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John Ervin Kirkpatrick and the Rulers of American Colleges

By Timothy Reese Cain and Steven E. Gump

At a special meeting on June 2, 1919, Washburn College president Parley Paul Womer assured his disgruntled faculty that he understood their concerns about his administrative style and his direction of the institution. In announcing forthcoming changes, Womer confirmed that the institution was embarking on a new era of faculty and administrative cooperation—and that faculty must be protected “against wilful and capricious action.”¹ Nine days later, when the Board of Trustees established an advisory committee of faculty and administrators, the board also agreed to appoint a committee to revise the institution’s constitution for the purpose of improving operations and increasing harmony. At the same meeting, without a hearing or faculty consultation, the board dismissed John Ervin Kirkpatrick, a professor of history and

¹Quotation from Secretary W. G. Wheeler’s summary, Minutes of Faculty, 1908–20, Washburn University Archives, Mabee Library, Washburn University (hereafter Washburn Archives), 257.

political science who was an outspoken critic of the administration.² Kirkpatrick's struggles at Washburn College began a new phase of his academic career—one that resulted in multiple publications critiquing autocratic presidents and external boards of trustees; this career included a second dismissal in violation of his academic freedom and led to his operating Ashland College, an American version of a Danish folk school that allowed him to implement his ideas of resident governance.

This article considers Kirkpatrick's decade and a half of efforts for faculty academic freedom and against what he saw as the ultimate enemy of higher education: external boards of control. Based on archival materials, Kirkpatrick's numerous published writings, and other contemporaneous sources, it provides evidence of the endemic struggles between internal academic actors and external authorities; highlights early attempts to resist academic autocracy, including through unionization; points to stressors affecting the AAUP's early investigations; and introduces a short-lived experiment with internal rather than external control of an educational institution. Kirkpatrick's career and experiences demonstrate the potential relationships among intramural speech, extramural speech, and scholarly research, complicating efforts to think about them separately. With what Robert O'Neil called "the strongly implied inverse nexus between expertise and protection" that is a legacy of the US Supreme Court's 1968 decision *Pickering v. Board of Education*, as well as the more recent restrictions of public employees' intramural speech due to *Garcetti v. Ceballos* (2006), these relationships are crucial issues.³ The *Pickering* decision provided some shelter for educators' extramural speech, as long as that speech was distinct from professional expertise and concerned the public's interest; extramural speech related to expertise was left vulnerable.

²Arthur O. Lovejoy, Grace Van S. Baur, Raymond G. Gettell, Edgar James Swift, and U. G. Weatherly, "Report of the Committee of Inquiry on Conditions in Washburn College," *Bulletin of the A.A.U.P.* 7 (January–February 1921): 66–137. See also James Fredric Zimmerman, *The Washburn Story, 1915–1925* (June 1968 rev.), unpublished manuscript, Washburn Archives.

³Robert M. O'Neil, "Academic Speech in the Post-*Garcetti* Environment," *First Amendment Law Review* 7 (Fall 2008): 1–21, quotation on 7.

Garcetti v. Ceballos has been used to justify further restrictions on the rights of college faculty. Under the ruling, public employees retain no First Amendment speech protections when acting in official capacities regardless of the public interest. Even though the Supreme Court noted that the decision *may* not apply to teaching or scholarship, district courts have used the ruling to deny First Amendment claims of public college faculty who have been disciplined for critiquing institutional leadership, hiring practices, and financial management. *Garcetti* raises fundamental questions about faculty speech rights at public institutions and threatens faculty members' abilities to voice their scholarly opinions and engage in institutional governance.⁴

Thus, this article also contributes to the ongoing discussions about the linkages between governance and academic freedom, arguing that while they might be theoretically separable, they can be closely linked in practice and experience. As was shown in the recent report of a subcommittee of members of the AAUP's Committee A on Academic Freedom and Tenure, "Protecting an Independent Voice: Academic Freedom after *Garcetti v. Ceballos*," these issues are both long-standing and urgent.⁵ Indeed, the subcommittee explicitly, if briefly, cited Womer's dismissal of Kirkpatrick for "disturbing the peace" as evidence of the importance of faculty voice in governance.⁶ And although these issues have received somewhat more attention in recent years, in part due to the *Garcetti* ruling and subsequent federal court decisions, O'Neil's 2004 claim that "the intriguing and vital relationship between tenure, academic freedom, and faculty governance has been curiously neglected" remains an important call for further consideration.⁷ Through its historical analysis of Kirkpatrick's protracted battles—battles that

⁴Robert M. O'Neil, Judith C. Areen, Matthew W. Finkin, Larry G. Gerber, William W. Van Alstyne, and Cary Nelson, "Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*," *Academe* 95 (November–December 2009): 67–88, esp. 83.

⁵*Ibid.*

⁶See <http://www.aaup.org/AAUP/pubsres/academe/2001/MJ/Feat/gerb.htm>.

⁷Robert M. O'Neil, "University Governance and Academic Freedom," in *Competing Conceptions of Academic Governance: Negotiating the Perfect Storm*, ed. William G. Tierney (Baltimore: Johns Hopkins University Press, 2004): 177–201, quotation on 179. As is discussed below, recent considerations of these issues include Cary Nelson, *No University Is an Island: Saving Academic Freedom* (New York: New York University Press, 2010), 31–50; and Larry G. Gerber, "Professionalization as the Basis for Academic

resulted in a first dismissal for critiquing institutional governance and a second dismissal for publishing scholarly works on academic governance—this article argues that academic freedom, tenure, and governance are, as Larry G. Gerber has argued while quoting the AAUP’s 1994 statement *On the Relationship of Faculty Governance to Academic Freedom*, “inextricably linked.”⁸ It provides detailed, case-based contextual understandings of their early convergence to complement Gerber’s recent broader history of their relationship.⁹

Academic Freedom and Governance in the Early Twentieth Century

Dating to the late nineteenth and early twentieth centuries, modern American notions of academic freedom developed concurrently with both the rise of research universities and the struggles for faculty professionalization. Although many of the famous early cases in the period involved economics and socialism, other issues, including race and religion, were implicated as well.¹⁰ With Arthur O. Lovejoy’s founding of the AAUP in 1915, his launching of the organization’s first investigation shortly thereafter, and the crafting of the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, the concepts of and procedural protections for academic freedom entered a new era—one that ultimately resulted in the codification of policies and protections in the 1940 *Statement of Principles on Academic Freedom and Tenure*, a joint statement with the Association of American Colleges (AAC). Between 1915 and 1940, approaches to academic freedom remained contested as faculty negotiated with each other, with administrators and governing boards, and with the general public over its meaning, scope, and avenues for protections.

Freedom and Faculty Governance,” *AAUP Journal of Academic Freedom* 1 (2010), available at <http://www.academicfreedomjournal.org/VolumeOne/Gerber.pdf>.

⁸Larry G. Gerber, “‘Inextricably Linked’: Shared Governance and Academic Freedom,” *Academe* 87 (May–June 2001): 22–24.

⁹Gerber, “Professionalization as the Basis.”

¹⁰For example, see Mary O. Furner, *Advocacy and Objectivity: A Crisis in the Professionalization of American Social Science, 1865–1905* (Lexington: University Press of Kentucky, 1975); and Walter P. Metzger, *Academic Freedom in the Age of the University* (New York: Columbia University Press, 1955).

Although historical considerations have emphasized issues of extramural political speech, such as violations of academic freedom and civil liberties during World War I and during the anticommunism of the late 1930s,¹¹ Gerber and others correctly note that governance issues and intramural speech were central to some of these early cases.¹² Three of the first five Committee A investigations involved issues of intramural speech or disagreements on educational issues.¹³ And, for example, while James McKeen Cattell's support of conscientious objectors during World War I was the ultimate trigger for his dismissal from Columbia University, his outspoken criticism of the institution's president, calls for radical change in academic governance, and violation of social norms were part of the larger context in which his firing occurred.¹⁴ The AAUP itself began emphasizing governance with its 1917 creation of Committee T on Place and Function of Faculties in University Government and Administration. Over the next two years, the committee surveyed 110 colleges and universities about their governance policies and practices as it considered appropriate responses to problems of administration and the relations among various institutional stakeholders. Committee T's first report, presented by Joseph A. Leighton at the AAUP's annual meeting in December 1919, noted faculty concern over the powers afforded to trustees and their presidential surrogates. Leighton identified "two

¹¹See, for example, Carol S. Gruber, *Mars and Minerva: World War I and the Uses of the Higher Learning in America* (Baton Rouge: Louisiana State University Press, 1975), 163–212; and Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* (New York: Oxford University Press, 1986), 24–44.

¹²Gerber, "Professionalization as the Basis"; O'Neil et al., "Protecting an Independent Faculty Voice."

¹³At the University of Utah, dismissed faculty members were accused of opposing the administration and criticizing the governing board in private or classroom settings. Willard C. Fischer claimed his dismissal was, in part, due to his criticism of the president—alleging, for example, that he had plagiarized—although Committee A was unable to determine the accuracy of the claim due to institutional noncooperation. Two faculty critical of the president of the University of Montana were dismissed as part of an effort to placate members of the governing board who supported the president. Walter P. Metzger, "The First Investigation," *AAUP Bulletin* 47 (Autumn 1961): 206–10; Daniel H. Pollitt and Jordan E. Kurland, "Entering the Academic Freedom Arena Running," *Academe* 84 (July–August 1998): 45–52.

¹⁴Carol S. Gruber, "Academic Freedom at Columbia University, 1917–1918: The Case of James McKeen Cattell," *AAUP Bulletin* 58 (September 1972): 297–305; Gruber, *Mars and Minerva*, 187–206; William Summerscales, *Academic Freedom and Dissent: Columbia's Response to the Crisis of World War I* (New York: Teachers College Press, 1970).

extreme types of university organization—the autocratic and bureaucratic type . . . and the democratic type,” with most institutions “*legally, or constitutionally, organized more or less on the former plan, much tempered in practice by democratic usage.*”¹⁵ Although Committee T noted the promising trend toward balancing authority with greater democratic practice at leading institutions, the report nevertheless warned that without formal legal protections, faculty participation in governance was subject to the whims of trustees and presidents.

Throughout these early years, these notions of academic freedom and faculty governance remained controversial. The *New York Times* famously castigated the 1915 *Declaration*, calling academic freedom “the inalienable right of every college instructor to make a fool of himself and his college.”¹⁶ More central to this discussion was the AAC’s reaction to the AAUP’s groundbreaking statement. Shortly after the statement’s release, the AAC convened at its annual meeting and treated the statement respectfully, debating the pros and cons of the espoused positions. In 1917, however, the AAC came out in opposition to the 1915 *Declaration*, asserted shortcomings in the AAUP’s approach and membership, and claimed institutional academic freedom to the exclusion of faculty freedoms. In its first report, the AAC’s Committee on Academic Freedom and Tenure of Office, a body established specifically in response to Committee A, warned of “vexels” and “mischief-makers” among the faculty and argued that “it certainly ought not go without saying that a professor must, in general, be in harmony with the college in which he teaches.”¹⁷ Acknowledging the goodwill of executives and trustees and the importance of administrative continuity, the report claimed that institutions should try to “suffer fools” but that it is better policy to dismiss faculty than replace presidents in the case of

¹⁵J. A. Leighton, “Report of Committee T on Place and Function of Faculties in University Government and Administration,” *Bulletin of the A.A.U.P.* 6 (March 1920): 17–47, quotation on 18–19. Emphasis in original.

¹⁶“The Professors’ Union,” *New York Times*, January 21, 1916.

¹⁷Committee on Academic Freedom and Tenure of Office, “Academic Freedom and Tenure of Office: Report of Committee,” *Association of American Colleges Bulletin* 3 (April 1917): 48–56.

disagreement.¹⁸ Moreover, the committee explicitly argued for the strict separation of administrative and teaching functions, noting that the “worthiest” professors already recognized that administrative work should be left to others.¹⁹

Washburn College: “A Typical American ‘Small College’”²⁰

National developments naturally interacted with and were informed by local, campus-based situations and events, including those at Washburn College in Topeka, Kansas. As the AAUP committee that investigated Kirkpatrick’s dismissal later pointed out, Washburn was “a typical American ‘small college’” in its size, organizational structure, and the administrative power of its president; it was also the very type of college that the committee believed was most susceptible to infringements of faculty rights.²¹ Founded in 1865 and affiliated with the General Association of Congregational Ministers and Churches of Kansas, the college was on shaky financial footing when Womer was hired as president in 1915. Womer was quickly successful in securing new funds for the institution, garnering him the admiration and support of the Board of Trustees. At the same time, his methods of obtaining donations, his frequent off-campus excursions for fund-raising purposes, and his willingness to engage in ethically questionable practices to curry favor with donors or placate Topeka business leaders troubled some on the faculty. Moreover, some professors viewed Womer, who had no previous experience in higher education administration, as autocratic. Kirkpatrick was one such professor who argued that Womer’s unwillingness to share decision-making authority inhibited institutional functioning, especially but not only during the president’s recurrent absences.

¹⁸Ibid., 55.

¹⁹Only after the expansion of membership to include the liberal arts college and corresponding shifts in leadership was the AAC able to become the AAUP’s partner on the 1925 *Conference Statement on Academic Freedom* and the 1940 *Statement*. See Walter P. Metzger, “The 1940 Statement of Principles on Academic Freedom and Tenure,” *Law and Contemporary Problems* 53 (Summer 1990): 3–77; and Timothy Reese Cain, “Academic Freedom in an Age of Organization, 1913–1941” (PhD diss., University of Michigan, 2005).

²⁰Lovejoy et al., “Report of the Committee,” 69.

²¹Ibid.

Born in 1869, Kirkpatrick was reared on a farm in Illinois and briefly worked as a salesperson before receiving a bachelor's degree from Chicago Theological Seminary in 1895. After serving as a Congregationalist minister in Kansas, he earned an MA from Yale University in 1906 and served as an instructor there while working toward a PhD at Hartford Theological Seminary. In 1908, he accepted a position at Washburn as a field secretary and, over the ensuing years, published a well-received biography of missionary Timothy Flint, organized the Department of History and Political Science, and later served as the college's executive secretary.²² A popular teacher, Kirkpatrick may have appeared to be on his way to a successful faculty career; but as his and some of his colleagues' desires for a more democratic administration at Washburn grew, his relations with President Womer became more strained. Moreover, Womer increasingly considered Kirkpatrick's external activities and internal calls for change to be detrimental to his own efforts to raise funds and expand the college, spawning a controversy that culminated in Kirkpatrick's removal.

Womer later claimed that Kirkpatrick had caused difficulty for the institution for years and that the governing board had considered dismissing Kirkpatrick at several points, dating to before Womer's 1915 arrival at Washburn.²³ He privately alleged that Kirkpatrick was removed from fieldwork due to his overbearing behavior when visiting churches on behalf of the institution and that Kirkpatrick had long acted in inappropriate ways, although Womer offered

²²J. E. Kirkpatrick, *Timothy Flint: Pioneer, Missionary, Author, Editor, 1780–1840: The Story of His Life among the Pioneers and Frontiersmen in the Ohio and Mississippi Valley and in New England and the South* (Cleveland: Arthur H. Clark, 1911); Albert Bushnell Hart, review, *American Historical Review* 17 (October 1911): 196; untitled announcement, *Dial* 47 (December 16, 1909): 505; "Kirkpatrick Takes Harvard Offer," *Washburn Review*, September 16, 1919.

²³See Womer to alumnus D. M. Cowgill, June 24, 1919, quoted in Lovejoy et al., "Report of the Committee," 105; "The Case of Professor Kirkpatrick," unpublished manuscript, President's Office–General Office Files–Womer, Parley P., Investigation by the American Association of University Professors, ca. 1917–23, folder 1, Washburn University Archives, Mabee Library (hereafter Washburn President's Office Files). As is discussed below, Womer offered multiple and conflicting accounts of events, and the AAUP investigating committee found his claims unreliable. Archival evidence concurs with this assessment.

no evidence for the claims.²⁴ The first documented event demonstrating discord occurred shortly after Womer's hiring when Kirkpatrick informed local authorities of illegal gambling by children at the state fair. Fair operators, on learning of Kirkpatrick's role, threatened, in the words of one faculty member, to "make Washburn College feel financial losses."²⁵ For Womer, Kirkpatrick's failure to report the incident to him rather than the county attorney showed disregard for proper protocols. Moreover, loath to have faculty do anything to threaten his fund-raising activities, Womer banned faculty from reporting such illegal activities without his explicit permission.

A series of events beginning in spring 1918 and continuing through the following academic year was informed by these early difficulties but far superseded them. Four faculty members were disassociated from the institution in 1918, including through dismissals, the resignation of a professor known to be in conflict with Womer, and the replacement of a faculty member on a leave of absence for army service during the war. Another, George S. Bredin, resigned in spring 1919, according to Kirkpatrick and his allies, "under pressure" due to a "personal difference" with Womer. None of these men were provided a public hearing, and many observers viewed the departures as indicative of Womer's autocratic rule. Significantly, Womer fostered this perception by, according to law school dean A. J. Harno, claiming to have fired one of those who left on his own accord. Womer further asserted control in all hiring and firing decisions and claimed veto power over all faculty decisions.²⁶ He also attempted to award unearned credits to Student Army Training Corps (SATC) students in hopes that they would financially

²⁴"Case of Professor Kirkpatrick," 4. This document is likely the one to which Lovejoy and Kirkpatrick referred when they separately claimed that Womer had shown them lengthy lists of charges but had refused to provide them with a copy for full consideration. See also Kirkpatrick to Womer, July 11, 1919, box 16, folder 99, American Federation of Teachers Inventory, part 1, series 4, Archives of Labor and Urban Affairs, Wayne State University (hereafter AFT Inventory).

²⁵Lovejoy et al., "Report of the Committee," 98-100, quotation on 99.

²⁶Ibid., 73. See also Roy Towne et al., "To the Board of Trustees," June 24, 1919, AFT Inventory, box 16, folder 99. Among the other personnel decisions that angered faculty was Womer's hiring of a violin instructor without consulting the head of the department after the head had determined the person was unfit for the position and had communicated that decision to the applicant.

support the institution in the future. Faculty members were troubled by the incident due not only to the impropriety of trading credits for funds but also to the attempted usurpation of faculty academic authority.²⁷

A faculty effort to win a pay raise in late 1918 only heightened tensions: Womer saw the effort as an affront—one that was worsened by Kirkpatrick's discussion of the issue with a trustee of the institution. Amid faculty meetings on the salary issues, Kirkpatrick pointed to administrative problems at the institution, claimed the situation was "undemocratic and irresponsible," and proposed a resolution for a committee of faculty and trustees to revise the administrative structure to "enable the faculty to share in the general policy-making of the institution."²⁸ Womer believed that the very act of suggesting this proposal, which was not forwarded to the trustees, displayed improper "meddling" in administrative affairs and furthered the fissures at an already divided college. In April 1919, as a group of faculty continued to agitate for change, Womer called Kirkpatrick to two private meetings, at which they discussed Kirkpatrick's advocacy and the potential that he would be dismissed at the June board meeting. As they worked through their disagreements, Womer assured Kirkpatrick that he would be kept on the staff but pushed him for further explanation of his and other professors' grievances.²⁹ In response, Kirkpatrick submitted to Womer a short piece, "The Why of Academic Unrest," that he had prepared for Cattell's *School and Society*. In the article, Kirkpatrick attacked modern tendencies in academic administration, including the vesting of all power in a president and an external board of trustees. He claimed that "dangerous unrest exists in the faculties of all but a few of our American institutions of higher learning" and noted that the president was often "held responsible for existing evils."³⁰

²⁷Lovejoy et al., "Report of the Committee," 76–77.

²⁸As quoted in *ibid.*, 78.

²⁹*Ibid.*, 80–81. See also Kirkpatrick to Womer, November 13, 1919, Washburn President's Office Files, folder 1.

³⁰J. E. Kirkpatrick, "The Why of Academic Unrest," *School and Society* 10 (July 12, 1919): 52–53.

At Kirkpatrick's request—and with Womer's accession—others also responded to the query, including Daniel Moses Fisk, who wrote:

As I see it, any dissent which you may have felt is not with you, but is a hostility towards a "SYSTEM" that you did not initiate, but (alas) inherited, a system that has broken down from the one reason that it has long been outgrown. . . . The institution has providentially grown too large to ask, or to allow any one officer to spread his energies out over so many details, and to de-focus his attention from the really large things that the present President has shown his competency to achieve.³¹

Arthur M. Hyde was even more direct in his attempt to help resolve the "unsatisfactory situation." He wrote that Womer's dismissal of successful teachers and assertion of veto power had "hurt us a good deal" and "seemed to put us in the position of inferiors." He continued, We felt that we were men of experience in educational work and men of intelligence; that we understood the problems with which we have to deal and that our discussions deserve respect. The dismissals of Miss Bullock and Miss Meek . . . made us feel that satisfactory work was not appreciated. Such things affect the morale of the faculty body and weaken our effectiveness.³²

Along with fellow faculty members Samuel G. Hefelbower and Theodore W. Todd, Kirkpatrick, Fisk, and Hyde simultaneously prepared three proposals that they believed could help Womer address the grievances. They suggested the creation of an elected advisory committee of faculty to provide input into "matters of interest to the college"; the reallocation of internal administrative responsibilities to the deans and faculty with presidential oversight; and the appointment of a committee of faculty, trustees, alumni, and representatives from the Congregational Church to prepare a new constitution for the institution.³³ At a meeting that

³¹D. M. Fisk to Parley P. Womer, April 30, 1919, Washburn President's Office Files, folder 1.

³²Arthur M. Hyde to Parley P. Womer, May 1, 1919, Washburn President's Office Files, folder 1.

³³Lovejoy et al., "Report of the Committee"; J. E. Kirkpatrick, "The Present Situation in Washburn College," *School and Society* 10 (September 6, 1919): 289–91; Kirkpatrick to Womer, May 1, 1919, Washburn President's Office Files, folder 1.

Womer called to discuss the proposals, Womer challenged the group and claimed that the five faculty members were attempting to strip him of all power, allegations he would later repeat to alumni and other observers of the situation.³⁴ Only when Duncan L. McEachron, a respected dean in the college, intervened and suggested that the proposals had some merit did Womer's attitude appear to change.

Events seemed to take a further turn for the better at the aforementioned June 2, 1919, faculty meeting, when Womer introduced several possibilities for dealing with the recent unrest: his resignation, his dismissal of the faculty who were challenging him, or a third way of compromise and cooperation. In arguing for cooperation, Womer asserted the president's primary role in institutional decision-making but noted the need for increased faculty input, especially in academic and student matters, although with the caveat that faculty should not be burdened with too much administrative detail. At the same time, he remained concerned about the recent disturbances and outlined what he saw as attitudes or behaviors that would justify termination, including "troublesome disposition that distorts the peace; disloyalty to the best interests of the institution; disloyalty to associates; [and] secret propoganda to create trouble for associates."³⁵ Womer then offered five proposals of his own to help bring about a new era on the campus, including that faculty and administrators would cooperate on enlarging the institution and developing its academic plans. Moreover, he proposed further job security and protections for faculty, notably, the "dismissal of faculty members only for cause, and adequate provisions to safeguard against wilful and capricious action."³⁶

Faculty members expressed their initial approval at the June 2 meeting and reconvened five days later to formally endorse Womer's plan. In doing so, they noted their "hearty sympathy with President Womer's desire . . . for closer cooperation between the Faculty and

³⁴Lovejoy et al., "Report of the Committee"; Kirkpatrick, "Present Situation."

³⁵Minutes of Faculty, 1908–20, Washburn Archives, 257.

³⁶Quotation from Secretary W. G. Wheeler's summary, Minutes of Faculty, 1908–20, Washburn Archives, 257. See also Lovejoy et al., "Report of the Committee."

Administration.”³⁷ At Womer’s urging—and in recognition that the new advisory committee would need to begin its work before the next academic year—the faculty elected its two representatives.³⁸ At its annual meeting on June 11, the Board of Trustees approved the joint faculty-and-administrative advisory committee and initiated other aspects of the plan. At the same meeting, though, it undercut the action by removing the individual who had led the campaign for the reforms. As the Committee A report later attested, “A new era of cordial cooperation, based upon a system of orderly and constitutional government, seemed about to begin in Washburn College. Four days later Professor Kirkpatrick was summarily dismissed.”³⁹

Rather than quell the disturbances, Kirkpatrick’s removal stoked the controversy and fostered further disruption. Kirkpatrick campaigned for reinstatement, demanded a fair hearing, and challenged the appropriateness of the dismissal in light of the board’s adoption of a faculty advisory committee. When Womer offered a hearing before the board *after* the dismissal was finalized, Kirkpatrick refused it as inadequate and biased. Although others argued that small religiously affiliated schools were the most likely to violate academic freedom, Kirkpatrick was offended precisely because the institution “purport[ed] to be a Christian College.”⁴⁰ He cited Womer’s own writings on church affairs and employment practices, arguing,

Sir, if you do not give me a fair and impartial hearing as to these general charges of yours, if you do not fulfill your pledge to the faculty in the sharing of administration policy, and the reorganization of the College, I declare you on the authority of your own teachings morally bankrupt, utterly unsafe in an institution which must be sincere and sound as to social and individual ethics. You can do the college nothing but harm in

³⁷Minutes of Faculty, 1908–20, Washburn Archives, 258.

³⁸The meeting minutes are silent on Womer’s role, but the Committee A report determined that Womer wanted the committee formed immediately since it would have work to undertake during the summer months. Lovejoy et al., “Report of the Committee.”

³⁹*Ibid.*, 88.

⁴⁰Kirkpatrick to Womer, June 12, 1919; Kirkpatrick to Womer, June 17, 1919, Washburn President’s Office Files, folder 1.

such a course though you may secure millions in cash. Persuing [*sic*] such a course your last day's service will be your best day.⁴¹

Kirkpatrick published his grievances in both local and national forums, generating not only publicity for his cause but also criticism of the institution.⁴²

Various stakeholders sought to influence public perceptions of the events, including numerous students who argued for Kirkpatrick's reinstatement, signed petitions, and even vandalized Womer's house in protest of the dismissal.⁴³ Many alumni also questioned both the decision and the process that led to it, although two years later a committee appointed by the Washburn Alumni Association expressed support for Womer and sought to put the Kirkpatrick saga behind the institution.⁴⁴ Even some of Womer's supporters urged a hearing, noting that it might lead to Kirkpatrick's resignation and would help quell the public criticism. More central, though, were the faculty who circulated information regarding the board's decision and petitioned the institution for an impartial investigation.⁴⁵ At the end of June, Harno resigned, claiming, "Any college administration which regards its heads of departments and faculty members as mere hirelings is building on false pretenses. That is the difficulty at Washburn. Its system of government is archaic and arbitrary. It is within the field of an absolute despotism."⁴⁶ Kirkpatrick and other faculty publicized the situation through letters and articles, claiming that the reasons for and process of his dismissal were flawed and indicative of larger structural problems at the institution. As the situation evolved over the ensuing year, additional faculty

⁴¹Kirkpatrick to Womer, June 12, 1919, Washburn President's Office Files, folder 1.

⁴²See, for example, Kirkpatrick, "Present Situation"; Kirkpatrick to Womer, November 13, 1919; and Kirkpatrick to Womer, November 19, 1919, Washburn President's Office Files, folder 1.

⁴³John P. Troxell to Womer, June 19, 1919; Kenneth M. Kerans to Womer, June 21, 1919, Washburn President's Office Files, folder 1; Lovejoy et al., "Report of the Committee."

⁴⁴Kirkpatrick corresponded directly with some alumni about his plight, prompting some of the letters to Womer. See multiple letters in Washburn President's Office Files, folder 1.

⁴⁵Wilson C. Wheeler to Womer, June 21, 1919; Arthur Hyde to Womer, June 23, 1919 (includes attached petition and statements); Group to Womer, June 24, 1919, Washburn President's Office Files, folder 1; Bearg to Womer, March 29, 1921, Washburn President's Office Files, folder 2.

⁴⁶"Dean Harno Resigns; Joins K. U. Law Faculty," June 30, 1919, in clippings scrapbook, Washburn Archives.

members left, including L. F. Pierce, who was to be dismissed on what he termed “trumped-up charges” in 1919 but was allowed to return before resigning in protest the following spring. At that time, Pierce claimed that Womer was again trying to dismiss him without foundation or a fair hearing, calling it a “repetition of the Kirkpatrick case in spirit if not in form.”⁴⁷ The dismissals and resignations prompted the circularization of a pamphlet, “Just One More Mass Exodus,” savaging Womer and the administration and leading to allegations over its authorship. Womer, in turn, continued to complain that a group of “insurgent” faculty was still attempting to usurp his authority and disrupt the institution.⁴⁸

Throughout, Kirkpatrick reached out for assistance, including by forming a local of the American Federation of Teachers (AFT) with a small group of his colleagues and asking for the union to intervene on his behalf. Over the next few months, AFT president Charles Stillman inquired into the situation and, receiving no reply to a written request for information, visited Topeka to meet with Womer. In a piece published in the AFT’s *American Teacher* and as a letter to the editor in the *Topeka Capital*, Stillman termed the situation “another indication of the most dangerous weakness in American education” and called autocratic educational leaders “a menace to our national life.”⁴⁹ Local labor organizations contacted Womer and expressed their concern, including over rumors that Kirkpatrick’s dismissal was due to his founding the AFT local, rather than vice versa. Womer explicitly denied to James O. Stevic, president of the Topeka Labor Council, that labor organizing had anything to do with the dismissal but later

⁴⁷L. F. Pierce to Womer and the Board of Trustees, May 25, 1920, Washburn President’s Office Files, folder 2.

⁴⁸A published report claimed that Womer accused faculty of being behind the pamphlet, but Womer later denied that he had done so. Todd, Mudge, Hefelbower, and Hyde to Womer, May 27, 1920, Washburn President’s Office Files, folder 2.

⁴⁹Charles B. Stillman, “The Washburn College Situation,” *American Teacher* 8 (April 1919): 182–83, quotation on 182; Charles B. Stillman to Editor, *Topeka Capital*, September 22, 1919. An earlier version of the piece indicates that Womer “chose to ignore” the “opportunity to present his side of the case”; the published versions tell of “an interview” with Womer. Charles B. Stillman, “The Washburn College Situation,” attached to Charles B. Stillman to Geddes W. Rutherford, September 2, 1919, AFT Inventory, box 16, folder 99. See also Charles B. Stillman to John E. Kirkpatrick, August 23, 1919; and Kirkpatrick to Stillman, September 4, 1919, AFT Inventory, box 16, folder 99.

argued exactly the opposite to people he thought would be antilabor.⁵⁰ From the outset of the controversy, Stevic and the AFT national office believed that Kirkpatrick's dismissal would be useful to organizing and that the Labor Council would be able to influence the outcome of the case.⁵¹ Still, the AFT was not yet able to exert pressure on behalf of academic freedom or tenure and played a far smaller role in the affair than did the AAUP.

Kirkpatrick first contacted the AAUP a few months before his dismissal, noting its possibility and asking for advice on how to handle the situation. When informed of his firing, Kirkpatrick again asked for assistance, and Lovejoy agreed to visit Topeka to undertake a preliminary inquiry and to try to reach a resolution. After little initial success negotiating, Committee A authorized a full investigation. Led by Lovejoy, the investigating committee engaged in a series of correspondences with Womer and Kirkpatrick, surveyed members of the faculty, and interviewed the trustees whom Womer identified as most central to the situation.⁵² The resulting report, released in early 1921, eventually found structural challenges at the institution, inappropriate procedures in handling Kirkpatrick's case, and an improved but still troubled situation at the college. It concluded that the dismissal procedures were inappropriate due to the lack of formal charges and the lack of a formal hearing before an impartial panel consisting of both faculty and trustees; that the grounds for Kirkpatrick's dismissal violated professional norms and standards; that Womer's activities before and during the investigation provided evidence of "administrative incapacity"; that, through its support of Womer, the board was at least complicit in the dismissal, if not more fully responsible; and that, although a

⁵⁰Womer to Stevic, June 20, 1919; Womer to Lovejoy, September 5, 1919, Washburn President's Office Files, folder 1.

⁵¹Stevic to Freeland G. Stecker, June 20, 1919; [Stecker] to Stevic, June 23, 1919; Stevic to Stecker, July 9, 1919, AFT Inventory, box 16, folder 99.

⁵²A tentative agreement for a hearing dissolved when the trustees asserted the right to appoint faculty and alumni members of the tribunal, rather than having them elected by their constituents. Kirkpatrick and Lovejoy found the change unacceptable, although ten years later Kirkpatrick informed Womer that he regretted the decision and believed the offer for a hearing had been sincere. Kirkpatrick to Womer, December 8, 1929, Washburn President's Office Files, folder 2.

new constitution was pending, even its passage would leave faculty vulnerable and without a permanent voice in institutional governance.⁵³

These findings were important to Kirkpatrick and for the AAUP's larger use of investigations to establish principles and procedures, yet the debates about the investigation reveal the still contested and developing nature of AAUP investigations. After initially meeting with and corresponding with Lovejoy, Womer became circumspect and guarded. He refused to provide written copies of materials that he had earlier shown Lovejoy and requested that his letters remain confidential. These actions, of course, placed the investigating committee in a difficult position, as it was unable to corroborate or repeat Womer's claims—claims which were often at odds with those in Kirkpatrick's sworn testimony. Moreover, Womer questioned the right of the AAUP to investigate and averred that, without representatives from the college on the committee, any AAUP investigation would be inherently biased. In response to these concerns, Lovejoy offered to expand the committee and to include representatives from the college on the conditions that its methods were judicious and its results binding, conditions Womer refused to entertain. To Womer, the Kirkpatrick case was closed.⁵⁴

Correspondence between Lovejoy and Womer continued throughout fall 1919 and was complicated by Lovejoy's involvement with Geddes W. Rutherford, the instructor whom Womer hired to replace Kirkpatrick. When Rutherford learned how the position had become available, he appealed to Lovejoy for advice. Then, in a letter that he circulated to the press, Rutherford abruptly resigned, citing the AAUP's recommendations and claiming that "sound standards of professional ethics" prevented him from holding a position that had been made vacant in such a troubling manner. Womer replied in an open letter of his own, countering Rutherford's claims with his own accusation that Rutherford acted unethically by resigning at such a late date, by not providing him a chance to present the institution's side of the story, and

⁵³Lovejoy et al., "Report of the Committee," 125–27, esp. 126.

⁵⁴Womer to Lovejoy, September 5, 1919; Lovejoy to Womer, September 24, 1919; Womer to Lovejoy, Washburn President's Office Files, folder 1. Lovejoy's letter appears as part of the subcommittee's report, but Womer did not allow his to be included. Lovejoy et al., "Report of the Committee," 133–37.

by copying Kirkpatrick on the resignation letter.⁵⁵ Lovejoy publicly responded to Womer's letter, supporting Rutherford's actions and claiming that Womer was mistaken in a crucial aspect of the case. Although the investigating committee had not yet determined the reasons why Kirkpatrick was dismissed, the unfair procedures and continued refusal of a fair hearing were known. This awareness alone made the position at Washburn undesirable to Rutherford, Lovejoy, and others. Womer's published response accused Lovejoy of willfully ignoring information provided to him and termed Lovejoy's position as "very weak even to the point of being pathetic."⁵⁶ Womer further challenged the AAUP's role and perspective, justifying his position through alignment with the AAC. He borrowed the AAC's language in terming Kirkpatrick a "vexel" whose actions warranted dismissal and continued:

You are doubtless aware that in a recent report by the American College Association [*sic*], in which Washburn College is a member, many of the aims for which your association stands are roundly criticized. I am sure that hundreds of high-minded teachers will sympathize with the principles which are recognized in this report, rather than those which your association is trying to further.⁵⁷

As the lengthy investigative process concluded and the AAUP prepared to publish its report in fall 1920, Womer again challenged the AAUP, specifically alleging that Lovejoy had acted

⁵⁵"The Case of Washburn College," *School and Society* 10 (September 20, 1919): 345–46, esp. 346. AFT President Stillman also encouraged Rutherford to resign. Stillman to Rutherford, September 2, 1919, AFT Inventory, box 16, folder 99. In a letter to Womer, Kirkpatrick explicitly challenged Womer's claims that Womer had not seen the letter before Rutherford made it public and further disputed other statements in Womer's letter. Kirkpatrick to Womer, November 13, 1919, Washburn President's Office Files, folder 1.

⁵⁶Arthur O. Lovejoy, "Washburn College and Professor Kirkpatrick," *School and Society* 10 (October 4, 1919): 406–7, quotation on 407. In his published response, Lovejoy denied Womer's allegations and countered some of Womer's claims with procedural facts and Kirkpatrick's sworn testimony, foreshadowing the eventual Committee A report. Arthur O. Lovejoy, "Washburn College and Professor Kirkpatrick," *School and Society* 10 (November 8, 1919): 558–59. These letters were also published in Topeka newspapers and were excerpted in Lovejoy et al., "Report of the Committee."

⁵⁷Lovejoy, "Washburn College" (October 4, 1919), 407.

unprofessionally and arrogantly, thereby undermining his findings.⁵⁸ Womer cited his own refusal to participate in the investigation as proof of its one-sidedness and alleged that the final report ignored evidence that supported his actions—evidence that he had embargoed. He further claimed that Lovejoy had promised him the opportunity to reply to the published report in full and demanded such an opportunity. Lovejoy countered that Womer had misinterpreted early correspondence and that the alleged offer had never been made.⁵⁹ More than forty Washburn faculty members twice appealed to the AAUP to quash the report. They claimed that the situation had changed, that a new constitution was soon to be in place, and that there would be no benefit to them or the institution if the report were published. Moreover, they claimed that Kirkpatrick was on a “program of revenge” and that his allies were planning to use the report to damage the institution.⁶⁰ Only two faculty members—the two members of the so-called insurgent group that remained—specifically countered these appeals and encouraged the AAUP to publish the findings. Hyde and Todd both claimed to be unsatisfied with the proposed constitution, with Todd further detailing the board’s continuing refusal to reform or undergo an examination of the institution’s functioning.⁶¹

⁵⁸One cause for the delay was the hope that a settlement could be reached, especially in light of ongoing efforts to develop a new constitution and provide faculty more input into hiring and dismissal decisions.

⁵⁹Womer to the Editor of the *Bulletin*, September 20, 1920; H. W. Tyler to Womer, October 1, 1920; Womer to Tyler, October 5, 1920; “From Professor A. O. Lovejoy,” October 9, 1920; Womer to Tyler, October 25, 1920; Lovejoy to Tyler, November 4, 1920; Womer to Tyler, November 26, 1920, Washburn President’s Office Files, folder 2. See, for the sources of the disagreement, Lovejoy to Womer, August 1, 1919; and Womer to Lovejoy, October 2, 1919, Washburn President’s Office Files, folder 1.

⁶⁰Chas. E. Carpenter et al. to Tyler, December 28, 1920; unsigned letter from the faculty to Tyler, January 26, 1921; unsigned letter from the faculty to Tyler, January 27, 1921, Washburn President’s Office Files, folder 2. Their evidence for revenge included reports that Kirkpatrick had “boasted” of intervening to prevent the General Education Board (GEB) from offering a grant to Washburn College. No other evidence of this boast exists, but Kirkpatrick did correspond with representatives of the GEB about the Washburn situation and otherwise sought to generate publicity about what he saw as the autocratic and destructive atmosphere at the institution. Kirkpatrick to Geo. E. Vincent, February 12, 1920; Kirkpatrick to Edwin Menninger, February 12, 1920, Washburn President’s Office Files, folder 2.

⁶¹Arthur M. Hyde, undated [January 6, 1921] memo; T. W. Todd, January 6, 1921, memo, Washburn President’s Office Files, folder 2.

The report was finally published in the January–February 1921 issue of the AAUP’s *Bulletin*. As noted, it thoroughly supported Kirkpatrick’s allegations that he had been inappropriately dismissed due to the procedure used, the disingenuousness of the action in light of promised reforms, and the justification for the dismissal by the accusation that Kirkpatrick had triggered “disharmony.” Kirkpatrick sought to advertise the report’s findings, while Womer continued to push for the airing of his rebuttal and an explicit renunciation of the report.⁶² And although the report received attention in local newspapers and drew a denunciation from the Board of Trustees, Kirkpatrick himself noted that the rather intimidating length of the report and the delay in its publication had caused it to “fall flat.”⁶³ Indeed, although Kirkpatrick’s efforts ultimately provoked change—some of it achieved at high costs—evidence of impact by the report itself is inconclusive. The “mass exodus” that was lamented in circulars may have been used for political and public relations gain but was nonetheless real. Because of Womer’s actions and the faculty’s lack of voice in institutional administration, Washburn lost scholars such as Harno, who left for a position at the University of Kansas and subsequently became the dean of the School of Law at the University of Illinois. The causes that Kirkpatrick, Harno, and colleagues pursued, however, and the changes in governance that they sought, were at least partly achieved. Although the board was not entirely transformed, changes in institutional by-laws provided alumni with additional seats on it, something Kirkpatrick thought would help reform the institution and return it from the hands of external interests to internal stakeholders.

⁶²Womer reached out to several AAUP members looking for advice on how best to pursue redress and in hopes of encouraging the AAUP to publish his response to the report. One of Womer’s college classmates, AAUP member C. H. Weller of the University of Iowa, wrote to AAUP acting president Vernon L. Kellogg expressing his dismay at the tone and one-sidedness of the report, arguing it would be better for the AAUP to fold than to produce another similar report. Former AAUP Council member Edwin D. Starbuck, though, believed that Womer bore the responsibility, as he withheld information from the investigating committee. C. H. Weller to Vernon L. Kellogg, March 15, 1921; Starbuck to Weller, April 8, 1921, Washburn President’s Office Files, folder 2. See also Womer to Weller, March 22, 1921; Weller to Womer, April 11, 1921; and Womer to Kellogg, March 21, 1921, Washburn President’s Office Files, folder 2.

⁶³“The So-Called Investigation at Washburn College; Statement by the Trustees,” n.d.; unsigned letter [Kirkpatrick] to Friends, March 24, 1921, Washburn President’s Office Files, folder 2.

Perhaps more important, the commitment to increased roles for faculty in hiring, dismissal, and all educational matters was achieved when the new constitution was approved in 1921.⁶⁴

“An Accident of History or a Bungle of the Law Makers”⁶⁵

Clashes with college presidents and governing boards frequently silenced professors who sought to maintain their viability for academic positions, but the Washburn situation failed to deter Kirkpatrick. Indeed, it launched a new phase of his career while committing him to the further pursuit of the very ideas that led to his difficulties at Washburn. In “The Why of Academic Unrest,” Kirkpatrick had bemoaned the academic autocracy of presidents but also expressed special contempt for external governance: “An accident of history or a bungle of the law makers has placed all legal and directing power in the hands of a collateral lay board devised as an aid to the college. This formal authority has been confused with the moral authority which from its nature must be with the college and which must center in the faculty of an institution.”⁶⁶ Understanding whether it was an “accident” or a “bungle” and arguing for fundamental changes that would recenter faculty in academic governance were the central projects of the remainder of Kirkpatrick’s career and key themes of his scholarly output until his death in 1931.

Several months after his dismissal from Washburn, Kirkpatrick left Topeka for a one-year position as a tutor and instructor at Harvard University (a position that allowed ample time for scholarly writing) before accepting a more lucrative appointment, commencing in September 1920, as an instructor at the University of Michigan.⁶⁷ In the early 1920s, he published numerous articles in *School and Society*, *the Nation*, and other venues, expressing his continued belief that

⁶⁴“Proposed By-Laws of Washburn College,” President’s Office–General Office Files–Parley P. Womer, By-Laws of Washburn College, 1921, Washburn Archives; Roy Bird, *Washburn through the Years* (Topeka, KS: Washburn University, 1997), 76.

⁶⁵Kirkpatrick, “Why of Academic Unrest,” 53.

⁶⁶Ibid.

⁶⁷“Kirkpatrick Takes Harvard Offer”; University of Michigan Board of Regents, *Proceedings of the Board of Regents*, June 22, 1920, 30.

“the faculty of a college or university as distinct from the executive or administrative party, should be first in responsibility for and in the management of the institution.”⁶⁸ Continuing this argument for faculty governance, he suggested that college presidents be selected by and serve at the discretion of the faculty.⁶⁹ And in a 1923 piece describing the present situation on the majority of college campuses, Kirkpatrick invoked Thorstein Veblen’s “captain[s] of erudition”:

The modern college president, the “captain of erudition” . . . , is not a scholar or teacher, or, if he chances to be such at the time of elevation to the throne of power, he ceases to be either the one or the other. He has other, and, if you please, more important work to do. He is chosen not by the scholars but by the men who have fallen heir to the property and the authority of the scholars, by men who consider the scholars to be their wards if not their hirelings. Without their knowledge or advice, he is chosen to rule over the scholars, as long as he can satisfy the lords of the college. Whatever the once independent and self-directing guild of scholars may desire, he retains his position. He holds over the scholars whom he has been called to rule the fate of academic and professional “life and death.”⁷⁰

While at the University of Michigan, Kirkpatrick began his historical research on academic governance and the roles of external boards of trustees. Among the first pieces to examine and compare the “governmental history, theory, and practices of academic institutions,” particularly those of higher education, in the United States, Kirkpatrick’s investigations appeared in several outlets, with many appearing in multiple iterations.⁷¹ A draft of an essay on the governance of

⁶⁸J. E. Kirkpatrick, “The Professor on Behalf of His Profession,” *New Republic* 28 (September 14, 1921): 68–70, quotation on 68. The previous year, for example, he had written that the “faculty is the only group in the college that is sufficiently trained and experienced to enable it to formulate and to administer successfully the most important affairs of the school.” J. E. Kirkpatrick, “The Place of the Faculty in the Organization and Government of Colleges,” *School and Society* 12 (July 3, 1920): 22–23, quotation on 22.

⁶⁹J. E. Kirkpatrick, “A Responsible College Presidency,” *Journal of Education* 100 (November 6, 1924): 458–59.

⁷⁰J. E. Kirkpatrick, “The American College President,” *School and Society* 18 (September 1, 1923): 245–49, quotation on 247.

⁷¹J. E. Kirkpatrick, *Academic Organization and Control* (Yellow Springs, OH: Antioch Press, 1931), xiii.

Harvard University was circulated in April 1922, with a different form appearing in the December 1922 *Harvard Graduates' Magazine*. In the latter piece, Kirkpatrick concluded that “in every American college and university of to-day the non-resident government is firmly established. In all of them it is a problem, not infrequently becoming acute.”⁷² In an essay issued in pamphlet form in 1923, he described historical changes in college governance at Harvard, William and Mary, Yale, Kings (Columbia), Princeton, Brown, Dartmouth, Virginia, and Michigan, arguing that early forms resulted from the lack of both scholarly guilds and large numbers of students. He attributed the later changes to exigencies arising after “rapid growth and expansion,” including the need to build institutional endowments and physical plants.⁷³ All of these pieces, as well as an essay specifically on governance at the College of William and Mary, relied predominantly on the interpretation of historical documents—charters, remarks, reports, and correspondence.⁷⁴ His writings from this period dichotomously portrayed resident governance as “responsible” and non-resident governance as “irresponsible,” a theme he carried through later work.⁷⁵

In addition to his historical research and writings during his stints at Harvard and Michigan, Kirkpatrick was also involved with plans for the organization of a public college in Kansas City, Missouri. In line with Kirkpatrick’s views on responsible governance, the college was to be without an external board of trustees. Its corporate and legal board was to be composed of “those faculty members who are on permanent tenure and of professorial rank”; the lay board was to include “representative[s] of the civic and professional bodies of the

⁷²J. E. Kirkpatrick, “Non-resident Government in Harvard University,” *Harvard Graduates' Magazine* 31 (December 1922): 186–93, quotation on 193.

⁷³J. E. Kirkpatrick, *Toryism in American College Government* (Ann Arbor, MI: George Wahr, 1923), 4.

⁷⁴John E. Kirkpatrick, “The Constitutional Development of the College of William and Mary,” *William and Mary College Quarterly Historical Magazine* 6, 2nd ser. (April 1926): 95–108.

⁷⁵Many of Kirkpatrick’s related articles and essays from the mid-1920s were collected and published together, most in revised and expanded form, in his 1931 *Academic Organization and Control*. This work, although published posthumously, had been prepared in 1927.

community” and, ultimately, students and alumni.⁷⁶ At various points during the planning stages, Kirkpatrick had signed on over two dozen “proponents,” including Lovejoy, David Starr Jordan (president emeritus of Stanford University), and Edward S. Parson (president of Marietta College). Others involved in the plan—through correspondence with Kirkpatrick as the proposal was being drawn up, for example—included John Dewey (Columbia University), Harry A. Garfield (president of Williams College), Alexander Meiklejohn (president of Amherst College), and Charles F. Thwing (president of Western Reserve University). Notable in the correspondence was some skepticism as to “whether dispensing with a Board of Trustees and vesting all power directly in the Faculty will command public support.”⁷⁷ Meiklejohn was more optimistic about the intended experiment, writing, “It is essential that the latter [faculty control] be carried just as far as is practicable.”⁷⁸ Despite the endorsements that Kirkpatrick received, these plans never came to fruition as multiple parties vied to initiate public higher education in Kansas City.⁷⁹

⁷⁶J. E. Kirkpatrick, “Proposals for a College Constitution,” *Free College Circular* 10 (February 7, 1922): 1–2, quotation on 1. Alexander Meiklejohn Papers, box 3, folder 22, Amherst College Archives and Special Collections (hereafter Amherst Archives). The proposal was later summarized in the *Michigan Alumnus*, where Albert Bushnell Hart of Harvard is quoted as having commented that “the idea of a board of trustees made up of the faculty is a novelty in American education.” “A Plan for a New Type of University,” *Michigan Alumnus* (March 23, 1922): 683–84, quotation on 684.

⁷⁷Harry A. Garfield to J. E. Kirkpatrick, October 29, 1921, Williams College President (Garfield) Records, box 17, folder 42, Williams College Archives and Special Collections.

⁷⁸Alexander A. Meiklejohn to J. E. Kirkpatrick, October 27, 1921, Meiklejohn Papers, Amherst Archives, box 3, folder 22.

⁷⁹The exact chronology is obscured, but efforts for public higher education were stalled by Kate W. Hewitt’s gift of land for a Methodist institution and the ensuing momentum for a private Lincoln and Lee University. A University of Kansas City was finally chartered in 1929, and the overlapping efforts eventually merged in 1931. The institution now known as the University of Missouri–Kansas City opened in 1933. J. Gordon Kingsley, “‘Tidying Up Harvard Yard’: Foundations of Higher Education in Kansas City, 1849–1933,” *Midcontinent Perspectives* (April 14, 1993), Western Historical Manuscript Collection, Kansas City, MO, available at <http://www.umkc.edu/whmckc/PUBLICATIONS/MCP/MCPPDF/Kingsley-4-14-93.pdf>.

Disharmony at Olivet

In 1924, Kirkpatrick returned to what appeared to be a continuing and stable academic appointment at Olivet College, a small college in Michigan that Kirkpatrick described as “so like a large number of schools of its class that it may well be taken as typical.”⁸⁰ Although technically nondenominational, the institution was linked to the General Council of Congregational and Christian Churches and, specifically, the First Congregational Church of Olivet.⁸¹ Like many other small colleges, Olivet’s financial situation was precarious in the first decades of the twentieth century. Across the country, World War I took a severe toll on college enrollments, and “the widespread siphoning of students into the war effort threatened college after college with extinction.”⁸² Without a branch of the SATC to help prop up the institution, the situation at Olivet became dire and, on June 10, 1918, the Board of Trustees voted unanimously to close the institution for the duration of the war.⁸³ Six professors appealed the decision and convinced the board to allow them to continue operating the institution for an additional year on a self-supporting basis; Olivet then closed at the end of the 1918–19 academic year.⁸⁴ Through the efforts of trustees George R. Wilson, an advertising executive in Chicago, and Ernest Boumer Allen, a minister active in the Congregational Church, the institution was revived the following year. At the time, Boumer Allen wrote, “The reopening of Olivet College represents more than satisfaction of its many friends and students. It marks the definition of a denominational trend in relation to all our Christian Colleges. That trend includes closer

⁸⁰John E. Kirkpatrick with Kenyon L. Butterfield, Preston W. Slosson, and Orland O. Norris, *College Control in Michigan* (Yellow Springs, OH: Antioch Press, 1929), 129.

⁸¹*Olivet, One Hundred Years, 1844–1944: A Commemorative History of College and Village* (Olivet, MI: Interested Citizens of Olivet, 1944), 50, available at <http://hdl.handle.net/2027/mdp.39015071374626>.

⁸²David O. Levine, *The American College and the Culture of Aspiration, 1915–1940* (Ithaca, NY: Cornell University Press, 1986), 24.

⁸³For discussions of the Student Army Training Corps, including its role in stemming the flow of students away from higher education, see Levine, *American College*, 23–32; and Gruber, *Mars and Minerva*, 213–52.

⁸⁴*Olivet, One Hundred Years*, 49, 80.

affiliation, without control, between the churches and colleges, and a re-emphasis upon the ideals of Christian education."⁸⁵

The notation that the affiliation would be "without control" may have offered some hope for freedom within the new institution, as perhaps could have the AAC's increasing openness to professorial academic freedom in the middle of the decade.⁸⁶ More important for Kirkpatrick, the institution was aware of his interests in academic governance and his arguments for greater faculty control. Indeed, Kirkpatrick later claimed that he was brought to Olivet specifically because of those views and that they were shared by others at the institution, including its president, Paul F. Voelker. In 1923, with Voelker's approval, Kirkpatrick authored a statement that Voelker "thinks it feasible to organize and incorporate the seven or eight faculty members of the faculty who joined him in reopening the school three years ago. They will ask the board of trustees for control of educational policy and a lease on the college property for a term of years. The trustees will remain as an auditing board having a veto on the budget."⁸⁷ This shift in power never occurred. Instead, as Kirkpatrick discovered, Wilson's external control caused increasing difficulty.

For three years, Kirkpatrick taught history and political science, earning recognition as a popular and successful teacher. He also continued his writing on academic governance and maintained his advocacy for fundamental shifts in college organization. Kirkpatrick knew that several of the trustees were interested in having him "retire from the college,"⁸⁸ but there remained some positive signs about the direction of and his future at the institution. In *The American College and Its Rulers*, completed by Kirkpatrick while at Olivet and released in July

⁸⁵"The Congregational Education Society," *American Missionary* 74 (September 1920): 303.

⁸⁶Olivet was not yet a member of the AAC but was of a type with the liberal arts colleges that founded the organization. In 1925, in part due to expansions in membership to include a more diverse array of institutions, the AAC agreed with the AAUP on the 1925 *Conference Statement on Academic Freedom and Tenure*, an important intervening step between the 1915 *Declaration* and 1940 *Statement*. Metzger, "1940 Statement."

⁸⁷Kirkpatrick to the Board of Trustees of Olivet College, June 19, 1926, Olivet College Archives.

⁸⁸Ibid.

1926, he praised some of the institution's progressive policies, linking them directly to those advocated for by the AAUP's Committee T. Kirkpatrick noted that, as Voelker was preparing to depart for the presidency of nearby Battle Creek College, a joint committee of faculty and trustees conducted the search for a new president. He pointed to further democratic tendencies, continuing, "In this institution also the trustees have given formal consent to a plan which makes for joint trustee and faculty committees which are to deal with all academic policies. No faculty appointments are to be made without the consent of the faculty."⁸⁹

Yet, just as at Washburn in 1919, substantial faculty input into personnel and policies remained little more than a plan, and, in June 1926, Kirkpatrick was again fired for his work on behalf of academic democracy. Although the exact chain of events leading to the board's dismissal of Kirkpatrick remains obscured, his book project was well known, and proofs of it were rumored to have been shared in town.⁹⁰ Excerpts of the work that appeared in the March and May issues of the student newspaper, the *Olivet College Echo*, avoided his most stinging rebukes of current practices, instead focusing on the possibilities of undertaking significant progressive change in higher education, as had been done recently at Antioch College. The book itself, though, was a resounding denunciation of external boards of control that not only subjugated faculty and students but turned presidents into pathetic, if still powerful, administrators. Antioch was the exception, included specifically because it offered "the one saving example of radical revamping of an American academic institution."⁹¹ In a chapter that was not excerpted but may have been otherwise available before July 1926, Kirkpatrick denounced the "Man in the Sky Scrapper," specifically pointing to Wilson as an example, though not mentioning him by name. Kirkpatrick wrote,

⁸⁹J. E. Kirkpatrick, *The American College and Its Rulers* (New York: New Republic, 1926), 66.

⁹⁰Harry Hansen, "Another Meiklejohn Case," *New York World*, July 30, 1926, in *American Civil Liberties Union Archives: The Roger Baldwin Years, 1917–1950* (Washington, DC: Scholarly Resources, 1996), microfilm, reel 44, vol. 299.

⁹¹Kirkpatrick, *American College*, 172–73; John E. Kirkpatrick, "Antioch: A Venture in Excellence," *Olivet College Echo*, April 21, 1926.

There is no difficulty in finding in a Detroit office the “one man” who carries under his hat the “power of direction” for Albion College, nor yet in finding in a Chicago office the same man for Olivet College. Is there no “smoldering spark” in this sort of corporate control, so often autocratic control, of our educational plants? No one can doubt that it offers or rather invites a “whirlwind of abuse of power.” No one can pretend that it makes for “clear and round dealing among men.” Our traditional system of academic organization has invited the shifting of directing power from “Main Street to Wall Street,” and from Wall Street to the private office of a director of the “house of Morgan.” The “shifting” process is well nigh completed. The consequences we are now beginning to realize.⁹²

Kirkpatrick soon personally realized the consequences in a way that only helped to emphasize his argument. On June 12, a few weeks before the book was published, the Board of Trustees resolved to remove Kirkpatrick.⁹³ Two days later, after commencement was completed and students had left campus, the secretary informed Kirkpatrick of his dismissal. The letter included the following justification:

I am instructed by members of the Executive Committee and the Board of Trustees to say that this resolution was adopted not because of any inefficiency on your part as a classroom teacher but because your views of college administration, which views you have always been free to express and advocate, are not in harmony with the views of the Board of Trustees and of substantial friends of Olivet not on the board who are giving financial support to Olivet College. Experience has shown us that these two conflicting views cannot live in harmony on the same campus.⁹⁴

⁹²Kirkpatrick, *American College*, 96. “House of Morgan” was a reference to the person responsible for Alexander Meiklejohn’s dismissal from Amherst College.

⁹³Untitled, *Olivet College Echo*, June 16, 1926.

⁹⁴Ibid.

The statement was, according to contemporary press reports, unique in its forthright discussion of the reasons for Kirkpatrick's firing.⁹⁵ At the same time, the statement was inherently contradictory: Kirkpatrick had been free to express himself without interference from the institution, yet that very expression cost him his position.

Just as at Washburn, Kirkpatrick was alleged to have threatened "harmony" on the Olivet campus. In a letter to the board, Kirkpatrick complained that he was not provided a hearing or due notice, and that the board had long since decided on the action but waited until the campus had emptied following commencement to announce it. He argued that the dismissal contradicted the recent AAUP and AAC agreement and Olivet's own policies. He noted that the incoming president, with whom Kirkpatrick was already planning for the upcoming year, had not even been informed of the dismissal. Pointing to his increasing calls for student participation in academic governance, he inquired as to whether students had been consulted and asked, "At their age if college students are to have no part in the larger affairs of the school, how will they be fit a year or two later to face the problems of home-making, of business and of the state?" As he had at Washburn, Kirkpatrick questioned, in light of the mechanism and reasons for the dismissal, how Olivet could be considered either Christian or a college. And while he appreciated the frankness of the statement dismissing him, he bitingly condemned the reasons:

Your letter makes it very plain that your "views" of college administration are very different from mine. One must, it seems, be a member of the board or a contributing constituent before he has a right to hold and advocate views on college administration. Since this is to be an "open" letter, perhaps you will care to inform the constituency how much more than \$2500, a conservative estimate of my donations to Olivet College this past year, it is necessary to contribute before one may advocate on such matters.⁹⁶

⁹⁵Hansen, "Another Meiklejohn Case."

⁹⁶Kirkpatrick to the Board of Trustees of Olivet College, June 19, 1926, Olivet College Archives.

Even though two faculty allies circulated Kirkpatrick's letter and a committee of students protested both the dismissal and the procedure used to enact it, there seems to have been relatively little controversy on campus or beyond it.⁹⁷ Joseph Jablonower, a founding member of the New York Teachers Union and advocate for academic freedom, later noted in the *American Teacher* that faculty had made "no noticeable stir" and the incoming president had not protested.⁹⁸ Moreover, in contrast to Rutherford's withdrawal from Washburn, Jablonower noted no evidence of Olivet having difficulty in replacing Kirkpatrick and lambasted faculty as apathetic and complicit in such dismissals. In his "First Reader" book review column in the *New York World*, Harry Hansen emphasized the links between the dismissal and *The American College and Its Rulers*, claiming that Kirkpatrick was the "latest martyr in the ranks of the movement to restore liberty in the American colleges."⁹⁹ Elsewhere, note was made of the unusually frank statement of the reasons for the dismissal, and the American Civil Liberties Union (ACLU) included it on its list of egregious cases in its tract *The Gag on Teaching*, but public commentary was largely muted.¹⁰⁰ Still, as the *American Teacher* editorialized, "No case could more fully substantiate Dr. Kirkpatrick's assertion as to the real ruler of American colleges than does Dr. Kirkpatrick's own."¹⁰¹

Academic Organization and Control

Kirkpatrick never worked at a traditional college or university again but continued his progressive educational activities, including through his affiliation with Commonwealth College in Mena, Arkansas. An important institution in the workers' education movement,

⁹⁷A. P. Colman and V. J. Searle, "Concerning the Dismissal of Dr. J. E. Kirkpatrick," June 14, 1926; Carl Nelson et al. to the Students of Olivet College, June 26, 1926, Olivet College Archives.

⁹⁸Joseph Jablonower, "A Neglected Aspect of Academic Freedom," *American Teacher* 11 (January 1927): 3–4, quotation on 3.

⁹⁹Hansen, "Another Meiklejohn Case."

¹⁰⁰Unidentified clipping in ACLU Archives, reel 44, vol. 299; ACLU, *The Gag on Teaching* (New York: ACLU, 1931).

¹⁰¹"Attacks on Academic Freedom," *American Teacher* 11 (November 1926): 16–17, quotation on 17.

Commonwealth offered college-level courses to laborers, claiming to be a nonpartisan institution that countered the propaganda rampant in traditional colleges and universities.¹⁰² The final phase of Kirkpatrick's teaching career, though, centered on the second-oldest Danish folk school in the country, Ashland Folk School, which had been shuttered amid nationalist pressures related to World War I. Shortly after Kirkpatrick's dismissal from Olivet, one of the school's board members offered him the opportunity to revive the institution and put his educational theories into action.¹⁰³ Kirkpatrick accepted the opportunity and reopened Ashland in 1928 with a six-week summer session for adults and a curriculum based "not upon the usual academic subjects but upon major life problems or situations," including "Sex-marriage-home," "Community-life," and "Leisure-play." Faculty and students enjoyed equal footing in both the classroom and in the labor that allowed the school to run inexpensively; the only employee to earn a salary was the cook.¹⁰⁴

At the end of 1928, Kirkpatrick reported the creation of a regular school term, the approval of a constitution modeled on his understandings of the earliest colonial colleges and his belief in participatory governance, and a forthcoming charter from the state of Michigan. He wrote: "The formal, legal, legislating and deciding body is actually the personnel of the College. The College in this case is the College. It is not a non-resident fictitious group vainly endeavoring to act for the resident, human and actual college."¹⁰⁵ The institution was, according to Kirkpatrick, a response to the failings of American schooling and an attempt at true education, which could

¹⁰²"The Kirkpatricks as Staff Lecturers," *Commonwealth College Fortnightly* 3 (July 1, 1927): 1, available at <http://libinfo.uark.edu/specialcollections/commonwealth/1927V3N23.pdf>; "Why Commonwealth?" *Commonwealth College Fortnightly* 3 supplement (December 1, 1927): 3-5, esp. 3, available at <http://libinfo.uark.edu/specialcollections/commonwealth/1927V3N23.pdf>; William H. Cobb, *Radical Education in the Rural South* (Detroit: Wayne State University Press, 2000).

¹⁰³B. Y. Landis and J. D. Willard, *Rural Adult Education* (New York: Macmillan, 1933).

¹⁰⁴J. E. Kirkpatrick and A. P. Coleman, "The Ashland School for Adult Education," *American Teacher* 12 (March 1928): 28-29, quotations on 28.

¹⁰⁵J. E. Kirkpatrick, "An Adventure in Self Education," *American Teacher* 13 (December 1928): 1-5, 23, quotation on 5. The college formally applied for its charter in February 1929. See box 2, folder A, Ashland College Articles of Association; and box 2, folder A, Ashland College Founding, Chester A. Graham Papers, Bentley Historical Library, University of Michigan (hereafter Graham Papers).

“never be realized in any measure at all adequate for the needs of our age, by the enforced schooling of 25,000,000 of our population, by our regimented and standardized teachers and administrators, by the dull and meaningless academic and scholastic performances of our school communities.”¹⁰⁶ As the executive, a member of the board, a teacher, a participant, its leading publicist, and the institution’s largest benefactor, Kirkpatrick was, in many ways, the guiding force behind the new institution, yet he remained committed to sharing authority and emphasizing community control.¹⁰⁷ He envisioned and created a small institution aimed at education not as an end but to help individuals live more meaningful and fulfilled lives.¹⁰⁸ Still, his time at Ashland was short-lived as health problems impaired his capacity to speak and began to limit his ability to lead courses and fully contribute. When Kirkpatrick’s deteriorating health prevented his continued presence at Ashland in late 1929, he withdrew from the board rather than serve as an absentee director.¹⁰⁹ Still, even after his resignation, he fought efforts to dissolve the institution’s unique governance structure and replace the shared authority with a more powerful director.¹¹⁰ In doing so, he remained faithful to his argument in *The American College and Its Rulers* that “home rule is as necessary for the academic community as for the urban or provincial community. Students and teachers must be trusted with more responsibility for the interests and activities of their own world.”¹¹¹

As Kirkpatrick enacted his educational ideals at Ashland, he expanded his writing on them as well, including through numerous tracts on folk schools and adult education. He also

¹⁰⁶Kirkpatrick, “Adventure in Self Education,” 23.

¹⁰⁷Kirkpatrick and his wife Bertha Hyde Kirkpatrick both donated and loaned money to the institution, accounting for more than 85 percent of the institution’s funding as of June 1929. “Statement of Financial Need and Progress in Raising Funds,” Graham Papers, box 2, folder A, Ashland College Financial 1929.

¹⁰⁸J. E. Kirkpatrick, “Ashland: A Community College,” Graham Papers, box 3, folder A, Ashland College Printed.

¹⁰⁹“Ashland College: Its Second Summer,” *American Teacher* 14 (October 1929): 22–23; Kirkpatrick to Friend, November 10, 1929, Graham Papers, box 7, folder Kirkpatrick, J. E. (1).

¹¹⁰Kirkpatrick to Fellow Ashlanders, June 10, 1930, Graham Papers, box 3, folder A, Ashland College Printed.

¹¹¹Kirkpatrick, *American College*, 302. The institution continued under the direction of Chester A. Graham until 1938, when financial difficulties and a dilapidated building forced its closure.

published three additional books on academic democracy, two in 1929 and *Academic Organization and Control* in 1931. In *College Control in Michigan*, Kirkpatrick explored the efficacy of boards that control institutions of “higher and professional education” in Michigan. In his preface, recalling his work on Harvard and other early institutions, he described the trustee system of college and university control as “peculiarly an American device, one that grew up in the late colonial period as a result of frontier conditions.”¹¹² In the 1920s, the trustees of all but one of the seven state institutions of higher learning were chosen by popular election, which Kirkpatrick called “a good talking point for the sort of politicians who recommends [sic] democracy to his constituents and privately uses it for his own advantage.”¹¹³ Ultimately, he proffered two possible reorganizations to the current boards of trustees for the seven state schools of Michigan, thereby combining his criticisms with a vision for reform.

Force and Freedom in Education offered a refinement of Kirkpatrick’s argument for local control and governance. Continuing his vein of critical commentary coupled with suggestions for reform, Kirkpatrick argued for the further empowerment of students at all levels of education—primary through graduate school. In this brief (128-page) work, Kirkpatrick urged the creation of “free schools” where attendance would not be compulsory; authority would be vested in students, teachers, and assistants; and the teachers would be schooled in experience, not merely in scholarship and technical training.¹¹⁴ These were “to be the laborator[ies] of free society.”¹¹⁵ Acknowledging progressive educators of the day, Kirkpatrick argued that standardization was useful for producing machines, not for building “character” or “spiritual understanding.”¹¹⁶ His attitude remained optimistic—even zealous—throughout. Ultimately, he retracted some of the skepticism he illustrated in *The American College and Its Rulers*, now

¹¹²Kirkpatrick et al., *College Control*, 1.

¹¹³*Ibid.*, 10.

¹¹⁴John E. Kirkpatrick, *Force and Freedom in Education* (Yellow Springs, OH: Antioch Press, 1929).

¹¹⁵*Ibid.*, 112.

¹¹⁶*Ibid.*, 25–26.

arguing that a reenvisioning of the education system is “wholly necessary . . . whatever the hazard, if mind and soul are to keep from under the wheels of our machines.”¹¹⁷

Published shortly after his death in 1931, Kirkpatrick’s *Academic Organization and Control* was described by his widow as “a fitting culmination to his life work.”¹¹⁸ This book combined new material with revised and expanded versions of a number of previously published sketches on the governmental histories of both privately and publicly controlled institutions. His introduction repeated key ideas presented in *Toryism in American College Government*, including that most institutions of higher education in the United States had evolved to be governed by nonresident lay bodies that were not responsible to their professional academic communities. He described with regret the present situation as one in which “the trustees of an American academic society have vested rights, the students have the rights of minor children, and the faculties have the rights of hired servants.”¹¹⁹ Writing both about higher education and K–12 education, Kirkpatrick enriched his descriptive and historical analyses with his own perspectives and theories. He created a bridge to his interests in the governance of K–12 education, likening boards of trustees to “meaningless and needless” public school boards.¹²⁰ Ultimately, Kirkpatrick made a clear call to unionization of schoolteachers: Someday the American teacher “may recover the dignity of his office. . . . Let him take a lesson from his wiser proletarian fellows, and organize strongly enough so that he may bargain collectively with the education boards and gain a hearing in the legislatures.”¹²¹

Discussion and Conclusion: Shared Governance, Tenure, and Academic Freedom

From his clashes with Womer through the posthumous publication of *Academic Organization and Control*, Kirkpatrick was a vocal figure in the struggles over academic freedom and shared

¹¹⁷Ibid., 116–17.

¹¹⁸Kirkpatrick, *Academic Organization*, [iii].

¹¹⁹Ibid., xiv, xxi–xxii.

¹²⁰Ibid., 155.

¹²¹Ibid., 200–201.

governance—yet one who has received less attention than his contemporaries. The aggrieved party in two instances of preemptory dismissal without a hearing, Kirkpatrick authored numerous pamphlets, articles, and books on the topic; and he founded and ran an institution that adhered to his governance ideals while offering a progressive educational environment for adults. To his antagonists, he was a “vexel” and troublemaker who wreaked havoc on institutional harmony at Washburn and Olivet, yet, throughout his battles with administration, he demonstrated a commitment to the institutions at which he served. Indeed, it was his interest in their well-being that prompted some of his activities, even if, as he later admitted in a written apology to Womer, he regretted some of his actions during their difficulties.¹²² By providing a window into long-standing issues of faculty roles and rights in higher education, Kirkpatrick’s ongoing struggles for academic freedom and democracy offer more than just an example of one person’s increasingly progressive educational views and dedicated efforts for change.

Kirkpatrick’s story reveals the tensions around faculty, academic freedom, and unionization in these early years. When, in response to his firing, Kirkpatrick and colleagues formed a local of the AFT, Womer seized on it as a potential excuse for the dismissal. Womer recognized that faculty unionization was such a contested issue—even the AAUP was opposed to faculty unions, although it did believe that faculty members should have the right to organize—that he might gain support in business circles by linking his action to the local’s founding. Moreover, the union and the larger calls for more democratic college administration were alleged to be evidence of bolshevism on campus, a significant if inaccurate claim during the First Red Scare.¹²³ These issues were not, of course, isolated at Washburn; early faculty unions across the

¹²²Kirkpatrick to Womer, December 8, 1929, Washburn President’s Office Files, folder 2. Kirkpatrick’s feelings for Washburn remained strong enough for him to will twenty thousand dollars to the institution; half of this amount was to be controlled by the faculty. “Dr. Kirkpatrick Gives \$20,000,” *Washburn Review*, February 9, 1931.

¹²³At Washburn, these charges also involved a supposedly inappropriate book that Kirkpatrick was alleged to have donated to the library. “Charge Is Denied,” unidentified clipping; “U.S. Like Rome,” *Topeka Daily*, September 2, 1919, Clippings File—Investigation by AAUP, Washburn Archives; Lovejoy et al., “Report of the Committee,” 83.

nation struggled against resistance that was only exacerbated by growing antiunion sentiment in 1919. With many administrators, external stakeholders, and even most faculty opposed to their existence, all but one of the college faculty unions established between 1918 and 1920 closed within a few years of formation.¹²⁴ In this era just after World War I, charges of un-American activity grew to include leftist political beliefs and threatened heterodox faculty at institutions across the country.

The Washburn case further reveals the difficulties facing the AAUP as it sought to define and institute academic freedom in American higher education, including through its investigative processes. Womer's increasingly adversarial stance, his denunciation of the final report, and his calls for redress pointed to the difficulty in undertaking investigations in these early years. As the AAUP was without formal authority and was not yet accepted as an authoritative voice, its investigative processes were open to challenges and could be inhibited by opponents. This tenuous position further emphasized the need for the AAUP to seek judicial and impartial processes, even if a lack of institutional cooperation made them difficult. At the same time, tensions related to the lengthy investigations were already apparent. Since thorough investigations of alleged violations could drag on for months or years, they could offer little help for aggrieved individuals such as Kirkpatrick. In fact, the reports—when finally released—might speak to issues that had already been addressed. Yet the attempts to undermine reports demonstrate why the investigations were so important to the association. Lengthy, thorough, and judicious reports aimed at establishing principles were challenged; hasty responses and defense action would have been even more so. As additional organizations, such as the AFT

¹²⁴Only the local at the institution now known as the University of Wisconsin–Milwaukee remained open, though it was small and undertook little activity. Timothy Reese Cain, "The First Attempts to Unionize the Faculty," *Teachers College Record* 112 (March 2010): 875–913.

and the Progressive Education Association, became involved in investigating academic freedom and tenure cases in the ensuing decade, these issues would only be exacerbated.¹²⁵

After Rutherford withdrew from the position that Kirkpatrick had vacated, the question as to whether the investigation was professional and impartial was again raised. Womer castigated Rutherford's action while Lovejoy, who had advised Rutherford and had himself resigned from his position at Stanford University in protest of Edward A. Ross's 1900 dismissal, lauded a principled stand. Lovejoy further argued that faculty would be unlikely to accept a position at an institution where freedom and tenure were so tenuous. The AAUP did not, though, officially call for such unified action and had from its beginning denounced the blacklisting of institutions. As John H. Wigmore emphasized in his 1916 presidential address: "I wish to repudiate the notion that this Association is an occupational union, which seeks to defend its members by a 'We Don't Patronize' list, or by any other form of coercion."¹²⁶ Although Wigmore was correct that the AAUP did not coerce members and did not consider boycotting institutions during this period, part of the power of the investigative reports was to inform prospective employees of the difficulties they could face if they took positions at offending institutions. These issues would arise periodically for the association, eventually coming to a head in 1929 with University of Chicago professor L. L. Thurstone's call for blacklisting institutions and expelling members who pursued positions at offending institutions. Thurstone's proposals, although initially rejected by AAUP leaders, provoked significant debate and eventually resulted in the censuring of institutions, a central feature of the AAUP's efforts for academic freedom and tenure since 1931.¹²⁷

¹²⁵Metzger, "1940 Statement"; Metzger, "First Investigation"; Loya F. Metzger, "Professors in Trouble: A Quantitative Analysis of Academic Freedom and Tenure Cases" (PhD diss., Columbia University, 1978); Cain, "Academic Freedom."

¹²⁶John H. Wigmore, "President's Report for 1916," *Bulletin of the A.A.U.P.* 2 (November 1916): 9–52, quotation on 14.

¹²⁷The term *censuring* was first used in 1938. Jonathan Knight, "The AAUP's Censure List," *Academe*, January–February 2003, available at <http://www.aaup.org/AAUP/pubsres/academe/2003/JF/Feat/Knig.htm>.

Kirkpatrick's experiences at Washburn and Olivet further speak to issues of academic freedom and governance that resonate in the modern era. In *For the Common Good*, Matthew Finkin and Robert Post argue that there are four American academic freedoms: teaching, research, intramural expression, and extramural expression. All but the first of these were implicated in Kirkpatrick's struggles. Although freedom of research is related to exploration, knowledge creation, and publishing within a scholarly field or disciplinary perspective, intramural and extramural speech—according to Finkin and Post—are not based on disciplinary perspectives. Intramural speech rights involve speech or publication on issues related to institutional governance, operations, or policies irrespective of whether the comments are made within or outside the institution. Extramural speech is speech that relates to a faculty member's ability to pursue the full rights of citizenship, including speaking out on issues of public concern.¹²⁸ Although distinctions among intramural speech, extramural speech, and freedom in research are useful, they can, as in Kirkpatrick's case, become complicated and blurred. Kirkpatrick's documented difficulties at Washburn began with what was clearly an extramural speech issue—his reporting of illegal gambling at the state fair. They were greatly exacerbated by intramural issues—his appeal for higher salaries and his efforts to reform the institution's governance. Although evidence suggests that intramural issues were the cause of the dismissal, the existing extramural grievances influenced Womer: Kirkpatrick was, Womer, a troublemaker who needed to be removed for multiple reasons. Kirkpatrick's experiences highlight how a faculty member's activities in the various areas can also have a

¹²⁸See Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven, CT: Yale University Press, 2009), esp. 113–26 on intramural expression and 127–48 on extramural expression. The inclusion of nonprofessional speech under the umbrella of academic freedom is not without its critics. See, for example, David M. Rabban, "Academic Freedom, Professionalism, and Intramural Speech," in *Academic Freedom: An Everyday Concern*, ed. Ernst Benjamin and Donald R. Wagner, *New Directions for Higher Education* 88 (San Francisco: Jossey-Bass, 1994): 77–88; William Van Alstyne, "The Specific Theory of Academic Freedom and the General Issue of Civil Liberty," in *The Concept of Academic Freedom*, ed. Edmund L. Pincoffs (Austin: University of Texas Press, 1975), 59–85; and Mark G. Yudof, "Intramural Musings on Academic Freedom: A Reply to Professor Finkin," *Texas Law Review* 66 (June 1988): 1351–57.

cumulative effect, ultimately resulting in an abridgement of freedom and tenure. This effect, distinct from but certainly related to Finkin's argument that intramural issues can be used as pretext for institutions to dismiss faculty for extramural speech, points to the need for the protection of both forms of speech.¹²⁹

At the same time, although Kirkpatrick's scholarship was not explicitly related to his firing from Washburn, even the Committee A report briefly noted that Kirkpatrick's role as political science professor made the governance issues "of especial significance."¹³⁰ His internal statements and efforts were not based on his disciplinary expertise but were informed by it, further complicating the situation. If, as some argue, intramural statements should not be covered by academic freedom protections, then how should situations such as Kirkpatrick's be considered? Institutions are replete with scholars whose disciplinary expertise directly relates to institutional organization and governance; shall they be denied the ability to turn that expertise to their own colleges and universities? Would institutions really be better off limiting the ability of, for example, accounting faculty to comment on institutional accounting practices or of critical race theorists to question the campus racial climate? If faculty members are prevented from weighing in on these issues, then it is not only intramural speech that might be abridged but the freedom of research as well. And, if not, then the alternatives are either to allow for faculty to participate in governance differently based on their disciplines or to allow for more comprehensive rights for all members. The former is philosophically problematic and portends difficulties in its practical enforcement.

¹²⁹Matthew W. Finkin, "Intramural Speech, Academic Freedom, and the First Amendment," *Texas Law Review* 66 (June 1988): 1323–49.

¹³⁰Lovejoy et al., "Report of the Committee," 78.

These ideas (and their formulation here) recall and extend Finkin's argument written partly in response to Mark Yudof's claim that "lines must be drawn"¹³¹ when considering intramural speech:

The process of drawing lines, however, is not without difficulty. If a professor draws upon the discipline in taking a political position, by what standard is the utterance to be measured? Must a professor of chemistry addressing a political audience in the matter of acid rain observe a more exacting standard of accuracy than a professor of French? When is a speech by a philosopher ever a professional? And to make some, but not all, speech on matters of intramural concern an exercise of academic freedom because of its connectedness to core faculty concerns such as curriculum and hiring . . . is to place the professor in the position of having to guess where his or her utterance might lie on a spectrum from the purely professional to the purely aprofessional. A complaint to an accrediting association? A protest of unfair treatment of a colleague? An expression of lack of confidence in the administration?¹³²

Finkin continued by noting that the early AAUP refrained from drawing lines, as it viewed "the professor as an uncompartimentalized whole."¹³³ The solution is to allow for a robust freedom for all members of the professoriate to engage in institutional governance, including the emboldening of advocacy for ideas that both relate to and are separate from disciplinary perspectives. The corollary is that definitions of intramural speech should be expanded. Though relevant to *how* a faculty member might view an internal issue and to the stand she or he might take, disciplinary expertise has no bearing on whether an issue is intramural. Of course, any consideration of academic freedom and faculty members' ability to engage in institutional

¹³¹Yudof, "Intramural Musings," 1355. The larger context of these discussions included the deleterious effect of the Supreme Court's *Connick v. Meyers* (1983) decision limiting First Amendment protections for employees when they were discussing not issues in the public interest but internal matters.

¹³²Matthew W. Finkin, "'A Higher Order of Liberty in the Workplace': Academic Freedom and Tenure in the Vortex of Employment Practice and Law," *Law and Contemporary Problems* 53 (Summer 1990): 357-79, quotation on 377-78.

¹³³*Ibid.*, 378.

critique is colored by the recent court rulings based on *Garcetti*. If *Garcetti* continues to be applied to faculty speech related to any work duties, then the First Amendment offers no protection for intramural speech, regardless of disciplinary expertise. If faculty members are “uncompartmentalized”—and, as Ellen Schrecker has argued, almost all faculty speech and writing can be construed as part of their official duties—then the potential situation is even more dire; as Schrecker noted, it is “frightening.”¹³⁴ As such, articulating and defending a robust and inclusive notion of academic freedom beyond legal protections is vital.

Kirkpatrick’s dismissal from Olivet was based on his published and well-known views on governance—views that were by then clearly the center of his *scholarly* work. His publication of *The American College and Its Rulers*, which included two brief mentions of his own institution (one positive, the other negative), appears to have been the final act that led to his termination. His dismissal was linked to objections not only over his research but also over how that research related to the trustees’ views of their own institution’s governance. Here, again, is a blending of issues: in this case, his freedom to research was violated, but the violations also implicated governance concerns. Of further significance was the trustees’ odd claim that they did not inhibit Kirkpatrick’s research—yet they simultaneously dismissed him for undertaking that research and espousing views derived through it. As such, the case highlights the value of tenure protections for faculty—protections that are limited in the modern era by the preponderance of non-tenure-line faculty. Olivet’s claim that it had never inhibited Kirkpatrick’s freedom of expression may have been technically true, but by dismissing him for that very expression, the trustees handed down the harshest punishment for using that freedom that they had at their disposal.

If Kirkpatrick’s experiences reveal the complexity involved with discussions about intramural speech, extramural speech, and academic freedom, they also emphasize the relationships among shared governance, tenure, and academic freedom. As Finkin and Post

¹³⁴Ellen Schrecker, “Troubling Days for Academic Freedom,” available at <http://www.aaup.org/AAUP/programs/protectvoice/opinions/Schrop.htm>.

noted, the AAUP investigative report on the Washburn case highlighted the intramural issues and used them to stake a claim to greater freedom and participation in governance. While, as Stanley Fish has argued, it is theoretically possible for academic freedom to exist without shared governance,¹³⁵ the historical records at Washburn, Olivet, and numerous other institutions provide evidence that relying on benevolence for protection is often a losing proposition.¹³⁶

Almost a decade ago, Gerber argued that academic freedom

requires a governance system in which faculty expertise—often residing in an individual, but also expressed at times in a collective fashion—is the determining factor in institutional decisions affecting academic matters. A system of shared governance does not guarantee that violations of academic freedom will never occur. It is possible for some faculty members to make decisions that violate other faculty members' academic freedom. But it is far more likely that academic values, and not extraneous concerns, will guide decisions about teaching and research when faculty members make those decisions instead of people who are removed from the classroom and the laboratory.¹³⁷

More recently AAUP president Cary Nelson contended, "Academic freedom is an empty concept, or at least an effectively diminished one, if the faculty does not control its enforcement through shared governance."¹³⁸ Moreover, academic freedom and faculty governance have shared histories and underpinnings. Both evolved as part of the professionalization of college faculty. Both involved faculty members' claims that they were not merely employees in

¹³⁵Stanley Fish, "Political Correctness Revisited: Views from Both Sides," *New York Times*, November 30, 2009, available at <http://opinionator.blogs.nytimes.com/2009/11/30/political-correctness-revisited-views-from-both-sides/>.

¹³⁶Sadly for advocates of robust understandings of academic freedom, the record of faculty activities during difficult times, such as World War I and the Cold War red scares, demonstrates that even shared governance is not enough to protect heterodox academics. See Gruber, *Mars and Minerva*; Schrecker, *No Ivory Tower*.

¹³⁷Gerber, "Inextricably Linked," page 23. Of course, Gerber is correct that faculty members have frequently been implicated in the violations of their peers' rights.

¹³⁸Nelson, *No University Is an Island*, 32.

academic organizations but key actors with needed expertise that was rarely present in boards and had been diminished in upper-level administration.¹³⁹ For Kirkpatrick, they were even further intertwined: his efforts for shared governance at the institutional and national levels led to violations of his academic freedom, violations that may have been prevented if his efforts for significant faculty roles in institutional decision-making had succeeded more quickly. As his experiences aptly demonstrated, governance practices that treat faculty input into institutional affairs as merely the activities of “vexels” or “mischief-makers” offer little hope for protecting academic freedom.

Tim Cain is an assistant professor in the Department of Education Policy, Organization and Leadership at the University of Illinois. His research examining the history of academic freedom, faculty unionization, and academic administration has appeared in the History of Education Quarterly, Labor History, Perspectives on the History of Higher Education, Teachers College Record, and other venues. He is a co-director of the Ethnography of the University Initiative at the University of Illinois and an associate editor of the History of Education Quarterly. He is currently completing a book manuscript on academic freedom between 1913 and 1941.

Steven E. Gump is a doctoral student in the Department of Education Policy, Organization, and Leadership at the University of Illinois at Urbana-Champaign.

¹³⁹Gerber, “Professionalization as the Basis.” Thomas L. Haskell identifies the growing emphasis on First Amendment claims to academic freedom as obscuring the links among academic freedom, governance, and professionalization. Thomas L. Haskell, “Justifying the Rights of Academic Freedom in the Era of Power/Knowledge,” in *The Future of Academic Freedom*, ed. Louis Menand (Chicago: University of Chicago Press, 1996), 43–90.