



Academic Freedom at American Universities: Constitutional Rights, Professional Norms, and Contractual Duties

Lee, Philip
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Book Review

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In *Academic Freedom at American Universities*, Philip Lee presents a convincing case for transforming higher education with respect to protecting and encouraging true academic freedom of professors – in both public and private university settings. In six chapters, Lee discusses: the crisis of academic freedom in modern universities and the American Association of Universities Professors (chapter 1), the AAUP’s first policy declaration in 1915 and its struggle to defend academic freedom (chapter 2), the AAUP’s seminal 1940 statement and judicially defined academic freedom during the McCarthy era (chapter 3), modern constitutional conceptions of academic freedom (chapter 4), the limitations of constitutionally-based professorial freedom (chapter 5), and contract law as an alternative and better professorial academic freedom (chapter 6), an expounding of the author’s central proposal.

Lee chronicles the shortcomings of constitutionally-based academic freedom and appealing to the First Amendment alone, which he seeks to demonstrate has failed to sufficiently protect public institution professors, while not even applying to private university faculty. Thus, Lee proposes an alternative remedy: “developing a body of contractually based academic freedom case law,” which will “greatly expand the ways that courts protect aggrieved professors when their interests diverge with their employers’” while also allowing for “the proper consideration of the custom and usage of the academic community as either expressed or implied contract terms in resolving disputes between universities and professors” (145-46). The author adds that this contract law approach would also entail the courts giving greater attention to specific campus contexts rather than seeking to create universal remedies that inevitably fall short of fitting certain campus settings.

Professor Lee's research demonstrates substantial mastery of the subject matter and relevant materials - no less for matters dating from the pre-AAUP period through its founding and early years of development to its expanding influence and most recent iterations. Lee's work evidences careful scholarship that includes extensive collecting, scrutinizing, and evaluating of various crucial events, court cases and findings, written opinions, and other relevant materials spanning the AAUP's organizational history. Particularly insightful is the author's discussion of the 1918 report on academic freedom in wartime and the report's multiple contradictions to the 1915 declaration's principles, culminating in actual "retreat from professional self-identification in deference to the government's claimed needs during wartime" (33). Also instructive is Lee's examination of the shift in focus and language between the 1925 and 1940 Conference Statements - mainly from a prescriptive list of university "don'ts" to descriptive university teachers' rights with the latter's garnering of widespread acceptance (47) and approval within the bounds of most religious schools as well (64). The author's writing style is consistently clear and engaging - no mean feat considering the rather technical and procedural materials encompassing much of this book.

Philip Lee's *Academic Freedom at American Universities* presents an important argument for an alternative - contract law - foundation for professorial freedom in the academy. I recommend the book as a valuable resource for all public and private higher education institutions, particularly their faculty and executive administration.

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