

Speaker 1 ([00:00:02](#)):

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Steve McGuire ([00:00:09](#)):

Welcome to Radio Free Campus. I'm Steve McGuire.

Justin Garrison ([00:00:12](#)):

And I'm Justin Garrison, and in this episode, Steve and I are going to talk with Professor David Rabban about academic freedom in the past, the present, and possibly the future. We're also going to discuss grading scandals at the University of Oklahoma, as well as publishing scandals at the American Political Science Reviewer and Academic Journal. And of course, we'll round out this episode with the segment everyone looks forward to, the Apparatchik of the Month and the Hero of the People Award. So this is it for us for 2025. Steve, why don't we get right to our interview guest?

Steve McGuire ([00:00:41](#)):

Sure. Yeah. Yeah, excited to have David Rabban on today. He's a professor at the University of Texas School of Law, and he's recently published a new book, Academic Freedom: From Professional Norm to First Amendment Right. And the book does exactly what the title suggests. It traces how academic freedom first articulated by the AAUP in 1915, at least in the American context, that's kind of the watershed moment. How it moves from being just something articulated, incorporated into academia as a professional norm to something that's picked up through the courts and brought in as a special concern of the First Amendment. It's a great book, well worth reading. Let's get to the interview. David, welcome to the podcast.

David Rabban ([00:01:30](#)):

Thank you. Thank you for inviting me.

Steve McGuire ([00:01:32](#)):

Yes, great to see you again. I was just mentioning that I saw you present on your book. I guess it was a couple of months ago and I really enjoyed it. So excited to have you here. This is really an impressive effort that you've put into writing this book about academic freedom and how it moved from being a professional norm to a First Amendment right. And I want to start by asking you two questions. First of all, to sort of outline what are the basics of how academic freedom moved from being a professional norm to a First Amendment right? And then after that, I'd like to ask you a little bit more about the state of the jurisprudence around academic freedom, because it seems like it's not as well developed as many people might think or might like to hope. So let's start with the first one, what's the basic story of how it develops into a First Amendment right?

David Rabban ([00:02:22](#)):

Yes, so the basic professional norm of academic freedom derives from the 1915 statement of principles on academic freedom by the American Association of University Professors, the AUP. The AUP was founded in 1915 and the 1915 Declaration was its first important official statement. And the basic principles of the 1915 Declaration are still influential in American colleges and universities because those principles provide the basis for many institutional regulations governing academic freedom. And in my opinion, to this day, the justification for academic freedom in the 1915 declaration is the best statement about the meaning of academic freedom that exists in the United States. So that's the AAUP background.

Steve McGuire ([00:03:19](#)):

Maybe I'll just ask you as an interlude to say, what is that justification in the 1915 statement?

David Rabban ([00:03:24](#)):

So in briefest form, but I think this gives the essence, the basic point of the 1915 declaration was that the function of professors requires academic freedom. Namely, the function of professors is to use their expertise to pursue and disseminate knowledge, knowledge, which is to the benefit of society at large. And the point was that professors cannot do that job in the interests of society, not just their own interests, if they can be disciplined or punished for reaching academic conclusions that meet academic standards, but that offend others, such as administrators, dare I say, trustees, politicians, the general public, even fellow professors. If professors are afraid of losing their jobs or other discipline, for the views they express, they won't express them. So that is the fundamental justification, you need academic freedom to allow professors to do their job of pursuing and disseminating knowledge in the societal interest.

Steve McGuire ([00:04:50](#)):

Okay. And so as you were saying, many institutions have incorporated these principles into their own documents, maybe into faculty contracts, faculty handbooks, that sort of thing. But it starts out, it's just a principle that's articulated by academics. And then the Supreme Court does eventually though pick this up and start to work it into First Amendment jurisprudence, correct?

David Rabban ([00:05:14](#)):

Yes. I should add that there was a 1940 statement that was ... It was not just the AUP, it was also the Association of American Colleges. So that's very important to have colleges as institutions, as well as professors endorsing basically the principles from 1915 in more kind of terse language that can be easily adapted into institutional regulations. So the current regulations of universities derive most immediately from the 1940 statement, but the 1940 statement is really effectuating the analysis from 1915.

([00:05:58](#)):

Now, to go to the courts, the Supreme ... Of course, academic freedom is not in the text of the Constitution, and the Supreme Court did not identify academic freedom as a First Amendment right until 1957, a case called *Sweezy versus New Hampshire* that is still very influential today. Subsequent cases rely on *Sweezy* extensively. It may be worth saying a word about the *Sweezy* case.

Steve McGuire ([00:06:31](#)):

Please do. Yes, I think it's an important case.

David Rabban ([00:06:33](#)):

And I think the background ... So this is a case, it's decided in 1957 during the Cold War, and *Sweezy* arose as part of an investigation by the Attorney General of New Hampshire, following up on a law passed by the New Hampshire legislature that prohibited the employment of subversive persons by the state, that was the law. And then the attorney general was investigating whether in fact there were subversive persons who had been employed by the state of New Hampshire, and that includes state universities.

([00:07:22](#)):

So *Sweezy*, as in *Sweezy versus New Hampshire*, was a very well-known Marxist economist, and he was invited to give a guest lecture at the University of New Hampshire, which he did. The Attorney General of New Hampshire subpoenaed *Sweezy*, the Attorney General asked him lots of questions, most of which *Sweezy* answered, but he didn't answer them all. And there were two topics on which *Sweezy* refused to

answer questions. One had to do with his wife's activities in the Progressive Party, a left-wing party at the time. And the other questions that Sweezy refused to answer had to do with the content of his guest lecture at the University of New Hampshire. So for example, the attorney general asked him, "Is it true that you advocated Marxism in your lecture? Is it true that you advocated the doctrine of dialectical materialism?" Sweezy refused to answer and he was held in contempt.

(00:08:36):

The case went to the United States Supreme Court, and there were two important opinions in that case. The plurality opinion for Justices written by Chief Justice Warren said that the questions from the Attorney General to Sweezy that he refused to answer, that Sweezy refused to answer, unquestionably invaded Sweezy's rights of political expression and academic freedom. And I think it's obvious that political expression and academic freedom, which were identified as separate First Amendment rights in the opinion, that separate identification arose from the separate sets of questions that the Attorney General was asking Sweezy. So there's the case in which the Supreme Court first identified academic freedom as a First Amendment right.

(00:09:41):

And one more thing I want to add is that there's an extremely important concurring opinion by Justice Frankfurter who had been a professor before he was a Supreme Court Justice and Frankfurter and Justice Harlan joined him, so that's two more adding to the four from the Warren opinion that makes six who identified academic freedoms of First Amendment right. And Frankfurter emphasized the importance of preventing government intrusion into the intellectual life of a university. And to make that point, Frankfurter cited from a South African statement of academic freedom. And that language from the South African statement became the basis for what we now call institutional academic freedom when the Supreme Court extended academic freedom to universities as institutions beginning in the 1970s, Sweezy had to do with academic freedom for professors. And the language from the South African statement that was crucial that Frankfurter quoted emphasized the freedom of a university to determine on academic grounds, one, who shall teach, two, what shall be taught, three, how it shall be taught, and four, who may be admitted to study. And today, those four elements are considered the basis of institutional academic freedom.

Steve McGuire (00:11:34):

Okay. And those principles of institutional academic freedom, would you say that those are especially important in the current moment? I think most people, when they think of academic freedom, they probably think of individual professors who say something that offends people or teach something or end up with research results that conflict with the interests of the powers that be or what have you, but then this other issue that institutions themselves have these rights, maybe something that people don't think about quite as much, but certainly is coming into play with some of the negotiations between the current administration and various universities.

David Rabban (00:12:16):

Absolutely. So the Supreme Court has recognized academic freedom as a First Amendment right of professors and of institutions. And there's a lot of complicated litigation because as you could imagine, sometimes those claims conflict. The academic freedom of a professor can conflict with the academic freedom of an institution. Also, of course, institutional academic freedom protects institutions from the state, and it's that aspect of institutional academic freedom that is at issue in a lot of the current controversies and indeed recent litigation, pushing back on the Trump administration demands on universities, but also there's litigation pushing back on state legislation that restricts what can be said in the classroom.

(00:13:16):

And if I could make one point about that litigation today is that the government intrusion through the Trump administration or through some state legislation is substantially greater than the government intrusion at issue in the Sweezy case itself. Remember in Sweezy, the Attorney General asked about the content of a lecture and Sweezy refused to answer, but that was it. So what was protected in Sweezy was the right to refuse to answer about the content of a lecture. The recent demands from the Trump administration, the recent state legislation tells universities and professors what can be taught, what can't be taught. It's a much more extensive intrusion into university life than what was forbidden way back in 1957. So I think that's a crucial point about the current litigation.

Steve McGuire ([00:14:25](#)):

Yeah, very interesting. So I do want to get back to the question of how the jurisprudence isn't maybe as developed as people might like to think in certain respects, but I think I'm going to hand it over to Justin because I know he did want to ask you some questions about some of the current efforts and the relationship between academic freedom and I believe academic responsibility. Is that right, Justin?

Justin Garrison ([00:14:48](#)):

Yeah. So we're on with David Rabban, a professor at the University of Texas School of Law and author of Academic Freedom: From Professional Norm to First Amendment Right, we're talking about this book. And David, you had just mentioned that the current environment is much more intrusive compared to the one that generated Sweezy. And I think you've said it's 1957, so this is in the mix for the Red Scare and other things like that, of course, which we kind of look back on as a really bad time for a number of things, including academic freedom. I'm wondering what your thoughts are. If we talk about the 1915 statement, there's pretty clear language that academic freedom comes with some kind of academic responsibility and it's up to academic professionals to set standards and then to hold peers accountable to those high standards of the appropriate use of academic freedom.

([00:15:43](#)):

I'm speculating, but I don't think I'm totally out in the woods here, some of the legislative intervention seems to be based on a perception that academics aren't upholding those standards to the degree that they ought. I'm not asking you to speculate on the motivations for legislation. What I would like to know from you is what would a functioning peer accountability look like that might give lawmakers and the general public a better impression of higher ed than they seem to have now, whether or not that impression is empirically justified or based on kind of emotional reactions to current events or what have you.

David Rabban ([00:16:23](#)):

So I think it's important to emphasize, as you were mentioning, Justin, that the 1915 Declaration itself emphasized the crucial role of peer review in the system of academic freedom, and the emphasis on peer review was perhaps the major innovation of the 1915 Declaration. Yes, the 1915 Declaration said that the right of academic freedom comes with responsibilities and the main responsibility is to adhere to academic standards. So academic freedom, according to its major justification, does not protect a professor who fails to meet academic standards. The 1915 Declaration went on to emphasize that it is fellow professors, peers who are in the best position to determine whether academic standards have or have not been met, because it's only the peers who have the expertise, the academic expertise to do so. So if there is an allegation that a professor has failed to meet academic standards and therefore academic freedom does not apply, that determination should be made by faculty peers.

([00:17:56](#)):

That could be bringing extraneous material into the classroom. That's not justified by academic freedom. It could be stating views that are outside the broad range of accepted academic knowledge in a field. If you're a geologist and say the earth is flat, you're not protected, but the point is fellow geologists should

make that determination. Subject to review, this is especially in the 1940 statement, it's clearer that the academic peer review can itself sometimes deviate from appropriate standards, and then there's a role for administrators and for courts for that matter and for trustees for that matter. But in the first instance, there should be peer review. And the concern, I think is a justifiable one, if people who are not expert are making judgements about whether so called academic speech meets academic standards, first of all, they're not in a position to be able to do that competently. And second, if they're the ones doing it, it's more likely that inappropriate political or other concerns will be taken into account.

Justin Garrison ([00:19:20](#)):

So I mean, if I'm hearing you correctly to paraphrase what you're saying is that the peer review process is the beginning, but not necessarily the end if there's malfeasance involved, if the peer review process isn't working in a particular instance, there are secondary and tertiary steps one could take to make sure that academic freedom is actually being respected, but we don't want to lose sight of the essential role that professors play in determining the professional conduct of their peers. Is that fair?

David Rabban ([00:19:50](#)):

Yes.

Justin Garrison ([00:19:52](#)):

Okay.

Steve McGuire ([00:19:54](#)):

Maybe I'll jump in here. David, another thing I wanted to ask you about is extramural speech. So you'll certainly know, but for the benefit of listeners, academic freedom is divided usually into three categories. You have research, you have teaching, when you're in the classroom, and then you have what's called extramural speech. And I think extramural speech from an academic freedom standpoint is the one that's a little bit more difficult. How do you sort out what kinds of protections a professor has when he or she is speaking, say, outside the classroom? Maybe the professor is at a political rally or something along those lines or on a podcast or a news program. Of course, you're speaking from your expertise and your research here, but people might also just have political opinions or sometimes they may even blend their political opinions and their academic research when they're speaking extemporaneously in these sorts of circumstances. And the 1940 statement, of course, deals with this as well.

([00:21:04](#)):

On the other hand, if you're looking at speech from a First Amendment standpoint, it seems very clearly designed to protect say political speech at a political rally or something along those lines, in a newspaper, on a podcast. So how do academic freedom and the First Amendment intersect when it comes to the extramural speech of professors?

David Rabban ([00:21:30](#)):

Well, that's a difficult question with probably a complicated answer, but here we go. Here we go.

Steve McGuire ([00:21:38](#)):

Yes. That's why we have you on the show to tell us about it.

David Rabban ([00:21:40](#)):

Okay, I'll do my best. So what I first want to say, in my opinion, the relationship between academic freedom and general rights of free speech has never convincingly been addressed either by the AAUP or

by the courts. It's a mess. The relationship between academic freedom and free speech, it's a conceptual mess. I have a view on how that mess ought to be cleaned up, but first, let me briefly describe the mess and then give you my own view, if that's okay?

Steve McGuire ([00:22:22](#)):

Sure, please.

David Rabban ([00:22:24](#)):

So the mess, the 1915 Declaration, as you mentioned, Steve, has three elements that it associates with academic freedom, teaching, scholarship, and extramural utterance. Now, extramural utterance typically is defined as of political speech outside the university unrelated to a professor's academic expertise. Of course, some extramural speech could be academic speech at a conference. And I can...

PART 1 OF 4 ENDS [00:23:04]

David Rabban ([00:23:03](#)):

... speech could be academic speech at a conference. And conceptually, that would be different than general political speech. But for our purposes, let's think about, whoops, I lost my earplug here. I'll put it right back. Sorry, I got so animated I got my earplug out.

Steve McGuire ([00:23:18](#)):

Your passion for the subject matter comes through, that's excellent.

David Rabban ([00:23:21](#)):

Yeah, there we go. Okay. Let's think of extramural speech basically as political expression outside the university unrelated to a professor's academic expertise.

Steve McGuire ([00:23:33](#)):

Sure, yeah.

David Rabban ([00:23:34](#)):

The 1915 Declaration protected all three elements. In my opinion, the justification for academic freedom in the 1915 Declaration, which I spoke about at the beginning of our conversation, does not justify the declaration's extension of academic freedom to general political expression. The fundamental justification for academic freedom is to protect expert knowledge, and the societally valuable function of expert knowledge. General political speech outside someone's academic expertise does not relate to that justification.

([00:24:21](#)):

And let me ask this rhetorically. What justification is there for giving a professor more or even different rights of general free speech than anybody else? There is no justification in my view. Oh, there are alleged justifications, none that are convincing to me, but there is a justification for giving professors special, maybe even additional rights with respect to their academic expertise because that special protection ultimately serves a valuable social function: the production and dissemination of knowledge.

([00:25:04](#)):

Now, at the time of the 1915 Declaration, there was very little general protection for free speech by anybody. And it was extremely tempting, too tempting, in my view, for the AAUP to extend academic

freedom to cover general free speech because the law in general was not available to protect it. Also, the first cases the AAUP investigated in 1915 between its establishment and the 1915 Declaration, they involved extramural speech by professors.

(00:25:44):

Walter Metzger, the great historian of academic freedom, this is a paraphrase, but a close paraphrase. He had a great line. He said, "The AAUP," this is with respect to protecting extramural speech through academic freedom. "The AAUP stretched the cloth of protection over the area in which academics were most exposed." The cloth of protection, academic freedom over the area in which they were most exposed, their political expression. It was tempting, but to my mind, unconvincing, and probably has led to confusion about figuring out what academic freedom really should mean. So that's with respect to the AAUP.

(00:26:33):

Now, turning to the courts. In a case, another very important early case, it's called Keyishian versus Board of Regents from 1967, a decade after Sweezy, the court majority referred to academic freedom as a "special concern of the First Amendment." Okay, that's very helpful. How is it special? What does it mean to call it special? There has been no guidance from the courts about that. Some courts treat academic freedom and general free speech kind of interchangeably. Most don't even address the issue. It's also very frustrating that while many, many decisions rely on First Amendment rights of academic freedom, many other decisions rely on general First Amendment rights of free speech when the issue is academic speech and where academic freedom as a First Amendment right should apply. In my view, while the First Amendment right of academic freedom has been broadly recognized by the judiciary, it's also been broadly ignored.

(00:27:56):

I could elaborate on that, but I also want to point out that even worse from my perspective, some cases apply general First Amendment rights or the general First Amendment law of free speech, which includes limitations on free speech, just as there are limitations on academic freedom, but courts apply general free speech law to academic expression in ways that deny protection that would be given if the First Amendment right of academic freedom had been applied. And may I give you two examples of that?

Steve McGuire (00:28:40):

Please, yeah.

David Rabban (00:28:42):

And this is the law, it's sometimes called employee speech jurisprudence. It's the law that relates to expression by public employees. That includes professors at public universities, they're public employees. By the way, people should remember what oftentimes is forgotten. The First Amendment protects against state action. It does not protect against private action. So, First Amendment academic freedom protects professors in universities, private as well as public, from action by the state, from legislation, from executive orders. First Amendment academic freedom protects professors at state universities, from administrators and trustees. First Amendment academic freedom does not protect professors at private universities from the administrators and regents of private universities, though some private universities voluntarily except for themselves the restrictions that the First Amendment imposes on public universities because they don't want to be perceived as giving less protection for free speech and academic freedom than the First Amendment requires of public universities.

(00:30:09):

Okay, back to speech by public employees. Now, until the 1960s, public employees didn't have free speech rights, but those rights were recognized in a famous case called Pickering. In that case, the court

extended First Amendment protection to public employees, but also said that the state as employer can be justified in limiting the rights of its own employees in a way the state as sovereign cannot be justified in limiting the rights of citizens generally, and there's lots of litigation over how to balance, as Pickering requires, the interests of a public employee in expression, and the interests of the public employer in effective operation of a public agency.

(00:31:08):

There are two concepts from employee speech jurisprudence that has been applied to the academic speech of professors in an extremely unfortunate way, in my view. One point is to be protected speech by a public employee must be about a matter of public concern, not about a matter of private concern, like a gripe about the workplace that's just personal to the employee, as opposed to raising a issue of major concern.

(00:31:45):

There are decisions involving professors at public universities that use this approach to reach the conclusion that "abstract theorizing," that "speech by a professor to an administrator with the goal of making the university better," that speech protesting that tenure was denied on grounds that violated the First Amendment, legal decisions have held all of those topics to be matters of private concern, not matters of public concern, and therefore unprotected by the First Amendment, but under the First Amendment law of academic freedom, those are clearly academic issues that should be protected. I want to emphasize, there are other decisions that apply general First Amendment law in ways that protect professors that would call that kind of speech a matter of public concern, but the cases are divided. So, there's one example, I hope that's clear.

Steve McGuire (00:32:50):

Yes.

David Rabban (00:32:50):

Even more damaging, in my view, in I think it was first decade of the 2000s, maybe 2006 or so, I may be off by a year or two, there's a case called Garcetti, and that case held for the first time that speech by public employees is not protected if the speech was made "pursuant to official duties."

(00:33:23):

I was general counsel of the AAUP when the Supreme Court accepted that case, and it was clear this was the issue it was going to decide. The lower court had held that public employees are protected by the First Amendment when they speak pursuant to their official duties, as long as they're speaking about a matter of public concern, and there are not employer interests outweigh the speech. The Circuit Court took that approach, but there was a concurring opinion that said, "I'm bound by precedent in this circuit to follow this approach, but I don't think it's a good idea."

(00:34:03):

And then the Supreme Court took the case. And I'm thinking as general counsel of the AAUP, why did the Supreme Court take this case? Probably to reverse the lower court, and to apply this notion of if a public employee speaks pursuant to official duties, it's not protected. And I said to myself, here I knocked my plug out again, what are the main official duties of professors? Teaching and research, I would say.

Steve McGuire (00:34:34):

Yeah.

David Rabban (00:34:35):

If this were the law, the protection of the First Amendment academic freedom of professors that had developed ever since Sweezy in 1957 would be in jeopardy. And I encouraged the AAUP to file a brief making that point, which it did do. It objected to the pursuant to official duties test in general, but also said, "If you accept that test, Supreme Court, please don't apply it to professors." I don't know whether it was because of the brief, I like to think so.

(00:35:10):

The Supreme Court did apply the pursuant to official duties test reversing the lower court. Justice Souter in dissent said, "I have to hope this test won't be applied to professors whose academic freedom protected by the First Amendment in teaching and research could be jeopardized."

(00:35:31):

And at the end of the majority opinion, I think it was Justice Kennedy said, "There's been some discussion about whether pursuant to official duty should be applied to professors' teaching and scholarship at public universities, but this case involves an assistant district attorney. We don't have to decide that broader question, and therefore we don't."

(00:35:52):

And I said, "That was a close call." And in the 20 years since that decision, I have to say, sadly, lower courts have been divided. Some have explicitly found a First Amendment academic freedom exception to the general rule that public employees are not protected when they speak pursuant to their official duties, but other decisions have ignored the language from the Supreme Court and just apply this pursuant to official duties tests to professors. None of those cases have involved teaching or scholarship. They've involved participation in university governance, other kinds of speech, but it's a really problematic decision finally.

(00:36:39):

This is the problem with not separating out academic freedom from free speech. In my view, the First Amendment law of academic freedom should pertain to the expression of expert knowledge of professors. At its core, teaching and scholarship. And the First Amendment right of academic freedom has been applied in many, many cases to teaching and scholarship. I think it also should apply to issues of academic governance, educational policy at universities where professors also have expertise, but it should not apply First Amendment academic freedom to the general political expression of professors. That doesn't mean the general First Amendment expression of professors is unprotected. It should be protected by the First Amendment right of free speech. The First Amendment right of academic freedom should be limited to the academic expression of professors that follows the convincing justification for academic freedom in the 1915 declaration, which itself was extended too far. So that's my view about how the law should develop, and I'm hopeful perhaps it will.

Steve McGuire (00:38:06):

Okay. But a lot of this, to some degree, remains uncertain because-

David Rabban (00:38:11):

Correct.

Steve McGuire (00:38:11):

... there's different decisions at lower court levels. I think the Garcetti case, I think that was part of the argument that the government in Florida was making to defend some of its legislation. And I remember reading about that and seeing that a number of people in the academic freedom world were, I think surprised and concerned to see that their argument looked like it could theoretically win, or it certainly wasn't a slam dunk that it would lose.

David Rabban ([00:38:38](#)):

Well, the court in Florida rejected that argument, but there's been a subsequent case in Alabama that accepted it. It's the only one of its kind I know about. There is this doctrine of government speech. Sometimes the government has a point of view and it's consistent for the government to express that point of view. If you're in the state department, right? Right, right. The Secretary of State is expected to present the point of view of the president. At some point, if there's too much disagreement, the president can fire the Secretary of State. I don't think anybody would consider that to be a violation of First Amendment right of free speech, but not all speech by people employed by the government is speech that's expected to present a message from the government.

([00:39:45](#)):

In fact, the whole justification for First Amendment academic freedom that's been recognized ever since *Sweezy* is that you have to protect the speech of professors from the government and from trustees and administrators in order to allow professors to perform their job. The job of a professor, including at a public university, is not to express the point of view of the government. The job of a professor is to express the professor's academic conclusions.

Steve McGuire ([00:40:29](#)):

Right.

David Rabban ([00:40:30](#)):

And therefore it is inappropriate, grossly inappropriate, to apply the doctrine of government speech to the academic speech by professors. And there are very few cases that even address that issue, because in my view, it's so obviously wrong. It's very dangerous to use this government speech approach. The Alabama case, it's the only one I know of that recognizes that there may be a few more, but that's against the overwhelming consensus of prior cases dealing with First Amendment academic freedom or the First Amendment generally dealing with professors.

Steve McGuire ([00:41:11](#)):

Okay. Very interesting, thank you.

Justin Garrison ([00:41:14](#)):

David, this has been wonderful. It's been an illuminating conversation. I know you just finished up your classes, and we're going to start getting angry emails from students who are going to wonder why they've been delayed to get access to your wise mind as they prepare for finals.

David Rabban ([00:41:30](#)):

Although my students are waiting for me to answer their questions about the course before the exam on Saturday after our session is over.

Justin Garrison ([00:41:39](#)):

Yeah, that's right. I'm sure they'll do fine with their exams. You have such a great presence in explaining these things in ways that are substantive, but easy to understand and compellingly argued. Just wanted to let our audience know that David and his publisher, Harvard University Press have been kind enough to give us a special code that would offer you the opportunity to buy this book that we've been discussing, *Academic Freedom*, through the Harvard University Press System at a substantial discount. That's going to be a discount you can use until the end of the calendar year, December 31st. We're going to put that link in our show notes. So definitely encourage you to buy this book because as good as this interview has

been, it is the appetizer for a much more robust discussion of these really important issues surrounding academic freedom. David, thank you so much for being with us today. It's been great to talk with you and we wish you the best of luck as you wrap up this semester.

David Rabban ([00:42:37](#)):

Well, thank you so much for having me. I really enjoyed it, and I hope your listeners will enjoy it as well.

Steve McGuire ([00:42:42](#)):

I'm sure they will. Thanks.

Justin Garrison ([00:42:43](#)):

Yeah, absolutely. Very good. Thank you, David.

David Rabban ([00:42:45](#)):

Okay, bye-bye.

Steve McGuire ([00:42:50](#)):

Well, Justin, I saw David speak a couple of months ago. It was fascinating, getting peppered with questions from academics and holding his own as you'd expect a law professor to do. But why don't you go first? What were your thoughts from the interview?

Justin Garrison ([00:43:07](#)):

Yeah, I thought it was really excellent. I've read his book, and it's a very good book, but he comes across so clearly as a gifted instructor. And those things aren't always the case, as you and I both know in detail from having worked in higher ed. You can have someone who's brilliant on paper, but is very difficult to understand, or isn't very good in the classroom, doesn't want to be in the classroom. But I thought that came through very clear. I wish the teaching company would start getting him to do great courses on academic freedom in the First Amendment because he has such a lucid way of explaining things that are really not easy to understand if you're not plugged into the higher ed space like you and I and other people like us are, so I thought that was really excellent.

([00:43:49](#)):

He also clearly knows the legal framework that he's working in and can observe its strengths and its weaknesses. I also like the idea that he put forward to us off camera after we were done that he welcomes disagreement. He's not afraid of disagreement. And even if someone might not agree with his conclusions about the best ways to strengthen academic freedom or to integrate it more fully and systematically in First Amendment jurisprudence, his book does a tremendous service.

([00:44:20](#)):

If you're someone who's watching this thinking like, "Oh, I didn't know academic freedom was really a thing. I don't understand what that means." There's a lot of objective writing just about the progress of this particular statement from the AAUP and how things have developed. And that was really illuminating for me. I didn't know the history to the degree that he did, and I found his book very helpful in that regard.

([00:44:41](#)):

Now, one thing I would say is not in disagreement with him per se, because his book isn't coming at this from the perspective of political science, but more like legal reasoning. I think there's a serious concern about the practice of peer responsibility, let's say, in upholding high standards of academic freedom. That's not what his book is trying to argue, so I'm not upset that he didn't have an answer to those kinds of

questions. But I do think one of the reasons that a lot of state and federal scrutiny has been put on institutions of higher education, particularly public universities, is the perception that I do think has basis in reality that the internal governance isn't working the way it's supposed to.

(00:45:32):

And I know we're going to talk about that maybe in a little bit more detail with some more current events kinds of examples in a few minutes, but that is something that I like his argument, and I guess maybe one way of putting it is I wish more professors took academic freedom and academic responsibility as seriously as he seems to. We wouldn't be having conversations about state and federal invention into higher ed if there were more people like him.

Steve McGuire (00:45:58):

Right. Yeah, and our president at ACTA, Michael, one thing he-

PART 2 OF 4 ENDS [00:46:04]

Steve McGuire (00:46:03):

And our president at ACTA, Michael, one thing he likes to mention is that while the AAUP has been quite active in its Committee A, which focuses on academic freedom, Committee B has never really been as active, the one that focuses on professional ethics and responsibility. So that does kind of speak to the point you're making. Also, I thought it was interesting when he was offering his own critique of the original 1915 declaration and talking about this difference between political speech or extramural utterance and teaching and research. And I was thinking to myself as he was talking about that, that this kind of hits right on this issue of the perception of political bias and that sort of thing that the public is expressing through these various polls looking at our universities. And this separation is maybe something that institutions and those within them have not properly guarded or it's not a distinction that they've properly observed.

(00:47:08):

And so they themselves have allowed this blending of what their expertise is with what their political opinions are. And I think we've seen that in a number of ways in recent years. And the end result is that people are extremely skeptical of institutional claims of expertise because they have seen examples where people have used their platform or their authority as experts to advance what at least in part were really just their political opinions.

Justin Garrison (00:47:43):

Yeah. I thought one of the fascinating parts of that run of the conversation, which I just hadn't thought of, but it makes sense. One of the reasons possibly for, the inclusion of that language in the 1915 statement is the First Amendment hadn't been incorporated yet. And I thought like, "Yeah, that's right." Gitlow is still a decade away from the statement. And that has nothing to do with academic freedom. That was about illegal advocacy and violating state laws against trying to overthrow the government or whatever in New York. So there is a sense in which, even if the intention at the time made some sense because there really isn't a clear kind of federal and state standard for suppressing and regulating political speech, that's outlived itself. The shelf life on that is over. There's a great line of jurisprudence covering all sorts of situations. And I think that was part of what he seemed to be getting at is that, particularly on the extramural side, there's already an existing body of jurisprudence that covers that.

(00:48:49):

You might know this, I'm not a genius because I know this or something like that, but like Scalia used to have that phrase, "Stupid but Constitutional." And you could say that about most academic extramural

speech. Most of the kind of lawn sign equivalent academic speech or speech coming from academics doesn't have a lot of scholarly value would be a charitable way to put it, but being a dunce doesn't mean you're doing something illegal. And I think that is important because I think a lot of the comments about Kirk being assassinated are pretty disgusting. They're vile comments. A lot of institutions seem to be running into pretty clear First Amendment barriers related to not following procedures or to violating the First Amendment rights of that professor or both. So being despicable is a constitutional possibility in the United States and in some sense, thank God, which is also covered by the First Amendment. We're talking about free exercise.

Steve McGuire ([00:49:56](#)):

Yeah. Certainly whenever it becomes an issue, almost always because the speech was stupid or offensive or something along those lines. Yeah. But yeah, I mean, it's an immense topic and really do want to recommend that people pick up a copy of his book and read it. Our conversation with him is barely touching on the tip of the iceberg. And he has a lot of knowledge, a lot of research that he's poured into this book, which took him 10 years to write. And I think it would benefit people who work in this area or think about these issues to read it. He also mentioned that he's, I believe, on sabbatical next semester. And so he's available to speak if you want to bring him to your campus or if you're organizing a panel or organizing some sort of conference. I think he's eager to get out on the road and talk to people. And he's more than willing to hear from people at his institutional email address.

Justin Garrison ([00:51:02](#)):

Yeah. So we can put his institutional email address with his permission as we've already obtained in our show notes. But if you want to reach out to him again, as Steve said, if you were a professor looking to bring someone to your campus, if you're a professional organization or a higher ed organization, you want someone to tell you what academic freedom is and how it works, that actually would be super helpful right now. So yeah, can't encourage that enough.

Steve McGuire ([00:51:28](#)):

Great. Well, as always, we have academic freedom issues to discuss that are taking place in the world around us.

Justin Garrison ([00:51:39](#)):

There's a nice theme running through the whole episode. It's like we just had a great discussion about good academic freedom, and now we're going to talk about various institutions and organizations that are just doing the opposite, perhaps.

Steve McGuire ([00:51:52](#)):

Yeah. So what are we going to talk about first? The Oklahoma story?

Justin Garrison ([00:51:56](#)):

Yeah, let's go for it.

Steve McGuire ([00:51:58](#)):

All right. Well, this one has been all over the internet and all over the news for the last couple of weeks and wanted to take a few minutes to talk about it and say a couple of things. So the basics, this is a psychology class at the University of Oklahoma. Students were assigned a kind of reflection paper based on a reading. A student handed in a paper, which I think, you can tell me if you disagree, but I think we'll

stipulate this was not a very good paper by academic standards. There's a whole prompt and rubric for the assignment. So there's people who have gone and looked at that in great detail and sort of independently graded the paper. And I've followed a lot of this conversation and people are giving it a variety of grades, but there's a lot of agreement. Not everybody agrees, of course, but there's a lot of agreement that this paper did not deserve a zero out of 25, which is what the instructor gave it.

(00:53:00):

So she gave the paper and she said, "Look, I'm not grading you based on your views. Here are some items that are wrong with it, some feedback, but also some of the things you say in your paper are offensive." And then she got a second instructor to also look at it and then back her up and suggest that she might want to think about how she expresses herself or something along those lines. So she got a zero and she filed a great appeal and because she also expressed her religious views in the paper, she also filed a claim of religious discrimination. And then I'm not exactly clear on all the details, but very quickly she went pretty public with this. I think she went up to the governor's office. I'm not going to attribute sort of motives to anybody, but there's been some discussion online that it almost seems like she was intending to do this. I have no idea if that's the case or not at this point. But even if that were the case, even if it were a kind of trap or publicity play, a lot of people walked right into it. And it's not just what the professor did, but also the reaction online has been quite illuminating. So that instructor was placed on leave by the University of Oklahoma pending the investigation. And that's where things were when it went public. And in a way, to me, this paper is almost like a kind of Rorschach test because on the one hand, you've got a lot of people, probably mostly left of center who are saying, "Oh, this was a garbage paper, definitely deserved a zero, what about academic standards, et cetera, et cetera."

(00:54:52):

And then on the other side, you've got a lot of people, and I'm more on this side of the issue in terms of this paper, saying, "Look, this..." Well, I think the student may have said, actually, she thinks it's a great paper, but a lot of people I've seen are saying, "No, no."

Justin Garrison (00:55:11):

My kids are often proud of their drawings as well.

Steve McGuire (00:55:14):

That's right. My take was, look, this is not a great paper. If I were grading it... Now, I don't know everything about the context and sort of what the expected level is in this class and all of that, but I've certainly seen papers in this general range in the past many times, and it would not be crazy to me to give this paper somewhere in a 10 to 15 range. And people have to keep in mind that when you're grading these things, the letter grades corresponding to the numbers, a C is in the 70s, a D is in the 60s in terms of percentage points. An F is anything basically, I think, 59 and below on a lot of grading scales. So even if she had given this paper 12 and a half out of 25, that would've been an F. But depending on how she calculates the grades at the end of the semester, it wouldn't have been as damaging overall.

(00:56:16):

And Justin, you and I were talking at one point when I was a professor, I can remember saying to students on countless occasions, "Look, just get me something, like submit a paper because if you don't submit anything, I have to give you a zero because you didn't submit anything. But if you submit even a terrible paper, I can give you an F, but you'll still get points and it won't tank your grade as badly at the end of the semester." Sad that you ever have to have that kind of conversation with a student, but let's be realistic.

Justin Garrison (00:56:47):

Yeah, not every student is a Socrates.

Steve McGuire ([00:56:50](#)):

Yeah, that's right. But anyways, I think at the end of the day, and we'll have to wait and see how it all plays out, but it certainly looks like the grade was potentially punitive because the professor found the student's views offensive. She says that's not the reason, but then she does go on to say, "By the way, this thing you said in your paper is pretty offensive." And so there's been a massive debate online and in a way you could argue, why is this even such a massive public story? But I think what it does is it highlights what students can face in the classroom if they have views that don't generally align with the, say, academic orthodoxy on campus or the views of the professor.

([00:57:43](#)):

And so I think a lot of people are seeing it as an example of that while a lot of other people are trying to defend the instructor and say, "No, this was a terrible paper." And so that's been part of it too, is people have been commenting. It's interesting to see all these people come to the defense of academic standards all of a sudden in this case, which of course in ACTA, we're big on improving academic standards as well. So that's why I think it's important to recognize like, "Yeah, this is not a good paper." I think there were issues with the prompt and the rubric as well, to be honest, but at the same time, I think there is a strong likelihood here that there was a kind of bias at play.

Justin Garrison ([00:58:30](#)):

Yeah. No, I agree with your take on this. I think a lot of people have said this isn't a great paper, but I can probably count on two hands the number of great papers I saw in an undergraduate course. I mean, part of your job as a professor is to take people who don't have great writing skills or reasoning skills and to the extent that's within your practical powers improve those things. You shouldn't be looking at your freshman year's work compared to your senior year's work saying, "Hey, great, nothing changed." You should be better. I mean, that would be one way of measuring the quality of what you got. The other part of this that I do find frustrating as it relates to this particular story is the status of the Bible as an academic source.

([00:59:17](#)):

Now, clearly there are ways in which you can use any source in a way that ultimately doesn't meet rigorous scholarly standards. And I'm not going to weigh in on this particular student's paper in that regard, but there does seem to be a general allergy to even mentioning that specific text or things that come out of it when it comes to higher ed. So I'll give you an example from my own illustrious teaching career, and this will land with you. And if you're watching this and you don't understand what I'm saying, this is proof that you need to continue being educated. I had a student in a paper write, "Well, I don't agree with Thomas Aquinas because he uses the Bible and that's just irrational." And I thought, what kind of world am I living in? I mean, to me, the more common critique of Thomas is he's too rational.

([01:00:08](#)):

He's got all of these crazy Aristotelian schemata at work in his... I mean, I love Thomas, but yeah, that's just an incredible mischaracterization. And it comes from, of course, "Well, only idiots talk about the Bible in higher ed." So if you don't know who Thomas Aquinas is, go to [aquinas101.com](#) run by the wonderful folks of the Thomistic Institute and learn more. As I said, if anything, he's too damn rational. To me, part of what is troubling about this story at Oklahoma is it seems to come out of that general spirit. This text is incompatible with higher learning, and it's worth noting that certainly in the Western tradition, higher education comes out of that specific religious tradition. Our universities grow out of that tradition, so it's not inherently incompatible.

Steve McGuire ([01:01:07](#)):

Yeah. I saw some commentary along those lines as well. And I think you could argue that the way she was bringing it to bear in an academic paper, that wouldn't necessarily be the way to do that. If she wants to argue for a perspective that's in that text, that's one thing. Just trying to sort of assert it because it's in the text, that's another thing. But I think you're right. Some of the comments I saw to me just actually were openly expressing a kind of religious bigotry or a kind of assumption of secularism that itself sort of revealed some of the biases in the present day academy where people were, they weren't just talking about the fact that she didn't really make a scholarly argument per se, but they were saying, "This kind of conversation just has no place in a psychology class," and that for sure should at least be up for debate.

Justin Garrison ([01:02:11](#)):

Yeah. I mean, I think as some of the more charitable interpretations of what the correct approach to this would've been on the teaching side, you just can't throw out any text in a psychology course or in a sociology class perhaps or in a political science course for that matter, a text that is in some way connected to the fundamental value beliefs of like billions of people on the planet. That's just not the same as giving it the same rigorous standard of scrutiny you would any text. You can't just throw that out.

Steve McGuire ([01:02:42](#)):

Yeah. All right. Well, speaking of political science... Well, actually, I do want to mention one other thing on that story and then we'll get the political scientists who are of course up to no good once again.

Justin Garrison ([01:02:54](#)):

That's right.

Steve McGuire ([01:02:54](#)):

But a second instructor was subsequently suspended at the University of Oklahoma as well. And this is also a kind of interesting case where there are some mitigating details, but ultimately I think it does point to at least potentially a kind of viewpoint discrimination. The instructor was allowing or maybe even encouraging students to go to a protest on campus to support the first instructor, the one who had graded the paper and been placed on leave. And there was a student affiliated with TPUSA in that class who was asking about being able to attend a counter protest at the same time. And I think there was some debate about the rules at the university allow for excused absences under certain circumstances and those include approved university events.

([01:03:46](#)):

So there's an element of like, what are the rules here and that sort of thing. But ultimately, the student was told that he could go to the protest, but only using an unexcused absence because the counter protest was not officially announced or officially organized in the same way that the actual protest was. And so this instructor was... I think she teaches in a composition program or a writing program and was suspended by the director. And then the university put out a statement supporting that director's decision. And so maybe there are some mitigating circumstances here in terms of the policies. And I think it does make sense obviously for universities to have policies around when an excused or unexcused absence is allowed. It might be almost a little odd to me to even being allowing excused absences to attend political protests in the first place, but I don't know all the details on the ground there.

([01:04:46](#)):

But in any event, at the end of the day, it sure looks like students who wanted to attend the protest to support the instructor were allowed to have an excused absence and the student or students who didn't support that were not allowed. And so that does look like a kind of viewpoint discrimination again. So I think it's important to have policies in place that are viewpoint neutral and then to enforce those policies

in ways that are viewpoint neutral. And I have to say, as a practical matter, I don't know why the instructor didn't just say, "Well, go to the protest if you're counter protesting, that's fine." I don't understand why the student needed special permission for a separate event. Maybe there's something I'm missing there, but just based on my own experience as an instructor, maybe judging some of these issues or trying to allow students to do things in a way that was viewpoint neutral, the first thought that occurred to me is I would've just said, "Look, go if you want to, and I don't really care which side you're on."

Justin Garrison ([01:05:57](#)):

Yeah, that's what a reasonable person would do, and that's why we're discussing it.

Steve McGuire ([01:06:01](#)):

That's why it didn't happen. Yeah.

Justin Garrison ([01:06:03](#)):

But lest you're wondering, "Dear viewer, surely these things don't extend outside of the classroom in the campus. Let me enlighten you." Steve and I, prior to joining ACTA, we're both political theorists, a different institution, political theory, it's kind of like the awkward stepchild of political science. We tend to get housed in political science departments, but people don't like us as much because we don't use numbers with a Z to share our information. We use Plato as our quantitative research or something like this.

Steve McGuire ([01:06:36](#)):

And it's frustrating because every theorist knows that the theorists should be the ones ruling the political science departments.

Justin Garrison ([01:06:42](#)):

That's right. Plato has this wonderful myth about the Ring of Gyges where if you could turn invisible, basically you'd just do whatever you want because justice is just a convention. And all I'm asking for is an opportunity to prove Plato wrong. So if any of you know where that ring is, I know I could fix higher ed, even if no one was watching.

Steve McGuire ([01:07:03](#)):

You would use it to govern a political science department?

Justin Garrison ([01:07:06](#)):

That's right. I mean, basically now we're talking about Lord of the Rings and Mordor and throwing things into fiery pits to destroy evil, which is probably where most universities should go. They're all located in Mordor spiritually.

Steve McGuire ([01:07:21](#)):

I think even you would be corrupted if you became a department chair.

Justin Garrison ([01:07:26](#)):

What a thankless job. I mean, one of the reasons it tends to go to people who are not necessarily of the highest competence or ethical accountability is the people who are like that don't want to do it because it's such a terrible job.

Steve McGuire ([01:07:41](#)):

Yeah, it really is. Yeah.

Justin Garrison ([01:07:41](#)):

It's just awful.

Steve McGuire ([01:07:44](#)):

Okay. Anyways.

Justin Garrison ([01:07:45](#)):

Yeah. So this is a perfect segue into this other aspect of academic freedom that David was talking about. And if you're not in the higher ed space, typically you're evaluated for tenure and promotion, you're evaluated on an annual basis and things that your employer, your university will look at are, how is the teaching going? Are your evaluations okay? Your course design looks reasonable, that kind of stuff. But then another major component, and particularly at very prestigious schools, arguably the most important component of your application for tenure and promotion is the quality of the research that you've conducted.

([01:08:18](#)):

And in political science, one of the top journals, perhaps the top journal in terms of peer association is the American Political Science Reviewer, which is the flagship publication of the American Political Science Association. And earlier this week, the Goldwater Institute published a study showing that at least over the years from 2020 to 2024, the journal substituted rigorous academic and scholarly standards of reviewing possible publications for, wait for it and be shocked, ideological considerations. And so from this time period that the report analyzed, a group labeling itself the quote, "feminist collective." That's not a pejorative term being used by the researchers. This is a-

PART 3 OF 4 ENDS [01:09:04]

Justin Garrison ([01:09:03](#)):

That's not a pejorative term being used by the researchers. This is a self-descriptor coming from the people editing the journal. They didn't necessarily focus so much on academic rigor and scholarly contribution to the creation of new knowledge. Rather, the standards that they wanted to enforce for political science were quote, "To actively dismantle the institutionalized racism, sexism, heterosexism, ableism, and settler colonialism that continue to characterize and structure it," and it is the political science field.

([01:09:32](#)):

Well, that's an interesting way of looking at things and there are certainly scholars who would say, yes, that's an accurate description of political science, but that's far from an uncontested interpretation to say the least. But what are the practical effects of this? Well, the Feminist Collective, according to this report, essentially initiated a two-tiered system of standards of review. So if you're a professor and you submit an article, as you know, Steve, they're not just going to give it a thumbs up or a thumbs down and it goes into print in a couple of weeks or something like that. They're going to send it out to your ostensible peers to evaluate it. If I was a political theorist professionally, there are things in political science I could not competently review, like a heavily quantitative study dealing with sophisticated regression analysis. That's just not my wheelhouse.

([01:10:21](#)):

So you would find someone who knows those things, understands those techniques, understands the broader scholarly world that a submission is trying to plug into. And you would think, well, they got to evaluate it on the basis of its academic rigor and the things that I mentioned. But this two tiered system took submissions from women and "scholars of color," that they would almost automatically be advanced to the peer review stage regardless of quality, while articles written by people who fell outside of those categories were much more likely to receive a straight desk rejection, a thanks, but no thanks at that first stage. That's really troubling if the purpose of scholarship, as we've been discussing with David, is to promote the creation of new knowledge to tell to rigorous scholarly standards. There is a lot more in this report. It's very long. I would encourage people to read it about the relationship between a journal like this and the use of public monies, state and federal tax dollars, fund a lot of academic research, including in political science.

(01:11:21):

There's a reasonable question about what are we getting our money's worth out of? One of the things that this report revealed, and this isn't like a perfect metric, but they found something like three stories over those four years, or three stories, excuse me, three articles over the four years of this Feminist Collective editorship dealt with the US or state constitutions compared to like 132 publications that were broadly related to social justice topics. It's all well and good if you want to have a journal that just promotes a very narrow range of ideological perspectives, but you should advertise that. You can't advertise yourself as the standard of political science at its best and then resort to these kinds of ideological sleight of hands. I think it's unethical. In some cases, it's overtly discriminatory, which is both unethical and in some cases illegal. This is just a really terrible look.

(01:12:21):

And it's this kind of story in addition to that Oklahoma story that makes people in state houses and the federal government and in the general population look at higher ed and say something like, "I don't know what you're supposed to be doing, but what you're doing is something I'm not interested in." That's a real problem, and higher ed needs to fix it itself, which is what ACTA recommends, or you're going to get the bulldozer coming from the beltway or from wherever your state house is. And in some sense, I don't have a lot of sympathy for people who cry wolf when they've done absolutely nothing to put their own house in order.

Steve McGuire (01:13:01):

Right. Yeah. Yeah. And this is an example of a particularly difficult situation because you're dealing with an independent scholarly association and it's House Journal. And you're right, this really is the flagship or at least one of the flagship journals of political science. And getting an article published in this journal, I mean, that can really help people who are looking for a job or looking to get tenure. And so to skew what you're looking at for acceptance at the journal based on identity characteristics and based on a kind of ideological screening is really troubling. And I think what also is troubling about this case, as far as I can tell, is that they're sort of openly proud of what they did. I mean, this is a kind of corruption and they're sort of celebrating it. And yeah, it's an all-woman editorial team, so they're celebrating that and they're calling themselves the Feminist Collective. By the way, the report author, Tim Minnella, was a colleague of mine at Villanova.

Justin Garrison (01:14:04):

Excellent. I didn't know that.

Steve McGuire (01:14:05):

Yeah, he's a historian by training. It's a really great report. Another thing he points out, of course, the editorial teams, I think they get the reigns of the journal for, I think it's four years. And so teams of editors

will then apply. And so this group applied and there was actually another group, a competing group that also applied or submitted their names to be the editorial team. And this of course was in 2020, sort of right at the height of the madness of the academy over the last 10 or 15 years. And this other group had sort of said they were going to institute a kind of more colorblind approach. They were going to have a series of mechanisms in place to ensure a really blind review that ensured that people were getting feedback on their submitted articles without regard for their identity characteristics or anything like that.

(01:15:03):

So in a way, both bids were sort of addressing or trying to address issues of discrimination on the basis of identity and that sort of thing. And one was the sort of more active approach, and they're the ones who won out. So there was another alternative on the table at the time. But yeah, it's a great example of, again, the sort of bubble of higher ed to me as well, because not only did they do this and openly say that they were going to do this, and I'm sure there was plenty of people who dissented, friends of ours and that sort of thing as this was taking place over the last four or five years. This editorial team is no longer in place. They've actually been replaced by the second bid at the time in 2020. That team ended up taking over at the end of this team's reign.

(01:16:02):

But for four years, this journal was skewed and they were open about it and enough people were fine with this that they could openly say that they were doing this and conduct the journal editorial process in this way and publish reports about it. And that's really part of the scandal here.

Justin Garrison (01:16:26):

It's a very difficult situation, right? And I mean, not everybody's academic experience is the same, not every institution's the same. All of that throat clearing out of the way. It is very difficult, particularly if you're on a medium to small-sized faculty, but even at a big research university, you're not going to have like seven or eight colleagues who do more or less the thing that you do. People are more specialized than maybe perhaps they should be. We're not enough generalists in our approach to understand what our peers are doing adequately. So a shortcut for that problem is to consider the rank of the journal in which the publication was accepted.

(01:17:05):

So if I know that this journal's the top in the field, then I know it must be good even if I don't quite have the capacity to evaluate it on my own. I mean, that's a pragmatic decision, but it's a really troubling one in practice if journals are doing this kind of stuff repeatedly. And we know that APSR isn't the only one. The Journal Nature and a variety of so called natural science journals have been doing similar kinds of weeding out of people who have reasonable evidence-based arguments to make, but they don't necessarily align with the ideological agenda of the editors at the moment. I think one of the nice things about this particular piece of research is it's not just kind of dunking on the journal like, "Oh, what a bunch of dumb social justice warriors," or something like this. They let the facts speak for themselves and they should be embarrassing to anybody who claims to be a professional.

(01:18:01):

At the same time, this is a test case or like a representative example that should inspire some kinds of reforms. And I think one of the things they mention along those lines that I found worthwhile is to reevaluate the system that I just mentioned. There should be some reconsideration of how scholarship is evaluated when it comes to annual evaluation and tenure and promotion, because it's pretty clear that some of the top journals are just reinforcing ideological orthodoxies. And if you're on that team, then great, you're probably going to have a great time. But if you're actually trying to do with academic freedom is supposed to provide you the means to do, which is create new knowledge, you will inevitably run into colleagues who don't only not like what you're saying, but they don't like you because of what

you're saying. And this is a serious problem that needs to be addressed systematically when it comes to that other side of academic freedom.

Steve McGuire ([01:19:01](#)):

Yeah. No, that's a great point. And I think that's something that ACTA emphasizes all the time and that we've certainly been emphasizing under the current administration and even in response to some of the state legislation too, is there's a lot of reforms that universities should be making that they've needed to make for a long time. And I think just as a practical matter, one way that universities or say faculty in this case could really help themselves would be like, okay, sure, if the government's doing something illegal and you're filing a lawsuit, absolutely take those kinds of steps as necessary. But also, there needs to be some introspection and there needs to be some work done to reform issues that are broken within the academy. And if they do that, it will make them less of a target. It'll be better for them, it'll be better for the university, and it will give people outside of the university less grounds to be upset or to try and do something about it that maybe isn't as helpful or productive as it could be if faculty or administrators or trustees were to take action themselves.

Justin Garrison ([01:20:19](#)):

Yeah.

Steve McGuire ([01:20:21](#)):

We're in 100% agreement.

Justin Garrison ([01:20:23](#)):

That's right.

Steve McGuire ([01:20:24](#)):

Which makes for great practice.

Justin Garrison ([01:20:24](#)):

Where's the peer review of this show? We're too darn nice.

Steve McGuire ([01:20:27](#)):

That's right. Yeah. Maybe we should start bringing on somebody to disagree with us for five minutes or maybe two-minute hate or something like that.

Justin Garrison ([01:20:36](#)):

Yeah. Maybe in the next year we can get that seven thesis against Viewpoint Diversity, the author of that piece on, and we can make it a real McLaughlin group and just shout the word wrong at random times. That'd be good for ratings.

Steve McGuire ([01:20:54](#)):

Yeah.

Justin Garrison ([01:20:54](#)):

Speaking of good for ratings, let's get to our award, Steve.

Steve McGuire ([01:20:57](#)):

Okay, good. So I'm covering the Hero of the People this month. All right. And our Hero of the People this month is the University of Florida. So last year, we had a really great run of universities and colleges that were adopting institutional neutrality, which is of course something that we advocate for at ACTA and have worked with colleges and universities to adopt these policies. And the basic idea is that universities will recognize that their primary function is to be a forum for debate. And so they shouldn't be, whenever possible, taking political positions or putting their thumbs on the scales for political positions, either through their use of their resources, or as is commonly done, making statements in response to controversial social and political issues. But this year, there haven't been as many universities that have sort of kept up that momentum of shifting towards widespread adoption of institutional neutrality.

([01:22:03](#)):

And so we're delighted to see that the University of Florida has taken that step. And it's been a good run for them. Our friends at the Manhattan Institute released a ranking recently and put University of Florida at the top of American colleges, universities, and their ranking looks at things like freedom of expression and diversity of thought on campus in addition to other metrics of quality and reputation and that sort of thing. And so the University of Florida, they also have, of course, the Hamilton Center, which is doing great things. Professor James Hankins has just left Harvard to join Hamilton Center in the University of Florida permanently. He said this summer that he thinks it's going to be one of the preeminent places, if not the preeminent place for the study of European history in the United States. So things are really looking up there, and we're delighted to see them adopt institutional neutrality.

([01:23:02](#)):

And I know there's a few other schools that have policies potentially in the pipeline, so hopefully they'll follow through. But just as always, we encourage universities to look at this, and they can either just adopt the University of Chicago's Calvin report through a board resolution, or as many places have done, including the University of Florida, it's a very detailed four-page policy. The University of Michigan also developed a policy. Universities can sort of set up a working group if they want and sort of develop their own policy and pass that if they don't want to just adopt the Calvin Report. And at ACTA, of course, we're always happy to provide guidance and expertise on what goes into a good policy of institutional neutrality and how and why institutions ought to adopt them.

Justin Garrison ([01:23:48](#)):

And if anyone in the audience wants to know more about the strengths and freedom of expression for the University of Florida and the areas they might want to consider further action, we recently released our own gold standard for the Freedom of Expression Evaluation on our website. We can put a link to that in the show notes below. University of Florida did very well compared to a lot of other schools, but no one has been a 20 out of 20. If you're listening to this and you want to be our first perfect score, get in touch with us. We'd love to work with you. Florida's done well.

Steve McGuire ([01:24:20](#)):

And we should say that there's a couple of institutions that are currently working to try and become a 20 out of 20 active gold standard institution. So the race is on.

Justin Garrison ([01:24:29](#)):

Yeah. So if you want to be there before it's cool, get to work.

Steve McGuire ([01:24:32](#)):

That's right.

Justin Garrison ([01:24:33](#)):

All right. So Steve did the Hero of the People Award, which allows me to close out this calendar year of Radio Free Campus with our last Apparatchik of the Month award. Now I was thinking this section could just be titled, Why Marxists Ruin Everything. In addition to being the ideology that inspired hundreds of millions of people to get murdered over the course of the 20th century, now it's trying to ruin Christmas. So Christmas is a good time of year. And one of the great things about the holiday season is watching good Christmas movies like Die Hard, right? Arguably the best Christmas movie that ever was, but there's a lot of nice holiday films that people... It's kind of a consumer ritual, maybe would be a way of putting it.

([01:25:24](#)):

But a professor belonging to the State University of New York system took a shot at the beloved classic Planes, Trains and Automobiles. This is Steve Martin and John Candy. It's largely kind of a Thanksgiving film as opposed to a Christmas movie. So what is it that the professor didn't like? According to this article from The College Fix written by Micaiah Bilger on December 5th, the professor said that this film uses family as an excuse for Steve Martin and other capitalist bourgeoisie, poor treatment of the working class, including the lower class character played by John Candy. So here it is. It's a nice film about a guy who needs to find the right balance in his life and he meets someone that helps him kind of along his hero's journey, but no, no, no, no. It's all part of the capitalist superstructure where the working class is just continually exploited by the guy who has the watch that gets him an extra night in the hotel or whatever it was at that part of the film.

([01:26:31](#)):

I just thought this was so stereotypically academic. I'm waiting for the sequel because I've already thought, well, you could just do a search and replace for this perspective and make the same argument about Trading Places with Eddie Murphy and Dan Aykroyd and talk about it as racial exploitation.

Steve McGuire ([01:26:50](#)):

Sure.

Justin Garrison ([01:26:50](#)):

Damn it. It's not that. It's just some of these things are funny. And I know Marxism largely attracts people who are mirthless and don't have a sense of humor or take much joy in life, but for goodness sakes, take a break. It's December, the semester is over. Just relax, okay? In other words, ho, ho, ho, comrades.

Steve McGuire ([01:27:14](#)):

Well, I'm going to come to a partial defense of the Marxists because I've got to say, in my experience, some of the people who have sort of allied with classical liberals and conservatives on being concerned about some of the excesses of "wokeness" or what have you have been more traditional Marxist types who also agree that a lot of what's going on is performative, that it's not going to affect real change and that sort of thing. And so they've actually been good allies in some respects in terms of defending the academy. And I remember at Villanova when we had Charles Murray speak back in 2017, one of the people who sort of stood up and told people to let the man give his talk was one of the Marxist philosophers in the philosophy department. Of course, as a philosopher, he was in the philosophy department, but so partial defense.

Justin Garrison ([01:28:17](#)):

Well, I don't know. At the risk of being super obnoxious, Stalin was an ally in World War II, but he was still a mass-murdering jerk.

Steve McGuire ([01:28:27](#)):

Fair enough.

Justin Garrison ([01:28:27](#)):

So needs must.

Steve McGuire ([01:28:29](#)):

Yeah. I'm not defending Stalin, unlike some other people.

Justin Garrison ([01:28:32](#)):

Here it is now, Steve McGuire, pro-Stalin.

Steve McGuire ([01:28:35](#)):

Whoa.

Justin Garrison ([01:28:36](#)):

But the last note on this, when we were talking with David, he mentioned that the professors, the invited scholar, Sweezee, was asked whether or not he talked about dialectical materialism in his talk.

Steve McGuire ([01:28:48](#)):

That's right.

Justin Garrison ([01:28:50](#)):

And even in terms of Marxism, how far the apple has fallen from the tree.

Steve McGuire ([01:28:54](#)):

That's right.

Justin Garrison ([01:28:55](#)):

If I found a student who has the Che Guevara T-shirt and all of that going and I said, "What's dialectical materialism?" I'd eat my hat if I got an accurate answer.

Steve McGuire ([01:29:04](#)):

Yeah, that's one of the problems.

Justin Garrison ([01:29:04](#)):

It probably just sounds like you bought two things at the same time.

Steve McGuire ([01:29:07](#)):

You just can't find a solid lecture on dialectical materialism these days.

Justin Garrison ([01:29:11](#)):

I mean, it's a snooze, but for goodness sakes, it is better than the woke troparies. And on that cheerful, inspiring, unifying holiday message, we might as well wrap up. Thank you for watching this and for

watching and listening to our other episodes. We're going to come back in 2026 and hit the ground running with more great guests and good conversation. I won't slander Marxists every time. I'll reserve my scorn for other ideologies as well. But Steve, it's been a delight to be on this show with you. I've learned a lot about things that are important to ACTA, engaging with interesting guests and scholars. I've learned a lot about how a show like this works on the technical side. I mean, it's been a fascinating eight months doing this, and thank you for being a good co-host and for doing everything that you've done to make our episodes so successful.

Steve McGuire ([01:30:12](#)):

Yeah. Well, thanks to you too. I've really enjoyed it and I'm looking forward to the new year and a new season of Radio Free Campus.

Justin Garrison ([01:30:20](#)):

Excellent. So with that, we are going to wrap up. We'll see you next month in January. So until then, happy Christmas and KBO.

Speaker 2 ([01:30:28](#)):

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Speaker 1 ([01:31:05](#)):

Only 19% of all Virginia students surveyed say their campus is very welcoming of people with unpopular political opinions. Discover more at goacta.org.

PART 4 OF 4 ENDS [01:31:19]