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ABSTRACT

Academic freedom, at institutions of higher education, is discussed in terms of questions raised about the ability of an institution to dismiss an instructor. In the first case, "Martin v. Parrish," the instructor was dismissed for using profanity in the class. The second case, "Carley v. Arizona Board of Regents," centered on the importance of student evaluations in the ultimate dismissal of an instructor. The questions discussed are based upon the premise that teaching is an ambiguous technology. As such, with no specifying outcomes, can the means really be specified? If a university wishes to strengthen teaching, who will evaluate and on what criteria? Recommendations are offered at the institutional, collegial, and individual levels and include the following: require multiple measures of quality teaching; have a developmental process and goals; use a system appropriate to the institutional type; and (for the individual) raise academic freedom only as an institutional claim, not a legal one, since academic freedom is, in reality, an institutional, occupational and organizational norm, not a legally efficacious construct. (LMS)

Taking Teaching Seriously--
Academic Freedom
Considerations

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Taking Teaching Seriously -- Academic Freedom Considerations

Prefatory Caveat: While the post-secondary sector is quite diverse, my own experience has been only in a research-oriented university. Thus, the propositions advanced here are likely incorrect as regards some institutions. However, I doubt that any sector is completely free of the structural dilemmas discussed in the paper.

I. Setting the context: Two "case studies" involving faculty dismissed/denied tenure for improper or inadequate teaching.

A. Martin was an economics instructor at Midland College in Texas. He was "inveterately" profane in his classroom, offering such comments as "the attitude of this class sucks," "you may think economics is a bunch of bullshit," and "if you don't like the way I teach this Goddamn course, there is the door." Following a formal student complaint in 1983, Martin was warned by the dean and vice president that continued use of profanity in class would cause disciplinary action, including possible termination." "Heedless of the administrators' concerns," Martin continued, resulting in two student complaints being filed in 1984. This time, Martin was fired.

Martin attempted to raise an academic freedom defense, which was summarily dismissed by the court. He apparently argued that his purposes for profanity were to express publicly his frustration with the progress of the class and to motivate them. The court responded that "[i]t is, however, undisputed that such language was not germane to the subject matter in his class and had no educational function." The court also characterized Martin's language as "a deliberate, superfluous attack on a 'captive audience' with no academic purpose or justification."

While the court's observations, of course, can be viewed as traditional judicial ex cathedra pronouncements, there was some testimony supportive of these conclusions. Most salient was the College president's testimony that Martin's conduct was unprofessional and hindered instruction. Two students also testified, one that Martin caused him to lose interest in economics, and another that he was reticent to ask questions in class for fear of Martin's

ridicule. In large part, the court deferred to the administrative judgment that Martin's conduct was "unprofessional," observing that "federal courts thus appropriately respect the professional conclusion of those whose past and future careers depend on the esteem due to Midland College."

Martin's profanity gives the court and administrators a convenient basis for hooking him. The court notes that the students "paid to be taught and not vilified in indecent terms." What if Martin were sarcastic and ridiculing, but not profane? Would that ameliorate the pedagogic "problem"? Admitting that two students testified about their discomfort, were Martin's students learning what the syllabus promised? Did he convey knowledge? If so, who chooses the limits of his conduct and on what bases? Can we be certain that his pedagogic style was ineffectual? Harmful? What basis for comparison exists? Or does this case turn on implicit, absolute standards, codified in the administrative cohort of Midland College? See Martin v. Parrish, 805 F.2d 583 (5th Cir. 1986).

B. Carley was an untenured assistant professor of art at Northern Arizona University (NAU). During his fifth year, the departmental committee on faculty status recommended by a 3-to-2 vote against granting him tenure. After the department head recommended retention, and the dean recommended release, NAU's president concurred in the recommendations for non-retention. The university's Academic Freedom and Tenure Committee concluded after a hearing that Carley's rights to academic freedom and due process had been violated, but the president rejected its recommendation that Carley be retained.

Carley brought suit, focusing in part on the institution's reliance on student evaluations to reach the conclusion that his teaching was inadequate. He couched his claim in academic freedom language, arguing that his teaching methods were protected conduct. Moreover, he sought to defend himself as a "demanding teacher contrary to some student expectations." His method of "frequently leaving his classes unattended" was intended to teach students self-reliance and independent work habits that would prepare them for the business world. Apparently his students did not comprehend the value of this method, as Carley had received predominantly negative criticisms from students for several years. These evaluations were "of

primary importance" in the decision against Carley at all levels in the institution. Carley's dean described his recommendation against Carley: "the primary indicators being the student evaluations and lack of significant progress in that area."

The court was bemused by Carley's claim that his students' poor evaluations constituted violations of academic freedom and that NAU was precluded from relying on them. The court swept aside the possibility that teaching methods could fit within academic freedom, because prior claims had normally involved content disputes. In cases where pedagogic methods were at issue, academics have been described as demanding insulation from review by superiors. Indeed, courts apparently interpret the question as one of insubordination, in that the faculty member was disobedient to authoritative institutional teaching policies.

The Carley court adopted a familiar deference to the expert decisionmakers in the institution. It pointed to the Supreme Court's observation that academic freedom requires both uninhibited exchanges between teacher and students and, "somewhat inconsistently, autonomous decisionmaking by the academy itself." In that context, this court was satisfied that "the University" had concluded Carley was an ineffective teacher and that it was "their" professional opinion his methodology was unsuccessful.

Such analysis seems straightforward, but who exactly is "the University" in this matter? There were certainly differences of opinion, even between the faculty committees that reviewed Carley's record. Whose professional judgment is most important? Of course, one might grant greatest influence to his closest colleagues whose expertise would be greatest (but counting the department head's vote with the departmental committee, there was a 3-to-3 departmental deadlock). It is troubling that the student evaluations were ostensibly the essential criterion. There is neither indication that Carley's colleagues observed directly his teaching methods, nor made assessments of students' learning (versus satisfaction). Although student dissatisfaction across time was highly influential for Carley, were there actually program norms or explicit expectations? Were poor evaluations treated seriously in an uniform fashion at the department, college or university level?

Could any of those levels demonstrate that Carley was qualitatively different than his peers? Had anyone discussed these matters with Carley during the previous five years, heard his rationale, and investigated the utility of his methods? Would NAU or its faculty really be satisfied with the proposition that its students are the primary assessors of faculty competence? If so, why should a court defer to students' "expert" judgments? See Carley v. Arizona Board of Regents, 737 p.2d 1099 (Az. App. 1987).

C. In neither case did the court take seriously the faculty member's argument that the institutional decision (or its basis) was essentially arbitrary, or that individual pedagogical choices were entitled to the protections flowing from academic freedom.

D. What if we took seriously either of the following propositions:

1) The conclusion that a faculty member is incompetent/inadequate as a teacher which leads to occupational harm (dismissal, denial of tenure, merit, etc.) should not receive blanket judicial deference based on the decisionmaker's presumed expertise, and that some relationship must be demonstrated between the decision and the professor's failure to exhibit predetermined behaviors or meet criteria or achieve desired outcomes (e.g., student learning); or

2) The values of academic freedom are implicated in decisions regarding "how" course/content is taught (per Frankfurter in Sweezy; Powell in Bakke).

What problems follow?

E. N.B. There is no particular season to anticipate that courts normally would take either of these propositions seriously, in the absence of extreme facts.

II. If estimates of inadequate teaching are to progress past intimations, based on rumor, and to be based on "legitimate" criteria, substantial changes in institutional structures and processes are implicated.

A. Teaching is an ambiguous technology. The more so in higher education because desired outcomes are at best diffuse/multifaceted, at worst, nonspecified (what students are supposed to learn). As many desired

outcomes are difficult to measure, often no attempts are even made (e.g., critical thinking skills).

B. Without specifying outcomes, it is difficult to specify minimally adequate or necessary means. Thus, some global and "gatekeeping" criteria are possible (preventing pedagogic bankruptcy), but establishing a validated hierarchy of teaching skills or methods is almost impossible.

C. Most young faculty develop pedagogy "privately" -- relying on experiences as a student, intuition, conversations/anecdotes. Even more than in the K-12 world, there is a sanctity to the privacy of closed classroom doors. The rhetoric of academic freedom makes intrusion or scrutiny inherently problematic.

D. Among other things, that limits available assessment information to student reports via course evaluations, a source that young professors learn to view skeptically from senior colleagues (particularly if the evaluations are too poor/too good).

E. Consequently, although professors informally discuss instruction with some frequency (content issues probably predominate), classroom performance is an individualistic experience. Professors appear to believe that instruction is learned through experience (variation: you got it or you don't) and that different styles are comparably effective (an egalitarian perspective: everyone does it his/her own way). Those beliefs complicate evaluation for improvement or retention purposes. There are not consensually derived norms (or technically developed ones) that are communicated to young/struggling professors. (NB: most young professors "get it" on their own; that is, their performance falls within limits of tolerance, which are broad, after all).

III. If a college/university undertakes to improve teaching quality or to build a more important role for teaching in promotion and retention (or pay) decisions, the institution's normative structure creates problems. There are also organizational process problems.

A. Who is to evaluate? Administrators are amateurs -- untrained in evaluation and selected for reasons other than pedagogic skills (and socialized to norms of privacy and "academic freedom"). Senior faculty have similar socialization and no one has a technical or

instructional language of pedagogy -- nor experience with anyone else's pedagogy (except as students). No one is going to want this responsibility nor feel particularly adept at performing it. Administrators are sufficiently harassed without taking on faculty over something as indefinite as teaching. The traditional "compromise" is that if faculty show up for classes, use somewhat standard content/methods, they will be left alone.

B. Using student evaluations raises faculty's hackles, but they are undoubtedly legitimate as a source of information. But sufficient? Even proponents of student evaluations do not believe that. Often reviewing syllabi is recommended, but that is a content/substantive evaluation -- not particularly useful as a pedagogical one.

C. Parenthetically, the problems suggested here are exacerbated substantially if the press for teaching improvement does not arise within the unit or college (or the faculty do not at least consent to the importance of this agenda). Currently there is an institutional press occurring in many places; in many respects, the press is a cyclical one generated by a hostile political environment or a reformer in power. Where the central administration produces/promotes the demand, it will often, in bureaucratic fashion, seek uniformity or reduced variability in departments or colleges. If the "evaluative measures" are global (i.e., institutionwide), the legitimacy of the process is nil -- and prospects for creating legitimacy remote. Indeed, faculty efforts will most likely be directed at subverting the process.

IV. Recommendations

A. If escape appears impossible...

1. At the institution level:

a. Promote variability among units. At most, have some global measures (keyed to marginal adequacy), but require that units derive discipline/program pedagogic values and behaviors.

b. Require multiple measures (it is stupid to ignore student opinion; stupid to rely exclusively on it).

c. Have a developmental process and goals -- i.e., build capacity. Link performance, especially excellence, to incentives and inadequacy to consequences (make performance matter).

d. Whatever criteria define inadequacy should also define excellence - that is, awards for great teaching should be related to behaviors expected (at some level) from all professors, and the process that identifies incompetence should also identify excellence (often, they are oddly uncoupled).

e. Use a system appropriate to the institution type - that is, if desired student outcomes can be specified and measured use that advantage in designing the system. If not, don't use a system which depends on such specification.

2. For units (colleges or departments):

a. Pedagogy has to "come out of the closet." The assumptions about the how and why of teaching in that discipline/profession need to be aired. That dialogue may to lead to some consensual norms about collegial expectations. If so, those need to be communicated to newcomers (they may even become important in selecting newcomers -- but probably not).

b. The process of "evaluation" should be primarily developmental. Improvement should be the essential goal, especially for junior faculty. But whatever defines the lower limits of pedagogical adequacy should be an uniform expectation of all -- tenured faculty too. In many colleges, newcomers often seem held to higher research standards ("it's becoming a better college"). That really does not make sense in this domain of professorial behavior. It is possible that making teaching more public will mean that learning is reciprocal between "mentor" and "mentee."

c. If the pressure for this "new" focus on teaching comes from the institution, which is again responding to its resource environment in politic fashion, and there is no enthusiasm whatsoever at the unit level, wait it out. The cycle of interest will end. If choosing noncompliance, various procrastinations are advisable: create a committee to study and make recommendations to the whole faculty, which can then deliberate further; put students on the committee as that will likely produce more issues and interests, thus prolonging process (i.e., create a "garbage can" decisional process); if the faculty tenuously agree on a program, "phase it in" by starting with providing assistance and focusing on nontenured faculty as this may take long enough that institution's interest will collapse before full implementation occurs. Remember that for postsecondary institutions, interest in teaching is often a persistent, generally innocuous myth that becomes dangerous only if its symbolic virtues are treated as organizational imperatives.

3. At the individual level, if confronting an unfavorable pedagogical assessment:

a. Remember that pedagogic problems may be linked to conceptual muddleness (students hate faculty hesitations, uncertainties and recurrent equivocations during class) [I realize this premise has a homiletic ring to it, like "good scholarship makes good teaching"]; thus, reviewing your course goals and syllabus is not a bad start.

b. Ask for as much specification as possible - do not accept generalities/aphorisms (this will not be easy to get usually, unless the unit has really spent time evolving a set of beliefs/practices for guiding pedagogy).

c. Although obvious, spend time - if you are going to defend heatedly your pedagogical prerogatives, particularly as against your assembled colleagues, it is best that you can produce a sophisticated (or plausible) rationale for your methods, the more so if you are "experimenting" (NB: it is unpersuasive, even when true, to argue that you are no worse than others - that argument lacks moral splendor).

d. If push comes to shove, raise academic freedom, but as an institutional claim, not a legal one. Academic freedom is really an occupational and organizational norm, bandied about loosely as a proto-legal construct, but rarely legally efficacious and virtually never in intrainstitutional disputes. Educational institutions enjoy substantial judicial deference for such "expert" judgments. You are better off trying to evoke guilt from your colleagues, as they are likely insecure making this type of judgment. As well, academic freedom is likely a more plausible argument among one's colleagues when the evaluative demand or process emanates outside the unit, as in a central administrative venture.

4. On the virtue of intruding academic freedom into the dispute, it is a diffuse term, but one with powerful connotations within postsecondary institutions. If faculty and administrators do interpret this type of conflict as implicating academic freedom, that should sensitize participants to the ramifications of evaluation for faculty autonomy. Moreover, it will implicate the procedural protections associated with institutional conflicts over content and scholarly restraints. If this concern is captured within the indefinite, negotiated perimeter of academic freedom, claims will be taken seriously.

   a. Persuading one's colleagues that pedagogical disagreements rise to an academic freedom claim will not be easy, as this usage of the concept is loose (not relatively speaking, because academic freedom is often invoked in wholly nonacademic matters, such as general free expression disputes).

   b. Arno van Alstyne argued that academic freedom must be interpreted as a web of reciprocal rights and responsibilities. That set of duties normally includes a commitment to public scrutiny and testing of propositions. It is not clear that institutional or collegial efforts at improving teaching always mirror these academic freedom values, even though the processes clearly affect instructional conduct.

c. Evaluation of teaching involves decisions that touch a core institutional activity, inextricably linked with the creation and dissemination of knowledge. It is unduly optimistic to believe that issues of pedagogic method and issues of content are easily separable. Certainly, distinctions between content and method evaluation are sufficiently subtle that any system purporting to regulate or evaluate method alone should be subjected constantly to the sort of careful public scrutiny implied by academic freedom norms.

d. Faculty in many institutions are cynical about promises to value good teaching, and incredulous about admonitions regarding taking teaching seriously in promotion decisions. If institutions confound faculty expectations and follow through, faculty will undoubtedly progress from bemusement to discomfort in short order. The processes through which institutions build the capacity necessary for implementing such policies will be crucial. At the very least, most institutions must operate within the functional constraints of "loose coupling" in instructional matters and the normative expectations of autonomy and expertise-based decisions. Academic freedom values may prove an important heuristic value while these delicate issues are negotiated. It may prove a treacherous obstacle as well.