Individual and Institutional Academic Freedom[1]

James D. Gordon III

Academic freedom is essential in higher education. Academic freedom has two dimensions: individual academic freedom and institutional academic freedom.

Individual Academic Freedom

Individual academic freedom involves the freedom of an individual faculty member to teach, to research, and to speak as a citizen. The concept of individual academic freedom came to the United States from the German universities. The rationales for individual academic freedom are that scholars should be free to pursue truth and to transmit truth to students and that students should be free to learn. The most important statement on academic freedom in the United States is the 1940 statement of the American Association of University Professors (AAUP). It provides, "Academic freedom is essential . . . 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."[2]

At the opening of the J. Reuben Clark Law School in 1973, BYU President Dallin H. Oaks cited the importance of exposure to a variety of viewpoints. He said:

> The curriculum and manner of instruction in the J. Reuben Clark Law School should approach the law from a scholarly and objective point of view, with the largest latitude in the matters being considered. The law is an adversary profession. . . . It is uniquely important that its students be exposed to all rational points of view on every question worthy of study. Failure to provide this kind of training would put our graduates

> at a significant disadvantage when they meet the opposing arguments—as they will—in the crucible of the adversary process of negotiation, litigation, and the formulation of legislative and administrative policy. Students of the J. Reuben Clark Law School must therefore be expected to study and master what they may well choose never to advocate. If that principle is clearly understood, it will save a great deal of misunderstanding on the part of our students and those who anxiously watch their instruction.
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> Yet despite the latitude that must be allowed for instruction in this law school, there are fundamental principles on which there is no latitude. We expect to have a vigorous examination of the legal principles governing the relationship between church and state under the Constitution, but no time for debate over the existence of God or man's ultimate accountability to Him. There is ample latitude for examination of the responsibilities of a lawyer who is prosecuting or defending one of crime, but no room for debate over the wrongfulness of taking a life, stealing, or bearing false witness.[3]

Institutional Academic Freedom

Institutional academic freedom is the freedom of a college or university to pursue its mission and to be free from outside control. The Supreme Court and other courts have repeatedly recognized institutional academic freedom, which is grounded in the free speech clause of the First Amendment. Universities advance and communicate knowledge, and therefore the free speech clause protects them from governmental interference in academic matters.

The Relationship Between Individual and Institutional Academic Freedom

At all colleges and universities, a tension exists between individual and institutional academic freedom. While individual academic freedom is essential to a university's mission, it is not unlimited. A college or university mission includes educating students and advancing knowledge. Some expression that injures or fails to advance the university mission is not protected.

To pursue their missions, all institutions of higher education place some limits on individual academic freedom. In general, colleges and universities have at least six categories of official limitations on individual academic freedom. They are: (1) the curriculum; (2) the academic discipline; (3) institutional judgments about grading; (4) institutional judgments about the quality of teaching and scholarship; (5) hate speech; and (6) religious expression.

First, the curriculum is a limitation, and this limitation involves judgments about course content and germaneness. The institution may determine what material should be covered in a course. A course fits into a curriculum, and the institution and students rightfully expect that students who take the course will obtain certain knowledge and skills necessary to succeed in higher-level courses or after graduation. The institution may determine not only the course content, but also the teaching methods to be used.

The second limitation is the academic discipline itself. Isaac Kramnick and R. Laurence Moore have observed that "disciplines are disciplines because they don't encourage every point of view."[4] This limitation can present difficult issues, because the disciplines are not value-free.

The third limitation involves institutional judgments about grading. The courts have upheld requirements that faculty members adhere to the universities' grading policies and standards.

Fourth, institutional judgments about the quality of teaching and scholarship impose limits on academic freedom. These qualitative judgments are based on certain conventional standards and values. A professor who disagrees with those standards and values will find that his or her own approach is not protected by academic freedom.

The fifth limitation involves restrictions on hate speech, including racist and sexist speech. A number of universities have adopted harassment policies that prohibit expression that harasses or demeans others because of race, ethnicity, gender, sexual orientation, religion, or disability.

The sixth limitation relates to religious expression. For example, state universities typically prohibit the advocacy of religious viewpoints by faculty in the classroom to maintain a separation between church and state. Some religious colleges and universities also have limitations regarding religious expression. Consequently, both secular and religious colleges and universities have limitations related to religion. At many secular colleges and universities a professor cannot teach that God exists, and at some religious colleges and universities a professor cannot teach that God does not exist. The differences in those freedoms are in part what attracts some faculty members and students to secular universities and others to religious universities. For instance, 88 percent of BYU faculty responding to a survey said that they have more freedom to teach their subject matter in the way that they feel is appropriate than they would have at other universities.[5]

Every college or university places some limitations on individual academic freedom to protect the school's institutional mission. George Worgul has observed that "'academic freedom' at any university . . . is never unlimited or absolute. Every university has an identity and a mission

to which it must adhere. . . . Freedom is always a situated freedom and a responsible freedom."[6]

Institutional Academic Freedom at Religious Colleges and Universities

Many religious colleges and universities have a mission to provide an education that is consistent with the ideals and principles of the sponsoring religion. Religious colleges and universities have the institutional academic freedom to pursue their distinctive missions. This freedom is protected by both the free speech clause and the free exercise clause of the First Amendment.

The AAUP's 1940 statement on academic freedom recognizes the right of religious colleges and universities to place limitations on individual academic freedom to preserve their religious mission and identity. The "limitations clause" of the 1940 statement provides, "Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of appointment."[7]

Accreditation standards also recognize both individual academic freedom and the right of religious colleges and universities to protect their mission. For example, the Northwest Commission on Colleges and Universities states that an institution must foster and protect academic freedom for faculty.[8] It also affirms, "The institution's faculty and students are free to examine and test all knowledge appropriate to their discipline or area of major study as judged by the academic/educational community in general. Regardless of institutional affiliation or sponsorship, the institution maintains an atmosphere in which intellectual freedom and independence exist."[9] The Northwest Commission also recommends that the institution "publish candidly any reasonable limitations on freedom of inquiry or expression which are dictated by institutional mission and goals."[10]

Conclusion

Both individual and institutional academic freedom are essential for colleges and universities. Individual academic freedom involves the freedom of an individual faculty member to teach, to research, and to speak as a citizen. Institutional academic freedom is the freedom of the institution to pursue its mission and to be free from outside control. Both dimensions of academic freedom are important, and both need to be understood and respected.

James D. Gordon III is Assistant to the President for Planning and Assesment at Brigham Young University. At the time of this conference, he was Interim Dean and Marion B. and Rulon A. Earl Professor of Law at Brigham Young University's J. Reuben Clark Law School. He received a BA in political science at BYU in 1977 and a JD at the University of California, Berkeley, in 1980. He clerked for Judge Monroe G. McKay of the U.S. Tenth Circuit Court of Appeals and then practiced law in Salt Lake City. He joined the BYU law faculty in 1984. He has served as Associate Academic Vice President for Faculty at BYU. Gordon teaches contracts, professional responsibility, professional seminar, and securities regulation.

1. These remarks are largely based on James D. Gordon III, "Individual and Institutional Academic Freedom at Religious Colleges and Universities," *Journal of College and University Law* 30, no. 1 (2003): 1–45.

2. "1940 Statement of Principles on Academic Freedom and Tenure," in American Association of University Professors, *AAUP Policy Documents and Reports,* 10th ed. (Washington, D.C.: American Association of University Professors, 2006), 3; accessible online at http://www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm.

3. Dallin H. Oaks, "Opening Remarks," in Founding Documents (August 27, 1973), 14, accessible online at http://www.law2.byu.edu/law_school/foundingdocumentsnew/.

4. Isaac Kramnick and R. Laurence Moore, "The Godless University," *Academe* 82 (November–December 1996): 23.

5. Keith J. Wilson, "By Study and Also by Faith: The Faculty at Brigham Young University Responds," *BYU Studies* 38, no. 4 (1999): 175.

6. "Editor's Preface," in George S. Worgul Jr., ed., *Issues in Academic Freedom* (Pittsburgh: Duquesne University Press, 1992), ix.

7. "1940 Statement."

8. Northwest Commission on Colleges and Universities, Standard 4.A.7, http://www.nwccu.org/Standards%20and%20Policies/Standard%204/Standard%20Four.htm.

9. Northwest Commission on Colleges and Universities, Eligibility Requirement 11, http://www.nwccu.org/Standards%20and%20Policies/Eligibility%20Requirements/Eligibility%20Requirements.htm.

10. Northwest Commission on Colleges and Universities, Operational Policy A-8(c)(2), http://www.nwccu.org/Standards%20and%20Policies/Operational%20Policies/Policy%20A8/Operational%20Policy%20A8.htm.