THE VALUE OF INSTITUTIONAL NEUTRALITY FOR FREE INQUIRY

Keith E. Whittington*

INTRODUCTION

Over the course of the 1960s, protests roiled American college campuses. As Richard Nixon assumed the White House and responsibility for the Vietnam War and as a draft lottery was reinstituted, campuses exploded—sometimes literally. In April 1969, armed students seized control of the student union at Cornell University.[1] The next month a student protest at "People's Park" near the University of California at Berkeley degenerated into a riot.[2] Shortly afterward, members of the Students for a Democratic Society and the Student Afro-American Society occupied the administration building at Columbia University and briefly took a dean hostage.[3] That fall, members of the White Panther Party set off a series of bombs at the University of Michigan.[4] The next spring, four students were killed by National Guardsmen at an antiwar protest at Kent State University.[5] That summer, members of the Weather Underground set off a car bomb on the campus of the University of Wisconsin.[6] Similar, if less infamous, events took place across the country at campuses large and small.

Meanwhile, universities and their faculties were struggling over how to respond to the intense student activism. To be sure, some individual professors joined in with the student activists. But others demanded more than individual action. They demanded an institutional response. In November 1969, the Council of the American Association of University Professors confessed that it found itself divided on the question of whether institutions of higher education should remain neutral on the political and social controversies of the day. The division on the AAUP Council mirrored the divisions within the professoriate more generally. No doubt views on institutional neutrality were difficult to separate from views on student activism. A comprehensive survey of faculty attitudes conducted in 1969 found that half the faculty under the age

* David Boies Professor of Law and Director of Center for Academic Freedom and Free Speech, Yale Law School.

[1] DONALD A. DOWNS, CORNELL '69 (2012).

[2] MARC EDELMAN BOREN, STUDENT RESISTANCE 180–82 (2001).

[3] *Id.* at 174-75.

[4] *Panther by the Tail*, THE HISTORY OF THE UNIVERSITY OF MICHIGAN, https://historyofum.umich.edu/panther-by-the-tail/ (last visited May 15, 2025).

[5] Boren, *supra* note 2, at 187–88.

[6] JEREMY VARON, BRINGING THE WAR HOME 178 (2004).

of thirty expressed support for student activists. Less than a quarter of those over the age of fifty said the same.[7]

Universities, academic departments, and scholarly societies were inundated with demands that they take a stance on the Vietnam War and various other matters. One member of the AAUP Council complained about the "tyranny of the minority" "who may seek to immobilize the majority by denying them the right to adopt a collective position on a problem of grave moment."[8] The chair of a political science department thought that a resolution condemning the war by his faculty-student senate was improper but would as a practical matter make little difference, and so "I did not make the futile gesture of opposing this statement."[9] Another political scientist, some twenty years more junior, was at the vanguard in promoting such faculty resolutions and thrilled to the possibility that he was contributing "to the development of a revolutionary consciousness in America."[10] The outgoing president of Brandeis University thought that universities were at the heart of a "genuine revolution" sweeping the nation but tried to hold at bay those in the New Left who demanded that universities themselves become "a revolutionary force."[11] A university politicized in that way, he thought, "is a university doomed."[12]

The debates of the 1960s were left unsettled, though as a practical matter, numerous scholarly institutions did issue political statements. If the question of institutional neutrality died down along with American withdrawal from Vietnam, it was not laid to rest. Subsequent episodes of campus activism renewed the calls for universities to get off the sidelines and join the activists and renewed the debate over whether such actions would be appropriate.

The debate has taken on some new urgency now. It is not just the case that new social controversies are energizing political activism on college campuses, though there are. And it is not just that the professoriate is often in sympathy with the substantive political views of the campus activists, though they are. It is also the

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[7] EVERETT CARLL LADD, JR. & SEYMOUR MARTIN LIPSET, THE DIVIDED ACADEMY: PROFESSORS AND POLITICS 188 (1975). The student activism support scale was derived from a set of questions ranging from whether student demonstrations had a place on college campuses to whether students who disrupt campus should be expelled. *Id.* at 40.

[8] Donald N. Koster, *On Institutional Neutrality*, 56 AAUP BULLETIN 11, 12 (1970).

[9] Samuel Krislov, *The Obligation to Reject Engagement*, 56 AAUP BULLETIN 276, 276 (1970).

[10] Alan Wolfe, *A Summer Look at the Spring Events*, 56 AAUP BULLETIN 269, 272 (1970).

[11] Morris B. Abram, *Reflections on the University in the New Revolution*, 99 DAEDALUS 122, 124 (1970).

[12] *Id.*

case that new methods of organizing and communicating have transformed campus life just as it has transformed other aspects of society. In the spring of 1969, heated exchanges broke out in faculty senate chambers over whether resolutions denouncing the Vietnam War should be adopted, but when proponents of speaking out won those debates and secured their much-desired faculty resolution the victory was often quite fleeting. The appropriate notation would be made in the university records. Perhaps the student paper and alumni magazine would publicize what the faculty had said. And then, the solemn resolution of the faculty would disappear from public consciousness leaving barely a trace. Perhaps this is an example of a law sometimes attributed to Columbia political scientist Wallace Sayre: "the politics "the politics of the university are so intense because the stakes are so low."[13]

The stakes, at least for institutional political statements, might be somewhat higher now. Certainly, the potential audience is larger. Every university department, center, and program now come equipped with a website and a social media account. Institutional statements are now widely publicized and publicly archived. The same information technologies also lower the costs of coordinating political activities both for and against such institutional pronouncements. Momentum for adopting a resolution can build as sister institutions go on record themselves, and institutional statements can become newly controversial as they gain visibility to critics who might reside far beyond the campus gates.

My concern here is with the ways in which departing from a norm of institutional neutrality might damage the university's commitment to free inquiry and impinge on academic freedom. There is a separate concern, which I have developed elsewhere, that abandoning institutional neutrality also generates institutional risk. If scholarly institutions become, or are perceived to be, political partisans, they risk being treated as such. They will not be treated as part of a common inheritance of accumulated knowledge and a common resource of expertise and scholarly insight, but rather as allies of some political factions and foes of others. For an outside audience, institutional statements on political controversies may have little effect on shifting political opinion about the controversies themselves but might have more effect on shifting political opinion about the credibility and value of the institution.[14] However

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[13] Herbert Kaufman, *Communications: Letters to the Editor*, 10 PS 511, 511 (1977).

[14] *See* Keith E. Whittington, On Institutional Neutrality and the Purpose of a University 23 (Apr. 30, 2024) (unpublished manuscript), http://dx.doi.org/10.2139/ssrn.4801896.

departing However, departing from a norm of institutional neutrality might not only affect the attitudes of those outside the institution. It might also affect the behavior of scholars within these institutions of higher learning.

The Kalven Report produced at the University of Chicago relatively early in the turbulence of the Vietnam era has become a touchstone for subsequent debates over institutional neutrality.[15] It is frequently cited at the University of Chicago itself, though most universities have shied away from explicitly embracing the fairly stringent commitment to institutional neutrality that the Kalven Report has been understood to represent. The brief Kalven Report reads more as a declaration of principles than as an apologia for the university's position. I think the conclusion that the Kalven committee reached is largely correct, but that report does not tell us why we should agree.

In 1967, George W. Beadle, the president of the University of Chicago, appointed a faculty committee led by Harry Kalven Jr. Kalven was a well-regarded scholar of the First Amendment in the Chicago law school, and the committee included luminaries from across the Chicago campus. The committee was charged with the mission of preparing a statement on the university's "role in political and social action."[16] The report produced by the Kalven committee reaffirmed the longstanding policy of the University of Chicago to maintain institutional neutrality. One of the very first acts of Chicago's faculty was to adopt a resolution in 1899 declaring that, "the University, as such, does not appear as a disputant on either side upon any public question; and that the utterances which any professor may make in public are to be regarded as representing his own opinions only."[17] The 1899 resolution contended that neutrality at the institutional level was critical to preserving the freedom of speech of faculty at the individual level, and the Kalven Report endorsed that view. The Kalven Report did not make a big splash at the University of Chicago at the time. Kalven received more attention on campus for another committee he was chairing at the same time; that committee was examining the university's policies on student discipline, which students apparently found to be the more consequential issue.

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[15] Kalven Committee, *Report on the University's Role in Political and Social Action*, U. CHI. (Nov. 11, 1967), https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf.

[16] *Id.*

[17] William R. Harper, *The Thirty-Sixth Quarterly Statement of the President of the University: Freedom of Speech*, 5 U. Rec. 370, 376 (1901).

The Kalven committee came in response to the activities of the Students for a Democratic Society on the Chicago campus. The SDS had been protesting the university's connections to the Continental Illinois Bank. The university kept its accounts at the Bank, and several prominent officials of the bank sat on the university's board of trustees. The Continental Bank participated in a consortium of American banks that provided a revolving line of credit to the government of South Africa, and the SDS argued that the bank was contributing to propping up the racial apartheid regime of that country. But the issue had already spread well beyond that initial controversy by the time the Kalven committee reported back to Beadle, touching on questions ranging from which corporations should be allowed to send recruiters to campus to which prospective students should be admitted to the university.

The Kalven Report contended that the university's role in regard to social controversies was distinctly limited. "A good university, like Socrates, will be upsetting."[18] The university will undoubtedly create "discontent with the existing social arrangements," but it did so by being the "home and sponsor of critics."[19] The university "is not itself the critic."[20] The university as such should strive for a stance of institutional neutrality on the controversies of the day, even as members of the university community engaged as partisans on those controversies.

Significantly, the Kalven Report did qualify its endorsement of institutional neutrality. Universities must defend "the very mission of the university and its values of free inquiry," and universities would inevitably have to adopt positions on matters of public policy affecting the institutions themselves.[21] A university need not sit on the sidelines when governments are making decisions about land use policies, tax policies, or intellectual property that will have consequences for the university itself. More notably, universities have an obligation to stand up for intellectual freedom. Institutional neutrality is valuable not for its own sake but as a means for preserving a societal space for free inquiry. If government officials or social movements challenge principles of intellectual inquiry or threaten the ability of scholarly institutions to perform their role in advancing and disseminating knowledge, then those institutions and their leaders have a responsibility to do everything in their power to counter those threats. Institutional neutrality is a

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[18] Kalven Committee, *supra* note 9.
[19] *Id.*
[20] *Id.*
[21] *Id.*

means to an end, and university leaders must not become so focused on the means that they lose sight of the end.

I think this basic conclusion of the Kalven Report is correct. Adhering to a principle of institutional neutrality facilitates free inquiry by the scholars operating within these institutions.

I. THE RISK OF MISSION EROSION

At the very core of the mission of the university is the pursuit of truth and the advancement of human knowledge. How universities perform that mission is of great importance. Notably, modern universities seek to do that by sheltering within their walls a diverse array of scholars who individually examine claims, gather evidence, and develop arguments. The university as a corporate entity does not do that, and the faculty as a collective does not do that. Universities nurture a community of scholars who individually do that. Those individuals are united only in a limited sense of each being committed to the pursuit of knowledge through reasoned discourse.

The faculty as such are not called upon to reach collective judgments on substantive questions, and it would be a mistake if they were asked to do so. It is common for the press to report on scientific studies by reference to the university where the study was performed—the "Harvard study," "researchers at MIT," and the like. This is an understandable shorthand since the average news consumer will have heard of the university but not the researcher. However, this convention has the detrimental effect of casting a halo of borrowed prestige from the reputation of the institution over a single study by a single researcher and falsely implies that the university as a whole has endorsed the conclusions of a single study produced therein. As denizens of the campus, we should know that this is an error. The conclusions of any given study must necessarily be tentative for its analysis might be flawed. Moreover, it is wholly consistent with the pursuit of knowledge for a single university to employ experts who fiercely disagree with one another. If the English department has two Shakespeare scholars, they may fundamentally disagree over the proper interpretation of *Hamlet*. If the university has two labor economists, they may come to different conclusions about the effects of minimum wage policies on unemployment. If a law school has two constitutional scholars, they may have different views on the proper interpretation of the equal protection clause and may even have divergent views on how we ought to go about the process of

constitutional interpretation. We regard such internal disagreements as entirely compatible with the mission of the university because the mission is to allow such debates to take place in the hopes that the clashing of arguments will in time help illuminate the truth.

There are occasions when scholars are appropriately asked to come to common conclusions, but such endeavors are limited and voluntaristic. The social scientists Everett Carl Ladd and Seymour Martin Lipset might agree to conduct a survey of American academics for the Carnegie Commission on Higher Education and interpret its findings, but Ladd and Lipset could have parted ways if they had irreconcilable differences and other survey researchers were free to examine their data and offer competing interpretations.[22] The American Political Science Association might assemble a Committee on Political Parties to develop recommendations for fostering a more responsible party system, but individual members of the committee and subsequent scholars were free to dissent from the report's conclusions.[23] The White House might appoint a group of law professors to a Presidential Commission on the Supreme Court of the United States to examine potential reforms to the Court but those individuals need not have reached consensus and scholars outside the commission were free to criticize its conclusions.[24] For good reason, we do not ask Yale Law School to reach an agreement on possible judicial reforms or the political science department of Princeton University to issue a collective statement on possible reforms to American political parties. Those academic units are designed to support scholars investigating such questions, not to reach collective conclusions on the answers to those questions and certainly not to settle debates and foreclose future inquiries.

Even on substantive questions properly within the subject matter of an academic discipline, we do not require conformity on scholarly opinion about those questions. Academic disciplines are organized around ways of knowing, or

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[22] *See* LADD & LIPSET, *supra* note 1. For an example of contrary interpretation, *see* Robert A. McCaughey, *American University Teachers and Opposition to the Vietnam War: A Reconsideration*, 14 MINERVA 307, 307 (1976).

[23] *See Toward a More Responsible Two-Party System: A Report of the Committee on Political Parties*, 44 AM. POL. SCI. REV. 1 (1950). For an example of a later critique, *see* Evron M. Kirkpatrick, "*Toward a More Responsible Two-Party System*": *Political Science, Policy Science, or Pseudo-Science?,* 65 AM. POL. SCI. REV. 965 (1971).

[24] *See* PRESIDENTIAL COMM'N ON THE SUP. CT. OF THE U.S., FINAL REPORT (2021), https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf.

Wissenschaft,[25] not around a list of known facts. The facts that we think we now know are always only provisional. They must be left open to challenge and reassessment. We train young scholars to understand what we think we currently know. Their competence as experts depends, in part, on their ability to faithfully describe Newton's Third Law of Motion, or Darwin's theory of natural selection, or Duverger's law of political party formation, or Arrow's impossibility theorem and the evidence we have to support them. We require teachers to competently inform students about such laws and the weight of support behind them, but we do not require teachers to refrain from criticizing them or offering students alternative perspectives. A commitment to the pursuit of knowledge requires that we not insist that young scholars agree with or believe in such laws. The conventional wisdom might be mistaken or require qualification, and academia should be open to young scholars deploying established ways of knowing to upset established truisms. A healthy academic discipline should not have a party line to which its members must pledge fealty. The theoretical physicist Max Planck is credited with observing that scientific revolutions often progress one funeral at a time, since critics of new theories are often not themselves persuaded by the new ideas even if they are no longer able to persuade their colleagues of the acuity of their criticisms. Academia once had dogmas and enforced orthodoxies, and the mission of a university was once understood as being one of handing down eternal truths unsullied. The nineteenth-century revolution in higher education displaced that mission and substituted in its stead a commitment to advancing knowledge by forsaking dogmas and challenging orthodoxies. Modern universities are committed to free inquiry, not enforced belief. Academic disciplines as such do not issue pronouncements and do not quash dissenters, or at least they should not do so without sacrificing their very reason for being.

Institutional statements on social and political controversies subvert that mission. By their nature, such statements tend to entrench contingent political views and thereby undercut the free search for truth. Such statements attempt to resolve disagreement and express current belief. It memorializes transient opinions when universities should be resisting such temptations, recognizing that the strongly held views of the moment might not survive further examination in

[25] *See Wissenschaft*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/wissenschaft_n?tl=true&tab (last visited Jan. 11, 2024).

the future. If a scholarly institution puts a stake in the ground regarding some current beliefs, it undercuts the willingness and ability of scholars to revisit those beliefs and call them into question.

Universities should not post a sign saying, "in this house we believe . . . ." The university as an institution should abjure such statements of faith. That is not to say that universities must be nihilistic and believe nothing at all, but what they should believe in is a process not a result. Universities believe in the value of free inquiry, reasoned argument, and experimentation. They do not believe in the conclusions of any particular inquiry or turn aside those who would challenge such conclusions. By signaling that some political beliefs are sacrosanct at a scholarly institution, that institution turns away from its mission of refusing to hold up any beliefs as sacrosanct. In issuing political statements, the current faculty or university leadership attempt to settle controversies and embed a set of views into the foundation of the university. Such statements inevitably discourage further debate and dissent. If the faculty as a body has agreed to a resolution of some issue, it does not welcome those who would unsettle that decision. decision.. Collective pronouncements are intended to close the door on further investigation, not to invite additional disputation. That is not the proper mindset of an academic enterprise.

Even more bizarrely, the issuing of political statements by academic institutions elevates opinion over expertise. Political resolutions institutionalize non-expert opinion at the expense of expert judgment. Perhaps we think the content of such resolutions are just matters of preference, opinion, and taste and are not amenable to expert judgment. But universities should not traffic in matters of preference and taste. It is at best a departure from the institutional mission. At worst it is a betrayal of the mission. Universities should be fostering a belief that they promote deliberate judgment. If instead they are seen as elevating partisan political opinion they will be devaluing their greatest currency.

Not all political statements can be chalked up to matters of taste. There are in fact experts on a campus or in academia broadly with considered judgments regarding all manner of social and political controversy. Those judgments may ultimately prove to be right or wrong, but the expertise that academia develops contributes to the public good by providing the best available scholarly knowledge to assist the democratic

public and policymakers in reaching decisions about how to respond to political problems.[26] There are scholars who have dedicated their careers to studying matters of war and peace or criminology. What is gained by academic institutions elevating not those scholarly voices but the collective view of the faculty on the wisdom of military action or the best means to address mass shootings? To be sure as citizens in a democracy all the members of the campus community are entitled to have and to express their personal opinions on such matters of public concern. Those opinions are not scholarly judgments, however, and universities confuse the issue if they elevate collective opinions rather than scholarly judgments.

Take an example of a current political controversy about which some professors have expertise—legislative apportionment and political gerrymanders. Individual scholars are routinely called upon to lend their expertise to those who are drawing up legislative maps and to those who are litigating over the maps once they have been drawn. Those scholars do not primarily or directly offer their normative preferences about how legislative seats should be apportioned, but rather they offer their statistical and political expertise about how seats can be apportioned and what the consequences of alternative maps might be. As might be expected, individual scholars routinely appear on both sides of those disputes. The U.S. Supreme Court has particularly struggled to find a "judicially manageable standard" for determining "whether the particular gerrymander has gone too far" and has exceeded "the limits of [the legislature's] districting discretion."[27] Justice Anthony Kennedy once held out the hope that "new technologies may produce new methods of analysis that make more evident the precise nature of the burdens gerrymanders impose on the representational rights of voters and parties," which could "facilitate court efforts to identify and remedy the burdens, with judicial intervention limited by the derived standards."[28] Academics have rushed to produce those "new methods of analysis" that might guide legislators and judges.[29] This in turn has led legislatures to complain that judges must subscribe to the *Political Research Quarterly* and the *American Political Science Review* in order to

[26] *See also* ROBERT C. POST, DEMOCRACY, EXPERTISE, ACADEMIC FREEDOM (2012).
[27] Vieth v. Jubelirer, 541 U.S. 267, 291 (2004).
[28] *Id.* at 312–13.
[29] *Id.* at 313.

resolve cases.[30] Judges would be left trying to make sense of a "social-science stew" and "dueling 'social science' expert(s)," with each party choosing their own "favored social-science metric."[31] This social-science arms race infamously led Chief Justice John Roberts to challenge an attorney at oral argument to explain why judges should be asked to make rulings based on what "I can only describe as sociological gobbledygook" that the "intelligent man on the street is going to say [is] a bunch of baloney."[32]

Perhaps a faculty senate or a political science department might decide to help things along by formally adopting a resolution endorsing one of these competing metrics. What is supposed to be the status of such a resolution, and what does it add to the scientific or political process? The scholarly institution is not only attempting to elevate a particular set of conclusions as being uniquely authoritative, but it is also implicitly casting other conclusions and the scholars who endorse them into the outer darkness. If a new entrant into the gerrymander-metric wars emerges, has the scholarly institution effectively prejudged those conclusions as wrong? An institutional endorsement of a particular social-science answer attempts to artificially freeze the scientific process and establish as dogma one favored conclusion in a contested field.

Academics already contribute to this problem by joining in the production of open letters with large lists of signatories. If the goal of a letter or petition is to express weight in a political struggle, then numbers matter. The number of signatories on a petition matters in the same way that the number of individuals marching in the street or attending a rally or participating in a boat parade matters. It is the mass that is meaningful in certain kinds of political struggles. As an individual citizen, I can add my voice to that of the crowd, but my voice in that context is no louder nor more consequential than anyone else's. If, however, I am asked to sign a letter and identify myself with my academic title and affiliation, then presumably the purpose is to add something other than the equal weight of one more engaged citizen. The purpose is to lend scholarly credibility to the enterprise and to convey to the world that the letter does not

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[30] Brief for Appellants at 46, Gill v. Whitford, 585 U.S. 48 (2017) (No. 16-1161), 2017 WL 4325878.

[31] *Id.* at 46–47.

[32] Transcript of Oral Argument at 38, 40, *Gill*, 585 U.S. 48 (No. 16-1161).

merely reflect the personal opinion of a group of individuals but rather conveys the expert judgment of a group of relevant scholars. That message is not just watered down but becomes actively fraudulent when the signatories have no real expert credibility to lend.

On any given matter of public controversy, there are relatively few scholars with genuine and relevant expertise on the subject. Universities should be able to offer up those experts to those who want to be better informed about the matter at hand. Letters signed by dozens or hundreds of professors, however, are no longer offering informed scholarly judgment. They are offering up political opinion under the guise of informed scholarly judgment. Such efforts drown out and obscure genuine expertise and devalue the scholarly enterprise and what it can contribute to democratic politics. There may literally be only a handful of genuine experts on a given question of political interest. A collective letter by that handful should have weight not because of how many signatories there are but because of who those signatories are and the credibility that they have as a consequence of their previous scholarly work on that question. Opening such a letter to dozens, hundreds, or thousands of additional signatories changes the very nature of the letter and what it should be contributing to public discourse. A letter signed by thousands of academics on nearly any question should have no more weight in democratic politics than a letter signed by thousands of plumbers. If scholars are to speak with authority about matters of public concern, they must stick to those topics on which they can speak with authority and refrain from speaking out *as professors* on other topics.

Universities do the same thing when they speak in an institutional voice about matters of public concern. Such institutional speech drowns out and obscures genuine scholarly speech. It posits that hundreds of non-expert professors should be weighed in the balance against a handful of expert professors when the opinion of non-expert professors *speaking as professors* should have no weight at all. They should have a hearing in a democratic arena in the same way and to the same degree as any other citizen of the community should have a hearing. But when professors seize the megaphone of a scholarly institution in order to shout out their merely personal opinions, they do a disservice to both the profession and the polity. They attempt to overawe ordinary citizens and lay claim to an authority that they have neither earned nor deserve.

On many matters of public concern, the hazard of institutional speech is even more serious than one of misplaced or exaggerated authority. Imagine, for example, that a faculty senate votes on and issues a statement condemning or endorsing a military venture. Every member of that faculty senate has an equal vote in that process and carries equal weight in determining whether such a statement will be issued. But suppose further that there are actual experts on that topic on the faculty but that their views are in the minority among the faculty as a whole. The university in such a case would be in the very odd position of overriding the judgment of the actual scholarly experts in order to elevate the judgment of those with non-expert opinions. Why should academic institutions ever risk being in such a position?

Or imagine instead that an academic department claims the right to deplatform an invited speaker on the grounds that such a speaker is not qualified to speak on a topic at an institution of higher education, as a group of faculty did when Northwestern University professor Laura Kipnis was slated to speak at Wellesley College.[33] One kind of argument that has been advanced in the campus free speech context for barring outside speakers is a strong claim that universities should only host genuine scholarly experts speaking on their topics of expertise because otherwise universities might become complicit in spreading misinformation. An academic institution should tolerate only academic freedom and not free speech on its campus. Set aside the question of whether this is an attractive model for a modern university to follow or whether such a policy could be expected to be applied in a principled and consistent fashion. The pronouncement at Wellesley begged the question of who was authorized to evaluate such claims of scholarly qualification. Should the political science faculty be consulted on whether speakers scheduled to discuss political topics in humanities departments should be allowed to go forward? Should the Commission on Ethnicity, Race and Equity be able to determine whether a tenured feminist professor of film studies has the appropriate credentials to speak to an audience on a university campus about her experience with university Title IX

[33] KEITH E. WHITTINGTON, SPEAK FREELY: WHY UNIVERSITIES MUST DEFEND FREE SPEECH 134–37 (Princeton, N.J.: Princeton University Press, 2018); LADD & LIPSET, supra note 1, at 215–18.

policies and administration? Claims of authority are not the same as actual authority.

The contradictions can become even more stark. If universities are to abandon a norm of institutional neutrality and adopt political positions, who is to make such decisions about whether and how to speak in the institutional voice? The faculty often assume it is they who will command the stage when debating such resolutions, but why should that be the case? Consider particularly the problem of institutional speech by subunits of the university, most notably the academic departments. Who is entitled to speak for the department on matters of social controversy?

Quite plausibly departments should only be able to issue political statements on behalf of the department when there is consensus among *all members of the department* for doing so. The students and the staff should not be impressed into issuing a statement made on their behalf without being consulted. For purposes of taking political stances, the staff of a department are just as much citizens with political views as any member of the faculty. They have a quite limited role within an academic department as a professional scholarly entity. But they should be regarded as equals to any member of the faculty for purposes of speaking in public as a citizen about matters of public concern. There is simply no justification for the faculty to issue political statements in the name of the staff. The faculty need not consult with the staff on which courses to offer or which professors to hire or what the requirements for obtaining a doctoral degree should be, but there is no comparable professional reason why the faculty should be able to ignore the views and preferences of the staff when it comes to issuing political statements in the name of the "department." If academic departments are to be treated as a political club as well as a professional scholarly enterprise, then every member of the club should be consulted about the club's political pronouncements.

If we accept the principle that every member of the departmental community is implicated by any statements issued in the name of the department and that every individual should stand as an equal when acting in their political capacity as citizens, then statements should only be issued if every member of the departmental community is equally accounted for in the decision-making process. If we then also accept something short of unanimity as the decision rule for issuing statements, then it will be the case that *the entire faculty of the department* could find

itself in the minority and in a dissenting position when the department issues statements on political matters. If we adopt such a policy allowing departments to issue political statements, then we should recognize and make explicit the possibility that the undergraduate majors in a department could simply outvote the other members of the department and issue political statements in the name of the department that the undergraduates alone wish to issue. If members of the faculty find that prospect unattractive, then perhaps they should think further on why they might be comfortable with overriding the dissenting views of the students, staff, or some members of the faculty when issuing statements purportedly in the name of the department. If members of the faculty think that institutional statements made in the name of the department but through the weight of the votes of the undergraduate students devalue the reputation of the department, then perhaps they should likewise consider whether academic institutions issuing public statements through the weight of non-expert professors would likewise devalue the reputation of the scholarly institution. The situation is unlikely to be improved if we empower some other set of actors within the university to speak in an institutional voice. The faculty will no more appreciate the board of trustees or the university president speaking on their behalf on matters of public concern. Indeed, the faculty would not be happy if they were dragooned into a statement written and agreed to solely by a committee of genuine scholarly experts on campus on a matter of social controversy.

Scholarly institutions that seek to take positions on matters of social and political controversy have altered their core mission and have done so in a way that will do damage to that mission. Rather than being a forum within which scholarly controversies rage, the university will position itself as a judge of those controversies. Rather than playing host to ongoing scholarly disagreements, the university will attempt to authoritatively settle those disagreements. Rather than privileging the process of scholarly disputation, the university will come to privilege a set of particular scholarly findings and conclusions. Rather than elevating expertise to better inform the polity, the university will exalt non-expert opinion in the hopes of influencing the polity. Institutional statements risk subverting the university's commitment to free inquiry into difficult and controversial subjects.

II. THE RISK TO ACADEMIC FREEDOM

Institutional political statements risk an even more direct infringement of individual academic freedom. The risk here is probably greater in the case of departmental statements than in the case of statements on behalf of the university as a whole, but even the latter carries some danger that it will chill the speech of individual members of the faculty.

It is a longstanding feature of academic freedom principles that professors should be evaluated solely on the basis of their professional and scholarly qualifications and not on the basis of their private political opinions or activities. The firewall between professional qualifications and private politics is critical to protecting individual professors from professional sanctions for holding unorthodox or controversial personal opinions and for protecting institutions from being held responsible for the private opinions and activities of members of the faculty. In 2011, the American Association of University Professors recognized that the rise of new forms of media had elevated the salience of the personal political opinions and expression of individual members of the faculty. Those developments had put new pressures on longstanding principles of academic freedom. As that report emphasized, "the fundamental principle is that all academic personnel decisions, including new appointments and renewal of existing appointments, should rest on considerations that demonstrably pertain to the effective performance of the academic's professional responsibilities."[34] The intrusion of political considerations into academic decision-making compromises the ability of universities to contribute to the public good by contributing to the public sphere scholarly judgments untainted by political pressures. The threat of such inappropriate interference with professional judgments can come as readily from "politically motivated academics" as it can from "private corporations and public officials."[35] Social media has made it easy for colleagues, deans, and trustees to discover whether a particular scholar is a socialist or what their views on Israel or abortion might be. The fact that such information is known does not mean it should factor into professional decisions. Even if that information is known, it should be deemed irrelevant. Whether

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[34] *Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions*, AAUP.ORG (2011), https://www.aaup.org/file/EnsuringAcademicFreedomFINALExecSumm.pdf.

[35] AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, POLICY DOCUMENTS AND REPORTS, 33 (11th ed. 2015).

or not a professor is a socialist, a Zionist, or pro-choice should have no bearing on whether that professor is hired or promoted by a university.

Early in the twentieth century, the German sociologist Max Weber called attention to these dangers when universities were struggling to maintain their autonomy from political forces. The public interest on which the autonomy of the universities rested, he thought, depended on the ability of professors to think freely and speak independently of social and political pressures. "Society as a whole has no interest in guaranteeing the permanent tenure of a professorial corps which has been carefully screened to determine that its political views are unexceptional."[36]

Professors are quick to recognize the truth in Weber's statement when the ideological screening of the professoriate is being done by political officials or trustees. They are slower to admit its truth when the ideological screening is done by the incumbent members of the professoriate itself. But if it would be damaging to the public good for the governor of Florida to screen state university professors for their political conformity, it would be equally bad for the faculty of the law school to impose such a screen themselves—even if the political conformity that such a screen would create would differ depending on who deployed it. Weber contended, "'The freedom of science, scholarship and teaching' in a university certainly does not exist where appointment to a teaching post is made dependent on the possession—or simulation—of a point of view which is 'acceptable in the highest circles' of church and state."[37] Things are not improved if a potential faculty member must simulate the political perspectives of the existing members of the faculty rather than the highest circles of church and state. Faculties should not "function as deputies on behalf of the political police," even if the political police are not the ones currently reigning in the state capitol.[38] It is a disservice to the greater public if scholars must pass through a screen to ensure that their political views are acceptable to those in power.

If departments make a practice of issuing political statements, then it will necessarily be the case that the political opinion of current and future members of the department will be

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[36] Max Weber, *The Power of the State and the Dignity of the Academic Calling in Imperial Germany*, 11 MINERVA 571, 589 (1973).
[37] *Id.*
[38] *Id.* at 590.

viewed as professionally relevant. Issuing political statements would officially become part of an "academic's professional responsibilities."[39] Those political opinions may or may not be dispositive in any given case, but the firewall between professional qualifications and private political views will have been breached. What were previously regarded as private political views of no consequence to departmental affairs will now become a legitimate professional qualification with consequences on departmental decision-making. If a department has a commitment regarding, for example, the status of Palestinians in Israel, then whether a potential faculty member shares those political values and would bolster the department's existing political commitments would potentially become a relevant consideration in hiring and promotion decisions. Would it be possible, further, to appoint a current member of the faculty to serve as department chair if that individual dissents from the department's collective views about contested political issues of the day? Ideally, it should make no difference whatsoever what a department chair's political opinions might be, but without a norm of institutional neutrality such views might be regarded as quite important. A department would no longer simply be an organization dedicated to a scholarly enterprise. It would now be a political club as well, and political clubs must necessarily behave differently than scholarly organizations and police the political activities of their members. We might think that a department would still prioritize traditional professional criteria in making judgments on who should gain membership into the department, but there is no particular reason to think that feelings will run stronger and deeper on matters of scholarly interest than on matters of political interest. The tail could easily wind up wagging the dog. The personal will become the professional.

If departments are empowered to issue political statements on the basis of something less than unanimity, the problems of compelled speech become quite serious. Any decision or rule that allows for lesser majorities to issue statements will necessarily result in the department issuing political statements in the name of and on behalf of individual department members who do not share the views expressed in the statement. Allowing for dissenting statements is not an adequate remedy for this problem. If there are dissenting voices

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[39] *Infra* note 35.

in the department, it makes no sense for the department to be able to take a political stance *as a department*. Dissents will be ignored and subsumed by the departmental statement. At best, a department could issue a statement for and in the name of the majority of the department, with a minority statement getting explicit and equal billing. Of course, once such political statements are recharacterized as statements of a majority rather than statements of the department qua department, then it no longer makes sense to allow departments to issue statements at all. Individual members of a department are already free in their private capacity to generate collective statements that include any individual willing to sign on to the statement. The only purpose of a departmental statement rule is to allow departmental majorities to co-opt the reputation and status of dissenting individuals who would have refused to join a collective statement voluntarily. There is no justifiable reason for the department to be able to speak *in the department's name* on contested political matters when members of the department disagree with the opinion being expressed.

The constitutional principles around compelled speech should call to our attention a further problem, which is that individuals should have the right not to speak at all. The government infringes on the autonomy of individuals if it requires them to endorse political orthodoxies with which they do not agree, but it likewise fails to respect the dignity of individuals if it forces them to speak when they would prefer to remain silent. The U.S. Supreme Court first articulated a rule against compelled speech when public school officials required students to recite the Pledge of Allegiance during World War II. The Court in that case sang the praises of an American "freedom to be intellectually and spiritually diverse."[40] "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[41] If public school children of the Jehovah's Witness faith wished to decline to pledge fealty to any nation, that was their right. When the Court was later called upon to say whether drivers in New Hampshire could blot out the State's motto of "live free or die" on the license plates that they were required to display in order to drive on public roads, the Court began "with the proposition

[40] W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 641 (1943).
[41] *Id.*

that the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all."[42]

State universities are legally bound by such First Amendment principles, but even private universities in the United States should generally recognize the same principle against compelled speech in their own operations. If an academic department issues a political statement in the name of the department, then it has effectively forced all individuals in the department to implicitly join that statement. If the only out from that implicit endorsement is for individuals to file a dissenting statement of their own, then the department has effectively denied individuals the "right to refrain from speaking at all."[43] If the departmental majority wishes to express a departmental view about, for example, the American military action in Iraq, the only options that would be left to a dissenting faculty member would be either to make plain their dissenting view by speaking or to remain silent and allow the departmental colleagues to speak on that dissenting faculty member's behalf. Either way, the department would be compelling speech from each and every member of the faculty. There is no reason why surrendering the right to choose what to say on political issues and the right to choose not to say anything at all on particular political issues should be a condition of employment in a university. A small set of private religious institutions might require such a statement of faith from members of its faculty, but we generally recognize that such requirements are antithetical to the core principles and self-conception of most modern American universities.

Abandoning the norm of institutional neutrality and adopting a practice of issuing political statements is troubling for the freedom of speech of individual members of the faculty, even if unanimity was accepted as the rule for issuing such statements. Making the issuing of political statements a formal part of a department's official activities would set up a situation in which lobbying and pressuring individual members of the department to engage in political speech that they would prefer not to engage in would become a routine feature of university life. There is no good reason why professors employed by the university should have to endure such lobbying campaigns as part of their employment. Professors join the university faculty to engage in scholarly activities, not to be political activists. A departmental

[42] Wooley v. Maynard, 430 U.S. 705, 714 (1977).
[43] *Id.*

statement policy will force faculty members who simply want to do their scholarly work to also have to affirmatively resist colleagues' demands to engage in political activism.

Of course, not everyone is well-positioned to resist such lobbying campaigns. A chaired full professor might well be comfortable as the lone holdout on a departmental political statement. An untenured assistant professor, however, holding out or even joining a dissenting minority would be in a far more disconcerting situation. If the tenured faculty in a department, or even just the tenured faculty in a subfield, felt strongly that a political statement should be issued by the department, it would require an untenured assistant professor in that subfield to have unusual courage to refuse to sign on to such a statement. Indeed, junior faculty might find themselves cross-pressured by competing factions holding divergent political views. If the members of the senior faculty are raging over whether the department should condemn American entry into a war, the members of the junior faculty have no safe haven. When the department itself is not politically neutral, the untenured members of the faculty cannot choose to be politically neutral either. Assistant professors will find themselves having to say which side they are on, even if the result is that they will have earned the enmity of some of their senior colleagues. Of course, such conflicts can arise over ordinary matters of departmental policy or hiring, but it seems inappropriate to create such a conflict in a context in which it could be easily avoided. Junior faculty should not be forced to compromise their personal political views in order to stay in the good graces of the senior faculty who will control their professional future, and they should not have to fear that their professional future will depend on whether they hold or are willing to express particular political views.

Abandoning a norm of institutional neutrality would convert what would previously have been regarded as purely private and personal political opinions into something that could be regarded as professionally relevant and that should therefore be factored into personnel evaluation decisions. Unfortunately, the extramural utterances of current and potential members of the faculty might sometimes influence hiring and promotion decisions in any case, but traditional academic freedom principles indicate that such conduct would be wholly inappropriate. If the expression of political opinions is no longer merely an extramural, private matter but is instead an aspect of

the professional speech and conduct of a member of the faculty acting on institutional business, then political opinions can no longer be reasonably ruled out of bounds in hiring and promotion decisions. Potential colleagues would be entitled to know whether the addition of a new faculty member would lead to changes in departmental policy not only on such questions as what the requirements of the degree program should be but also on such questions as whether American foreign or domestic policy is being properly conducted.

Moreover, if it is part of the routine business of a university for the faculty to issue political statements, then not only will faculty colleagues have a legitimate professional interest in the personal political opinions of every member of the faculty, but so will university officials, trustees, and even legislatures. If the job of a university professor includes having views on whether chants of "From the River to the Sea" is a call to violence, then they should be evaluated accordingly—and university trustees should reasonably dismiss professors who might commit the institution to the wrong position on such political questions. It will no longer be viable to wall off such opinions as merely personal and private and of no proper concern to university authorities.

If commenting on social and political controversies is part of the job description of members of the faculty and can appropriately be done through the instruments of university decision-making, then it will necessarily put pressure on those who might dissent from the majority sentiment of the university or the department. There will be pressure on members of the faculty to fall in line with and conform to the views of the majority of the faculty. In some cases that pressure might even rise to the level of fear of retaliation. If a university president or a department chair has spoken in their institutional capacity on political controversies, it is not unreasonable for a member of the faculty to worry that their professional prospects will be negatively affected if they are seen as contradicting the institution's apparent political commitments. A university that simultaneously says that professors should enjoy full freedom to speak in public as citizens on matters of public concern but also adopts procedures for issuing institutional statements on those same issues will have the strength of its former commitment questioned. Whether real or apparent, the political minority will come to view the institution as a hostile working environment in which they would be well advised to keep their own personal

political opinions to themselves. Indeed, prospective students and faculty will receive the signal that the institution is officially hostile to and unwelcoming of people with their personal political views. They would recognize that they should either avoid those institutions entirely or accept that they will be regarded as subalterns.

Institutions of higher education should not be signaling that some members of the campus community do not belong there. Justice Sandra Day O'Connor advocated for an understanding of the Establishment Clause of the First Amendment of the U.S. Constitution that emphasized government endorsement of religion. As she put it, "endorsement sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the community."[44] Official endorsement of political creeds has the same potential effect as official endorsement of religious creeds. An academic department should no more endorse political messages than it should festoon the department office with religious symbols or hang political banners over the departmental reception desk. If an academic department were to issue political statements, there is no reason for students or others to imagine that the political proclivities of departmental faculty will only manifest themselves in some parts of their professional activities but not in others. Many students already believe that professors are hostile to some political viewpoints, and allow their own political preferences to slant their teaching and grading. It will be more difficult to reassure students that professors understand that it would be professionally inappropriate to allow their personal politics to creep into their teaching duties if professors demonstrate that they believe that there is no divide to be maintained between their personal and professional activities. Students would have a reasonable fear that professors will treat students differently depending on their politics if those same professors use the university as their personal political platform.

To take a very extreme case, consider the situation of Northwestern University electrical engineering professor Arthur Butz. In 1976, Butz published a book arguing that the Holocaust was a hoax.[45] The university refused to fire or sanction Butz for publicizing such views on the grounds that they were fully

[44] Lynch v. Donnelly, 465 U.S. 668, 688 (1984).
[45] ARTHUR R. BUTZ, THE HOAX OF THE TWENTIETH CENTURY (1975).

protected expressions of his personal political opinion, an instance of extramural speech that was as protected in his case as it was for any other professor on the campus. Butz continued to express such views periodically, and on one such occasion, President Henry S. Bienen of Northwestern issued a statement affirming Butz's freedom to hold and express such views.

> Butz is a tenured associate professor in electrical engineering. Like all faculty members, he is entitled to express his personal views, including on his personal web pages, as long as he does not represent such opinions as the views of the University. Butz has made clear that his opinions are his own and at no time has he discussed those views in class or made them part of his class curriculum. Therefore, we cannot take action based on the content of what Butz says regarding the Holocaust—however odious it may be—without undermining the vital principle of intellectual freedom that all academic institutions serve to protect.[46]

Imagine, however, that Butz was not alone. Perhaps he kept his political views well concealed but aggressively recruited other engineering professors who shared them. One day he realized that a majority of his electrical engineering colleagues were also Holocaust deniers. If Northwestern University adhered to a strict policy of institutional neutrality regarding matters of political controversy, Butz and his friends would be limited to expressing their views on their personal web pages and through obscure conspiracy-mongering publishing houses. If the university instead authorized its faculty to issue formal political statements as a department, then Butz would be well positioned to transmute his personal political views into official departmental statements. Bienen would no longer be able to say that Butz expressed only his personal views and did not represent the views of the university. Butz's views would in fact be the views of the university, or at least of the electrical engineering department. Under such circumstances, professors, staff members, and graduate and undergraduate students would be confronted with the decision of whether or not they wanted to associate themselves with a department committed to Holocaust

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[46] *University Senate Meeting*, NW. U. (Nov. 9, 2006), https://www.northwestern.edu/faculty-senate/documents/faculty-assembly/SenateAgenda_Nov_9_06.pdf.

denial. Moreover, those colleagues and students would have good reason to believe that they were now outsiders and no longer full members of the departmental community. A university president faced with such a problem would likewise have to decide whether it would now become necessary to fire members of the faculty who held the wrong political views. In the confrontation between a policy allowing faculty members to hold extremist political views and a policy allowing faculty members to express such views through institutional instruments, one or the other would have to give.

Butz's views were, of course, extreme, and as a result he was unlikely to ever find himself surrounded by similarly minded faculty colleagues. But the divide between insiders and outsiders that Butz could create if he were able to commandeer the official organs of the department would be just as real if his particular politics were less of an outlier. Academic departments would create similar divides if they were likewise free to issue statements endorsing the American invasion of Afghanistan, the legal prohibition of abortion, or the desirability of prohibiting all immigration into the United States. Professors who found themselves on the wrong side of those departmental votes, and students who were informed of such votes, would quite reasonably consider themselves strangers in a strange land and would question whether they should remain associated with such a campus community. Institutional neutrality pushes politics into the private sphere in order to build and maintain a professional community dedicated to scholarly ends and sharing scholarly commitments. Abandoning such neutrality will instead invite fissures and schisms over politics. In a diverse campus community, such an invitation to struggle will at best be a distraction and at worse be bedlam.

In the nineteenth-century, advice manuals were produced to help guide young individuals who would be seeking to make their way in a professional world increasingly dominated by employment rather than independent farming or artisanship. The ambitious young gentleman or lady must learn how to "do the right thing at the right time in various important positions in life."[47] Rules of etiquette must be understood and adhered to if one were to "be self-possessed and free from embarrassment."[48]

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[47] THOMAS E. HILL, HILL'S MANUAL OF SOCIAL AND BUSINESS FORMS 5 (Chicago: Hill Standard Book Co., 28th ed. 1881).
[48] *Id.* at 7.

One of the foremost rules of etiquette was understood to be this one:

> Do not discuss politics or religion in general company. You probably would not convert your opponent, and he will not convert you. To discuss those topics is to arouse feeling without any good result.[49]

Such nineteenth-century etiquette books were particularly valuable in a world of great diversity. America in the Gilded Age was riven by intense partisan polarization and unprecedented ethnic and religious diversity. Knowing how to navigate a world of such diversity was essential. Cultural competence meant recognizing that talking about politics or religion in mixed company was unlikely to end well and was best avoided if business and social affairs were to be conducted without unnecessary animosity.

This is still good advice. But the advice is too easily forgotten when we imagine that we are not in fact operating in "general company." If we instead assume that all of our colleagues share our political and religious views, then of course openly discussing such topics might not "arouse feeling without any good result." Talking about politics might be as innocuous as talking about the weather if politics is not taken seriously or if we can count on the company we keep as not being very diverse. It seems doubtful that many members of the professoriate would be unbothered if scholarly institutions abandoned the norm of institutional neutrality relative to religious opinions. If academic departments or universities spoke with their institutional voice on the important value of being born again through having a personal relationship with Jesus Christ, professors would appropriately be appalled. They would immediately see that it would be wrong for institutional leaders or a majority of the faculty to convert the institutions of free scholarly inquiry into vehicles for the expression of personal beliefs. It is easier to quiet such concerns if the beliefs in question are more widely held and the dissenters are less apparent or less numerous. Given the political composition of the American professoriate, it becomes effortless to suppose that all right-thinking individuals will share the same opinions about matters of public controversy and that scholarly institutions can speak with one voice about such

[49] *Id.* at 147.

controversies. It would be effortless to suppose so, but it would be inimical to free inquiry to act on such a supposition. Professors may choose to speak with one another about religion and politics, but they should not wish that academic institutions will speak on such matters.

III. FROM THOUGHT TO ACTION

Institutional neutrality has been a point of contention around universities and around academic units within universities. Increasingly, however, other scholarly bodies are also being called upon to enter the political fray. Scholarly associations and journals are similarly pressed to abandon a posture of political neutrality and resolve to commit themselves to a particular political point of view. The prospect of a politically engaged scholarly association or scholarly journal has perhaps highlighted the question of what such engagement entails in practice. If a scholarly institution were to take a stand on a contested political issue, what, if anything, should follow from that?

This question has also arisen in the context of universities. Many of the recent debates about institutional neutrality have centered around the issuing of political statements. Who should control the university's megaphone and what can that megaphone be used to say? But once the university resolves to adopt a political posture, actions might be understood to follow from that resolution. If an institution is serious about its political commitments, then it should act on them and not just talk about them. Of course, one kind of action is excluding potential students or professors who disagree with the institution's political commitments. The institution might not only worry that dissenting colleagues could eventually change the institution's political commitments, but they might also wonder why they should provide a platform to colleagues who disagree with the institution's political commitments. If the institution is not a neutral vehicle for scholars of many views but is instead a vehicle for expounding particular political commitments, then it is counterproductive to tolerate those who might counter the message.

Exclusion of dissenters and suppression of dissent is the most obvious thing to do if an institution is a committed partisan rather than a neutral platform. Universities routinely resist the call to purge the campus of political dissenters on the grounds that the university is the home to many diverse voices. The

university does not endorse any of those voices, and none of those voices speaks for the university. A professor who expresses a controversial political opinion speaks for himself alone. Likewise, a controversial speaker who is brought to campus is not endorsed by the university that hosts him. The university has no one message to convey, and thus it tolerates the exhibition of many messages on its campus. It is the marketplace of ideas, not the purveyor of one idea. If the institution instead becomes an advocate rather than a forum, then there is less reason to tolerate counterprogramming to its favored message. It can no longer distinguish its own voice from the voice of those who speak on campus because now it has become the messenger for delivering a particular point of view. A diversity of voices only muddles the message the university has resolved to communicate. If the university as an institution knows the right answer to any particular political or social question, then it can only breed confusion if it allows on campus those who express the wrong answer to those questions. If the university has a dogma, then it need not tolerate heretics.

Other potential actions are less obvious but are also sometimes thought to follow from an institution committing itself to a particular political position. If the university as an institution has normative views and believes that some things are wrong, should it not take steps to actively advance those views and stamp out those things that are wrong? If it has a political position, should it not act in ways that are consistent with that position?

Divestment and disassociation are often thought to be the logical next step after political commitment. The Kalven Report itself was spurred by such a demand. The university might divest from disfavored enterprises and cease doing business with entities engaged in activities of which the university disapproves. It might disassociate itself from organizations that violate its political conscience. The university could, for example, refuse to invest its endowment in socially disfavored stocks, refuse to place deposits in banks that do business with disfavored nations, refuse to give offices on campus to individuals whom the university disfavors, refuse to accept funds from disfavored entities, and/or banish organizations from campus of which the university disapproves.

There might be policy reasons for objecting to a university barring from its campus Reserve Officers' Training Corps (ROTC) programs or Students for Justice in Palestine; or

investing the endowment only in socially conscious financial instruments or refusing to do business with companies owned or managed by individuals with disfavored political views. The merits or demerits of such policies are beyond my concern except for in one particular—whether they affect free inquiry—and in some cases, they do.

Within the university, such decisions regarding disassociation might affect both teaching and research. It is a core tenet of American academic freedom that, in accord with their own professional judgment, professors should be able to expose students to controversial material germane to the subject matter of the course that is being taught. The university should neither censor what materials are introduced to students nor sanction professors for bringing students into contact with such materials. One kind of "course material" that professors routinely use in their teaching is human beings, in the form of guest lecturers or visitors to a class. Instructors make use of guests to elaborate on or defend views that the professor might not share, to expose students to experiences or perspectives that they might not otherwise encounter, or to provide students with the benefit of specialized knowledge or expertise that would otherwise be hard to communicate. It is not hard to imagine such guests being controversial or for a demand that the university disassociate from some organizations or viewpoints to affect the use of such guests. It is already the case that student activists have disrupted classes in which disfavored individuals, such as employees of the Department of Homeland Security, have appeared. Students have objected to the presence on campus of visitors with disfavored views or ties, such as employees of fossil fuel companies. Professors have been brought up on disciplinary charges for inviting to a class a guest speaker with controversial views or past, such as a white nationalist. Outside activists have protested when professors have brought to class a guest speaker some regard as offensive, such as a drag queen or porn actress. Professors have demanded that scholars associated with the Israeli government not be allowed to speak on American college campuses. Assuming such speakers are germane to the subject matter of the class and presented within a context of critical inquiry rather than indoctrination, it is within the academic freedom of individual members of the faculty to make use of them, just as it would be within a professor's authority to assign works written by them or speeches recorded by them. A strong disassociation policy could require university interference with

how professors choose to teach their classes by restricting what guests they are allowed to use.

Scholarly activities on a campus can also be affected by such efforts at disassociation following a university's political commitment. In a modern university context, visiting fellows and speakers are routine features of the intellectual environment. Universities authorize members of the faculty or units of the university to extend such invitations at their own discretion. If a university were to interfere with such decisions because a member of the faculty or an established academic unit has invited a speaker of which university administrators disapprove, it would be intruding into scholarly affairs entrusted to the faculty. Such a form of interference with the faculty was not anticipated by the Statement on Academic Freedom and Tenure. When it spoke of "freedom of research," it was focused more narrowly on the production and publication of scholarly research.[50] After all, as the AAUP said in its 1915 Declaration, the "freedom of inquiry and research . . . is almost everywhere so safeguarded that the dangers of its infringement are slight."[51] The professor needed only the freedom to "pursue his investigations [and] declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion."[52] When, however, a dean or university president refuses to allow the faculty director of a scholarly center to invite a visitor to campus or sanctions a faculty member for having awarded a fellowship to a controversial scholar, it is an improper interference with the scholarly activities of the faculty at the university. Such efforts to exclude visitors from campus not only affect the freedom of teaching, they also affect the "unlimited freedom to pursue inquiry [that] is the breath in the nostrils of all scientific activity."[53] Modern academic inquiry requires not merely that professors be left alone to read their books and conduct their experiments but also that they be allowed to collaborate with colleagues and engage in scholarly exchange. Scholarly inquiry is a collective enterprise, and universities infringe on the pursuit of knowledge if they impose limits on how members of their faculty interact with others.

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[50] AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, POLICY DOCUMENTS AND REPORTS, xvii (11th ed. 2015).
[51] *Id.* at 4.
[52] *Id.* at 7.
[53] *Id.*

Scholarly research also requires resources, and universities can suppress research indirectly even if they eschew suppressing it directly. Political posturing by universities can lead to demands that they restrict funding sources that members of the faculty might use to pursue their research. If a university wishes to disassociate itself from the fossil fuel industry, then scientific research on campus sponsored by that industry might be hampered or cut off entirely. If a university is politically hostile to some funding sources, then scholarly activity that depends on those sources might be restricted. However, money is fungible, unlike people. It is at least theoretically possible for a university to replace funds that it has cut off and make a researcher whole. In practice, universities might struggle to do so or simply be disinclined to do so. It matters little whether the university has particular views about the specific content of the research that is affected by such decisions. Closing off access to funds from fossil fuel companies might affect research on green energy, and the university might only care about the source of funds and not the use that is made of those funds. But whether the university has a positive desire to prevent some research or whether it has allowed its political commitments to create barriers to some research, the effect on free inquiry by the faculty is the same. Some would go further, and demand that universities establish "Ethics and Society Review Boards" that would strangle research in its cradle if proposed research projects might, for example, lead to technology that might be "coopted for nefarious purposes" or lead to "job loss due to automation."[54]

Universities are not the only scholarly organizations that might abandon principles of institutional neutrality. Scholarly associations and scholarly journals have been tempted to do so as well. In some cases, those decisions might primarily be symbolic, and when they are, they might have the kind of exclusionary consequences that also arise in the context of universities. A scholarly association that wears its political commitments on its sleeve is unlikely to be perceived as welcoming to scholars who hold other political values. Symbolic resolutions are likely to have more consequences for the feelings, good and bad, of members of a scholarly association than for any outside body.

As with universities, a scholarly association that abandons a posture of political neutrality will soon have to

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[54] Michael S. Bernstein et al., *Ethics and Society Review: Ethics Reflection as a Precondition to Research Funding*, PROC. NAT'L ACAD. SCI., Dec. 2021 at 1, 5 tbl.2.

grapple with demands that it consciously excludes those who disagree with its political stances. If a political science association is not merely a neutral platform for the sharing of information about political science, it will soon be forced to decide whether it should bar disfavored speakers from its professional conferences. If a scholarly association has substantive commitments on contested political questions, why should it provide a forum to those who would challenge or disagree with those commitments? Why should it allow its scholarly awards to be given to such heterodox scholars, or allow its journals to publish their work, or allow such scholars to use its employment resources? Political values are orthogonal to the scholarly values that ought to guide such decisions when space or resources are scarce. Unless those declarations of political values do no work at all in the operation of a scholarly association, a demand for political censorship will sometimes have to trump scholarly judgment. Free inquiry will have to be restricted in the name of promoting and protecting favored substantive ideas.

These challenges have become more stark in recent years. Jonathan Haidt, a founder of the Heterodox Academy, spotlighted one version of this challenge by publicly resigning from the Society for Personality and Social Psychology in 2022. The scholarly association added a new requirement for scholars applying to research at its annual conference. Conference participants would henceforth need to explain how their "submission advances the equity, inclusion, and anti-racism goals" of the society.[55] The selection of research to be presented at the conference would not simply be based on its "strength/rigor" or contribution to the scholarly literature.[56] It would also be based on whether the research advanced the ideologically freighted values of anti-racism. Such a requirement, Haidt argued, would force social psychologists "to betray their fiduciary duty to the truth and profess outward deference to an ideology that some of them do not privately endorse."[57] To enhance their professional opportunity to present at the primary scholarly venue of their discipline, students and professors would be obliged "to betray their quasi-fiduciary duty to the truth by

[55] Jonathan Haidt, *The Two Fiduciary Duties of Professors*, HETERODOX ACAD. (September 20, 2022), https://heterodoxacademy.org/blog/the-two-fiduciary-duties-of-professors/.
[56] *Id.*
[57] *Id.*

spinning, twisting, or otherwise inventing some tenuous connection to diversity."[58] When the commitment to diversity became a further mandate to demonstrate a commitment to anti-racism, spinning and twisting would no longer be enough.[59]

In 2021, Christopher Ferguson had similarly resigned from the American Psychological Association, an organization in which he had previously held leadership positions. He found that the scholarly association routinely issued political statements that conflicted with his own scholarly judgment in his area of expertise. Ultimately, he concluded, "the APA no longer functions as an organization dedicated to science and good clinical practice."[60] When the science conflicted with the politics of the association, it was the science that had to be pushed aside.[61]

Some scholarly journals have moved in a similar direction. The editors of *Nature Human Behavior* attracted particular attention for declaring that "although academic freedom is fundamental, it is not unbounded."[62] When making publishing decisions, "scientific merit" and "advancing knowledge and understanding" would sometimes have to be subordinated to avoid disseminating research findings that might indirectly be harmful to "individuals or human groups."[63] True research should nonetheless be suppressed if it "promotes privileged, exclusionary perspectives" or "undermines the dignity or rights of specific groups."[64] Free inquiry, it is said, should be circumscribed by the concerns of editors and publishers about social impact.[65]

If scholarly institutions, including journals and publishers of scholarly research, adopt a set of political commitments, they will be forced to choose when those political commitments

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[58] *Id.*
[59] *See id.*
[60] Christopher J. Ferguson, *My APA Resignation*, QUILLETTE (December 31, 2021), https://quillette.com/2021/12/31/my-apa-resignation/.
[61] *See id.*
[62] *Science Must Respect the Dignity and Rights of All Humans*, 6 NATURE HUM. BEHAV. 1029, 1029 (2022).
[63] *Id.*
[64] *Id.*
[65] For more detailed discussion, *see* Jonathan Rauch, *The Danger of Politicizing Science*, PERSUASION (September 21, 2022), https://www.persuasion.community/p/the-danger-of-politicizing-science; Bo Winegard, *The Fall of 'Nature,'* QUILLETTE (August 28, 2022), https://quillette.com/2022/08/28/the-fall-of-nature/; Anna I. Krylov, *The Peril of Politicizing Science*, 12 J. PHYSICAL CHEMISTRY LETTERS 5371 (2021); Anna I. Krylov & Jay Tanzman, *Critical Social Justice Subverts Scientific Publishing*, 31 EUR. REV. 527 (2023).

conflict with their older commitment to publishing cutting-edge research. One wonders how such scholarly associations or journals would deal with new entrants into the partisan gerrymander metric wars that have come to occupy legislatures and the courts. Should the decision as to whether a scholarly paper should be presented at a conference or published by a journal hinge on whether it would help or hinder the political interests favored by the leadership of those scholarly gatekeepers? Should research examining the economic effects of increased immigrants from lesser developed countries only be published if its empirical findings are politically convenient? Should research on the incidence of domestic abuse in particular demographic groups only be published if its empirical findings put those demographic groups in a favorable light?

Scholarly institutions should not put a political thumb on the scale in assessing scholarly research. Scholarly institutions did not always understand themselves to be neutral institutions. They were often harnessed to and bounded by political and religious demands. Faculty were fired and research was quashed when they conflicted with the sensibilities of the great and powerful. The extended struggle to reform and uplift American institutions of higher learning centered on the belief that knowledge was better than ignorance. The truth might sometimes be inconvenient, but it is better to know something and begin to think about how to respond to it, than to sweep things under the rug and be caught by surprise when one's ideals run aground on the rocky shoals of reality. Human society would flourish if it better understood the world, even if those new understandings were startling and forced the human race to adapt in unexpected ways. Abandoning the principle of institutional neutrality might carry with it the risks that come with becoming an antagonist in the political struggle, but it also impedes the quest to advance human knowledge.