On Institutional Neutrality

(FEBRUARY 2025)

The statement that follows was formulated by a subcommittee of Committee A on Academic Freedom and Tenure. It was approved by Committee A in December 2024 and adopted by the Association's Council in January 2025.

Following faculty involvement in the Vietnam Moratorium of October 1969, the AAUP considered "the role of academic institutions in reacting to social issues." A special committee was appointed to make a statement on "the question of institutional neutrality," but its resulting statement described conflicting views on the topic rather than endorsing one. The AAUP Council, the statement said, found itself "divided" and thus felt "obliged to commend to the community of higher education a searching examination of the issues involved, to be explicit about the risks involved in *any* actions taken, and in any case to ensure freedom for the proponents of *all* points of view."[1]

The following year, in 1970, a resolution adopted by the Fifty-Sixth Annual Meeting of the AAUP called on the academic community to direct greater attention to the solution of "contemporary social problems," noting somewhat obliquely that "neutrality in regard to specific public policies does not sanction neutrality toward society's need for public policy itself." Less oblique was the resolution's conclusion that higher educational institutions must "accept corporate responsibility to address . . . societal problems" and that this "must certainly include bearing direct responsibility for the way in which invested income-bearing resources are managed."[2]

Aside from this resolution on divestment, the AAUP has never determined that the neutrality of institutions is either necessary for, or incompatible with, the principles of academic freedom. For more than a half century, we have instead chosen to emphasize the complexity of the issues involved, the dangers that can attend either approach, and the necessity of making institutional decisions with an eye to their effects on academic freedom and shared governance. This statement reaffirms that long-standing approach.

In the wake of protests surrounding the war in Gaza, some universities faced with coordinated external campaigns to adopt policies of "institutional neutrality" have committed to one or more of the many things that concept has encompassed over time. These calls for institutional neutrality are usually claimed to be necessary for the protection of free speech and academic freedom, yet there is no single definition of the term. Claims for institutional neutrality have variously referred to a university's need to maintain silence on social or political matters; bans on statements made by academic departments and other units within the university, or sometimes by faculty speaking collectively across departments; a refusal to divest from or scrutinize financial investments on bases deemed political; and limits on campus protests, by students or their supporters, that are seen to disrupt what is taken to be the neutral space of the university.

At times, then, the concept of institutional neutrality involves a chosen or imposed silence; at other times it means disallowing particular actions. Its impact on academic freedom and shared governance can vary based not only on what institutional neutrality is taken to mean but also on the circumstances in which it is adopted or imposed. This statement aims to take up some of the history and uses of institutional neutrality in order to offer more nuanced guidance about its potential effects.

1. "A Statement of the Association's Council: The Question of Institutional Neutrality," *AAUP Bulletin* 55, no. 4 (Winter 1969): 488.

2. "The Fifty-Sixth Annual Meeting," *AAUP Bulletin* 56, no. 2 (Summer 1970): 141.

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In keeping with the AAUP's prior practice, Committee A now reaffirms more explicitly that institutional neutrality is neither a necessary condition for academic freedom nor categorically incompatible with it. But like many of the other decisions a university makes, choices about when it will speak, what speech it will permit, and how it will manage its financial resources must always be made in ways that respect and advance the principles of academic freedom.

History

Some who invoke institutional neutrality do so as if it were a timeless principle with a fixed meaning, as did the authors of the University of Chicago's Kalven Report in 1967—often now cited as the source of the authoritative definition. That report, written as student protests against the war in Vietnam erupted on college campuses, hearkened to an enduring legacy, claiming "simply to reaffirm a few old truths and a cherished tradition"—thereby writing itself into a tradition it helped to invent.[3] Contrary to this idealized notion, the history of institutional neutrality shows it to be more complicated in its definition and implementation than "old truths and a cherished tradition" implies.

In the United States, the earliest articulations of the principle came during the Progressive Era—the end of the nineteenth century and the beginning of the twentieth, the moment of the expansion of research universities and the consolidation of disciplines. Then, the invention of institutional neutrality, like the invention of academic freedom, had a distinct political goal: to protect the university and its faculty from the ire of businessmen and politicians who found the views of reform-minded professors distasteful, if not subversive, and whose financial investments in the university gave them the right, they insisted, to fire its professors and dictate its policies.

To stave off this powerful financial interference, university presidents and faculty, inspired by European ideas, claimed autonomy for their institutions, on the one hand, and "complete freedom of speech" for their teachers, on the other. Some, like William Rainey Harper, the president of the University of Chicago, sought to make it clear that faculty views (in and outside of the classroom) did not represent the institution. "It is desirable," he said in a 1901 speech, "to have it clearly understood, that the University, as such, does not appear as a disputant on either side of any public question; and that the utterances which any professor may make in public are to be regarded as representing his own opinions only."[4] Harper's statement suggested that universities had no opinions, when in fact their very existence embodied secular, scientific, and reformist values that were themselves under attack. In this context, his claim of neutrality was a political tactic designed to remove from public scrutiny and partisan interference a controversial mission devoted to the production and dissemination of knowledge that would contribute to social, economic, scientific, and political change.

A different impetus for the invocation of institutional neutrality came in the 1960s and 1970s. Then, the perceived threat came from student advocacy, which some saw as a demand to politicize the university's educational mission. The assertion of institutional neutrality was a way of both refusing the demands of students and characterizing those demands as a violation of a sacred principle. This was the case even, or especially, when the student protests challenged the very possibility of neutrality, as in the cases of universities' choosing whether to submit student grades to draft boards during the Vietnam War, addressing systemic racial and gender discrimination, and extending representation on faculties and in the curriculum to previously excluded groups.

In response to the most dramatic of the protests—teach-ins, sit-ins, protests against outside speakers, building occupations, and demands for divestment—university committees issued reports articulating a principle of institutional neutrality. The Kalven Report noted that, with some exceptions, there must be "a heavy presumption against the university taking collective action or expressing opinions on the political and social issues of the day, or modifying its corporate activities to foster social or political values, however compelling and appealing they may be." The report argued that "the instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic." There might, however,

3. "Kalven Committee: Report on the University's Role in Political and Social Action," *The University of Chicago Record* 1, no. 1 (November 3, 1967), https://campub.lib.uchicago.edu/view/?docId=mvol-0446-0001-0001.

4. "The Thirty-Sixth Convocation," *University Record* 5, no. 42 (January 18, 1901): 376, https://campub.lib.uchicago.edu/view/?docId=mvol-0007-0005-0042.

be moments when action is required to defend "the very mission of the university and its values of free inquiry." (Nazi Germany was on the mind of at least one committee member, and Cold War–era loyalty oaths might have been on that of another.) Exceptional as such moments were thought to be, the Kalven Report's allowance of them undermined the notion that a university "cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness." By focusing solely on the academic freedom of individual faculty and students, the Kalven Report did not consider the possibility or value of collective expression by these groups—or of the role of shared governance in which departments, schools, or the faculty as a whole might collectively participate.

The reports that followed Kalven were directed more specifically at student protests, deeming them an unacceptable disruption of the work of the university. Free speech by students and their faculty or staff supporters was most often the focus, but a particular conception of institutional neutrality remained an unspoken background assumption. Despite their seemingly separate concerns, the claim of institutional neutrality and the attempt to regulate or suppress student protests became interconnected when administrators saw protesters' demands as political, by contrast with a status quo deemed neutral, or when they characterized protesters' methods as disruptive, by contrast with the university's preferred modes of expression, which it pledged to protect in a content-neutral manner.

The 1974 Woodward Report, the product of a committee appointed by Yale University's president, Kingman Brewster Jr., to examine the state of free speech at Yale, argued that "the primary function of the university," which is "to discover and disseminate knowledge by means of research and teaching," depends on "unfettered freedom" of expression for anyone who receives an invitation to speak on campus.[5] The report called on all members of the community "to defend the right to speak and refrain from disruptive interference" and to approve sanctions against "those who offend." Disruptive interference included not only individual actions to prevent a speaker from speaking but also collective protests inside a building and "coercive picketing" outside. "Civility" was invoked as part of the "reeducation" recommended to ensure respect for the principle of free expression—reeducation seemingly implying the need for newly included members of the university community to acquire the civility their upbringing may have lacked. Kenneth J. Barnes, a Yale Law School student and member of the committee, dissented from the report, arguing against the majority's insistence that "free expression should always supersede any other values which might conflict with it." Barnes's claim was that an absolutist notion of free speech ignored the imbalance of power between minorities and the majority and that, historically, only collective protests could give voice to ideas and practices otherwise ignored or repressed. Barnes's dissent called attention to the value judgments behind the committee's call for neutral rules: for example, prioritizing the importance of nonacademic speech of outside speakers over "commitment . . . to equal opportunity." And Barnes questioned the majority's commitment to the marketplace of ideas given its "desire to limit the free expression of opinion" of Yale's president, who had castigated those who invited provocateurs to campus.

Yet another Chicago statement (branded the Chicago Principles) was commissioned in 2014, again in the wake of student protests, when University of Chicago President Robert J. Zimmer and Provost Eric Isaacs appointed a committee of faculty to articulate "the University's overarching commitment to free, robust, and uninhibited debate."[6] The Chicago Principles reasserted and connected the principles of institutional neutrality and free speech, defined as "the freedom of all members of the University community to discuss any problem that presents itself." University of Chicago philosophy professor Anton Ford has pointed out the limits of the statement: "The Chicago Principles equate freedom of expression with freedom of discussion. The problem with this equation is that discussion is not the only mode of rational public speech: it differs from deliberation, on the one hand, and from protest, on the other. Discussion is truth-seeking speech; deliberation is decision-making speech; and protest is disruptive speech. All three are hallmarks of democracy, but only the first is protected

5. "Report of the Committee on Freedom of Expression at Yale" (December 23, 1974), https://yalecollege.yale.edu/get-know-yale-college/office-dean/reports/report-committee-freedom-expression-yale.

6. "Report of the Committee on Free Expression"(January 1, 2015), https://provost.uchicago.edu/reports/report-committee-freedom-expression.

by the Chicago Principles."[7] When speech takes forms other than discussion, the neutral tolerance of the Chicago Principles ends, and limitations on expression are seen as necessary for the university to function.

This brief history suggests that the claim of institutional neutrality has long been deployed in ways that are context-dependent and tactical, often as a means of warding off critics from outside and inside the academy. The idea of neutrality has been invoked not only to protect universities' autonomy and the academic freedom of their members but also to avoid institutional accountability and to silence dissent. The question now before Committee A is how these varied notions and uses of institutional neutrality have the potential to affect academic freedom and faculty governance.

Institutional Statements

An institution's decision to make statements on political or social controversies does not necessarily violate academic freedom, nor does its refusal to make such statements, at least when that decision is made by the institution itself through properly shared governance.[8] To say this, however, is not to deny that choices around institutional speech and silence have the potential to threaten academic freedom both within the university and in higher education more generally.

Committee A does not agree that the issuance of institutional statements necessarily infringes on the academic freedom of the institution's members. The effect of institutional statements on academic freedom is, as Robert Post argues, an empirical question,[9] and their effect is likely to vary based on the subject matter of the statements, the way they are formulated, and the background policies and culture surrounding the protection of dissent at the institution in question. Committee A therefore rejects the Kalven Report's argument that "there is no mechanism by which [the university] can reach a collective position without inhibiting the full freedom of dissent on which it thrives."

The Kalven Report itself represents the collective position of a committee in which one member partially and publicly dissented. It strains credulity to think that an institution known to protect academic freedom would meaningfully stifle research, say, on climate change simply by announcing and explaining its choice to divest from fossil fuels. A university president who writes the university community in celebration of Black History Month or Pride Month is not thereby (to quote the Kalven report again) "censuring any minority who do not agree" that those events are worthy of celebration. Those who disagree with such statements may or may not feel able to express their opinions publicly, depending on the administration's tolerance for dissent—that is, on the prevailing conditions for academic freedom.

By contrast, a university's public condemnation of the speech of individual faculty members or a group of faculty is far more likely to have a chilling effect not only for those faculty members but also for the entire community, causing doubts about the very existence of academic freedom on campus.

A commitment to neutrality, in other words, is not some magic wand that conjures freedom. Calls for neutrality instead provide an opportunity to consider how *various* practices of an institution—not only its speech or silence but also its actions and policies—might promote a more robust freedom of teaching, research, and intramural and extramural speech.

While an institution's decision *not* to make statements on some category of issues does not generally raise academic freedom concerns, the same cannot be said for legislative bans on institutional statements, which several states have now imposed. Academic freedom suffers on a broader scale when colleges and universities are barred from speaking out, or choose not to speak out, against threats that affect higher education nationwide. Even the Kalven Report recognizes an obligation for universities to "oppose such measures and actively . . . defend [their] interests and . . . values." Legislative bans on expression that include vague or overbroad language are likely to chill expression not only by institutions but also by their members. As PEN America has written, though "lawmakers often promise that their bills will leave faculty speech untouched . . . , the facts say otherwise."[10]

7. Anton Ford, "The Chicago Principles Are Undemocratic," *Chronicle of Higher Education*, May 6, 2024, https://www.chronicle.com/article/the-chicago-principles-are-undemocratic.

8. AAUP, "On the Relationship of Faculty Governance to Academic Freedom," *Policy Documents and Reports*, 11th ed. (Johns Hopkins University Press, 2015), 123–25.

9. Robert Post, "The Kalven Report, Institutional Neutrality, and Academic Freedom" (July 20, 2023), in *Revisiting the Kalven Report: The University's Role in Social and Political Action*, ed. Keith E. Whittington and John Tomasi (Johns Hopkins University Press, forthcoming), Yale Law School, Public Law Research Paper, available at SSRN: https://ssrn.com/abstract=4516235.

10. PEN America, *America's Censored Classrooms 2024*, October 8, 2024, https://pen.org/report/americas-censored-classrooms-2024/.

Choosing to remain silent is an expressive freedom, while state censorship violates that freedom. This principle, true for individuals, also extends to a university's autonomy as an institution. Because a university is allowed to make an institutional statement—even according to its sharpest critics—when its mission is under threat, choices about when to speak will often express a university's sense of its mission, and external limits on its ability to do so infringe its autonomy. This is the justification Wesleyan University President Michael Roth offered when, citing Kalven, he condemned threats to higher education from the Trump administration and its allies. "Today's campaign rhetoric is not politics as usual," he writes. When the vice presidential candidate declares that "'universities are the enemy,'" Roth insists, "we must not be neutral about this."[11]

Similarly, while an institution's decision to speak on political and social matters is not *necessarily* incompatible with academic freedom, its choices about when and how to speak can certainly affect the academic freedom of its members. Several of the criticisms lodged against institutional statements—many of which date back to the debate on institutional neutrality that the AAUP sponsored in 1969—are only indirectly related to academic freedom. These include the allegations that institutional statements often have little practical effect, beget ever more statements, or produce unnecessary controversy within the university. Other criticisms, however, implicate serious academic freedom concerns, and when institutions choose to make a statement—as when they engage in any other action—they have a responsibility to consider the effects their choice will have on academic freedom at their institution and beyond. Critics have alleged that statements sometimes go beyond the expertise of the institution or person responsible for making them, thereby reducing public trust and political support for institutions of higher education. Statements that appear overly partisan or indicate an intolerance for debate and dissent on controversial issues can similarly corrode the atmosphere of academic freedom required for the advancement and dissemination of knowledge. This danger is particularly acute when a university makes statements condemning controversial academic work by one of its faculty members instead of leaving it to other scholars in the field to provide commentary or criticism.

Few of these threats are unique to institutional statements, however. In what it does, no less than what it says, a university can harm its public standing and threaten the freedom of those who advance its mission. Calls for institutional neutrality that focus solely on what institutions *say* have the potential to lose sight of the many other ways colleges and universities take positions that are not neutral. Admission and financial aid policies; criteria for faculty hiring, promotion, and tenure; changes in the curriculum; efforts to promote diversity and inclusion; the naming of buildings; decisions to open or close departments or research centers; and, most recently, guidelines for acceptable student protest, especially those that favor one side in a political controversy[12]—all potentially affect the climate of academic freedom at a given university, just as a university's statements (including on those issues) might.

Departmental Statements

A somewhat different set of considerations comes into play in deciding whether departments or other campus units like schools, centers, and institutes should be allowed to make statements—and, if so, whether doing so is advisable from the perspective of academic freedom.

Departmental statements have two potential advantages over speech at the institutional level. First, when departments draw on their distinctive disciplinary expertise in making a statement on some matter of social or political controversy, they avoid the criticism often levied against institutional administrators who weigh in on subjects beyond their ken. A ban on statements by departments potentially deprives society of the collective voice of experts in the fields most relevant to the controversy at hand and constitutes an internal restraint on academic freedom.

Second, departmental statements can play a valuable role in shared governance, different from that of individuals or ad hoc groups of faculty, staff, or students. Attempts to ban or limit statements by departments thus work to silence an important form of intramural speech within the university—one which, when dissenting from that of administrators, is unlikely to be confused with speech on behalf the institution itself. A department or other unit that has lost confidence in its president, that dissents from a

11. Michael S. Roth, "The Neutral Turn," *Slate,* October 23, 2024, https://slate.com/life/2024/10/trump-college-presidents-politics-liberal-conservative.html.

12. "Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism," *Academe* 108 (Summer 2022): 70–73.

statement made on behalf of the university as a whole, or that has particular expertise on some policy choice being made by the university can make a distinctive contribution to shared governance, which the AAUP has long recognized as "inextricably linked" to academic freedom.[13]

At the same time, statements by departments are not without their potential dangers to academic freedom. In particular, the pressure dissenters might feel to conform to a collective view is likely to be far greater at the departmental level than at the institutional level. Departmental statements should thus be made in a manner that guards against this danger. Establishing procedures for making statements—such as bylaws that require anonymous voting—can reduce the pressure to conform, particularly among those members of the department who lack tenure or permanent employment. When a department speaks on matters less obviously connected to its disciplinary expertise or operations, the danger that faculty will be evaluated according to criteria unrelated to their disciplinary expertise—itself a violation of academic freedom and faculty governance responsibilities—grows more dire.

When, however, procedures and practices protective of academic freedom are established, a department's choice to weigh in on matters related to its operations or its scholarly expertise should not present a threat different in kind from that of any other choice it might make through democratic processes. Just as a department's expertise allows it to set the curriculum, requirements for the major, and standards for the hiring and promotion of faculty, so does that expertise justify public statements relevant to the department's operations and scholarly purview.

Financial Investments

No decision concerning a university's investment strategy counts as neutral. Whether a university accepts or rejects specific calls for divestment, whether it decides to maximize profits or to use its investments to advance other institutional priorities and values, it makes a substantive decision little different from its decision to issue a statement that reflects its values. As Janet Halley has recently observed, "Where the University both invokes a neutrality mandate and takes corporate action, the result will not be neutrality but non-transparency. Institutional neutrality could become institutional deception."[14]

The Kalven Report, unlike some of its more recent progeny, recognized institutional speech and divestment as interconnected issues; it called for a "heavy presumption against the university . . . modifying its corporate activities to foster social or political values, however compelling and appealing they may be." As with statements, an institution's choice to operate under such a presumption is not in itself a threat to academic freedom. Of course, the fact that the Kalven Report imposed a presumption rather than a ban itself suggests that decisions to divest are likewise not categorically incompatible with academic freedom. As the AAUP annual meeting resolved in 1970, universities bear "direct responsibility for the way in which invested income-bearing resources are managed." This includes responsibility not only for the social impact of their choices but also for their impact on academic freedom and inclusion within the university community—all of which should be transparently acknowledged and discussed through the processes of shared academic governance.

Campus Protest

As in previous times of protest, recent encampments have led many universities to impose new and stricter restrictions on expression on campus. These are often justified as "neutral" in two different ways: The restrictions are said to protect the university's ability to carry out its true mission, defined in alleged contrast to the politicized (that is, nonneutral) aims of protesters, and the restrictions themselves are framed (if not always applied) in a content-neutral manner.

To treat a university's mission as necessarily threatened by certain forms of protest is to assume that the mission does not include preparing students for democratic citizenship—for expression that takes the form of protest when discussion or deliberation fails to achieve just ends. Protest, of course, can take many forms, some of which are far more disruptive than others to a university's teaching and research activities and to its antidiscrimination and inclusion efforts. But it is hardly neutral to assume that protest is inherently inconsistent with the university's mission or that no level of political disruption can be permitted on

13. "On the Relationship of Faculty Governance to Academic Freedom."

14. Janet E. Halley, "Institutional Neutrality or Institutional Deception?," *Harvard Crimson*, February 27, 2024, https://www.thecrimson.com/column/council-on-academic-freedom-at-harvard/article/2024/2/27/halley-institutional-neutrality-deception/.

campus without thereby endangering the university's mission. These are substantive choices that should be discussed and decided in a manner that respects the faculty's primary role in academic governance.

Regulations limiting the time, place, and manner of expression are often justified by their neutrality in regard to the content of that expression. A prohibition on overnight encampments, for example, does not distinguish based on the cause that any individual encampment is meant to advance. But when these regulations are put in place in response to a particular protest movement, and especially when regulations are applied to different groups with unequal vigor, claims of neutrality become deceptive, if not hypocritical.

The content-neutrality of time, place, and manner restrictions can also mask the fact that the sheer amount of expression universities find necessary to prohibit is itself a value-laden choice. At public universities and private universities that commit to First Amendment principles, the Constitution requires that time, place, and manner restrictions, even when content-neutral, be narrowly drawn to leave open "ample alternative channels for communication."[15] Universities that regulate expression because of its time, place, or manner thus cannot avoid taking a stand on the question of what forms of expression count as adequate alternatives for those that the university chooses to prohibit.

Here, as with institutional and departmental statements and investment decisions, talk of neutrality can mask substantive choices, where the option deemed "neutral" requires justification no less than any other.

Conclusion

In this statement we have shown that the term *institutional neutrality* conceals more than it reveals. Contrary to the way in which the term is commonly understood, we have identified institutional neutrality in all of its varied meanings, none of them necessary or sufficient for academic freedom to flourish. A university's decision to speak, or not; to limit its departments or other units from speaking; to divest from investments that conflict with its mission; or to limit protest in order to promote other forms of speech are all choices that might either promote or inhibit academic freedom and thus must be made with an eye to those practical results, not to some empty conception of neutrality. The defense of academic freedom has never been a neutral act.

Academic freedom is best protected when the various choices that get lumped together and often obscured under the heading of institutional neutrality are made openly, through the procedures of shared governance. Decisions made through these procedures cannot guarantee all members of a university community the *outcomes* they champion. When the community articulates its mission, chooses policies to implement it, and makes statements and takes actions to advance it, there will always be dissent and disagreement. Faculty who dissent must be protected. The AAUP is always there to defend their academic freedom. But dissent is most effective under conditions in which faculty voices and principles of shared governance are respected. Fighting for academic freedom and shared governance has long been, and continues to be, the mission of the AAUP. ■

15. Clark v. Community for Creative Non-Violence, 468 US 288, 293 (1984).