

Academic Freedom

Checks and Balances

Article Date: Friday, June 04, 2010

Written By: William Joseph Austin, Jr.

*"Academic Freedom" is an elusive phrase, yet the liberty of thought claimed by educators is vitally important to a free society. This article will discuss several facets of an important tradition that means different things to different people. The law that has evolved around it is a virtual system of checks and balances among the stakeholders in our educational system. Finally, the article will provide a brief update on application of **Garcetti v. Ceballos** to cases that involve professors in public universities.*

Academic Freedom and the Role of Student, Teacher, and Institution

Underlying the concept of "Academic Freedom" is the First Amendment. According to Justice Lewis Powell, "Academic freedom, though not a specifically enumerated constitutional right, long has been viewed a special concern of the First Amendment." **Regents of the University of California v. Bakke**, 438 U.S. 265, 312 (1978). The First Amendment, which applies to the states through the Fourteenth Amendment, protects the freedom of speech from governmental abridgement. Not yet embracing Academic Freedom as "a specifically enumerated constitutional right," the case law still invokes the First Amendment time and again when confronting issues of education and the acquisition of knowledge in the classroom.

Defining Academic Freedom then is problematic times two. In American jurisprudence it rests on the First Amendment, which itself has the quality of Vedic hymn. Otherwise its sources lie in tradition and custom. There is also the question, to whom does it belong?

The distinguishing features of Academic Freedom form up around the tradition that schools and educators should enjoy a degree of autonomy from governmental, religious, and societal pressures. See M. Edwards, et al. *Freedom of Speech in the Public Workplace* 129 (1988), citing T. Leas & C. Russo, "Waters v. Churchill: Autonomy for the Academy or Freedom for the Individual?", 93 *Ed. Law Rep.* 1099 (1994).

In 1940, the American Association of University Professors and the Association of American Colleges issued a Statement of Principles on Academic Freedom and Tenure, which would afford teachers individualized rights in research and classroom teaching:

Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other duties; [and] . . .

Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

This credo was placed in a larger context, a statement of the ideal of higher education:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes.

In the case of **Plyler v. Doe**, 457 U.S. 202, 221 (1982) (emphasis supplied below), the Supreme Court mapped out a place for this ideal as it functions in public education:

Public education is not a "right" granted to individuals by the Constitution. [citation omitted] But neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction. *"The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance."* [citation omitted] We have recognized "the public schools as a most vital civic institution for the *preservation of a democratic system of government*," [citation omitted] "and as the primary vehicle for transmitting the values on which our society rests." [citation omitted] "As pointed out early in our history, some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." [citation omitted] And these historic "perceptions of the public schools and inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists." [citation omitted] In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society.

Application of these traditions and principles has been complicated by the competing claims laid on them by the cast of characters. One interpretation is that Academic Freedom insulates the institution itself from interference by the state. That is, academic institutions may freely determine, on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study. See **Sweezy v. New Hampshire**, 354 U.S. 234, 255 (1957) ("the