

1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement_ is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges during 1969. The governing bodies of the associations, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher (See Note 1) 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 and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.

It carries with it duties correlative with rights. [1] (See Note 2 -- Numbers in [square brackets] refer to Interpretative Comments, which follow.)

Tenure is a means to certain ends; specifically:

(1) Freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

ACADEMIC FREEDOM

- (a) Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- (b) 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. [2] 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. [3]
- (c) College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public might judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. [4]

ACADEMIC TENURE

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank, (5) the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the persons total probationary period in the academic profession is extended beyond the normal maximum of seven years. [6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period. [7].
3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have. [81]
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the

charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available, to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution. [9]

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

1940 INTERPRETATIONS

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure- were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.
3. If the administration of a college or university feel that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University

Professors and the Association of American Colleges are free to make an investigation.

1970 INTERPRETIVE COMMENTS

Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs. _

The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy. _

In the thirty years since their promulgation, the principles of the 1940 Statement of Principles on Academic Freedom and Tenure have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 Statement, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 Statement is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 -Statement; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in -Keyishian v. Board of Regents-385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 _Statement on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the _Statement on Professional Ethics, adopted in 1966 as Association policy. (A revision, adopted in 1987, was published in _Academe: Bulletin of the AAUP 73 July-August 1987]: 49.)
2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry, which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material, which has no relation to their subject.

3. Most church-related institutions no longer need or desire the departure from the Principle of academic freedom implied in the 1940 Statement and we do not now endorse such a departure.
4. This paragraph is the subject of an Interpretation adopted by the sponsors of the 1940 Statement immediately following its endorsement, which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph (a) (4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the 1940 Statement should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances" (AAUP Bulletin 51 [1965]: 29), which states *inter alia* "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar".

Paragraph V of the Statement on Professional Ethics also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows: As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of other obligations in the light of their responsibilities to their subject, to their students,

to their profession, and to their institution. When they speak or act as private persons they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary as well as to the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. (For a discussion of this question, see the "Report of the Special Committee on Academic Personnel ineligible for Tenure," -AAUP Bulletin- 52 (1966): 280-82.)
6. In calling for an agreement "in writing" on the amount of credit for a faculty member's prior service at other institutions, the -Statement furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. (For a more detailed statement on this question, see "On Crediting Prior service Elsewhere as Part of the Probationary Period," -AAUP Bulletin- 64 (1978): 274-75.)
7. The effect of this subparagraph is that A decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 Statement with respect to the termination of services of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the-Standards for Notice of Non- reappointment, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of non-reappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

5. Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one- year appointment terminates during an academic year, at least three months in advance of its termination.
6. Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
7. At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the Statement on Recruitment and Resignation of Faculty Members, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the -Recommended Institutional Regulations on Academic

Freedom and Tenure, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the Statement on Procedural Standards in Faculty Dismissal Proceedings, jointly approved by the American Association of University Professors' and the Association of American Colleges' in 1958. This interpretive document deals with the issue of suspension, about which the 1940 Statement is silent.

The 1958 Statement provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude, identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

ENDORSERS

Association of American Colleges	1941
American Association of University Professors	1941
American Library Association (adapted for librarians)	1946
Association of American Law Schools	1946
American Political Science Association	1947
American Association of Colleges for Teacher Education	1950

American Association for Higher Education	1950
Eastern Psychological Association	1950
Southern Society for Philosophy and Psychology	1953
American Psychological Association	1961
American Historical Association	1961
Modern Language Association of America	1962
American Economic Association	1962
American Agricultural Economics Association	1962
Midwest Sociological Society	1963
Organization of American Historians	1963
American Philological Association	1963
American Council of Learned Societies	1963
Speech Communication Association	1963
American Sociological Association	1963
Southern Historical Association	1963
American Studies Association	1963
Association of American Geographers	1963
Southern Economic Association	1963
Classical Association of Middle West and South	1964
Southwestern Social Science Association	1964
Archaeological Institute of America	1964
Southern Management Association	1964
American Theatre Association	1964
South Central Modern Language Association	1964
Southwestern Philosophical Society	1964
Council of Independent Colleges	1965
Mathematical Association of America	1965
Arizona-Nevada Academy of Science	1965
American Risk and Insurance Association	1965
Academy of Management	1965
American Catholic Historical Association	1966
American Catholic Philosophical Association	1966
Association for Education in Journalism	1966
Western History Association	1966

Mountain-Plains Philosophical Conference	1966
Society of American Archivists	1966
Southeastern Psychological Association	1966
Southern Speech Communication Association	1966
American Association for the Advancement of Slavic Studies	1967
American Mathematical Society	1967
College Theology Society	1967
Council on Social Work Education	1967
American Association of Colleges of Pharmacy	1967
American Academy of Religion	1967
Association for the Sociology Of Religion	1967
American Society of Journalism School Administrators	1967
John Dewey Society	1967
South Atlantic Modern Language Association	1967
American Finance Association	1967
Association for Social Economics	1967
United Chapters of Phi Beta Kappa	1968
American Society of Christian Ethics	1968
American Association of Teachers of French	1968
Eastern Finance Association	1968
American Association for Chinese Studies	1968
American Society of Plant Physiologists	1968
University Film and Video Association	1968
American Dialect Society	1968
American Speech-Language-Hearing Association	1968
Association of Social and Behavioral Scientists	1968
College English Association	1968
National College Physical Education Association for Men	1969
American Real Estate and Urban Economics Association	1969
History of Education Society	1969
Council for Philosophical Studies	1969
American Musicological Society	1969
American Association of Teachers of Spanish and	1969

Portuguese	
Texas Junior College Teachers Association	1969
College Art Association of America	1970
Society of Professors of Education	1970
American Anthropological Association	1970
Association of Theological Schools	1970
American Association of Schools and Dept. Of Journalism	1971
American Business Law Association	1971
American Council for the Arts	1972
New York State Mathematics	1972
Association of two-year Colleges	1972
College Language Association	1972
Pennsylvania Historical Association	1973
Massachusetts Regional community	1973
College Faculty Association	1973
American Philosophical Association(Endorsed by Association's Western Division in 1952, Eastern Division in 1953,and Pacific Division in 1962.)	1974
American Classical League	1974
American Comparative Literature Association	1974
Rocky Mountain Modern Language Association	1974
Society of Architectural Historians	1975
American Statistical Association	1975
American Folklore Society	1975
Association for Asian Studies	1975
Linguistic Society of America	1975
African Studies Association	1975
American Institute of Biological Sciences	1975
North American Conference on British Studies	1975
Sixteenth-Century Studies Conference	1975
Texas Association of College Teachers	1976
Society for Spanish and Portuguese Historical Studies	1976
Association for Jewish Studies	1976
Western Speech Communication Association	1976

Texas Association of Colleges for Teacher Education	1977
Metaphysical Society of America	1977
American Chemical Society	1977
Texas Library Association	1977
American Society for Legal History	1977
Iowa Higher Education Association	1977
American Physical Therapy Association	1979
North Central Sociological Association	1980
Dante Society of America	1980
Association for Communication Administration	1981
American Association of Physics Teachers	1982
Middle East Studies Association	1982
National Education Association	1985
American Institute of Chemists	1985
American Association of Teachers of German	1985
American Association of Teachers of Italian	1985
American Association for Applied Linguistics	1986
American Association of Teachers of Slavic and East European Languages	1986
American Association for Cancer Education	1986
American Society of Church History	1986
Oral History Association	1987
Society for French Historical Studies	1987
History of Science Society	1987
American Association of Pharmaceutical Scientists	1988
American Association for Clinical Chemistry	1988
Council for Chemical Research	1988
Association for the Study of Higher Education	1988
American Psychological Society	1989
University and College Labor Education Association	1989
Society for Neuroscience	1989
Renaissance Society of America	1989
Society of Biblical Literature	1989
National Science Teachers Association	1989

Medieval Academy of America	1990
American Society of Agronomy	1990
Crop Science Society of America	1990
Soil Science Society of America	1990
Society of Protozoologists	1990
Society for Ethnomusicology	1990
American Association of Physicists in Medicine	1990
Animal Behavior Society	1990

NOTES

9. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.
10. Numbers in brackets refer to Interpretative Comments, which follow.

APPENDIX I (Abridged)

(NOTE: Page numbers refer to the print edition of the -Policy Documents and Reports, 1990. Such entries are not particularly useful in an electronic edition; however, they were included for the purpose of document integrity.)

Selected Judicial Decisions and Articles Referring to AAUP Standards

The federal and state courts have, on many occasions, relied on Association policy statements for assistance in resolving academic disputes. (See Note 1) Listed below are some examples of judicial decisions referring to AAUP statements in this volume, and a few selected articles discussing AAUP policies as a source of "common law" for higher education. Note that this list is merely illustrative and not exhaustive. It is designed only to serve as a useful starting point for further research on the subject.

I. 1940 Statement of Principles on Academic Freedom and Tenure (Page 3)

Tilton v. Richardson 403 U.S. 672, 681-2 (1971) –

Adoption of 1-940 Statement by church-related institution supports conclusion that "the schools were characterized by an atmosphere of academic freedom rather than religious indoctrination."

Jimmies v. Almodovar, 650 F.2d 363, 369 (1st Cir. '1981) - When the Puerto Rico legislature enacted a statute concerning dismissal of university personnel with permanent appointments, it presumably was aware of, and intended to preserve, the distinction made in the 1940 Statement between a dismissal for cause or for other personal grounds and a dismissal for impersonal institutional reasons such as a change in academic program.

Krotkoff v. Goucher College, 585 F.2d 675, 679 (4th Cir. 1978) - "Probably because it was formulated by both administrators and professors, all of the secondary authorities seem to agree it [1940 Statement] is the most widely-accepted academic definition of tenure.¹¹¹

Adamian v. Jacobsen , 523 F.2d 929, 934-5 (9th Cir. -F975) - University regulation on adequate cause for dismissal of tenured faculty member may not be unconstitutionally overbroad if construed by the regents in the same manner as the AAUP interprets the 1940 Statement.

Bignall v. North Idaho College 538 F.2d 243, 249 (9th Cir. 1976) - Court of Appeals adopts 1940 Statement definition of tenure, in financial exigency situation.

McConnell v. Howard University-, 818 F.2d 58, 64 n.7 (D.C. Cir. 1987) - The contractual terms included in the faculty handbook "must be construed in keeping with general usage and custom at the University and within the academic community," citing cases which rely significantly on the 1940 Statement.