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The Institutional Foundations of Free Speech at Public Universities

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Introduction

Systems of higher education in free societies must be committed to freedom of speech in two senses. First, in order to serve their social function of the creation and dissemination of knowledge and critical inquiry, a well-functioning system of higher education must commit to the basic elements of *academic freedom*—allowing professors “full freedom in research and in the publication of the results,” “freedom in the classroom in discussing their subject,” and freedom from “institutional censorship or discipline” when publicly expressing political views informed by their professional knowledge.¹ Second, in order to nurture critical perspectives in public debate and to enable the free development of political consciousness, universities should serve, as much as possible, as open forums for *free expression*, allowing a wide range of political expression from both faculty and students, both on and off campus.²

One perennial worry about shifting to a system of universal free public higher education—heard frequently in informal discussions but rarely articulated at length—is that doing so would make it too easy for the government (state or federal) to interfere with universities, undermining the two freedoms that make them so important. This worry is amplified in our current environment of government repression. It is incumbent upon those of us who promote free public higher education to grapple with how to ensure public universities are designed to promote “free speech” in a broad sense.

This report draws on US history to broach that inquiry in two steps.

First, this report cautions against the simple view that public universities are uniquely likely to repress speech. This view is tempting because speech repression is most naturally imagined as an authoritarian government subordinating all institutions to the priorities of the authoritarian rulers. The reality of repression is more complex. Threats from the government can be, and regularly are, targeted at both public and private colleges (as, indeed, is true of current threats from the Trump administration, which

¹ “1940 Statement of Principles on Academic Freedom and Tenure, with 1970 Interpretive Comments,” American Association of University Professors (AAUP), <https://www.aaup.org/sites/default/files/1940%20Statement.pdf>.

² Not all observers agree with this dual purpose of universities and much depends on the specification of each, but it is beyond the scope of this report to get into those theoretical weeds. For general discussion of the relationship between the values of free speech generally and the distinctiveness of the university, see Robert Post, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State* (Yale University Press, 2012); Paul Horwitz, ed., *First Amendment Institutions* (Harvard University Press, 2013); Keith E. Whittington, *Speak Freely: Why Universities Must Defend Free Speech* (Princeton University Press, 2019).



has been putting pressure on elite private universities at least as much as public universities). And plenty of efforts to limit speech, legitimate or illegitimate, come from inside the university (for example, students demanding to be protected from ideas that challenge their beliefs, or administrators cutting programs without sufficient business application) and from nongovernmental outsiders (such as corporations seeking to repress evidence of the harms of their products). Developing an environment conducive to free speech at public universities thus involves more intricate governance questions, most of which are not unique to *public* universities.

Second, this report clears ground for these subtler governance questions by mapping out how different university constituencies have tended to respond to (and/or generate) free speech challenges throughout history. Ever since federal courts began to extend First Amendment protections to faculty and students of public universities in the middle of the 20th century, they have played a crucial backstopping role both in providing recourse for infringements and in setting norms. But this role has been limited in several respects. Other players—trustees, senior administrators, and faculty, as well as accreditors and other third-party reviewers who play a reinforcing role—have been more influential when it comes to day-to-day governance questions surrounding free speech on campuses. In general, trustees have been least reliable in promoting academic freedom and robust on-campus debate, while faculty have been most reliable. Senior administrators have been caught in between—seemingly more strongly protective of speech norms when faculty have more power, and less when trustees have more. The role of students, legislators, and governors, while important, is left for future work.

This report then puts forward a few hypotheses about how future higher education governance regimes might support—or fail to support—more robust free speech. First, legislatures and universities can and should develop (or create independent governance bodies that can develop) more detailed standards for evaluating different free speech challenges than are currently articulated in court doctrine. Second, developing a set of rules—and even a process for the administrative enforcement of those rules—will not suffice; as we are currently witnessing, the rules do not hold fast if people are not willing to fight for them. Therefore, those serious about institutional design must ask which constituencies are likely to fight for free speech, and then empower them. Because trustees are the least likely and faculty the most likely to fight for free speech, governance should shift power from the former group to the latter. Third, robust public funding for higher education makes free speech—and especially academic freedom—easier to promote. In other words, well-funded public universities should be seen as protectors of rather than enemies to free speech.



There is no simple solution to building universities to withstand censorship or, beyond that minimum, to create environments that inculcate clear thinking and knowledge of the world and promote free exploration thereof. In our age of collapsing norms and assaults on familiar institutions, creative rebuilding will be required.

Protecting Free Speech on Campus Is Not Simply a Matter of Restricting State Power

In our political culture, it can be tempting to think about free speech challenges on campus in terms of an ideal type: A censorious politician or political movement is scandalized by nonconformist thoughts expressed at a university and responds by using state power to impose penalties on those who voice them. In this conception of threats to free speech, public universities can be seen as uniquely likely to crack down on inconvenient expression. After all, they are *public* institutions—institutions that are created, owned, and (in principle) controlled by a government. Should any censorious force gain control over the political branches of that government, it would be able to impose its censoriousness on and through public universities directly. It would follow that private universities are relatively insulated independent centers of power not beholden to state control.

But the reality of speech governance on campus is more complicated. Both public and private universities face a variety of pressures to control research and teaching agendas and to limit which views can be expressed and how. Not all—not even most—of these pressures come from governmental officials. As this section explains, creating universities that are friendly to free speech is, thus, a multi-pronged governance question that requires a conceptual framework that does not over-rely on the public-private divide.

Public and Private Institutions Are More Alike Than Different

The first reason that the ideal type described above is misleading is that the differences between public and private universities with respect to speech regulation are smaller and more subtle than any simple binary can contain. Designing a speech-protecting university system mostly requires designing similar speech-protecting institutions for *all* universities, with differential treatment for public universities mostly being a matter of details.

One major reason for this is that not all—and maybe not even most—efforts to limit free speech at universities are channeled through governments. Perhaps the most



important nongovernmental source of influence are wealthy donors. When the American Association of University Professors (AAUP) was created in 1915, its organizers were at least as concerned about the threats to academic freedom that came from wealthy donors demanding that universities fire professors whose research and/or public statements supported redistribution, unions, regulation, and/or government ownership as they were about governmental censorship.³ The efforts of the wealthy to shape research and curriculum have not abated since.

Nongovernmental Pressures

Sometimes these efforts take the form of pressure campaigns to defund research and/or fire researchers that undermine the interests of one or more donors (by pointing to their misconduct or providing evidence for a policy that would reduce their profits), but especially since the latter half of the 20th century, they have more commonly come in the form of selectively supporting research and teaching that advances donors' interests. Tobacco companies have funded research that calls into question the health effects of smoking and chewing tobacco; oil companies and meat processors have funded research that casts doubt on the reality of human-caused climate change.⁴ More generally—and especially since the passage of the Bayh-Dole Act, which removed barriers to patentability of ideas developed at universities—corporations support research centers that are likely to yield patentable technologies.⁵ In addition to these investments in particular profit centers, some donors fund research and teaching in ideologies that generally promote political support for their interests—such as centers for “free market ideas” and “entrepreneurship”.⁶

³ “AAUP's 1915 Declaration of Principles,” AAUP, https://aaup-ui.org/Documents/Principles/Gen_Dec_Princ.pdf. For context, see Timothy V. Kaufman-Osborn, *The Autocratic Academy: Reenvisioning Rule Within America's Universities* (Duke University Press, 2023).

⁴ Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Climate Change* (Bloomsbury, 2022); Viveca Morris and Jennifer Jacquet, “The Animal Agriculture Industry, US Universities, and the Obstruction of Climate Understanding and Policy,” *Climatic Change* 177, no. 3 (2024): 41, <https://doi.org/10.1007/s10584-024-03690-w>. This corrupt manipulation of the creation and dissemination of knowledge has surely contributed to our current environment of distrust in experts, opening up space for the dangerous anti-science politics that is currently eating away not only at universities but also at institutions of public health and beyond.

⁵ Jennifer Washburn, *University, Inc: The Corporate Corruption of American Higher Education* (Basic Books, 2006); Sheila Slaughter and Gary Rhoades, *Academic Capitalism and the New Economy: Markets, State, and Higher Education* (Johns Hopkins Univ. Press, 2010); Brendan Cantwell et al., *Academic Capitalism in the Age of Globalization* (Johns Hopkins University Press, 2014).

⁶ Donors' motivations can be less narrowly interested, of course. Some donors devote funding to centers of research that benefit society more broadly—such as centers for disease research or the



In addition to shaping what is taught and thought, donors' power has been used to shape how universities respond to student speech, specifically protests. The recent crackdowns on pro-Palestine protests provide a vivid example. At private universities such as Columbia, the University of Pennsylvania, and Harvard, pro-Zionist board members put enormous pressure on university presidents to close down student encampments and to punish students who were involved in organizing them. These board members coordinated with each other to plan their responses and articulate their demands.⁷ And as discussed further below, their campaign to put pressure on private universities to restrict speech and expression cannot be fully separated from the pressure that various governments exerted on universities in the same direction.

Sorting out the good and the bad that comes with donor-imposed conditions on university funding is beyond the scope of this report. Here, all that needs to be established is that donors can and do have such influence, that the influence can be used to shape what is thought and taught at the institutions to which they contribute funds, and that this influence is not at all unique to public universities. In fact, public universities are relatively insulated from this type of influence insofar as they are less dependent on donor funding because of their support from state governments.⁸

study of some specialized area of humanities or art—while others fund political causes that go against their class interests, such as centers for tax or worker justice. In all of these cases, donors use their money to shape what is taught and researched and the impact on free speech is less problematic and more subtle. Funding for a particular area of disease research does prioritize that topic over others, for example, and it does so based on a donor's assessment of what is valuable (which may or may not line up with a defensible analysis of how to set priorities). But, unlike funding to produce research that makes it easier to sell cigarettes by muddying the debates about the causes of cancer, such funding generally leaves it up to expert peer review to determine which research within the area is well performed and truth-advancing.

⁷ Brian Schwartz, "Wall Street Titans Help to Fuel Ivy League Donor Revolt," CNBC, November 2, 2023, <https://www.cnbc.com/2023/11/02/wall-street-titans-help-to-fuel-ivy-league-donor-revolt-.html>; Srishti Bansal, "Who Are the Alumni That Have Joined the Donor Backlash Against Penn Leadership?," *The Daily Pennsylvanian*, November 20, 2023, <https://www.thedp.com/article/2023/11/penn-who-are-the-withdrawn-donors>; Ethan Young and Jasmine Ni, "Marc Rowan Helped Draft the White House Compact. The Ideas Echo His 2023 Plan to Reform Penn," *The Daily Pennsylvanian*, October 6, 2025, <https://www.thedp.com/article/2025/10/penn-marc-rowan-questions-trustees-compact>; Josh Marcus, "Finance and Business Moguls Held Zoom with Eric Adams Urging Him to Bring in Police on Columbia Protesters," *The Independent*, May 17, 2024, <https://www.independent.co.uk/news/world/americas/us-politics/columbia-eric-adams-whatsapp-kushner-b2546545.html>.

⁸ This is not to suggest that there is a simple inverse relationship between the amount of state support and amount of influence donors can exert. Especially in the modern era of entrepreneurial universities, even public universities that receive ample funding seek to expand beyond what that funding would allow by diversifying revenue streams. Luke Herrine, *The Neoliberalization of Higher*



It is not only wealthy donors who attempt to influence the consequences of various sorts of faculty and student speech. Both progressive and conservative advocacy organizations have attempted to hold professors and students accountable for speaking in ways that make minority groups feel threatened or unwelcome. Religious organizations have sought to protect their practitioners and to impose their beliefs—sometimes by creating their own universities (a more common phenomenon historically than today). Students have attempted to get professors disciplined or fired for their speech inside and outside the classroom, and faculty have supported the suspension and expulsion of students for protest. All of these influences, and others, operate in both public and private universities, and can have serious restrictive effects on speech.

Governmental Pressure Across the Public/Private Divide

Meanwhile, government power over universities extends to both public and private systems, empowering the state to exercise influence over speech in both systems. This is because government influence over universities can be exerted through several means, most of which do not require the university to be a public institution.

One way to see the diversity of influences is to focus on the role of the federal government. Nearly all public universities, after all, are owned by state governments.⁹ So, from the perspective of the federal government, both public and private universities are independent entities. But it has not had any trouble finding ways to put pressure on them when a coalition to do so coalesces. In the second Trump administration, for example, the executive branch has bent both public and private universities to its will through strategic (and unlawful) withdrawals—and threatened withdrawals—of various funding streams and through threats of (borderline frivolous) civil rights lawsuits.¹⁰ Similarly, during the McCarthy era, Congress put pressure on both public and private universities to fire left-wing faculty (whether Communist or not) entirely through highly publicized hearings that portrayed these faculty as dangerous “subversives” and/or as scofflaws who refused to testify under oath.¹¹ For

Education (Roosevelt Institute, 2025), <https://rooseveltinstitute.org/publications/the-neoliberalization-of-higher-education>. This diversification does provide a hedge against political instability, but it also comes with the risks just discussed.

⁹ The federal government owns and operates 19 “[federal academies](#)”—mostly military in nature. Several tribal governments also charter and operate [colleges](#), which are neither federal nor state owned.

¹⁰ Emma Green, “Inside the Trump Administration’s Assault on Higher Education,” *The New Yorker*, October 13, 2025, <https://www.newyorker.com/magazine/2025/10/20/inside-the-trump-administrations-assault-on-higher-education>.

¹¹ Ellen Schrecker, *No Ivory Tower: McCarthyism and the Universities* (Oxford University Press, 1986).



multiple decades of the mid-20th century, the FBI coordinated with university leaders and elected officials to repress student protest and keep track of suspicious faculty.¹² Once civil rights law developed the idea of “hostile environment” discrimination,¹³ the federal government enforced against pervasively racist and sexist speech at both public and private institutions.¹⁴ And, setting aside constitutional questions, there are many other levers the federal government could pull, such as conditioning funding (lawfully and formally) or directly regulating conduct.

Unlike the federal government, state governments *do* own universities. But the leverage that comes with ownership is *in addition* to the leverage they have over all universities in their jurisdiction (and, indeed, some outside of it) by virtue of chartering, regulation, taxation, and other authorities. When state governments passed laws requiring loyalty oaths during the Red Scares of the first half of the 20th century, they primarily relied on their power as employers, but many states provided measures to ensure that private institutions in receipt of public funds used their employer power similarly.¹⁵ When governors and mayors have sicced police on student protestors (at both public and private universities), they have not done so in their capacity as part of the governing body of public universities, but in their capacity as chief law enforcement officials.¹⁶ In the recent spate of anti-“Critical

¹² Ellen Schrecker, *The Lost Promise: American Universities in the 1960s* (The University of Chicago Press, 2024); Seth Rosenfeld, “The FBI’s Vendetta Against Berkeley,” *The Chronicle of Higher Education*, August 13, 2012, <https://www.chronicle.com/article/the-fbis-vendetta-against-berkeley>.

¹³ To prove that a university environment is so hostile as to be a violation of the Title VI’s prohibitions against discrimination, a student must establish identity-based “harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999).

¹⁴ “Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics,” Department of Education, archived March 26, 2022, at <https://perma.cc/568B-TJB2>; Benjamin Eidelson and Deborah Hellman, “Antisemitism, Anti-Zionism, and Title XI: A Guide for the Perplexed,” *Harvard Law Review* 139, no. 1 (2025): <https://harvardlawreview.org/wp-content/uploads/2025/06/139-Harv.-L.-Rev.-F.-1.pdf>. This is not to suggest that this restriction of speech on campus is bad or inappropriate, but simply that it is a restriction.

¹⁵ Maryland’s “Ober law”, which “several other states actually copied . . . word for word” both required loyalty oaths of all public employees—including public university faculty—and required private institutions “which received state aid . . . to do their own housecleaning and . . . to report what steps they had taken to detect and eliminate the subversives on their staffs. All the private colleges complied.” Schrecker, *No Ivory Tower*.

¹⁶ Nikki McCann Ramirez, “DC Mayor Avoids Congressional Testimony After Siccing Cops on Student Protesters,” *Rolling Stone*, May 8, 2024, <https://www.rollingstone.com/politics/politics-news/dc-mayor-muriel-bowser-testimony-canceled-student-protesters-1235017095>; Destinee Adams, “NYC Mayor Says ‘Outside Agitators’ Are Co-Opting Columbia Protests—Students Disagree,” *Campus Protests over the Gaza War*, NPR, May 2, 2024, <https://www.npr.org/2024/05/02/1248634146/columbia-university-mayor-eric-adams-nypd-student-arrests>; “1969 People’s Park



Race Theory” laws that spread through the states, restrictions were placed on both public and private universities (and on K-12 schools).¹⁷

When Governmental and Nongovernmental Pressures Combine

In moments of intense backlash against some form of speech, the lines between public and private can become especially blurry. The recent crackdown on pro-Palestine protests is again a good example. In addition to using their own power as donors and members of private university boards to influence the decisions of those institutions, wealthy Zionists like Mark Rowan and Bill Ackman used their influence to push forward campaigns to oust both public and private university presidents.¹⁸ Civil society organizations sympathetic to Rowan and Ackman’s cause, like the Anti-Defamation League, further increased the pressure on university presidents and administrators to condemn student protests.¹⁹ They also coordinated with conservative organizations who were aiming to push the boards of public universities to the right,²⁰ with anti-Palestine student groups aiming to put pressure on left-wing faculty, and with organizations like Canary Mission aiming to sideline critics of Israeli policy.²¹ During the Biden administration, legislators hauled university leaders in front of Congress to pressure them to be harsher on purportedly (and, occasionally, actually) antisemitic student protestors.²² As a result of being perceived as insufficiently condemnatory of

Protest,” Wikipedia, https://en.wikipedia.org/wiki/1969_People%27s_Park_protest; Andrew Hay, “Students Sue Texas University, Governor over Gaza Protest Arrests,” Yahoo News, May 1, 2025, <https://www.yahoo.com/news/students-sue-texas-university-governor-014245577.html>.

¹⁷ Taifha Alexander et al., *Tracking the Attack on Critical Race Theory* (UCLA School of Law, Critical Race Studies, 2023), https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf.

¹⁸ Alan Blinder and Stephanie Saul, “Wealthy People Have Always Shaped Universities. This Time Is Different,” *New York Times*, November 24, 2025, <https://www.nytimes.com/2025/11/24/us/billionaires-influence-universities-trump.html?smid=url-share>.

¹⁹ Arno Rosenfeld and Jacob Kornbluh, “Exclusive: ADL Chief Compares Student Protesters to ISIS and al-Qaida in Address to Republican Officials,” *The Forward*, June 6, 2025, <https://forward.com/news/726133/greenblatt-adl-protesters-terrorists/>; Mari Cohen and Isaac Scher, “The ADL Doubles Down on Opposing the Anti-Zionist Left,” *Jewish Currents*, May 1, 2022, <https://jewishcurrents.org/the-adl-doubles-down-on-opposing-the-anti-zionist-left>.

²⁰ Nancy MacLean, “The American Council of Trustees and Alumni: A Little-Known Driver of the Attacks on Academic Freedom and Shared Governance,” *AAUP Action Report #4*, February 25, 2025, https://www.aaup.org/sites/default/files/ActionReport4_ACTA.pdf.

²¹ Alex Kane, “Canary Mission’s Newest Funders,” *Jewish Currents*, April 4, 2025, <https://jewishcurrents.org/canary-missions-newest-funders>; “Professor Watchlist,” <https://www.professorwatchlist.org>.

²² Sequoia Carrillo, “After a Disastrous Testimony, Three College Presidents Face Calls to Resign,” *NPR*, December 8, 2023, <https://www.npr.org/2023/12/08/1218314691/after-a-disastrous-testimony-three-college-presidents-face-calls-to-resign>.



antisemitism at these hearings, multiple presidents were fired.²³ During the Trump administration, the Department of Justice and Department of Education have used trumped-up charges of antisemitism²⁴ to threaten universities with loss of funding if they do not, among other things, treat pro-Palestine groups more harshly.²⁵ Multiple points of leverage—public and private, state, federal, and local—were called upon to bear down on university leadership (even as countervailing, but weaker, pressure came from faculty groups, organized students, free speech organizations, and anti-Zionist organizations).²⁶

In addition to sharing common external pressures, public and private universities share many governance structures that determine how they respond to those pressures. They both have presidents, provosts, administrative staff of a variety of types, and faculty, along with a variety of shared governance institutions, boards of trustees, and so on. And the dynamics between these different parts of the university are mostly the same at public and private institutions. Or, rather, the differences among various public and various private institutions are at least as great as the differences between public universities as a whole and private universities as a whole. These differences are discussed further in the next section.

Getting the Framework Right

Emphasizing these similarities is not to deny the differences between public and private universities. But, if we are to acknowledge them, we must also acknowledge that these differences cut in both directions. On the one hand, state-level government officials can certainly exert more direct influence on public universities because of the relative ease of amending their charter, their authority to appoint (and to fire) trustees, their control over employment practices, and their power of the purse. In addition, politicians and the general public tend to see public universities as more legitimately subject to public control than private universities. So a protest at a public university is

²³ Josh Moody, “A Year After the First Antisemitism Hearing, What’s Become of the Presidents Who Testified?,” *Inside Higher Ed*, December 5, 2024, <https://www.insidehighered.com/news/government/politics-elections/2024/12/05/whats-become-presidents-who-testified-congress>.

²⁴ Eidelson and Hellman, “Antisemitism.”

²⁵ Alana Wise, “Northwestern Settles with Trump Administration in \$75M Deal to Regain Federal Funding,” NPR, November 29, 2025, <https://www.npr.org/2025/11/29/nx-s1-5624964/northwestern-trump-funding-settlement>; “A Look at Colleges with Federal Money Targeted by the Trump Administration,” *Associated Press*, July 31, 2025, <https://apnews.com/article/trump-settlement-ivy-league-harvard-columbia-brown-8441ce30057c684084994ae53c0a2b92>.

²⁶ Shirin Sinnar, “Campus Protests and the Rule of Law,” *Law and Contemporary Problems* 87 (2025): <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5181&context=lcp>; Will Alden, “Portrait of a Campus in Crisis,” *Jewish Currents*, October 31, 2025, <https://jewishcurrents.org/portrait-of-a-campus-in-crisis>.



more likely to be an issue in a contested election than that at a private university in the same state, and state-level elected officials are more likely to feel pressure to take a position about the treatment of a controversial research program if it is undertaken by a professor at a public, rather than private, university.

On the other hand, public universities face at least two forms of pressure to be more protective of speech of many sorts than private institutions. First, the First Amendment generally only applies to “state actors”, which, to put it simply, means that only if a government official or agent is involved in imposing the speech restriction at issue does the person experiencing the restriction have the ability to seek protection from a court.²⁷ That does not mean that private university faculty and students have no First Amendment protections—they are still protected from restrictions that might be imposed on them by government research grants, for instance—but it does mean they are not granted protection simply by virtue of a restriction being implemented by their university. At public universities, any policy that affects academic freedom, student protest, and the like is subject to court scrutiny under the First Amendment (although exactly how much scrutiny each type of restriction gets is the subject of debate, as discussed below). Second, and for related reasons, it is significantly easier for private universities to simply decide, as a matter of policy, not to protect certain types of speech and/or to make strategic decisions without regard for the consequences to faculty or student speech. Small religious colleges are the clearest example of the former, and for-profit colleges of the latter.

Threats to Free Speech on Campus Take Diverse Forms, Which Require Diverse Responses

Thinking about restriction of speech on campus only in terms of the government censoring ideological opponents can mislead in a different way. It treats the protection of free speech as simply a matter of standing firm in the face of motivated authoritarians. However, not all threats to free speech come in the form of outside moralistic busybodies or sedition-hunters. A professor’s ability to pursue a particular line of research is threatened by closing down that researcher’s department because it does not demonstrate sufficient “return on investment” just as much as it is by a trustee demanding that the researcher be fired. Students’ ability to protest is

²⁷ *Manhattan Community Access Corp. v. Halleck*, 587 U.S. 802 (2019) (“The text and original meaning of those Amendments, as well as this Court’s longstanding precedents, establish that the Free Speech Clause prohibits only *governmental* abridgment of speech. The Free Speech Clause does not prohibit *private* abridgment of speech.”)



threatened by professors who vote in favor of disciplinary measures on the grounds that protest disrupts the studious atmosphere befitting a campus, even if not quite as much as it is by the governor calling the police to quell such protests. To think about what it means for a public university—or any university—to protect (or fail to protect) free speech requires appreciating the multiple forms threats can take and how those forms impact universities differently.

Tracing all the varieties of threats and their implications for governance is beyond the scope of this report, but a few rough delineations will help develop the intuition.

First, it can be helpful to separate explicit efforts to promote or repress a certain set of views from university actions that shape which views can be expressed for other reasons—such as budgetary considerations, balancing speech against other interests like safety or nondiscrimination, or maintaining classification systems for military-related projects. Both explicit and incidental restrictions can burden speech, and both can even disproportionately burden some types of speech over others (for example, anti-harassment rules are more likely to restrict white supremacist ideas, while budget cuts that focus on revenue generation are often more likely to focus on the humanities).²⁸ Yet it is worth drawing a distinction, first, simply to recognize that incidental threats do exist and must be guarded against, and second, to appreciate that explicit efforts at restriction are clearer and more direct threats—and thus easier to draw principled lines against. Incidental restrictions can be the result of trade-offs that result from promoting values that are not per se inconsistent with free speech and/or dealing with institutional or financial constraints. Thus, they are more likely to be justifiable, but also more difficult to detect (and thus easy to use pretextually).

Second, we can distinguish between the various reasons an explicit attack on certain types of speech can occur. Different reasons have different constituencies—both inside and outside the university—they are likely to motivate. The relative power of those constituencies (which shifts across different eras and can vary at different universities) shapes which sorts of threats are most likely to present themselves and which are most likely to create governance difficulties. Common across the decades are religious objections, efforts from businesses to quash ideas and facts that undermine their profits, anti-sedition sweeps, and attacks on politically marginalized views. Throughout

²⁸ Jared Gould, “UChicago’s Self-Made Crisis,” *Minding the Campus*, September 8, 2025, <https://www.mindingthecampus.org/2025/09/08/uchicagos-self-made-crisis/>; Erin Beck and Duncan Slade, “WVU’s Board of Governors Has Approved Budget Cuts. Here’s What to Know,” *Mountain State Spotlight*, September 15, 2023, <https://mountainstatespotlight.org/2023/09/15/wvu-board-cuts-degrees-layoffs/>.



most of the 19th century, religious objections were by far the most common reason speech was curtailed on university campuses, with the influence of organizations launching these attacks remaining virtually unchecked.²⁹ In the early 20th century, as the composition of the donor class changed, business objections to pro-labor, pro-public-ownership, and pro-regulatory views became more common.³⁰ And during times of war, anti-sedition-motivated attacks on free speech can become central and overwhelming.³¹

Third, and perhaps most importantly in our current environment, it is worthwhile to separate systematic attacks on certain types of ideologies, research agendas, and/or pedagogies from relatively isolated controversies about whether a specific speaker went too far. The point here is not to pretend that isolated controversies are unrelated to broader social struggles—whether a controversy results in repression certainly depends in large part on whether the type of speech at issue is broadly disfavored by powerful constituencies. Rather, the point is to distinguish coordinated efforts across multiple institutions to stamp out certain types of thinking from disputes about the future direction of one institution, or about the acceptability of a given teaching style or protest technique. There is, of course, gray area, but there is some black and white as well. McCarthyite purges were and today's MAGA crackdown are systematic efforts, whereas any given university's decision as to whether to accept funding from fossil fuel companies or to recognize a faculty union are relatively isolated.³²

²⁹ Richard Hofstadter and Walter P. Metzger, *The Development of Academic Freedom in the United States* (Columbia University Press, 1955), <https://archive.org/details/developmentofaca00hofs/page/n1/mode/2up>.

³⁰ Hofstadter and Metzger, *The Development of Academic Freedom*; Ethan W. Ris, *Other People's Colleges: The Origins of American Higher Education Reform* (The University of Chicago Press, 2022).

³¹ Schrecker, *No Ivory Tower* (Cold War); Larry G. Gerber, *The Rise and Decline of Faculty Governance: Professionalization and the Modern American University* (John Hopkins University Press, 2014) (World War I); Christina Boyd, "Sedition Act of 1918," The Free Speech Center, accessed December 16, 2025, <https://firstamendment.mtsu.edu/article/sedition-act-of-1918/>; Schrecker, *Lost Promise* (Vietnam); Geoffrey Kabaservice, *The Guardians: Kingman Brewster, His Circle, and the Rise of the Liberal Establishment* (Henry Holt & Company, 2004), <https://archive.org/details/guardianskingman0000kaba> (Vietnam).

³² A notable in-between case was Gov. Scott Walker's efforts to end public unions in Wisconsin, which was primarily targeted at teacher and faculty unions (police and fire were exempted). He did so using a bill drafted by the American Legislative Exchange Council—the right-wing network of state legislative drafters—as an effort to break the power of progressives in the state and to make it easier to restructure education. See Katherine Jean Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker*, Chicago Studies in American Politics (University of Chicago Press, 2016); Eleni Schirmer, interview with author.



Drawing this last distinction matters because systematic attacks are uniquely dangerous situations for free speech on campus. Multipronged efforts to reshape what can be thought and said push universities' and society's defenses of free speech to their limits and force various institutional actors to reconsider their roles. During the McCarthy era, for example, many otherwise strong defenders of academic freedom—among legislatures, faculty, and administration alike—went along with the efforts to purge “subversives.”³³

The Current Crackdown on University Free Speech

Today's crackdown is still developing, but many administrators, faculty, law firms, accreditors, and others are still calibrating their response: How much to try going along with what might be a prevailing set of norms in the future, and how much to risk trying to defend previous norms?

Several leading universities—the University of Pennsylvania, Columbia, Brown, the University of Virginia, Cornell, and Northwestern—have entered into settlements with the Trump administration on a variety of terms.³⁴ Berkeley agreed to turn over names of students involved with pro-Palestine protests, but did not enter into a general settlement.³⁵ Some of these institutions—the University of Pennsylvania, Brown, and the University of Virginia—declined the invitation to join a “Compact for Academic Excellence in Higher Education” that would have imposed additional and longer-lasting restrictions on free speech.³⁶ Other universities have so far refused to sign settlements, with Harvard suing to challenge the attempt to impose conditions.³⁷ Meanwhile, universities facing new gag orders from state legislatures have mostly gone

³³ Ellen Schrecker points out that many otherwise-liberal university presidents and faculty made an exception for “subversives”, and the AAUP was even initially supportive of at least some purges. Schrecker, *No Ivory Tower*.

³⁴ Ben Unglesbee et al., “Tracking the Trump Administration's Deals with Colleges,” *Higher Ed Dive*, October 22, 2025, updated December 2, 2025, <https://www.highereddive.com/news/tracking-the-trump-administrations-deals-with-colleges/803434>.

³⁵ Eric He and Will McCarthy, “It's a Capitulation': Berkeley Grieves as Its University Bends to Trump,” *Politico*, September 20, 2025, <https://www.politico.com/news/2025/09/20/trumps-campus-crackdown-berkeley-protest-culture-00574096>.

³⁶ “Compact for Excellence in Higher Education,” *Wikipedia*, https://en.wikipedia.org/wiki/Compact_for_Academic_Excellence_in_Higher_Education.

³⁷ Bianca Quilantan, “Harvard Secures Win in Fight with Trump over Federal Research Funding,” *Politico*, September 3, 2025, <https://www.politico.com/news/2025/09/03/harvard-victory-battle-trump-federal-funding-00542654>; Jocelyn Gecker and Michelle L. Price, “Trump Administration Seeks \$1 Billion Settlement from UCLA, a White House Official Says,” *Associated Press*, August 8, 2025, <https://apnews.com/article/trump-administration-ucla-ec848b4bee5c184f29dba9d7181904a1>.



along and/or attempted to exert influence through back channels, leaving it to faculty and students to resist more vocally.³⁸

In many ways, today's crackdown is more ambitious than the Second Red Scare. As Ellen Schrecker, the great historian of McCarthyism in universities, has pointed out, even during the height of that Red Scare, no public officials attempted to change what could be taught or researched—the effort was simply to purge those allied with the Communist Party.³⁹ Yet today's crackdown is quite explicitly aimed at changing curricula, eliminating efforts to address systematic exclusion, and undermining inconvenient research programs. Indeed, the goal is to institute a total transformation of universities. And the current crackdown is more tightly coordinated than the McCarthy inquiries. The latter relied on the independent but ideologically aligned action of multiple legislatures, sometimes in cooperation with the FBI. Today's crackdown is facilitated by a tight network of extremely wealthy right-wing donors and the think tanks and advocacy organizations that they fund, which have provided resources and training for federal- and state-level elected officials and bureaucrats, ideologically sympathetic trustees and presidents, and students and faculty, in addition to running their own pressure campaigns that integrate litigation, lobbying, and press strategy.⁴⁰

That said, the ambition of the current crackdown is itself a weakness. While McCarthyism aimed at a relatively small group of people affiliated with a broadly unpopular and demonized political project, today's crackdown has the more ambitious goal of replacing the majority political and social tendencies of the past several decades, as well as rewriting governing laws and norms. While McCarthyism encouraged a majority of faculty to target a minority of their colleagues, today's crackdown affects a large swath of the faculty—it is of the sort that generated faculty countermobilization during the Vietnam War and against the Scott Walker attack on

³⁸ Andrea Tinker and Alabama Reflector, “University of Alabama Professors Face Backlash, Fear of Losing Funding Under Anti-DEI Law, Lawyer Says,” *Al.com*, July 3, 2025, <https://www.al.com/news/2025/07/university-of-alabama-professors-face-backlash-fear-of-losing-funding-under-anti-dei-law-lawyer-says.html>; Katy McAfee, “Federal Judge Halts Enforcement of New State Law amid Free Speech Lawsuit Brought by Students,” *KUT Radio*, October 14, 2025, <https://www.kut.org/education/2025-10-14/university-of-texas-austin-free-speech-lawsuit-campus-protection-act-injunction>.

³⁹ “Worse Than McCarthyism’: Historian Ellen Schrecker on Trump’s War Against Universities & Students,” *Democracy Now!*, May 30, 2025, https://www.democracynow.org/2025/5/30/mccarthyism_universities.

⁴⁰ MacLean, “American Council”; Isaac Kamola, “Manufacturing Backlash: Right-Wing Think Tanks and Legislative Attacks on Higher Education, 2021–2023,” *AAUP*, May 2024, https://www.aaup.org/sites/default/files/Manufacturing_Backlash_final_0.pdf; Green, “Inside the Trump Administration’s Assault on Higher Education.”



public sector unions in Wisconsin.⁴¹ It is early days yet, but the administration's ambition may well prove to be too much given the large number of people who believe deeply in those norms and the larger number who are likely to be horrified by their abandonment.

Mapping Constituencies: Assessing The Extent to Which Relevant Actors Protect Free Speech

With some ground cleared, we can now examine how the different parts of the institutional infrastructure surrounding universities can be more or less supportive of free speech. This section outlines five such bodies that play a role in the free-speech landscape of universities: courts, trustees, university presidents and senior administration, faculty, and accreditors.

Courts

The most familiar protectors of free speech on campus are courts applying constitutional law, primarily the First Amendment. Under modern free speech doctrine, individuals and organizations can go to federal court to sue “state actors” (which usually means government officials or their agents) for violating their rights to “freedom of speech” and “to peaceably assemble.”⁴² Such suits can result in injunctions that order government officials to cease a course of action and/or monetary damages to compensate for courses of action already undertaken. Starting in the 1960s,⁴³ the Supreme Court began to recognize that First Amendment protections extended to faculty and students at public universities.⁴⁴ It is by now well established that faculty have First Amendment protections as public employees against retaliatory firing and

⁴¹ Jon Shelton, “The Battle for Higher Education in Wisconsin,” *Academe* (Fall 2024), <https://www.aaup.org/academe/issues/fall-2024/battle-higher-education-wisconsin>.

⁴² U.S. Const., amend. I. See also *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (incorporating the First Amendment against the states via the Fourteenth Amendment). It is worth noting that some states impose similar rules on private universities, whether by statute or constitution. *E.g.* Cal. Educ. Code § 94367; *Hagel v. Portland State Univ.*, 203 P.3d 226 (Or. Ct. App. 2009). And Congress expressed support for extending free speech protections similarly without creating an enforceable right. 20 U.S.C. § 1011a. Since private universities are not our focus here, I do not elaborate further.

⁴³ With some earlier cases hinting at what was to come. *E.g.* *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (mentioning the importance of academic freedom in dicta to a case ultimately decided on due process grounds); *id.* at 268 (Frankfurter, J., concurring) (same).

⁴⁴ *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967); *Healy v. James*, 408 U.S. 169 (1972).



protections as members of the general public against overbroad loyalty oaths.⁴⁵ It is also well established that the First Amendment imposes limits on public universities' regulations of student organizations,⁴⁶ student (and faculty) protest,⁴⁷ and student newspapers.⁴⁸ And governments are restricted in how they can regulate public or private universities—including which conditions they can attach to funding.⁴⁹ Many of the details of what these general principles require are the subject of circuit splits and ongoing scholarly debate. With respect to protection of faculty, central lines of dispute revolve around the question of how much a court should balance the public university's interest as a public employer in controlling its employees to serve the public and whether academic freedom should be located at the level of the institution or at the level of faculty.⁵⁰ With respect to protection of students, familiar line-drawing questions regarding how much disruption must be tolerated, how to balance speech rights with equality rights, and other issues, remain active.⁵¹

To the extent that courts hold firm to these principles, they are indeed important sources of free speech protection. The ability of faculty or students to sue when on-campus governance fails to protect their speech provides a backstop that can either force campus institutions to do better or provide some monetary compensation. More consequentially, the possibility that a university (or a legislature writing rules for a university, or a governor policing protests at a university) might be sued if they violate recognized norms of free speech provides the university a strong reason to hesitate before even coming close to violating those norms.

Moreover, to the extent that public officials (at universities or otherwise) internalize the principles of free speech that courts articulate, those public officials may employ

⁴⁵ E.g. *Buchanan v. Alexander*, 919 F.3d 847 (5th Cir. 2014); *Lyons v. Vaught*, 875 F.3d 1168 (8th Cir. 2017); *Keyishian*.

⁴⁶ E.g. *Healy*; *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661 (2010).

⁴⁷ *Shamloo v. Miss. State Bd. of Trustees*, 620 F.2d 516 (5th Cir. 1980).

⁴⁸ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995).

⁴⁹ Knight First Amendment Institute at Columbia University, “Federal Funding and the First Amendment,” accessed January 15, 2026, <https://knightcolumbia.org/research/federal-funding-and-the-first-amendment>.

⁵⁰ Heidi Kitrosser, “The Government Speech Doctrine Goes to School,” Knight First Amendment Institute at Columbia University, October 11, 2024, <https://knightcolumbia.org/content/the-government-speech-doctrine-goes-to-school>.

⁵¹ Zach Greenberg, “Rejecting the ‘Heckler’s Veto,’” *FIRE*, June 14, 2017, <https://www.thefire.org/news/rejecting-hecklers-veto>; K-Sue Park, “Whose Free Speech?,” *Dissent Magazine*, Summer 2021, <https://dissentmagazine.org/article/whose-free-speech>; Ryan Quinn, “Penn Professor Amy Wax Punished for ‘Derogatory’ Statements but Won’t Lose Job,” *Inside Higher Ed*, September 24, 2024, <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/09/24/penns-amy-wax-punished-statements-wont-lose-job>.



them in their own deliberations about how to govern universities. A noteworthy example of this phenomenon occurred during the 1960s Berkeley Free Speech movement. In December 1964—before any of the major Supreme Court cases ruling on the scope of the First Amendment on public university campuses came down—a group of three law professors wrote and circulated a memorandum arguing that regulation of student protest should be stubbornly content-neutral and generally tolerant of some amount of disruption. Although the Board of Regents had been pushing for crackdowns, they were persuaded that the logic of the First Amendment required them to apply these principles, a conclusion that helped to calm a contentious environment.⁵² This precedent also set an example for other universities, familiarizing at least some university boards with the importance of differentiating between restrictions on certain messages or speakers and restrictions on the time, place, or manner of the speech.

Yet courts only provide limited protection. For one thing, suing is expensive and taxing. Plenty of people who are wronged frequently opt to avoid the headache and eat the loss. And, even when successful, lawsuits usually come after harm has already occurred and often provide inadequate remedies and inadequate deterrence.⁵³ That is in part because the amount of deterrence they provide depends on whether the costs they impose are greater than the rewards or costs of censorship. When a university decision-maker faces substantial pressure to restrict freedom of expression—if their job is threatened or they stand to gain in donations or job prospects—they may make a calculated and rational decision that it is well worth the risk of being sued and even the cost of losing a lawsuit. That sort of thing has happened relatively quietly for decades, and the second Trump administration has demonstrated how it can be scaled up via lack of any internalization of First Amendment principles and a willingness to test the boundaries of the law at every step.

In addition, much doctrine remains unsettled, with the Supreme Court having shown repeated reluctance to resolve ongoing disagreement among lower court judges and scholars.⁵⁴ This uncertainty increases the cost of protection of free speech, since it requires more lengthy litigation to establish the relevant principles in each case. And even the most robust versions of court protection currently on

⁵² Schrecker, *Lost Promise*, 100–101; Seymour Martin Lipset and Sheldon S. Wolin, eds., *The Berkeley Student Revolts: Facts and Interpretations* (Doubleday, 1965), 273 (reproducing the original memorandum). The professors were Robert Cole, Hans Linde, and Robert O’Neil, all of whom had clerked for Justice William O. Douglas, a strong proponent of expanding First Amendment doctrine.

⁵³ Courts have also imposed procedural protections for students based on both interpretation of the Due Process Clause of the 14th Amendment and interpretation of university policies. These cases are discussed in William A. Kaplin et al., *The Law of Higher Education*, 2 Volume Set, 6th. (Jossey-Bass, 2019).

⁵⁴ Post, *Democracy*.



offer do not even come close to dealing with the impacts of reduced funding, union busting, and adjunctification on research and pedagogy.

Courts, therefore, are necessary protectors of freedom of speech, but far from sufficient to support robust forms of open inquiry at public universities.

Trustees

All public universities—indeed, all universities—have boards of trustees (sometimes also called “Regents”, “Governors”, and the like) that are responsible for making consequential governance decisions. Which decisions these boards are tasked with making—and with whom they have to share power—varies state by state. Additionally, nearly all states have some version of a statewide governance body that makes decisions for entire systems of public universities. Some of these function more like boards—replacing most of the functions of campus boards— while others make decisions about how to allocate resources across institutions and leave particular institutional questions to the boards governing individual campuses.⁵⁵

Boards are generally made up of alums with some power and influence—they are laypeople in the sense that they are not faculty and do not have any particular expertise in higher education. Until the recent radicalization of some boards, discussed below, they mostly have not concerned themselves with the day-to-day operation of the university, focusing instead on big-picture questions like hiring senior administrators and monitoring fundraising goals. Both of these aspects have meant that boards have been unevenly socialized into norms of academic freedom and open discourse and protest on campus. Yet the big-picture questions that boards generally deal with can relate to free speech on campus insofar as they involve choosing leadership that is more or less sympathetic to academic freedom and/or political dissent, deciding which programs to fund, and, most directly, making decisions about the role of collective bodies of faculty, such as faculty senates, in governance. And, even if they do not *usually* engage in day-to-day decisions, boards have a long history of being pulled into deliberations about relatively controversial cases involving faculty discipline and/or student protest.

When trustees have been called on to make such decisions, they have tended to be the least sympathetic to speech protection of anybody involved in the dispute (aside from, perhaps, elected officials, especially from the Right). In the 19th century—before the rise of modern universities—trustees repeatedly quashed faculties’ efforts

⁵⁵ These differences are outlined in a previous report. Herrine, *The Neoliberalization of Higher Education*.



to exert control over curriculum and were known to criticize faculty for failing to live sufficiently religious lives and to be harsh enough to students.⁵⁶ As research universities were first emerging in the early 20th century, presidents who were sympathetic to academic freedom and shared governance often had to struggle against trustees who saw universities as subject to their exclusive control.⁵⁷ During Red Scares, trustees were often pressuring the few presidents and faculties who were inclined to protect faculty who refused to testify.⁵⁸ In the first wave of student, and then faculty, protests in the 1960s, trustees were generally in favor of arrest, expulsion, and other punitive responses.⁵⁹ Especially insofar as they see themselves as protectors of university property and public reputation, they have generally continued to be inclined toward punishing rabble-rousers, resisting faculty unions, and adopting strong “institutional neutrality” positions.⁶⁰

To be sure, these are all generalizations. Trustees are not always the least speech-protective voices on campus, and they have sometimes been advocates for more protection. In a few historical instances—notably at Cornell in 1889—trustees actually pushed reluctant presidents toward the creation of faculty senates.⁶¹ When Georgia Gov. Eugene Talmadge announced in 1941 that he would “fire any university professor ‘who dissents from the proposition that the white man is by nature the superior of the black man’” and ordered the Board of Regents to fire deans who sponsored interracial conferences, the board unanimously refused.⁶² Governor Talmadge fired them all (something he could only do for public, and not private, universities, it is worth noting) and proceeded with the firings until he began to meet resistance from others. Even when they are not so brave, trustees have frequently come around to favoring free speech—especially when guided by principled statements of policy from weighty authors, such as the Berkeley law professor report discussed above as well as the Woodward Report, Kalven Report, and the Chicago Principles.⁶³

⁵⁶ Walter P. Metzger, *Academic Freedom in the Age of the University* (Columbia University Press, 1955).

⁵⁷ Metzger, *Academic Freedom*; Gerber, *Rise and Decline*.

⁵⁸ Schrecker, *No Ivory Tower*; Gerber, *Rise and Decline*.

⁵⁹ Schrecker, *Lost Promise*.

⁶⁰ Gerber, *Rise and Decline*; “On Institutional Neutrality,” AAUP, <https://www.aaup.org/reports-publications/aaup-policies-reports/policy-statements/institutional-neutrality>.

⁶¹ Gerber, *Rise and Decline*.

⁶² Glenda Elizabeth Gilmore, *Defying Dixie: The Radical Roots of Civil Rights, 1919–1950*, 1st ed (W. W. Norton & Company, 2009).

⁶³ “On Institutional Neutrality,” AAUP. I set aside here the question of whether these reports are consistent with each other and whether they conceptualize free speech properly. The salient point is that they all express the importance of restraint on the part of boards and administrators.



As far as I am aware, there has not been any systematic study of whether differences in how states organize and appoint their boards has affected how protective of speech they are. Some potential differences are worth noting, however. Larry Gerber has argued that states that adopted statewide governance boards and gave them relatively more power than campus boards made shared governance less effective, because faculty was organized at the campus level and so was more distant from where decisions were actually being made.⁶⁴ That remains a challenge even though the incorporation of public universities into “systems” also encouraged the spread of shared governance from flagship campuses—where it arrived first—to regional campuses that did not yet have them.⁶⁵

Separately, the adoption of more active management of endowments over the latter half of the 20th century and diversified revenue streams in light of public funding not keeping up with costs encouraged the selection of board members with more ability to raise and manage money.⁶⁶ This phenomenon was almost exclusively reserved to relatively well-endowed flagships. It seems likely that this selection process produced boards more concerned with reputational risk and property protection than the flourishing of an academic community, although I am not aware of any study that focuses on that question.⁶⁷

Another source of difference seems to be the political ideology of the appointing executive and legislature. There were multiple occasions during the early fights for academic freedom in which a switch to a more progressive legislature resulted in the appointment of trustees who were more sympathetic to shared governance.⁶⁸ Some of these progressive-appointed trustees also went along with progressive-led efforts to oust conservative professors, although these were much less common (and less successful) than business-led attacks on progressive professors.⁶⁹

Political ideology has only become more important in recent years. Conservative organizations have been attempting to organize conservative trustees to be more

⁶⁴ Gerber, *Rise and Decline*.

⁶⁵ Gerber, *Rise and Decline*.

⁶⁶ Charlie Eaton, *Bankers in the Ivory Tower* (University of Chicago Press, 2022).

⁶⁷ But see Eleni Schirmer, Jason Wozniak, Dana Morrison, Joanna Gonsalves, and Rich Levy, “Making the Invisible Visible: Organizing Against the Instructionally Harmful, Antidemocratic Effects of Institutional Debt,” *AAUP Journal of Academic Freedom* 12 (2021), https://www.aaup.org/sites/default/files/Schirmer_et_al_.pdf.

⁶⁸ Gerber, *Rise and Decline*.

⁶⁹ Metzger, *Academic Freedom*.



aggressive for decades, with increasing success in the past five years.⁷⁰ As Isaac Kamola and Nancy MacLean have documented in detail, the coordinated and extremely well-funded conservative effort to drive racial and sexual minorities and liberal and left-wing thought out of universities kicked into higher gear due to an influx of funding after the nationwide Black Lives Matter protests in 2020.⁷¹ The American Council of Trustees and Alumni, in collaboration with the Heritage Foundation, has been training trustees and advising boards on strategies to disrupt university governance.⁷² Alongside right-wing-dominated legislatures passing anti-DEI bills, gag orders, and tenure reforms and the right-wing governors appointing ideologically aligned presidents, right-wing-trained trustees have been exploring curricular reform that would promote conservative thought, imposing broad interpretations of “institutional neutrality” to muzzle professors, and putting pressure on administration to discipline outspoken students and faculty. Trustees have played an increasingly activist role in North Carolina,⁷³ Virginia,⁷⁴ Texas,⁷⁵ Florida,⁷⁶ and Indiana,⁷⁷ among other states.

This wave of right-wing activism was in part a reaction to a wave of funding for efforts to address racial injustice in the wake of the enormous outpouring of

⁷⁰ Christopher Newfield, *Unmaking the Public University: The Forty-Year Assault on the Middle Class*, (Harvard University Press, 2011) (discussing ACTA’s role in attacking faculty and students who were insufficiently supportive of military intervention after 9/11).

⁷¹ Kamola, “Manufacturing Backlash”; Nancy MacLean, “American Council.”

⁷² MacLean, “American Council.”

⁷³ Korie Dean and Kyle Ingram, “UNC System Board Approves Policy Gutting DEI Efforts at NC Public Universities,” *The News & Observer*, May 23, 2024, <https://www.newsobserver.com/news/local/education/article288507395.html>; Jane Stancill and Lynn Bonner, “Tom Ross Asked to Leave UNC System Presidency,” *The News & Observer*, January 17, 2015, <https://www.newsobserver.com/news/local/education/article10223801.html>.

⁷⁴ Cecilia Mould and Ford McCracken, “Ryan and Sheridan Provide Full Accounts of Ryan’s Resignation. They Differ Significantly,” *Cavalier Daily*, November 14, 2025, www.cavalierdaily.com/article/2025/11/ryan-and-sheridan-provide-full-accounts-of-ryans-resignation-they-differ-significantly.

⁷⁵ Kyle McClenagan, “Texas A&M System Approves New Policy That Could Limit ‘Race or Gender Ideology’ Courses,” *Houston Public Media*, November 13, 2025, <https://www.houstonpublicmedia.org/articles/education/2025/11/13/536041/texas-am-system-approves-new-policy-that-could-limit-race-or-gender-ideology-courses>.

⁷⁶ Emma Whitford, “Florida Board Says Syllabi, Reading Lists Must Be Posted Publicly for 5 Years,” *Inside Higher Ed*, November 10, 2025, <https://www.insidehighered.com/news/faculty-issues/teaching/2025/11/10/fla-board-says-syllabi-reading-lists-must-be-posted>.

⁷⁷ Laura Spitalniak, “A Complete Takeover’: Indiana Lawmakers Pass Last-Minute College Governance Overhaul,” *Higher Ed Dive*, April 29, 2025, <https://www.highereddive.com/news/a-complete-takeover-indiana-lawmakers-pass-last-minute-college-governanc/746654>.



protests after George Floyd’s murder.⁷⁸ During this wave, many universities and other institutions expanded DEI offices, some expanded their research and curricular offerings,⁷⁹ and many changed their public rhetoric in discussing how racial inequality is reproduced in the United States.⁸⁰ Some students and administrators pushed for restrictions of language and curriculum in the name of creating “safe spaces”, avoiding “microaggressions”, and otherwise creating a welcome environment for marginalized groups in part by restricting speech.⁸¹ An emerging narrative among some commentators was that there was a “free speech crisis” mostly driven by moral panic on the left.⁸² Close study indicates that this narrative depended on exaggerations and distortions (and any effect on increased censoriousness among left-wing students was temporary at most), but it did contribute to a growing sense among the political center and right wing that a wave of reform was needed.⁸³ For the purposes of this section, the crucial point is that trustees were mostly (but not entirely) bystanders to the wave of reckoning around racial justice, while they have often been protagonists in the backlash to it.

⁷⁸ Maria di Mento, “Wealthy Donors Make Big Gifts to Racial-Justice and Diversity Efforts,” *The Chronicle of Philanthropy* 33, no. 2 (2020): <https://go.gale.com/ps/i.do?id=GALE%7CA648910139&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=1040676X&p=AONE&sw=w&userGroupName=anon%7E4e6f59a8&aty=open-web-entry>.

⁷⁹ Rachel Poser, “Ibram X. Kendi Faces a Reckoning of His Own,” *New York Times*, June 4, 2024, <https://www.nytimes.com/2024/06/04/magazine/ibram-kendi-center-for-antiracist-research.html>.

⁸⁰ Noor Toraif et al., “From Colorblind to Systemic Racism: Emergence of a Rhetorical Shift in Higher Education Discourse in Response to the Murder of George Floyd,” *PLoS ONE* 18, no. 8 (2023): <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0289545&type=printable>.

⁸¹ *Chasm in the Classroom: Campus Free Speech in a Divided America* (PEN America, 2019), <https://pen.org/report/chasm-in-the-classroom-campus-free-speech-in-a-divided-america>; And *Campus for All: Diversity, Inclusion, and Freedom of Speech at US Universities* (PEN America, 2017), <https://pen.org/report/and-campus-for-all-diversity-inclusion-and-free-speech-at-u-s-universities>.

⁸² Greg Lukianoff and Jonathan Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* (Penguin Random House, 2018).

⁸³ Jeffrey Adam Sachs, “There Is No Campus Free Speech Crisis: A Close Look at the Evidence,” Niskanen Center, April 27, 2018, <https://www.niskanencenter.org/there-is-no-campus-free-speech-crisis-a-close-look-at-the-evidence>; Jeffrey Adam Sachs, “The ‘Campus Free Speech Crisis’ Ended Last Year,” Niskanen Center, January 25, 2019, <https://www.niskanencenter.org/the-campus-free-speech-crisis-ended-last-year/>; PEN America, *Chasm in the Classroom*.



University Presidents and Senior Administration

University presidents—and their leadership teams—play a central role in many of the decisions that shape the conditions for speech on campus.⁸⁴ Their political sympathies, tolerance for dissent, ideas of what role a university should play in society, and leadership style can be decisive in shaping the atmosphere of a university. Unlike trustees, they are constantly involved in day-to-day decisions about campus life and usually have at least some—and often extensive—background in academia. But, unlike faculty and students, they view campus life with some distance, being forced to mediate between the interests of those on campus, and off-campus actors like donors, trustees, and politicians. This liminality is both constraining (insofar as presidents must respond to multiple constituencies) and freeing (insofar as they can play those constituencies off each other). It makes a university uniquely shaped by the idiosyncrasies of its president, and it makes it hard to predict exactly what any given president will do merely by virtue of their institutional role.

Presidents have both been pioneers of free speech and obstacles to its implementation. During early struggles for academic freedom, some presidents were staunch allies of faculty shared governance, while some fought it tooth and nail.⁸⁵ In general, presidents with a background in research (rather than in business or otherwise outside academia) were more likely to favor ceding substantial control over academic matters to faculty, although some presidents with nonacademic backgrounds were similarly supportive.⁸⁶ During the student-led rebellions of the 1960s, presidents responded to demonstrations in a wide variety of ways—from open discussion and bargaining to calling the police and expelling protestors to wavering back and forth between these approaches, and much else in between.⁸⁷ No approach was clearly superior—Kingman Brewster’s widely praised conciliatory and dialogic approach to protestors at Yale resulted in reforms and deescalation, while John Summerskill’s efforts at conciliation at the University of San Francisco failed to deescalate a process that ultimately resulted in an almost total institutional

⁸⁴ Universities do not use the term “president” uniformly—in the University of California system, for instance, only the system as a whole has a “president”, while each campus has a “chancellor”. Here the term “president” refers primarily to the chief administrative official on any given campus, regardless of that person’s actual title. That said, most of the analysis pertains to senior administrative officials generally, without drawing fine lines as to particular scopes of responsibilities.

⁸⁵ Gerber, *Rise and Decline*; Metzger, *Academic Freedom*.

⁸⁶ Gerber, *Rise and Decline* (discussing the leading roles of Eliot at Harvard and Gilman at Johns Hopkins, former academics, but also Low at Columbia, not an academic).

⁸⁷ Schrecker, *Lost Promise*.



breakdown.⁸⁸ On the other end, Edward Levi's approach of mostly ignoring student demands at the University of Chicago and waiting for the semester to end also resulted in deescalation and, indeed, to his appointment as US Attorney General, while Grayson Kirk's refusal to negotiate at Columbia led to a massive escalation and Peter Regan's arrest of 45 professors at SUNY Buffalo led to chaos and loss of many esteemed faculty.⁸⁹

By the 1970s, with the exception of religious and for-profit colleges, general principles of academic freedom and tolerance for student protests had become broadly accepted.⁹⁰ Presidents were socialized into these norms, and often inherited robust shared governance institutions that put them in ongoing discussion with faculty strongly committed to them. (The robustness of these institutions varied by campus.) Presidents have mostly upheld strong commitments to open inquiry, dialogue, and protest even amidst intense pressure from trustees, outside advocacy groups, and ideologically aligned factions of students and (sometimes) faculty (whether left-wingers concerned about racism or right-wingers concerned about critical analysis of racism), even adopting and updating a set of principles to that effect. But the question of how to actually implement these principles always remained, and this commitment has not always held fast amidst pressure. A steady trickle of punishment for unpopular speech remained a significant, if relatively marginal, part of campus life. Presidents have seemed more likely to yield to pressure—or, indeed, to balance tolerance for speech against other values—if that pressure had sympathy among on-campus constituencies: minority students in uproar about hateful comments of a professor or visiting speaker; faculty complaining about protests' disruptions to their classes; conservative students angry about learning critical perspectives on American history.

At the same time, many presidents have been crucial to advancing a more subtle, long-term undermining of free speech that has been characteristic of the neoliberal era. Starting in the latter half of the 1970s, amid a general sense that universities were facing budget crises, the idea began to emerge of a president as an entrepreneur who had to resist the old-fashioned thinking of faculty in order to

⁸⁸ Schrecker, *Lost Promise*; Kabaservice, *The Guardians*.

⁸⁹ Schrecker, *Lost Promise*; Benjamin Ginsberg, *The Fall of the Faculty: The Rise of the All-Administrative University and Why It Matters* (Oxford University Press, 2013). I am mixing private with public university examples here, because the governance dynamics were not very different at public and private universities on this matter.

⁹⁰ Gerber, *Rise and Decline*; Ginsberg, *Fall of the Faculty*. Some evidence on current policies here: *Spotlight on Speech Codes 2019: The State of Free Speech on Our Nation's Campuses* (Foundation for Individual Rights and Expression (FIRE), 2019), <https://www.thefire.org/research-learn/spotlight-speech-codes-2019>.



bring universities into the modern era.⁹¹ It became increasingly common for presidents to get paid large salaries while focusing on networking with donors and trustees, endowment management, and making splashy investments in dorms, amenities, and science buildings. This was treating universities, whether public or private, more “like businesses”. A new class of professional university administrators emerged that had not spent much, if any, time as faculty. They looked for cost savings through the adjunctification of faculty and the cutting of majors without a clear career path, chased down donations even if they came with substantial strings attached, and recruited students via expensive advertising campaigns, sports programs, and subsidized party lives.⁹² They also crushed faculty unions and sidelined shared governance institutions. By the 2000s, more than half of faculty were non-tenure-track and nearly half were part-time. Meanwhile, only 4 percent of administrators were part time, and the ratio between faculty and administrators went from roughly 2:1 to roughly 1:1.⁹³

This new businesslike form of university governance had both subtle and dramatic negative impacts on campus free speech. When Florida State took hundreds of millions of dollars to open a school of chiropractic medicine—which is seen as bunk by evidence-based physicians—without any faculty input, it undermined faculty governance and undermined its mission to the pursuit of truth.⁹⁴ When Virginia Commonwealth University secretly signed a big contract with the tobacco company Philip Morris that included a term that prohibited processors from discussing the results of their research without the company’s permission, it not only directly muzzled faculty speech, it distorted the research produced.⁹⁵ When West Virginia and Loyola used budget shortfalls (often induced by the failed leveraged investments of administrators) to impose restructuring of departments to prioritize business and deprioritize the humanities, they maneuvered around shared governance and made their institutions more beholden to business needs.⁹⁶ When universities around the country shifted their hiring to part-time faculty, they undermined shared governance institutions and the academic freedom of the faculty who were hired.⁹⁷

⁹¹ Gerber, *Rise and Decline*; Slaughter and Rhoades, *Academic Capitalism*; Herrine, *Neoliberalization*.

⁹² Elizabeth A. Armstrong and Laura T. Hamilton, *Paying for the Party: How College Maintains Inequality* (Harvard University Press, 2015); Gerber, *Rise and Decline*; Newfield, *Unmaking*.

⁹³ Ginsberg, *Fall of the Faculty*.

⁹⁴ Ginsberg, *Fall of the Faculty*.

⁹⁵ Ginsberg, *Fall of the Faculty*.

⁹⁶ Ryan Quinn, “WVU Faculty Overwhelmingly Votes No Confidence in Gee, Calls for Freeze in Cuts,” *Inside Higher Ed*, September 7, 2023, <https://www.insidehighered.com/news/faculty-issues/shared-governance/2023/09/07/wvu-faculty-overwhelmingly-votes-no-confidence-gee>; Ginsberg, *Fall of the Faculty*.

⁹⁷ Gerber, *Rise and Decline*; Ginsberg, *Fall of the Faculty*.



The more recent coordinated right-wing attack on the independence of institutions of higher education has taken advantage of this decades-long distancing between presidents and faculty. The hollowing out of shared governance institutions and the long-term shift toward presidents with CEO/executive training made presidents more dependent on the support of trustees, which has made them weaker advocates for free speech on campus. Multiple boards of trustees have forced their presidents to resign under coordinated pressure from right-wing activists, working through House Republicans under the Biden administration, and then at the Department of Justice under Trump.⁹⁸ These presidents generally expressed support for free expression—even as some of them expelled and evicted student protestors—but were also concerned to conciliate with activists who had no interest in compromise. Most of them consulted more closely with boards that were inclined to bargain and/or controlled by anti-protestor activists than with faculty or students who were urging more confrontational stances. Indeed, at several schools threatened with massive withdrawals of funding, presidents have engaged in extended negotiations with the Trump administration, even as faculty organizations have urged resistance and even sued (and often won) under the First Amendment.⁹⁹ At other schools—including the University of Virginia—activists on the board actively plotted against presidents who were attempting to negotiate in good faith with an administration that had no interest in doing so.¹⁰⁰

Faculty

Faculty participation in university governance is both part of what “academic freedom” means and also a means of protecting faculty’s and (to a lesser degree) students’ speech rights. The mechanism by which faculty governance is supposed to protect research, pedagogical, and extramural freedom is direct. With respect to academic freedom, the practice of peer review and collective standard-setting for valid inquiry is part of the practice of truth-seeking—protecting faculty self-determination of standards thus protects academic freedom directly.¹⁰¹ With respect

⁹⁸ Mandy Taheri, “Full List of College Presidents Who Have Resigned Amid Campus Protests,” *Newsweek*, August 15, 2024, <https://www.newsweek.com/full-list-college-presidents-who-have-resigned-amid-campus-protests-1939822>; Annie Ma, “Northwestern University President Says He Will Resign Following Tenure Marked by White House Tension,” *Associated Press*, September 4, 2025, <https://apnews.com/article/northwestern-schill-resignation-trump-e2c8cb4042f8594c3c5b733730e32342>; Mould and McCracken, “Ryan and Sheridan.”

⁹⁹ “AAUP Litigation,” AAUP, <https://www.aaup.org/about/programs/legal-program/aaup-litigation>.

¹⁰⁰ “James E. Ryan Resignation Letter,” November 14, 2025, archived at <https://drive.google.com/file/d/1Is6xW62HI5oZaP15xhmtbaemtBtqrNZR/view>.

¹⁰¹ Post, *Democracy*.



to free expression, faculty have an interest in their own freedom, and they will advocate for that interest if they are incorporated in decision-making about it. Moreover, they know more about research and teaching processes and thus can govern with more expertise.¹⁰²

The mechanism by which faculty governance might protect student freedom of speech, however, is more indirect: Faculty tend to be relatively more favorable toward campuses that favor free speech than others with power on campus, and so they will be a voice in support. In practice, each of these mechanisms is mediated—sometimes strengthened, sometimes weakened—by others. For example, faculty tend to be more left-leaning than trustees or presidents, which is likely to make them more sympathetic to the protection of left-wing student or visitor speech, and less sympathetic to the protection of right-wing speech, especially when it is hateful.¹⁰³ But faculty are far from ideologically uniform, and they disagree about many other things as well. These disagreements, and the difficulty of organizing, can make it difficult for faculty to speak with one voice.

Shared governance at nearly every university was, alongside widespread tenure, a major achievement of the fight for academic freedom in the first half of the 20th century. But the uniformity can deceive, as what “shared governance” means in practice varies greatly. Most schools leave hiring and curricular decisions largely up to faculty departments, although even that basic level of deference is under attack as part of the broader right-wing assault in a few states. Most schools also have faculty senates, but that term can mean quite different things depending on the institution. Some senates serve merely advisory roles, while others are part of the formal decision-making process on “academic” matters such as curriculum and grading practices. As of 2024, around 27 percent of faculty are in unions with formal collective bargaining agreements (faculty unions are much more common at public than private universities after the *Yeshiva* decision in 1980),¹⁰⁴ some of which

¹⁰² This is not to say that faculty will always unanimously support academic freedom. Each individual faculty member will also have reasons to oppose certain strains of research, pedagogical methods, and other faculty members. In any given case, a faculty member may choose to make a decision that goes against a general principled support for academic freedom. And this happens regularly (as we will explore). But, overall, the historical record provides ample evidence of general faculty support for academic freedom—at the least, as a relative matter, faculty seem to have more support than other constituencies.

¹⁰³ Mark J. Chin et al., “Politics of the Professoriate: Longitudinal Evidence from a State Public University System’s Universe of Faculty,” EdWorkingPaper No. 25-1235 (Annenberg Institute, Brown University, July 2025), <https://files.eric.ed.gov/fulltext/ED674094.pdf>.

¹⁰⁴ *NLRB v. Yeshiva Univ.*, 444 U.S. 672 (1980). In *Yeshiva*, the Court decided that faculty members were not “employees” because they had too many governance rights under regimes of shared governance.



displace faculty senates and some of which supplement them.¹⁰⁵ No matter what form it takes, faculty governance at any given campus is strengthened by cross-campus institutions such as the AAUP and disciplinary associations (American Sociological Association, American Association for Biochemistry and Molecular Biology, etc.) that allow faculty to coordinate and share knowledge outside the aegis of their institutions and can exert external pressure on those institutions. Even at institutions with weak formal shared governance, faculty can sometimes rely on such cross-campus bodies to help them have a voice in informal ways. This dynamic is explored further below in the discussion of accreditation.

Shared governance has proven enormously important in protecting academic freedom, including by strengthening tenure protections.¹⁰⁶ Faculty governance institutions—formal and informal—have also generally been more sympathetic to student protestors than other university governance constituencies. In the tumultuous '60s, many faculty were skeptical of students, but many others joined in the protests and were transformed by the process (downstream effects include the development of the “teach-in” as a social form and the creation of left-wing constituencies in multiple disciplinary and professional associations).¹⁰⁷ Faculty were often involved in developing codes of conduct that supported student protest and required negotiations to run through faculty representatives to ease tensions. Over the 1970s, it became normal for faculty to be involved with developing policies allowing for student protest and joining many of the protests themselves.¹⁰⁸

But faculty governance has its limits and blind spots. During the McCarthy era, nearly every faculty member who was fired went through a peer review process in which their fellow faculty decided that alleged disloyalty and/or refusal to cooperate with investigations was sufficient grounds to fire a colleague.¹⁰⁹ The AAUP was initially supportive of this process and slow to change its mind—by which point its

That judgment was doubtful in 1980, but the erosion of shared governance institutions (in part through the increase of contingent faculty) has made it even harder to support today.

¹⁰⁵ Mary Ellen Flannery, “The Union Boom in Higher Education!,” NEA Today, September 18, 2024, <https://www.nea.org/nea-today/all-news-articles/union-boom-higher-education>. This represents a significant growth of unionization since 2012, and nearly all new unions include non-tenure-track faculty. See also Timothy Cain, “Organizing the Professoriate: Faculty Unions in Historical Perspective,” Louise McBee Institute of Higher Education, 2015, <https://ihe.uga.edu/news/stories/2015/organizing-professoriate-faculty-unions-historical-perspective>.

¹⁰⁶ Gerber, *Rise and Decline*; Roger L. Geiger, *Research & Relevant Knowledge: American Research Universities Since World War II*, 1st ed. (Routledge, 2017), <https://doi.org/10.4324/9781315128481>.

¹⁰⁷ Schrecker, *Lost Promise*.

¹⁰⁸ Gerber, *Rise and Decline*.

¹⁰⁹ Schrecker, *No Ivory Tower*.



condemnation was largely ignored until the fever broke.¹¹⁰ During the 1960s, many faculty opposed student protest and supported harsh discipline.¹¹¹ Throughout history, faculty have been divided amongst themselves. Political ideology has played a role, as mentioned above, but also the divide between relatively comfortable and high-status faculty and relatively low-status—and especially non-tenure-track faculty—contributed to a breakdown in solidarity during the neoliberal era. This breakdown frequently ran on STEM-versus- humanities lines, as STEM professors obtained more and more research funding while seeing themselves as less and less “political” (in contrast to the highly politicized physicists and chemists of the 1930s–60s), while humanities professors saw their funding shrink and became increasingly vocal about both the politics of higher education and political issues more generally.

Indeed, faculty governance has substantially weakened over time.¹¹² Perhaps the most important reason is that the faculty labor market has shifted from a sellers’ to a buyers’ market. At the turn of the 20th century, faculty and then-novel research universities were able to insist on academic freedom and shared governance rights in large part because there were so few people with PhDs in the country (no universities offered PhDs until the 1870s—Americans who were qualified and interested had to travel to Europe, mostly Germany, to earn one).¹¹³ McCarthy-era blacklists were possible in part because the supply of faculty had started to catch up with demand, but enforcing similar exclusions was much more difficult in the 1960s, during the golden age of university expansion, when federal research funding surged. Many faculty who were fired for their political views and would have been unable to find jobs in the 1950s had relatively little trouble only a decade later.¹¹⁴ Starting in the 1970s, the trend began to reverse as investment in research peaked, the supply of PhDs caught up with demand for professors, and support for universities became more cyclical.¹¹⁵

¹¹⁰ Schrecker, *No Ivory Tower*.

¹¹¹ Schrecker, *Lost Promise*.

¹¹² Colleen Flaherty, “Shared Governance, Then and Now,” *Inside Higher Ed*, July 28, 2021, <https://www.insidehighered.com/news/2021/07/29/shared-governance-over-time-snapshot>.

¹¹³ Geiger, *Research*.

¹¹⁴ Schrecker, *Lost Promise*.

¹¹⁵ Geiger, *Research*; John R. Thelin, *A History of American Higher Education*, Third Edition (Johns Hopkins University Press, 2019); Robert Perrucci, Kathleen O’Flaherty, and Harvey Marshall, “Market Conditions, Productivity, and Promotion among University Faculty,” *Research in Higher Education* 19, no. 4 (1983), <https://www.jstor.org/stable/40195517>; William R. Johnson and Sarah Turner, “Faculty Without Students: Resource Allocation in Higher Education,” *Journal of Economic Perspectives* 23, no. 2 (2009), doi.org/10.1257/jep.23.2.169.



This shift in the labor market power dynamics also made adjunctification and casualization possible. As discussed above, in the 1970s, a larger and larger share of faculty at public universities (and elsewhere) were non-tenure-track. By the 2010s, more than half of all faculty were part-time.¹¹⁶ This shift, which has been an easy way for presidents to save money, with the bonus of shifting the status of many faculty from tenured shared governor to contingent employee, has, predictably, undermined shared governance institutions.¹¹⁷ Adjunct faculty also usually do not have research budgets, and the contingency of their employment makes them easier to fire for speaking out without making it clear that is the reason for the firing.¹¹⁸ The fact that a large and growing share of faculty can be treated as expendable can make even tenure-track faculty think twice about speaking out.

However embattled, faculty governance continues to prove itself essential. Even as shared governance weakened at many institutions, university leadership still often looked to faculty to help design codes of conduct as they relate to various forms of on-campus speech. It has been faculty organizations and a newly activist AAUP that have been at the forefront of fighting back during the most recent onslaught on universities.¹¹⁹

Accreditors

Another source of governance for universities exists outside of both individual institutions and governments: the various self-governance institutions that aim to ensure the quality of research and teaching. Such organizations take a variety of forms—faculty have a variety of peer review institutions that extend well beyond individual campuses, trustees and university administrators have professional associations, and so on. The role of each would be worth exploring, but to highlight some of the dynamics, we might focus on an institution type with a more formal role in mediating between colleges and government: accreditors.

¹¹⁶ Ginsberg, *Fall of the Faculty*.

¹¹⁷ Gerber, *Rise and Decline*.

¹¹⁸ Eva Swidler, “Can the Adjunct Speak?” *Academe* (September–October 2016), www.aaup.org/academe/issues/102-3/can-adjunct-speak; Sachs, “There is No Campus Free Speech Crisis.”

¹¹⁹ “AAUP Litigation,” AAUP; Lily Kepner, “Texas Professors Union Gearing up to Fight Bills That May Restrict Academic Freedom, Tenure,” *Austin American-Statesman*, February 10, 2025, <https://www.statesman.com/story/news/politics/state/2025/02/10/texas-legislature-professors-union-readies-for-higher-education-bills/78053308007>; Conor Moore, “FIU’s Union Faculty of Florida – What Lies Ahead?,” *PantherNOW*, January 27, 2025, <https://panthernow.com/2025/01/27/fius-union-faculty-of-florida-what-lies-ahead>.



Accreditors are entities that review college programs in order to determine whether they meet a set of minimum quality criteria. *Institutional* accreditors determine whether a college as a whole meets minimal standards, such as having adequate classrooms and library facilities. *Programmatic* accreditors determine whether a given course of study meets minimal curricular and other standards. All universities must receive institutional accreditation by an entity recognized by the Department of Education in order to receive federal funding.¹²⁰ Most institutional accreditors are nonprofit associations of which universities are members—that is, they offer a form of peer review, usually at the regional level. Some—mostly those that accredit vocational and nursing schools—are instead state-level government agencies. Programmatic accreditors, on the other hand, are generally specialized and connected to a set of professional standards, such as the American Bar Association and the American Medical Association.

As gatekeepers to various sources of funding and legitimacy, accreditors have substantial power to influence universities' policies. They have sometimes used this power to provide a thumb in the scale in favor of free speech—mostly in the form of academic freedom. An especially dramatic example occurred when Georgia Governor Eugene Talmadge “went on a tear in 1941”, firing faculty, banning books, and closing programs that supported racial integration, and then firing trustees and eliminating the offices of the controller general and state treasurer when they tried to stop him.¹²¹ As historian Glenda Gilmore recounts, “Talmadge might have gotten away unscathed with all this, but the Southern University Conference expelled the University of Georgia from membership, and the Southern Association of Colleges and Secondary Schools [SACS], the accrediting body, threatened to withdraw its accreditation.”¹²² Students suddenly became worried about their degrees and rose up in protest, even booing Talmadge during a football game. A similar drama played out in Mississippi at around the same time.¹²³

Accreditors rarely take that bold of a stand, but, in more recent years, many have incorporated standards for diversity and some for free speech.¹²⁴ Perhaps the best

¹²⁰ “Overview of Accreditation in the United States,” US Department of Education, accessed December 16, 2025, <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/college-accreditation/overview-of-accreditation-united-states>.

¹²¹ Gilmore, *Defying Dixie*.

¹²² Gilmore, *Defying Dixie*, 352.

¹²³ Joy Ann Williamson-Lott, *Jim Crow Campus: Higher Education and the Struggle for a New Southern Social Order* (Teachers College Press, 2018). Lest we lionize SACS, the accreditor, we should recall that it refused to accredit colleges for Black students during this era.

¹²⁴ “Strategic Review Committee Memorandum,” American Bar Association, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions



evidence that these standards have some teeth is that conservative politicians seeking to crack down on free speech and diversity programs at universities have begun the project of creating their own new accreditor for fast-track approval by Trump's Department of Education.¹²⁵ Several politicians and university leaders involved in the genesis of this new accreditor argue that it would focus more rigorously on academic standards and reducing administrative burden, but others have openly advocated for an accreditor that would not question ongoing efforts to limit faculty speech and ban diversity programs.¹²⁶

At best, accreditors function as reinforcement of norms enforced by others. But they can also play an active role in that reinforcement. Multiplying standards imposed by accreditors does come with costs. For instance, Benjamin Ginsberg argues that accreditors have played a role in displacing faculty governance by collaborating with administrators to impose “accountability measures” of the sort that have caused K-12 educators to replace their own judgment with “teaching to the test.”¹²⁷

Hypotheses on Reform

The inspiration for this report is the concern that making higher education in the United States better and more equitable by expanding funding for public universities would create a threat to free speech on campus. So far, this report has responded to this concern by pointing out that public universities are not necessarily more vulnerable to governmental censorship than private universities, and that threats to free speech do not only come from the government. Designing universities as institutions that encourage open inquiry and nurture knowledge-based challenges to claims made by the powerful is a complex question of governance, and we have explored how different constituencies with governance authority over (mostly public) universities have performed as underwriters of free speech at different moments in history.

[to the bar/council reports and resolutions/aug23/23-aug-src-memo-standards-revisions-not-ice-comment.pdf](#); Josh Moody, “Florida’s Accreditation Shuffle Begins,” *Inside Higher Ed*, August 30, 2023, <https://www.insidehighered.com/news/governance/accreditation/2023/08/30/flas-accreditation-shuffle-begins-one-college-gets-us>.

¹²⁵Josh Moody, “6 States Partner to Launch New Accrerator,” *Inside Higher Ed*, June 25, 2025, <https://www.insidehighered.com/news/governance/accreditation/2025/06/25/desantis-announce-launch-new-accreditor>.

¹²⁶ Moody, “6 States.”

¹²⁷ Ginsberg, *Fall of the Faculty*.



Armed with this knowledge, how should those seeking to expand free public higher education (and others!) be thinking about the design of institutional governance to promote free speech moving forward? This section offers three modest hypotheses to begin that conversation.

Court Decisions and Rulings Need Supplementation

Though courts' rules for the protection of free speech have been an essential part of making public universities safe for open inquiry and political dissent, they have not sufficed. As discussed above, they have been too open-ended, too difficult to enforce, and, especially when it comes to academic freedom, insufficiently protective to be relied upon as the sole set of principles of free speech that should bind universities. Better doctrine would be warranted, as several have argued,¹²⁸ but, especially in light of the increasingly reactionary takeover of federal courts, we should and can articulate that doctrine in other forums.

Universities and university systems could—and some have—elaborate more detailed rules about legitimate and illegitimate grounds for faculty discipline based on both in-class and extramural statements, rules about inviting and uninviting external speakers, and rules about which restrictions external grants can legitimately impose and which they cannot, among other things.¹²⁹ In addition to substantive principles, they could also elaborate procedures for resolving borderline cases. Most public universities have such procedures for employment decisions, at least for tenured faculty, but those could be extended to other situations and to contingent faculty.

Legislatures and/or regulators (whether at the state or federal level) could also impose such rules, whether as conditions of the receipt of funding, restrictions in university charters, or employment regulations. Moreover, legislatures could tie the hands of executive officials (presidents, governors), and their own hands to some degree, whether by passing a general purpose statute that articulates the more protective versions of current First Amendment doctrine or by creating procedural hurdles (for example, by requiring designated officials in the Department of Education to flag speech concerns in any bills pertaining to higher education—or

¹²⁸ Kitrosser, “Government Speech Doctrine”; Post, *Democracy*; Horwitz, *First Amendment*; Keith E. Whittington, “What Can Professors Say in Public? Extramural Speech and the First Amendment,” *Case Western Reserve Law Review* 73, no. 4 (2023), <https://scholarlycommons.law.case.edu/caselrev/vol73/iss4/8>.

¹²⁹ A list of recent legislative efforts can be found here: “Campus Free-Speech Legislation: History, Progress, and Problems,” AAUP, 2018, <https://www.aaup.org/reports-publications/aaup-policies-reports/topical-reports/campus-free-speech-legislation-history>.



including specific protections in specific programs—for instance, by including clear anti-retaliation language in scholarship programs).

This suggestion is made tentatively. As the AAUP has pointed out, there are real risks that come with legislative enactments of free speech codes.¹³⁰ For one thing, it all depends on whether a legislature adopts the right rules. Politicians have been known to claim the mantle of “free speech” while actually seeking to promote certain types of speech and make it easier to repress others.¹³¹ Not to mention that there are disagreements as to what free speech actually requires. That said, the record of legislative accomplishment on designing rules to promote free speech gives some reason for hope, assuming that the current anti-university fever begins to cool. As noted above, Congress has already included language in the Higher Education Act that supports the protection of student speech and association rights at private universities. This “sense of Congress” provision merely affirms support for court-created doctrine, but, for one thing, that support is itself important to any future federal initiative to expand power over public universities. For another, Congress has also shown itself capable of creating what legal scholar Genevieve Lakier calls a “non-First Amendment law of freedom of speech” through the design of postal laws, common carrier laws, and worker protection laws, among other things.¹³²

One potential way to avoid a legislative morass would be for a legislature to recognize the standards developed by one or more independent authorities. The AAUP could be recognized as a sort of quasi-accreditor, for example, which would give the AAUP’s investigations and standard-setting some of the force of law rather than relying on naming and shaming. Alternatively, an independent agency could be created (assuming such institutions continue to exist) that could develop standards with the help of multiple constituencies. Or authorities could be parceled among different agencies—with, say, the Department of Labor focusing on standards of faculty and employee discipline and the Department of Education focusing on students.

¹³⁰ “Campus Free-Speech,” AAUP.

¹³¹ See a discussion of some experiments from the 1990s and early 2000s in Horwitz, *First Amendment*.

¹³² Genevieve Lakier, “The Non-First Amendment Law of Speech,” *Harvard Law Review* 134, no. 7 (May 2021), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=14020&context=journal_articles.



Lay Boards Should Have Less Power and Scholars Should Have More

As the attacks of the Trump administration have made amply clear, articulating rules to protect free speech and setting up systems for their enforcement do not always suffice. The main tack of this administration in attempting to get universities to adopt its priorities has been to extract settlements by threatening them with withdrawals of funding that would likely be unlawful if enacted, and/or by initiating lawsuits that would likely lose if litigated, knowing that it would be enormously costly for the institution to defend itself, especially as it would lose funding in the meantime. The university administrators who have agreed to settlements have done so to avoid these costs and/or because they have some sympathy with at least some of the administration's demands, and fulfilling those demands provide easy cover. By and large, administrators have not challenged the administration's demands in court; that has been left primarily to faculty. One could say similar things about (largely, but not entirely, Republican) legislators' threats toward university presidents for failing to police antisemitism—real and imagined—at on-campus pro-Palestine protests.

All of this illustrates especially dramatically what is always true: We cannot rely on good rules to enforce themselves. It matters at least as much that people with an interest in the promotion of free speech on campus have power (and that people with power are committed to the promotion of free speech on campus). This presents both an internal institutional governance question (how do we make sure that those with an interest in upholding those rules have power and are willing to fight?) and an institutional ecosystem question (how do we make sure that institutions beyond any given university stand ready to support those fights?).

These are primarily questions of institutional governance.

Many institutional governance questions at universities are too complex and require accounting for too many considerations beyond our scope to take on in this report. But two overarching observations are worth making: First, lay boards have proven the least reliable protectors of academic freedom and student protest on campus, and, indeed, have too often been antagonists of each. That is true more generally of donors, whether on the board or not. These nonacademics and nonstudents should have less power in decision-making. Second, faculty bodies have been the most reliable—if far from perfect—protectors of free speech on campus (and academic freedom requires, in part, faculty governance). Students have also been reliable, but their influence tends to be more transient and to come



in surges. Thus, the erosion of faculty governance bodies must be reversed and robust faculty governance institutions (not just nominal advisory bodies) must be a baseline for all public universities.

At every stage of the history of universities in the United States, lay boards have been the most likely to take positions that undermine free speech on campus. They have, especially early on, seen faculty power to determine what can be taught and researched as a threat to their power. They have consistently been the easiest college constituency for external groups to activate against on-campus speech. They have been supportive of the erosion of tenure and the reallocation of resources to disciplines with the most labor market potential in the neoliberal era. Two factors seem most important in producing this lack of sympathy for free speech. (1) As nonacademics and nonadministrators, trustees tend not to have been socialized into the norms of academic freedom and open discussion on campus. (2) Trustees, especially in the neoliberal era, tend to have backgrounds that encourage them to see institutional governance through the lens of for-profit corporations with powerful investors. Thus, the value of controversial speech, of research without clear business application, of extended disruptions of campus life, and so on, are seen in terms of how they affect the reputational status and the revenue strategies of the university.

This lay perspective—whatever its other merits—is actively harmful to the promotion of free speech on campus. It should be counteracted. One way to do so would be to reduce the power of boards in making various decisions that are relevant to free speech, whether by reallocating some decisions away from them or by requiring them to somehow share power with, say, faculty senates over those decisions. Another way—not necessarily inconsistent with the first approach—would be to change who populates such boards. That could be done through training of lay trustees, although that method is likely too weak to work on its own. More likely to be effective would be requiring some fraction of these boards to have academic backgrounds and/or to be faculty members. Having at least one student on the board, which is not uncommon, would also be worthwhile, although the effectiveness of student representation varies greatly and seems to depend on the strength of cross-campus coalitions.¹³³

Both requiring boards to share power with faculty and requiring boards to include faculty on them would increase faculty's role in governance. That is a valuable goal

¹³³ Sean Behl, "How We're Rebuilding the Nation's Largest Student Organization," *The Forge*, December 12, 2024, <https://forgeorganizing.org/article/how-were-rebuilding-nations-largest-student-organization>.



on its own. Although faculty have not always proven resilient in the face of external attacks—McCarthyist purges being the most egregious example—and have often been divided amongst themselves about how to deal with protest and student speech, on the whole they have been the most reliably pro-free speech constituency at colleges.

As discussed above, their power has eroded due to adjunctification, the weakening of shared governance institutions, and the increased role of administrators. That erosion should be reversed. Faculty senates must have real decision-making power, not just quasi-ceremonial advisory power. Faculty must be able to make their own hiring, firing, promotion, and curricular decisions. And faculty should be able to collectively bargain *in addition* to having representation via a senate. Giving faculty so much power does come with trade-offs—faculty have been known to be institutionally conservative, opposing some valuable technological updates, for instance. Accepting some potential costs seems well worth it, but we leave it an open question exactly how to get the balance right.

Austerity Breeds Unfreedom

There are also grounds to believe that the environment on campus is more conducive to free speech when public spending on higher education is higher. One reason to believe this is that more public funding can improve the academic labor market, which gives faculty more power to shape the conditions of their employment. More public funding also makes public universities less dependent on private donations, which is likely to come with strings attached. Both of these hypotheses require qualification and further study, but they are worthy of serious consideration.

The Bargaining Power of Academic Labor

With respect to academic freedom and faculty speech, the core intuition is that the easier it is to get a faculty job, the more freedom a faculty member has. When demand exceeds supply, the presence of exit options for any given faculty member lowers the cost of taking risks—trying out new ideas, expressing controversial views—by making it easier to get another job if fired. It also increases the bargaining power of faculty to set conditions—including those relevant to academic freedom—on their employment. It also reduces the ability of employing universities to impose speech-restricting conditions on faculty members, since universities have more limited options and know that other universities can snatch away unhappy faculty. And, although multiple factors shape the relative size of supply and demand for



academic labor, a growing system is one that needs a growing supply of academic labor and robust public support.

There is some evidence to support this simple model. Academic freedom first came to American universities with the rise of the research university at the turn of the 20th century. This was a time in which universities were expanding dramatically and, because no US university offered PhDs until the 1870s, the number of Americans with PhDs was low. The small group of PhDs who universities sought to employ frequently insisted on the university adopting a policy of academic freedom and shared governance—credibly threatening to not take a job without these policies.¹³⁴ After World War II, a huge surge of research funds from the federal government again encouraged rapid growth of universities, which, by the 1960s, created a major sellers' market for academic labor. During that decade, even faculty who were fired because of dissident beliefs could relatively easily find a new job (that was not true in the 1950s because of blacklists, but those became less effective in the 1960s in part because of the surge of new funding and in part because of McCarthy's discrediting). Knowing such jobs were available made faculty bolder.¹³⁵ It seems unlikely to be a coincidence that this was a golden age for shared governance institutions and the era of an unprecedented wave of faculty activism and support for student activism. It also seems notable that shared governance institutions began to erode once research funding peaked and the faculty market turned toward a buyers' market over the latter half of the 20th century.

However, there is counterevidence as well. The Second Red Scare rocked campuses during the initial surge of postwar research funding (although the 1960s saw more of an expansion). A wave of faculty taking the risk of unionizing surged in the 2010s, when many faculty job markets had become dismal in part due to a collapse in funding after the global financial crisis. And the norms of academic freedom and tolerating student protest lasted well beyond the surge of faculty power in the 1960s. Further research would be required to sort out the causal dynamics, but, for now, we can simply acknowledge that multiple factors may well be at work—there is no simple story that says “a good job market means more freedom.”

¹³⁴ Metzger, *Academic Freedom*; Gerber, *Rise and Decline*.

¹³⁵ Schrecker, *Lost Promise*; Geiger, *Research*.



Funding Sources for University Research and Operations

Separately, the more money that a university can receive without having to promise to undertake particular research or pedagogical projects or to otherwise promote or restrict particular points of view or forms of assembly, the more its priorities can be shaped by its own governance institutions. Institutions with strong shared governance systems will then be more shaped by the process of faculty (and perhaps student) deliberation. Public funding for universities can come with conditions, but most state funding is for general operating expenses and an expansion of federal funding to make colleges free would function similarly. Providing such funding, especially with free speech protections, supports the institutional autonomy that makes free speech possible on campus. Meanwhile, although some donors do provide unrestricted funds, nearly all donations to universities are given for a particular purpose (tuition support for certain types of students, constructing a new building, researching a particular subject).¹³⁶ And more reliance on donors also means increasing power of donors to shape university governance—whether via the board of trustees or otherwise.¹³⁷ Removal of public funding, therefore, means that universities have to make more promises about how they will spend money in order to receive it, and let nonacademic wealthy people have more control over colleges.¹³⁸

¹³⁶ Anne E. Kaplan, “CASE Insights on Voluntary Support of Education,” Council for Advancement and Support of Education (CASE), March 2025, <https://www.case.org/resources/case-insights-voluntary-support-education-2024-key-findings>.

¹³⁷ Eaton, *Bankers*; Charlie Eaton and Albina Gibadullina, “The Social Circuitry of High Finance: Universities and Intimate Ties Among Economic Elites,” Research and Occasional Paper Series: CSHE.11.2020 (Berkeley Center for Studies in Higher Education), <https://cshe.berkeley.edu/publications/social-circuitry-high-finance-universities-and-intimate-ties-among-economic-elites>.

¹³⁸ Universities have also increasingly come to rely on debt financing—often issuing bonds with future tuition pledged as collateral. This form of financing directly imposes the condition of raising tuition revenue and it also puts colleges at the mercy of bond investors and the ratings agencies they rely on, both of whom are skeptical of too much labor power, too much controversial expression, and investment in “unprofitable” lines of pedagogy and research. Matteo Binfarè and Kyle Zimmerschied, “The Role of Debt in Financing Higher Education,” in *Financing Institutions of Higher Education* (University of Chicago Press, 2024), <https://www.nber.org/books-and-chapters/financing-institutions-higher-education/role-debt-financing-higher-education>; Destin Jenkins, *The Bonds of Inequality: Debt and the Making of the American City* (The University of Chicago Press, 2021).



Conclusion

The basic principle that universities must be insulated from political control in order to serve their truth-finding, educational, and democracy-promoting functions is both sound and essential. But that principle does not suffice to determine how to structure the funding or governance of universities consistent with the values of free speech. Both public and private universities can be threatened by government censors, and government censors are not the only threats to academic freedom and dissent. What precisely is required to preserve the ideal of universities as spaces for what the First Amendment scholar Robert Post calls “democratic expertise” is not simple. This report has ventured some initial suggestions: clear rules to govern specific repeat cases, efficient enforcement mechanisms for those rules, a shift in power to faculty and away from trustees and donors, and robust public funding with minimal conditionality. But surely this is only the beginning of the inquiry. Much remains to be said about the role of students, the role of governors and other executive branch officials, the federalist balance, how other countries manage these questions, and so on.

Today, longstanding institutional buttresses are buckling, and they will have to be rebuilt one way or another. Our current moment of crisis is an especially apt time to look to our past for models, but we should not rely on them too much. After all, one of the implicit lessons of this report is that threats to free speech and our resources have varied a great deal. And the present systemic attack on universities as independent centers of power is not quite like anything we have seen before. The power of government censors, wealthy interests, and other forces that seek to suppress free speech can be countered, but doing so will require creativity and vision in addition to knowledge and experience.





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