmer of hope. In his article Dewey asserted that he was among those who "dissent most thoroly [sic] from the opinion sometimes expressed that there is a growing danger threatening academic freedom." So far as he could see, incidents like the Ross case only served to show "the increased sensitiveness of public opinion, and the active willingness of a large part of the public press to seize upon and even to exaggerate anything squinting towards an infringement upon the rights of free inquiry and free speech."<sup>14</sup>

When the AAUP was finally created, Dewey as its first president made clear that it was not an organization created out of desperation. On the contrary, according to Dewey, the organization was to stand as a monument to the victory won in the first stage of the war. "Within almost a single generation," he said in his presidential address, "our higher education has undergone a transformation amounting to a revolution. And I venture to say that, in spite of the deficiencies we so freely deplore, no country has at any time accomplished more than in the same number of years."<sup>15</sup>

Now that the first victory was won, said Dewey, it was time “to arm ourselves with patience and endurance in view of remoter issues.” The defense and expansion of academic freedom was to be made into a permanent and systematic pursuit with the creation of the AAUP, rather than an intermittent, haphazard one. The organization was to become an institutional embodiment of wisdom gained through a generation of faculty activism. “No one underestimates the practical difficulties in our way. But arming ourselves with the good will and mutual confidence our profession exacts of us, we shall go forward and overcome them.”<sup>16</sup>

What the founding of the AAUP also signaled, according to Dewey, was that

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the American academics had come to their own as an autonomous body of professionals. Dewey made a point of comparing the organization to “the American Bar Association or the American Medical Association,” with the implication that, just like lawyers or doctors, the American academics now possessed an organization which would help theirs become a self-governing profession.<sup>17</sup>

To the generation of men and women who staged what Dewey called a “revolution” in higher education, we owe the concept of academic freedom. Practically all subsequent efforts made in its defense have been based on the agenda they formulated. The implementation of the tenure system in particular, a main agenda discussed at the first meeting of the AAUP, has been a major breakthrough. As Dewey predicted, nothing has been easy. There have been subsequent periods in the history of the country crowded with almost as many academic freedom cases as the late 19th century. But in keeping with the tradition of the founders, the offenders were not allowed to leave the scene without feeling the sting of vigorous protests. In all of this the National Education Association (NEA) has been the AAUP’s comrade in arms and an instrumental force in its own right.

Though the AAUP was founded as a separate organization operating under its own charter, it may justifiably be considered an organic outgrowth of the NEA. To begin with, some of its key agenda originated from those initially formulated by NEA for the teaching profession at large. The idea that academics should seek to gain a professional status comparable to that of doctors and lawyers, for example, was an extension of one of the original goals of NEA stated in its first annual meeting: “To create and permanently establish a teachers’ profession by methods usually adopted by other professions.”<sup>18</sup>

The two organizations were also linked through their members, many of whom were active in both or had close ties with members in the other organization. In particular, between William Torrey Harris, who served as the president of NEA in 1875 and thereafter remained its guiding spirit, and Dewey, the AAUP's first president, there was something of a mentor–protégé relationship dating from the earliest phase of Dewey's career. As the editor of *Journal of Speculative Philosophy*, Harris “discovered” Dewey when the latter was still a young high school teacher contemplating a career change. Harris not only published an article submitted by the then-unknown talent but encouraged him to go to graduate

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school to prepare for a career in philosophy. Dewey eventually ended up serving as an honorary president of NEA as well.<sup>19</sup>

The most important link between the two organizations, however, was that without the precedent set by NEA, the creation of the AAUP might have been difficult to contemplate. Through its existence and its work, NEA created a climate of opinion in which many were able to believe in the efficacy of activism. NEA's “transforming influences,” it was said, were bringing changes even to places where “old fogyism [sic]” used to prevail.<sup>20</sup> As the first truly national organization representing the interests of the teaching profession, NEA demonstrated the truth of the old adage that in numbers and unity lie strength and power.

From the beginning, the aim of NEA has been to remain a comprehensive organization serving the teaching profession in its entirety. Though it has had its own specialized departments—the Department of Higher Education, for example, existed as early as 1870—it has also worked synergistically with other organizations, like the AAUP. When necessary it has used the weight of its influence and resources—far greater than commanded by any other educational organization including the AAUP—to defend academic freedom.

Today we may be heading toward a period which calls for a new initiative. For better or for worse, the grounds are shifting. Challenges to academic freedom are coming from new sources. With the coming of the postindustrial era and an economy increasingly dependent on new knowledge, universities find themselves working closer than ever with various economic interests. With new opportunities come new temptations. Moreover, the tenure system itself may be crumbling, as the majority of those who teach at colleges and universities now work on a contingent basis. Time may be approaching when the agenda set by the original

founders of academic freedom may not be sufficient.

Still, there is a great deal we can learn from the founders. Two words sum up the secret of their success: knowledge and leadership. The American academics of Ely's generation had a realistic understanding of how the system worked. They knew what gave them leverage within the system and how to apply it effectively. They were men and women of ideals who also understood that ideals could not protect them unless they were willing to fight to defend them. Armed with knowledge, and driven by a relentless sense of realism, they were able to use the system to their advantage, instead of becoming its victims.

Likewise remarkable was the leadership of those who guided the generation. Leadership had to be exercised on two fronts and they provided it admirably. First, they worked to foster a strong sense of community within the academic profession, throughout its rank and file. When a controversial academic freedom case erupted, the profession was ready to rally with a united front, as a community. Second, they demonstrated exemplary statesmanship in enlisting the support and participation of the public. "I am a great believer," Dewey said, "in the power of public opinion." And so it was proven time and again that a sympathetic public opinion could be the greatest ally in the battle.<sup>21</sup>

New challenges may call for a new initiative. But the nation's higher education faculty still requires, more than ever, knowledge and leadership. In this age of ours, we tend to confuse information with knowledge. Mountains of data have been collected over the years on every aspect of higher education imaginable. But they have to be brought to a constructive synthesis if they are to be of help to us. The challenges of leadership may be even greater. For one thing, a sense of community within the American academic profession has been eroding for some time, especially among adjunct instructors. Since they carry out the bulk of teaching duties at colleges and universities, a festering sense of alienation has begun to spread. As for the communication between the academic community and the public, one risks an understatement saying that it has diminished significantly since the days of the Ely trial and the Ross case.

As the founders of academic freedom understood, challenges are not necessarily obstacles. For those who are willing to rise up to them, challenges can become opportunities. This lesson, which they so convincingly illustrated with their own examples, may well be the greatest of their legacies. 

## ENDNOTES

- <sup>1</sup> Andrew F. West, "What is Academic Freedom?" *North American Review*, Vol.140 (1885), 432-44.
- <sup>2</sup> *Bulletin of the AAUP*, I, no. 1 (Dec., 1915), 20.
- <sup>3</sup> Richard Hofstadter and Walter P. Metzger, *The Development of Academic Freedom in the United States* (Columbia University Press, 1955); Michael S. Pak, "Academia Americana: The Transformation of a Prestige System," (Ph.D. Dissertation: Harvard University, 2000), 30-77.

- <sup>4</sup> Frederick Rudolph, *Curriculum: A History of the American Undergraduate Course of Study Since 1636* (Jossey-Bass, 1977); Michael S. Pak, "The Yale Report of 1828: A New Reading and New Implications," *History of Education Quarterly* 48, no.1.
- <sup>5</sup> Harper to Thomas Goodspeed, August 24, 1895, Goodspeed Papers, University of Chicago Archives. See also Harold E. Bergquist, Jr., "The Edward W. Bemis Controversy," President's Papers, Special Collections, University of Chicago Archives.
- <sup>6</sup> Thomas Goodspeed to "Brother Blake," October 7, 1909, President's Papers, Special Collections, University of Chicago Archives.
- <sup>7</sup> For a fuller account of the Ely trial, see Michael S. Pak, "Academia Americana," 256-260.
- <sup>8</sup> Wells quoted in Theodore Herfurth, *Sifting and Winnowing: A Chapter in the History of Academic Freedom at the University of Wisconsin* ([University of Wisconsin], 1949), 7.
- <sup>9</sup> [University of Wisconsin], "Proceedings before Committee appointed by the Board of Regents to investigate and report concerning charges against Dr. Richard T. Ely," [page] B-1, Board of Regents, Papers, University of Wisconsin Archives.
- <sup>10</sup> [University of Wisconsin], "Proceedings," [page] E-2.
- <sup>11</sup> As reprinted in Madison *Democrat*, September 19, 1894.
- <sup>12</sup> John Dewey, "Academic Freedom," *Educational Review* 23, no. 1 (Jan., 1902), 1-14.
- <sup>13</sup> Ross to "Mamma," December 18, 1900, Edward A. Ross Papers (Microfilm edition), State Historical Society of Wisconsin. For a fuller account on the Ross case, see Michael S. Pak, "Academia Americana," 248-254.
- <sup>14</sup> John Dewey, "Academic Freedom," 9.
- <sup>15</sup> John Dewey, "The American Association of University Professors Introductory Address," *Science*, Vol.41, no. 1048 (Jan. 29, 1915), 148.
- <sup>16</sup> *Ibid.*, 151.
- <sup>17</sup> *Ibid.*, 150.
- <sup>18</sup> Zalmon Richards, *History of the National Educational Association of the United States: Its Organization and Functions, A Historical Sketch* (The National Educational Association, 1892), 24.
- <sup>19</sup> Robert B. Westbrook, *John Dewey and American Democracy* (Cornell University Press, 1991), ix.
- <sup>20</sup> Zalmon Richards, *History of the National Educational Association of the United States*, 29.
- <sup>21</sup> John Dewey, "The American Association of University Professors Introductory Address," 148-149.