

Concerning Academic Freedom and Tenure

"[T]here is little consensus regarding the meaning of academic freedom although there is agreement that it is something worth protecting. The concept has been invoked in support of many contrary causes and positions. It, for example, was used to justify student activism and to repress it, to defend radical faculty and to defend their suppression, to support inquiry into admissions or promotions or tenure decisions and to deny such inquiry. It is at best a slippery notion, but clearly a notion worthy of analysis" (C. Kaplan and E. Schrecker [eds.], in *Regulating the Intellectuals: Perspectives on Academic Freedom in the 1980s*, 1983).

"The practical fact in most places, and the unexceptional rule at Yale, is that tenure is for all normal purposes a guarantee of appointment until retirement" (Kingman Brewster as quoted in Ralph Brown and Jordan Kurland, "Academic Tenure and Academic Freedom," in William Van Alstyne [ed.], *Freedom and Tenure in the Academy*, 1993).

"Tenure, accurately and unequivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides only that no person continuously retained as a full-time faculty member beyond a specified period of probationary service may thereafter be dismissed without adequate cause" (William Van Alstyne [ed.], in *Freedom and Tenure in the Academy*, 1993).

"Academic freedom and tenure do not exist because of a peculiar solicitude for the human beings who staff our academic institutions. They exist, instead, in order that society may have the benefit of honest judgment and independent criticism which otherwise might be withheld because of fear of offending a dominant social group or transient social attitude" (Fritz Machlup as quoted in Rolf Sartorius, "Tenure and Academic Freedom," in Edmund Pincoffs [ed.], *The Concept of Academic Freedom*, 1975).

The academy, simply defined, is the community of fully critical reflection that is always only more or less adequately realized in any so-called academic institution, i.e., college or university.

Academic freedom may be defined, accordingly, as the freedom proper to the academy as the community of fully critical reflection, and therefore also proper to, but always only more or less adequately institutionalized in, any college or university. As such, academic freedom, positively, is freedom *for* fully critical reflection and, negatively, freedom *from* anything and everything that in any way impedes such reflection.

There are two levels of academic freedom thus defined: (1) the level of the individual members of the academic community, and therefore of the college or university, whether permanent faculty, probationary faculty, students, or administrators; and (2) the level of the community and therefore of the institution—college or university—as such. Academic freedom at this second level may also be called community or institutional autonomy. Just as individual members of the academic community, and thus of a college or university, must be free *for* fully critical reflection and free *from* all that impedes it, so the community or institution itself must be free to pursue its own distinctive mission as an academic community or institution and thus to promote and protect the academic freedom of each of its members, without interference from other communities, institutions, or individuals.

Of course, any college or university, like the academic community it institutionalizes, exists to serve the larger human community and its other institutions, as well as their individual members. But because the academic community is the community of fully critical reflection, and because this also identifies any academic institution as such, the service of any college or university, as of its individual members, may never be direct, but must always be only *indirect*: the indirect service of fully critical reflection.

Consequently, while individuals and communities, including ecclesial and political communities, may found institutions constituted with a certain identity and mission to which they may be expected to be faithful, they have the moral right to designate these institutions "*academic institutions*," i.e.,

One way to understand the basic issue between Diekema's concept of a Christian college or university and my own is to adapt the well-known typology employed in a report of the Danforth Commission on Church Colleges and Universities in 1965 (cf. *DTT*: 81). The adaptation consists in (1) dividing one of the original types into two new ones (Types 3 and 4); and (2) adding one new type (Type 1), thereby yielding a five-fold typology, as follows:

1	2	3	4	5
<i>secular institutions</i>	<i>"non-affirming" religious institutions</i>	<i>fully "free" religious institutions</i>	<i>partially "free" religious institutions</i>	<i>"defender-of- the-faith" religious institutions</i>

Thus adapted, the typology covers not just church or religious colleges and universities, but all institutions, secular as well as religious. The two variables in terms of which it is constructed are *academic freedom* and *religious foundation or constitution*.

Type 1, at the extreme left of the typology includes all secular colleges and universities, both public and private, where there is academic freedom but no religious foundation or constitution. Type 5, at the extreme right, includes all religious colleges and universities of the original "defender-of-the-faith" type, where there is religious foundation or constitution but no academic freedom.

In between these two extremes are three other types of religious institutions where there is either religious foundation or constitution and at least limited academic freedom. Type 2 is closest to Type 1 in including institutions of the original "non-affirming" type where there is religious foundation, if not constitution, and unlimited academic freedom, while Type 4 is closest to Type 5 in including institutions of the original "free" type where there is religious constitution as well as foundation but only limited academic freedom. Type 3, then, is equally far from both of the extreme types as well as from the other two intermediate types in including institutions of the original "free" type where there is religious constitution as well as foundation and unlimited academic freedom.

The concept of "peer review," according to which one can be dismissed for cause only on the basis of a judgment of incompetence by one's peers, is not entirely free of significant ambiguity—of much the same kind that Curran rightly points up in "the concept of institutional autonomy in relation to academic freedom" (105).

Granted that only one's peers are in a position to judge one's competence, still not even they may arbitrarily decide upon the criteria by which one's competence is to be judged—any more than a board of trustees may arbitrarily take an action that violates the institutional autonomy of the college or university. Freedom does not extend so far as to include denying freedom any more than autonomy can be made to include giving up autonomy.

In the end, the only noncontroversial criteria of competence all have to do with whether or not a person has the skill, knowledge, experience, etc. suitable and sufficient for engaging in the study or inquiry which is constitutive of the field, discipline, or specialty in question. If a person is qualified to ask and answer the questions that a field, discipline, or specialty is constituted by asking and answering, then she or he is competent, regardless of her or his answers to the questions or of her or his receptivity, or lack of receptivity, to any of the authorities proposing answers to them.

But, then, a peer review judging by any criteria of competence other than these would not result in a proper judgment, where "proper" means "a judgment in accordance with the twin principles of academic freedom and institutional autonomy."

This is not to question, naturally, that the other no less necessary condition of any proper peer review is accurate knowledge of the facts of the case—of what the person under review has or has not done which would confirm her or his competence (or incompetence) as soon as the criteria defined above were to be applied.