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# What is Academic Freedom?

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## Arthur Lovejoy (1930)

“Academic Freedom is the freedom of the teacher or research worker in higher institutions of learning **to investigate** and **discuss** the problems of his science and **to express** his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, **unless his methods** are found by qualified bodies of his own profession to be clearly **incompetent** or **contrary to professional ethics.**”

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# For the Common Good

- Those teaching and researching in higher education were given this special freedom because it was recognized that the knowledge produced in disseminated by such workers was critical for the development of society, an idea often expressed by the phrase “for the common good” or “for the public good”.
- In order to produce and disseminate the highest quality of knowledge in a given field, academics needed to be regulated only by other academics who were the only ones in a position to judge the work of their peers.

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# A Self-Regulated Faculty

- Faculty “are the appointees, but not in any proper sense the employees”, of university trustees or regents. “For, once appointed, the scholar has professional functions to perform in which the appointing authorities have neither competency nor moral right to intervene.” (1915 Declaration of Principles)
- “University teachers should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees, than are judges subject to the control of the president, with respect to their decisions.” (1915 Declaration)
- With these rights come the obligation for the faculty to regulate their own fields and ensure the quality of the knowledge produced and taught.

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# Special employment protections

- Academic freedom is an independence of mind.
- This independence is encouraged through employment protections, namely:
  - Tenure. But note, “During the probationary period a teacher should have the academic freedom that **all other members of the faculty have.**” (1940 *Statement*)
  - Academic due process. “**Termination for cause** of a continuous appointment, or the **dismissal for cause** of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a **faculty committee** and the **governing board** of the institution.” (1940 *Statement*)

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## Is Academic Freedom Simply First-Amendment Free Speech?

- Although **academic freedom** in the United States **receives some protection**—at public universities—**from the First Amendment**, the conception of academic freedom in this country **predates its judicial recognition** and has **developed largely outside of it**.
- The AAUP regards academic freedom as a **professional right** extended to members of the profession **subject to certain limitations**, including the **obligations of professional ethics**.

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## A professional, not an individual freedom

- “The function of academic freedom is **not to liberate individual professors from all forms of institutional regulation**, but to ensure that faculty within the university are free to engage in the professionally competent forms of inquiry and teaching that are necessary for the realization of the social purposes of the university. In this sense, academic freedom is a *professional* freedom.” (Robert Post, “The Structure of Academic Freedom” (2006))

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# Free speech is not a good model for understanding academic freedom

- The First Amendment is premised on an “equality of status in the field of ideas”. All expressions are given equal protection under the law.
- Academic knowledge is premised on an *inequality* of status between differing ideas. We routinely reject certain ideas as lesser than others, and train our students to do the same. Without this process of designating certain ideas as less worthy than others, knowledge would not progress.
- Due to its focus on the individual and the equality of status of each expression, First Amendment rights provide a poor model for understanding academic freedom.



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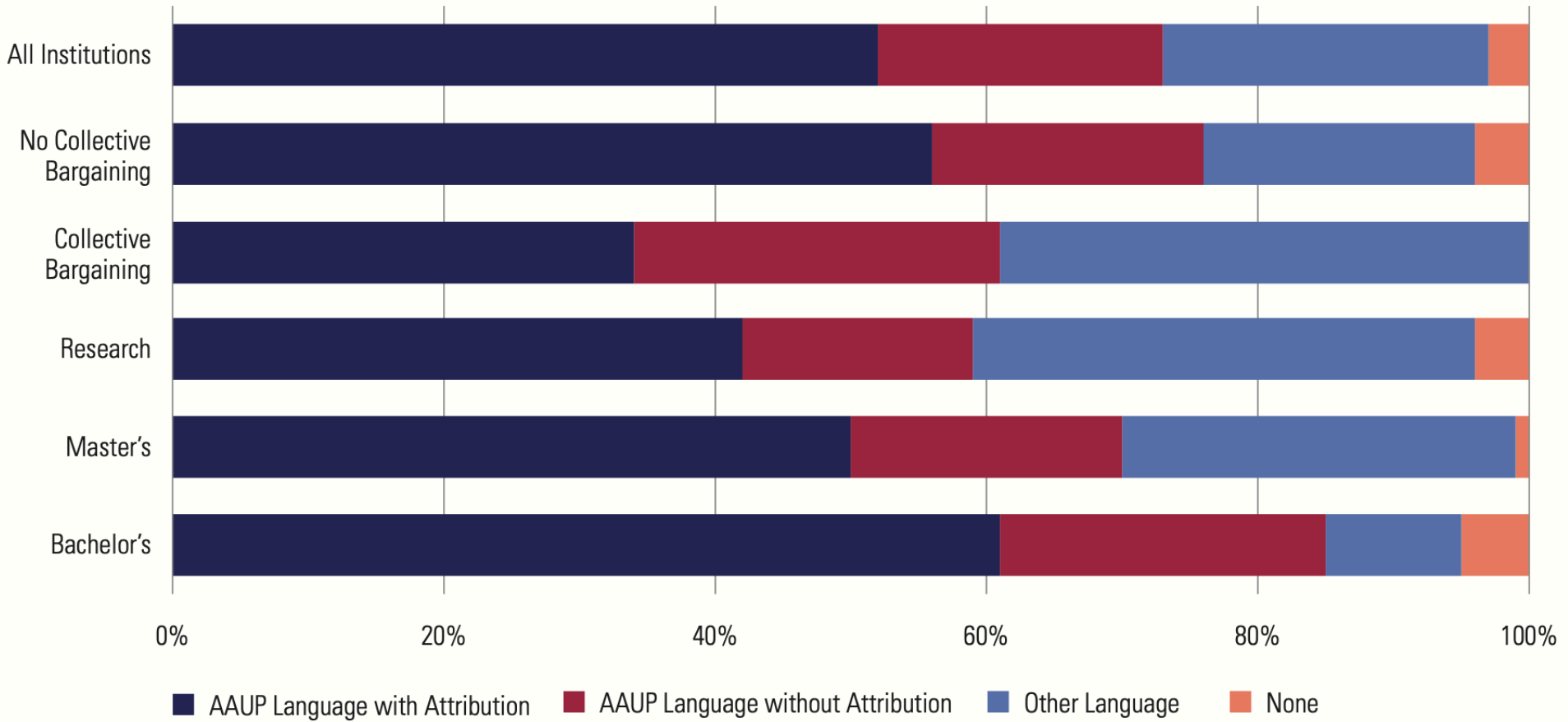
# The Protections of Academic Freedom v. 1A Free Speech

Academic freedom is both **broader** and **narrower** than First Amendment free speech:

- It is **broader** because it is a condition of employment at those private institutions that provide for it in their regulations. Furthermore, some court decisions have been interpreted as **narrowing** First Amendment protection of academic freedom for public employees.
- It is **narrower** because academic freedom does not protect some speech that may be protected by the First Amendment (e.g., disciplinary incompetence).

FIGURE 3

**The 1940 *Statement* is the Primary Source of Academic Freedom Language**  
Provenance of Academic Freedom Statements, by Institution Type



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# The Structure of the 1940 *Statement*

- **Headnote:** History of the *Statement*.
- **Introduction:** Rationale for academic freedom and tenure.
- **Academic Freedom:** Topic of this presentation. This section is frequently included in handbooks or CBAs without other parts of the *Statement*.
- **Academic Tenure:** Only briefly discussed here.
- **Notes:** Original and 1970 *Interpretative Comments*.
- **Endorsements** by educational and disciplinary associations (more than 250). It was jointly formulated with the AAC&U.

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## From the Introduction of the 1940 *Statement*

- “Institutions of higher education are conducted for the **common good** and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the **free search for truth** and its **free exposition.**”

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# The Structure of the Academic Freedom Section

- The 1940 *Statement* identifies **three constitutive elements** of academic freedom: research, teaching, and extramural speech.
- It further identifies **specific restrictions** for each of these elements.
- It does **not** further **elaborate** the nature of the constitutive elements or claim that the list of restrictions is **exhaustive**.
- Arguably, the success of the 1940 *Statement* can be attributed to the **skeletal nature of the definition**, which leaves it open to subsequent definition and refinement, and to the **explicit recognition of restrictions**.

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# Sources of Interpretation of the 1940 Statement

- 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*
- 1925 *Conference Statement*
- 1970 *Interpretative Comments*
- Other derivative AAUP policy statements and reports
- AAUP investigations of violations of academic freedom and tenure

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# Freedom of Research

- Academic freedom is frequently **falsely equated** with freedom of research. This misperception is **reinforced** by tying the awarding of tenure to research accomplishments and by appointing contingent faculty members to teaching-only positions.
- *1940 Statement*: “Teachers are entitled to **full freedom** in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.”

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# Freedom in the Classroom

- *1940 Statement*: “Teachers are entitled to freedom in the classroom in discussing their subject, but they should be **careful not to introduce** into their teaching **controversial matter** which has **no relation to their subject.**”
- *1970 Interpretative Comment*: “The passage serves to underscore the need for teachers to **avoid persistently intruding material** which has **no relation to their subject.**”
- *Freedom in the Classroom (2007)*: “So long as an instructor’s allusions provoke **genuine debate** and **learning that is germane to the subject matter** of a course, they are protected by ‘freedom in the classroom.’”



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# Individual vs Collective Academic Freedom

- *Freedom to Teach* (2013): “The freedom to teach includes the right of the faculty to **select the materials, determine the approach to the subject, make the assignments, and assess student academic performance** in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer.”
- “In a **multisection course taught by several faculty members**, responsibility is often **shared** among the instructors for identifying the texts to be assigned to students. ... The **shared responsibility** bespeaks a **shared freedom**, which **trumps** the freedom of an individual faculty member to assign a textbook that he or she alone considers satisfactory.”

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# Extramural Speech

- The inclusion of extramural speech as a constitutive element of academic freedom has been called “the **distinctively American** contribution to the theory of academic freedom” by Walter Metzger.
- It is arguably the **most controversial** and **most challenged** aspect of academic freedom, as it does not necessarily relate to disciplinary expertise.

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# Extramural Speech

1940 *Statement*: “College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be **free from institutional censorship or discipline**, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be **accurate**, should exercise **appropriate restraint**, should show **respect for the opinions of others**, and should make every effort to indicate that they are **not speaking for the institution.**”

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# Extramural Speech

- *1940 Statement*: “If the administration of a college or university ... believes that the extramural utterances of the teacher have been such as to raise **grave doubts concerning the teacher’s fitness** for his or her position, it may proceed to file charges...”
- *1964 Committee A Statement/1970 Interpretive Comment*: “In cases involving such charges, it is **essential** that the hearing should be conducted by an appropriate—preferably elected—faculty committee... The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal **unless it clearly demonstrates the faculty member’s unfitness** for his or her position.”

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# Extramural Speech

- 1949 *Evansville College Investigation*: “As to the **necessity** of a formal disavowal of institutional spokesmanship, **the circumstances should determine the matter**; for example, it would be **unnecessary**, when speaking in support of a Boy Scout drive, to announce: ‘My sentiments on this occasion are not necessarily those of Blank College.’ The **rule of reason** would be to clarify the relationship if it is not already clear.”

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# Academic Freedom and Faculty Governance

- The 1940 *Statement* does **not** explicitly recognize speech on governance as a **constitutive element** of academic freedom, although several AAUP investigative reports from the 1920s and 1930s comment on the issue.
- The AAUP recommends that faculty handbooks and CBAs explicitly recognize that “address[ing] any matter of **institutional policy or action** whether or not as a member of **an agency of institutional governance**” is a fourth constitutive element of academic freedom.

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# Academic Freedom and Faculty Governance: Inextricably Linked

- Intramural speech is a **constitutive element** of academic freedom, and...
- ...maintaining academic freedom requires **faculty participation in governance**, in particular through the faculty's primary responsibility for faculty status: appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal.
- As noted at the beginning of this talk, participation in governance is an essential part of being a self-regulated faculty body.