

---

## Academic Freedom at UBC: Historical Notes

N. Guppy

What follows is a brief account of events and issues related to academic freedom at UBC. The initial question that motivated writing this short piece was to understand why in 1976 the UBC Senate approved a statement on academic freedom, a statement that now appears both in the Academic Calendar but also, and with an important preface, in the Collective Agreement between the Faculty Association and the University.

Early in our institutional history archival records show UBC dealing with academic freedom mainly in regard to appointments and curriculum. Michael Horn (1999), whose historical treatment of academic freedom in Canada is the current canon in the area, points to the appointment of historian Walter C. Barnes as an early challenge for UBC. In 1916 Barnes, an American, was asked to teach British history. Not only was his appointment disputed on the grounds of his national heritage, but his teaching was also challenged. Apparently Barnes discussed a range of explanations for the commencement of the Great War (WWI), including what were seen by some as German-biased rationales. A challenge of this sort to Professor Barnes's teaching violates a scholar's academic freedom to teach unhindered by non-academic constraints so far as that teaching is generally in line with the standards of a discipline.

Barnes was not re-appointed, a decision Horn (*Ibid*, 48) notes as "prudent" given the "relentless pressure" UBC faced from individuals in the provincial government regarding his appointment. Prudent or not, if the re-appointment was denied because of government pressure this would be an infringement of academic freedom. Whatever the reasons for the denial, these are lost to history.

Issues of proper pedagogy were debated publicly once more in the 1920s. Questions were raised, again by members of the provincial government, about the proper textbooks to use in teaching history and the proper place of religious issues in university teaching. In addition to questioning the teaching of any one particular scholar, this challenge can be understood as disputing what the University itself should accept as proper scholarly activity (e.g., the place of religion). Academic freedom is based on the presumption that the university, as collegially defined by its faculty members, ought to determine what counts as scholarly work. The University Act which governs UBC explicitly states that "a university must be non-sectarian and non-political in principle (66:1)." Exactly what this statement enables or constrains remains open to interpretation. However, it would seem that the 1920s debate focused, at least in part, on whether the university was being too sectarian and / or too political in allowing certain religious instruction. Here is academic freedom challenged along an additional dimension, that of the entire university as distinct from the rights of individual scholars.

A defining moment in UBC's collective grappling with academic freedom came in the fall of 1976. Mr. Harry Schwarz, a member of the Parliament for the Progressive Reform Party in South Africa was invited to campus as a Dal Grauer Memorial Lecturer. He gave three lectures, one an address at the Vancouver Institute. All three of the lectures were disrupted by protesters speaking out against apartheid policies in South Africa and Schwarz was accused of, among other things, being a fascist and a racist. (As a bit of after-the-fact context,

Schwarz was a political ally of Nelson Mandela, appointed as the South African Ambassador to the United States between 1991 and 1995).

Subsequent to the disruptions of Schwarz's lectures, a Senate committee was formed to make recommendations "to assist the President in dealing with problems concerning the academic freedom of lecturers and audiences" (Senate minutes, November 1976). One of the recommendations that resulted was the incorporation of the following declaration on academic freedom, which since 1977 has appeared annually in the University Calendar.

### **ACADEMIC FREEDOM**

The members of the University enjoy certain rights and privileges essential to the fulfilment of its primary functions: instruction and the pursuit of knowledge. Central among these rights is the freedom, within the law, to pursue what seem to them fruitful avenues of inquiry, to teach and to learn unhindered by external or non-academic constraints, to engage in full and unrestricted consideration of any opinion. This freedom extends not only to the regular members of the University but to all who are invited to participate in its forum. Suppression of this freedom, whether by institutions of the state, the officers of the University or the actions of private individuals, would prevent the University carrying out its primary functions. All members of the University must recognize this fundamental principle and must share responsibility for supporting, safeguarding and preserving this central freedom. Behaviour which obstructs free and full discussion, not only of ideas which are safe and accepted but of those which may be unpopular or even abhorrent, vitally threatens the integrity of the University's forum. Such behaviour cannot be tolerated. [Approved by Senate in December, 1976]

The statement initially appeared in the University Academic Calendar where it could perhaps best be understood as an aspirational document or declarative statement. It was more a statement of values than a policy document and in that sense did not have the legal status of compelling anyone to act in any particular way. The statement was also eventually included in the Faculty Handbook which was a loose collection of materials that the University distributed as an informational booklet. The Handbook also contained material that was agreed upon between the Faculty Association (in its pre-unionized form) and the University Administration. When the Faculty Association was recognized under the BC Labour Code as a unionized bargaining unit, then the statement was eventually incorporated into the preface of the Framework Agreement between the Faculty Association and the University. (On my understanding the statement's precise legal status remains ambiguous because some legal experts consider it as part of the recitals, as opposed to the operative provisions, in the Agreement. The force of its legal status may thus be less clear cut, in this sense, than that of other sections of the Agreement).

A significant test of the statement came in 2001 when Professor Sunera Thobani spoke out strongly against U.S. military retaliation for the September 11 terror attacks on New York and

Washington. At a Women's Resistance Conference on October 1<sup>st</sup> of that year she stated that, among other things, US foreign policy was "soaked in blood." Her remarks were met by fierce criticism, including from members of the provincial government and the federal cabinet, as "inappropriately timed," "uniformed," "hateful," and "anti-American." The university, through Vice-President Academic and Provost Barry McBride was quick to defend Thobani's right to speak freely, saying that her remarks were "the stuff of democracy" and "a cornerstone of university culture."

At least part of the concern about Thobani's remarks turned on whether her comments were personal opinion or informed academic commentary. Freedom of expression in this context is different from academic freedom. Thobani's comments included statements that the "liberation ... of women" will only be accomplished if we "transform the fundamental divide between North and South, between Third World people and those in the West ...." Clearly this is commentary well within her range of professional expertise, as a scholar in Women's Studies and Gender Relations (as the unit was then called). Nevertheless, a complaint was filed with the RCMP alleging Professor Thobani was "inciting hatred" against Americans (the complaint was dismissed). The President at the time, Martha Piper, defended the right of scholars to offer strong opinions by arguing that "in the university, unconventional ideas and controversial opinions deserve special protection."

Piper went on to note that:

academic freedom must be accompanied by academic responsibility; that is, the individual must act responsibly, base statements and opinions on fact and evidence, and use acceptable scholarly methods in the pursuit of truth. The question then is: who should determine whether an individual's expressions of opinion meet the test of fact and evidence? .... This determination has always been the responsibility of other respected scholars in the field, i.e. peers, who scrutinize and evaluate each other's work. Peer review is the best system we know of to ensure that a scholar's work is evaluated by the dispassionate judgement and knowledge of experts, rather than by the court of public opinion or political policy. ... [T]he University is a community of scholars with a wide range of views and opinions. Accordingly, the view of one scholar cannot and does not represent the view of the University. The institution's role is to provide a forum for the free exchange of ideas (from Minutes of Senate, October 17, 2001).

Piper's comments touch directly on how freedom of expression and academic freedom align. She articulates a view that academic speech is subject to quality controls which are determined by the professional standards of disciplinary colleagues. Freedom of expression has no such controls and in this important sense academics are more constrained than other citizens in making knowledge claims. Academic freedom also implies more than free speech, in the sense that external influences ought not limit or confine the pursuit or dissemination of knowledge.

More recently a series of colleagues have faced external pressures aimed at silencing their views (social justice scholars voicing opinions about transgendered issues, religious scholars confronting concerns from community members that their research was blasphemous, and First Nations scholars supporting the voices of specific communities). In each instance the university responded by supporting the scholars whose speech was threatened. A continuing challenge is internal critique, the degree to which scholars in various positions ought to be free to criticize the institution, and be supported while doing so.

Infringements of academic freedom are always troubling, but one issue that has recently occurred is an apparent feeling that it is solely up to the senior administration of the university to publicly support faculty colleagues. The University must support colleagues but the university community as a whole must also be effective in speaking out in support of academic freedom. In this sense, we all share in an obligation to support and defend academic freedom. The promotion and protection of academic freedom is not solely the responsibility of the University or the Faculty Association, but is something to which everyone must be committed.

In 2004 the statement on Academic Freedom was included in the Collective Agreement between the University and the Faculty Association. Of significant importance, when it was incorporated into the Collective Agreement three elements were added as a preamble to the statement on academic freedom (quoted above). The additional elements read as follows:

THE UNIVERSITY OF BRITISH COLUMBIA and the FACULTY ASSOCIATION OF THE UNIVERSITY OF BRITISH COLUMBIA

DESIRING to promote fair and proper economic conditions and terms of appointment for Faculty Members, Librarians, and Program Directors at The University of British Columbia;

RECOGNIZING that the University is a community of scholars whose essential functions are the pursuit and dissemination of knowledge and understanding through research and teaching and that academic freedom is essential to carrying out these functions;

BEING DETERMINED not to interfere with that academic freedom;

CONFIRM THAT the members of the University enjoy certain rights and privileges . . . (continues as quoted above, "Academic Freedom").

The original statement that appeared in Senate in 1976, and the preamble added in the Collective Agreement, currently provides the interpretation of academic freedom that prevails at UBC. Basing her judgement on this material, the Honourable Lynn Smith, writing about academic freedom in a report for UBC (October 27, 2015), concludes that at UBC the "academic freedom" of faculty is defined as follows:

- i. Vested in “members of the University”, recognizing that “the University is a community of scholars”;
- ii. Essential to the integrity of the University’s forum and to the fulfillment of the two primary functions of the University, those being (1) instruction: the pursuit and dissemination of knowledge and understanding through teaching, and (2) the pursuit and dissemination of knowledge and understanding through research;
- iii. Consisting of “the freedom, within the law, to pursue what seems to [members of the University] as fruitful avenues of inquiry, to teach and to learn unhindered by external or non-academic constraints, [and] to engage in full and unrestricted consideration of any opinion”;
- iv. As placing positive obligations on “[a]ll members of the University” to “recognize this fundamental principle” and to “share responsibility for supporting, safeguarding and preserving this central freedom”;
- v. As being protected from “suppressing behavior” by certain individuals or institutions, namely (1) institutions of the State; (2) officers of the University; or (3) the actions of private individuals;
- vi. Where “suppressing behavior” includes (but is not necessarily limited to) “[b]ehaviour which obstructs free and full discussion, not only of ideas which are safe and accepted but of those which may be unpopular or even abhorrent”; and
- vii. Is a freedom which is not “interfere[d] with” by the provisions of the Collective Agreement (see summary of Smith report, 2016).

A subsequent Senate statement that first appeared in the University Calendar in 1992 immediately following the wording on academic freedom emphasizes that the university also supports “freedom from harassment and discrimination.” This statement, which is not in the Collective Agreement, reads as follows:

The University of British Columbia is committed to ensuring that all members of the University community - students, faculty, staff, and visitors - are able to study and work in an environment of tolerance and mutual respect that is free from harassment and discrimination. (University Calendar)

Approved by Senate in 1991, the discussion surrounding the adoption of this harassment and discrimination language, points to the tension between these two statements. Law professor Philip Bryden noted that “there is a conflict between broad notions of academic freedom and broad notions of freedom from harassment and discrimination (Senate Minutes January 1991 pg 9941).” No resolution of the tension was proposed. The tension could be understood as requiring an impossible balancing of two opposing principles - academic freedom permits the exploring of even abhorrent views versus a forum promoting mutual respect and inclusivity of all views. Alternatively, and perhaps more helpfully, the tension could be understood as orthogonal (not opposing) where the content of views are separable from their mode of delivery. Respectful disagreement even in contentious conversations is the expectation so that abhorrent views can be explored in a constructive, conciliatory manner.

UBC continues to work through many new, modern complexities presented around academic freedom. These include new dilemmas posed by streams of, and standards for, public communication and the proper role of public intellectuals. There are as well new pressures surrounding knowledge mobilization and commercialization. The balance of rights and responsibilities is ever-more complicated as different scholars in different fields have divergent views on ways forward. However, at root the academy is a place of intellectual criticism and supporting, safeguarding, and preserving that right is core to our collective mission. As an institution we have not always done that in ways with which everyone agrees, but it is up to us all to work toward advancing academic freedom.

Drafted by N. Guppy, Senior Advisor to the Provosts November 2016