

A Comparison of Academic Freedom Between Greece and the U.S.

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Both Greece and the United States are known for the protection of academic freedom throughout the university sector (Karran, 2007; Downs, 2009). However, whereas constitutional provisions exist to guard these rights in both countries, they exist explicitly only for faculty who work within public institutions. Despite these similarities, the length of time these freedoms have existed in each country varies greatly.

Despite these current protections, new fears have entered the faculty realm. Current political tides have created concern among faculty in both countries that some of these freedoms are in danger of being eroded. In addition to these shared concerns, a recent issue concerning academic freedom in these countries lies at the intersection of all these current events, as U.S. institutions look to establish private institutions within Greece and faculty within the U.S. look to protect the academic freedom of their colleagues abroad. To examine this point, the current status of academic freedom within both countries will be explored, beginning with a brief history detailing how each country arrived at the current point. Current limits will then be analyzed, followed by a description of recent developments that faculty fear may pose a threat to their continued academic freedom. I conclude by examining an intersection that exists where all these points are colliding with mixed results.

Academic Freedom in the United States

The earliest concepts of academic freedom date back to ancient Greece, when Socrates first taught his ideal of living an examined life (Downs, 2009). Approximately 2,400 years later and 5,000 miles away, Socrates' principle continues in American higher education through the protection of academic freedom.

Although not specifically addressed within the Constitution, the concepts underlying academic freedom are viewed as an extension of the First Amendment right to free speech and

have been viewed by the Supreme Court in such a manner (*Keyishian v. Board of Regents*, 1967). Because the First Amendment only applies to restrictions of speech by the government, private institutions are not obligated to bestow academic freedom rights toward their faculty. However, the AAUP views the necessity of extending academic freedom rights to employees at both public and private institutions (2009a), with many doing so through contract or charter (Downs, 2009).

American Association of University Professors (AAUP)

As a leading organization in the protection of faculty rights, it is not surprising the AAUP has been an historical leader in the definition and protection of academic freedom. In its *1915 Declaration of Principles on Academic Freedom and Academic Tenure* (1915), the organization articulated the three important elements of academic freedom: “freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action” (p. 292). Interestingly, the statement seemingly overlooked any potential challenges to the first element, as it “is almost everywhere so safeguarded that the dangers of its infringement are slight” (p. 292), and instead focused more attention on the second and third points, which were viewed as being the most endangered. Perhaps for this reason, AAUP did not take the opportunity to succinctly define what was meant by each element, as the definitions are instead embedded within the narrative that followed. However, because the first item was not viewed as being endangered at that particular moment in time, a majority of the elaborations on the statement focused on the latter two points and thus left the first item somewhat vague.

In totality, the statement has been interpreted as an embracing of academic freedom for the individual faculty member and student, the institution, and the academic department or discipline (Downs, 2009). However, given the title of the statement and its place as the first

freedom described in the work, it seems clear that the organization viewed individual academic freedom as the most important of the three types.

In 1925, AAUP joined with the Association of American Colleges (AAC) to formulate a more specific set of academic freedom principles (Fuchs, 1963). This second statement was superseded 15 years later, when AAUP elucidated these points more fully through its *1940 Statement on the Principles on Academic Freedom and Tenure* (and later clarified in 1970) (1940). In this statement, the organization expanded upon the three elements it first described in 1915:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise

appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution (pp. 3-4).

Although the main argument in each of the three areas remains consistent with the 1915 statement, AAUP greatly expanded upon the definition afforded each element, which marked a notable addition to the original 1915 statement. Now in existence for 70 years, the tenets have clearly withstood the test of time and proven to be a solid foundation for the group. Although the original statement has been clarified multiple times since its inception, in addition to the 1970 interpretations, to address emerging issues, including faculty governance (1994), institutional regulations (originally drafted in 1957 and most recently revised in 2009b), and electronic communications (2004), the organization continues to follow the three points above as the basic principles of academic freedom. Even though they were viewed almost unanimously as unchallengeable for many decades to follow, their applicability to current society has been called into question by the judicial system in recent years.

Legal Interpretations

A series of court rulings over the past 50 years have helped shape the way many view the legal protections afforded to faculty under the auspices of academic freedom. The discussion that follows is not an exhaustive list of all academic freedom rulings, but instead focuses on some of the most important cases over the preceding five decades that have helped shape the judicial system's evolving views on academic freedom.

Prior to the 1970s, the Supreme Court viewed individual and institutional academic freedom as symbiotic ideals that could not be separated for fear of damaging the other. This was most evident in *Sweezy v. New Hampshire* (1957), where Chief Justice Warren opined:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die (Page 354 U. S. 250).

In his concurring opinion, Justice Frankfurter took a different, yet equally important approach as he emphasized the close connection that exists between institutional autonomy and academic freedom (Rabban, 2001), as he believed academic freedom to be predicated on institutional academic freedom (Downs, 2009). To accentuate his argument, Frankfurter quoted from a South African conference statement that underscored the need for institutional autonomy. The statement reasoned if a university is to create an atmosphere most conducive to learning, it is imperative that four freedoms prevail: "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (Page 354 U. S. 263).

Using Frankfurter's framework, courts have frequently ruled on the side of institutional autonomy, particularly when it is perceived to conflict with an individual's academic freedom. In *Edwards v. California University of Pennsylvania* (1998), a Federal court ruled in favor of the university after it had suspended a professor without pay after he was perceived to be pushing his

religious beliefs during class, finding “the First Amendment does not place restrictions on a public university’s ability to control its curriculum” (para. 12). Similarly, a U.S. District Court judge found in *Stronach v. Virginia State University* (2008) that “constitutional right to academic freedom exists that would prohibit senior (university) officials from changing a grade given by (a professor) to one of his students” (p. 8) while further stating academic freedom “is the university's right and not the professor's right" (p. 5).

Although the above cases have centered largely on classroom activity, the courts have also been called upon to decide on issues that fall outside the classroom walls. In *Urofsky v. Gilmore* (1999), faculty members at the public universities within Virginia challenged a state law requiring state employees to receive prior written approval before using a state owned or leased computer to access sexually explicit content, alleging that it hindered their ability to teach and conduct research. The court, in siding with the commonwealth, found the faculty members did not possess greater rights than other public employees, as the faculty had their speech restricted on the basis of their employment and not as private citizens. Although never referred to explicitly, the opinion directly addressed the first two elements of AAUP’s 1970 statement while deciding it on the grounds of the third element.

This decision faced added importance for higher education following the Supreme Court’s ruling in *Garcetti v. Ceballos* (2006). In this case, the Court’s majority held that speech by government employees that occurred as a part of their employment duties is not protected by the First Amendment as it does not occur as a private citizen. While the majority deliberately avoided any discussion on the impact of this decision upon academic freedom, Justice David Souter raised the issue as a key element in his dissent, stating, “I have to hope that today's majority does not mean to imperil *First Amendment* protection of academic freedom in public

colleges and universities, whose teachers necessarily speak and write ‘pursuant to...official duties’” (p. 17).

To the distress of many within the faculty, Souter’s fears appear to have materialized through a series of lower court rulings that followed the decision, as a number of courts have applied the ruling to higher education as well (AAUP, 2009a). Although it is important to note that a majority of these recent cases have been decided at the district and appellate level, meaning they have little precedential weight outside the courts’ boundaries (White, 2008), many academics are already concerned that a conservative-leaning Supreme Court could undo many of the protections faculty have enjoyed for decades (Rahdert, 2007). This possibility is particularly worrisome for academics in light of *Emergency Coalition to Defend Educational Travel v. United States Department of the Treasury* (2008), in which Judge Laurence H. Silberman wrote in his concurring opinion that he shared “the doubts of our Fourth Circuit colleagues as to the notion that ‘academic freedom’ is a constitutional right at all” (p. 3).

Many see this recent trend of questioning the Constitutional protections afforded academic freedom as particularly troublesome when many of the controversies involving academic freedom arise in “gray areas” (Downs, 2009). When many faculty activities necessary to earn tenure are incumbent upon academic freedom protections, tremendous negative ramifications are possible if these Constitutional protections are not upheld. For example, service is one of the major components for earning tenure and often requires public speaking. Under the *Ceballos* ruling, Downs argues this public expression may not even be protected under the First Amendment. In addition, faculty view self-governance as a responsibility of their position. However, if faculty are no longer able to criticize the university without fear of retaliation, as the *Ceballos* ruling appears to allow, the ability is severely impeded.

These two examples do not even touch upon arguably the two most important faculty functions: teaching and research. Although any potential impacts of possibilities that faculty no longer have a First Amendment guarantee to academic freedom are purely speculative until the Supreme Court offers a definitive ruling, the negative possibilities are tremendous. It is feasible faculty could be banned from teaching in a manner they believe to be the best suited for their class if administrators do not agree with the faculty member's teaching style. Furthermore, faculty could be dissuaded or even prevented from pursuing controversial lines of research. This could potentially have a chilling effect upon both the educational system and society.

It seems clear that until the Supreme Court issues a definitive ruling on academic freedom, the debate on the ramifications of these recent rulings is likely to continue. In the interim, the best protection for faculty is to fight for academic freedom protections to become part of their institutions' rules (Downs, 2009), as this will allow for another layer of protections for the faculty.

Academic Freedom and Overseas U.S. Branch Campuses

As U.S. institutions look to capitalize on the income potential that international markets provides, they are likely to continue expanding into overseas markets (Schmidt, 2009). The impacts this could have on faculty at those sites has already caught the attention of faculty advocate organizations. The possibility that academic freedom rights could be limited for faculty who teach at U.S. campuses overseas has already caught the attention of the AAUP, who issued a joint statement with the Canadian Association of University Teachers (2009) to specifically address this issue. The statement explicitly calls for institutions to take steps to ensure the protection of academic freedom and shared governance for professors on their international campuses as well as to adopt codes of conduct that govern workplace conditions for

nonacademic employees. Despite the organizations' noble intent, some have criticized the statement as being impractical as it views the situation through a domestic lens that may not be applicable in all scenarios (Schmidt, 2009).

Academic Freedom in Greece

Patterns of institutional control for higher education vary considerably by country across the globe. As many countries rest control in the central government, patterns of appointment, promotion, and academic life are often dictated by government policy (Altbach, 2000). This also means issues related to academic freedom are at the discretion of policymakers. This has raised concerns, as some argue that academic freedom is now under attack across the world, (Altbach, 2001), which is exactly what some critics argue is happening in Greece.

Despite having a tradition of education that dates back to Socrates (Downs, 2009), many structures and laws pertaining to Greek higher education institutions are fairly recent. A colonels' military junta from 1967-1973 was a period of restricted academic freedom for many faculty within Greece. Despite the military's best attempts, lecturer and student opposition remained (Marseilles, 2008). This opposition helped establish a foundation for the existing academic freedoms that are in place today. To better understand this current state, I will first provide a brief overview of the higher education structure to establish a context for understanding this freedom.

Higher Education Structure

The Greek higher education system currently consists of three distinct levels of education: four-year universities, technological educational institutes, and technical and professional schools. The highest level of these institutions is the four-year universities, of which there are currently 22 within Greece. These are similar to institutions in the United States

with a Carnegie Classification of doctorate-granting research universities (or colloquially referred to as Research I universities). The University of Athens, which was established in 1836, is the oldest university, and oldest tertiary education institution, within Greece (Karmas, Lianos, & Kalamatianou, 1988; Jackson, 2006).

Students can also attend technological educational institutes, which are parallel in structure to the four-year universities. Although these 16 three- to four-year institutions are comparable to polytechnics in England and Fachhochschule in Germany (Karmas et al., 1988; Jackson, 2006), they do not have an equivalent within the U.S.

According to the constitution, both of these institution types “operate under the supervision of the State and are entitled to financial assistance from it” (Greek Constitution, Article 16 para. 5). Although this means all universities are publicly run and under the control of the Minister for Education, Lifelong Learning and Religious Affairs, it also guarantees that students who attend these institutions will receive free tuition and textbooks (Protopapas, 1999; Euroguidance Center of Greece, 2003).

This arrangement provides considerable authority to the Minister. Each year this official determines the number of secondary education graduates who will be allowed to enroll in each of the departments currently in operation within the public universities. Furthermore, because these are all public institutions, the Minister has established the four criteria that will be used to determine which students are admitted to each of the departments currently in operation to standardize the process: academic, economic, social, and political. Additionally, the government also decides the location of all universities within the country (Karmas et al., 1988).

The law dictating all four-year universities and technological educational institutions to be free and public is outlined in the constitution, which states, “the establishment of university

level institutions by private persons is prohibited” (Greek Constitution, Article 16 para. 9). This restriction severely limits the ability of private four-year institutions to organize within the country, as students who graduate from private universities receive degrees that are not recognized by the Greek government, are excluded from non-elective government service, and cannot practice in fields requiring professional degrees such as law, medicine, and engineering (Jackson, 2006).

Although four-year universities and technological educational institutes receive more attention, a third level of tertiary education also exists within Greece. This final group of institutions is technical/vocational education and special professional schools, which typically consist of two- and three-year programs and are similar to community colleges in the U.S. Because they are below the university level, they do not fall under the auspices of the constitution and therefore can be either publicly or privately controlled. Public professional schools are supervised by a governmental ministry other than education, whereas private institutions are controlled by an autonomous public organization (Kalamatianou, Karmas, & Lianos, 1988; Karma et al., 1988).

Academic Freedom

Before an extensive discussion on academic freedom can be initiated, it is necessary to make an important clarifying point. Because private universities in Greece receive little formal recognition from the government (meaning their degrees are not recognized by the government), the following discussion focuses exclusively on faculty at public universities. In addition, the literature appears to be largely silent on the issue of academic freedom for faculty at private institutions. Furthermore, it is also essential to remember that all gains related to academic

freedom are recent, as previous governments severely restricted these freedoms prior to the mid-1970s (Marseilles, 2008).

As is common throughout the European Union, the protection of academic freedom was written into the nation's constitution. Article 16, which pertains exclusively to education, spells out many of the protections and limitations that apply to higher education. In a method that likely demonstrates its perceived value by its writers, academic freedom is addressed first in this article by stating, "Art and science, research, and teaching are free and their development and promotion constitutes a state obligation. Academic freedom and the freedom to teach do not override the duty to obey the Constitution" (Greek Constitution, Article 16 para. 1).

Of particular importance is how the protections and limitations of academic freedom are clearly delineated. Although not explicitly stated in the document, it is easy to determine some activities that would clearly fall under exception clause in this paragraph. For example, a teacher who incites students to overthrow the government would likely not be protected by academic freedom. Likewise, a faculty member who used a lecture to solicit students to murder a rival would also not be protected. While these are extreme examples, it underscores the breadth of the protections for faculty. Many of the actions not protected under the constitution are deemed to be inappropriate by most reasonable faculty anyway, which means there is little actual constraint placed on faculty through the "obedience" clause.

As academic tenure is often inseparable from academic freedom, as has been demonstrated through numerous joint statements on the topics by the American Association of University Professors (AAUP, 1915, 1940), which will be discussed later, it is also important to note that a basic framework for tenure is also described in the Greek constitution, even if it is not mentioned by name. Article 16 paragraph 6 holds that "professors of university level institutions

shall not be dismissed prior to the lawful termination of their term of service,” except for select instances, in which case a judicial verdict is still necessary. Though a professor’s term of service could be of varying length, there appears to be a clear intent to protect a professor from termination due to differing opinions over classroom material, lectures, and other issues commonly protected under academic freedom.

Another important aspect of academic freedom is the role of self-governance (Areen, 2008), in which Greek faculty are encouraged to participate. As the constitution states education shall aim for the “moral, intellectual, professional and physical training of Greeks” (Greek Constitution, Article 16 para. 2), some have applied this context to their work as faculty to mean they are “morally obliged and encouraged” to participate in the management of the university (Marseilles, 2008, para. 4). To this end, university decision-making bodies consist of six constituent groups, including professors and lecturers as well as students and nonacademic employees (Karmas et al., 1988).

The protections outlined in the constitution are important as there is no other specific legislation that directly addresses academic freedom (Karran, 2007). However, in 1992, law 2083 was passed to further clarify the role of tenure within institutions of higher education:

Only those belonging to the two upper ranks of the academic hierarchy are elected to permanent (tenured) positions. Appointments and promotion of all teaching staff is made by special electoral bodies, which meet together with the General Assemblies of the departments (para. 5).

The passage of this law was important, as it provided specific legislation to protect tenure and served to further strengthen the importance of the department, which already had considerable

power. In fact, it is the general assembly within each department that is responsible for securing academic freedom for all of their constituents (Karmas et al., 1988).

Limits.

Given the framework that is outlined in the constitution as well as through other legislation, many view academic freedom for Greek faculty to be free of governmental restrictions (Marseilles, 2008). That does not mean that no limits exist, however, as there is a rising pressure from the private sector to limit some faculty research activity.

Theoretically, Greek faculty are free to pursue their research interests. However, research that requires external funding can find major restrictions imposed on the project by the funding source. In these instances, it is quite possible for the private funder to pressure the faculty member to produce favorable results. In addition, research findings that are not in accordance with a government policy can be quashed. In either instance, faculty may find it nearly impossible to secure future research funding if they resist (Marseilles, 2008). This pressure to “find” favorable results or to suppress unflattering ones places a strong limitation upon a guiding principle of academic freedom that seeks to protect the faculty member in such situations.

It is also important to note that significant power was ceded to university students through a series of reforms in the 1980s. One aspect of these powers is a say in determining the retention of faculty (Jackson, 2006). Although the extent to which this impacts faculty teaching decisions is not clear from the literature, one must question the significant role this may have in the decision-making process of untenured faculty members and the extent to which it subversively impacts their teaching methods.

Proposed Reforms.

There are a number of proposed reforms currently being debated that could have profound impacts upon academic freedom rights within the country. European Union directive 2005/36 requires member nations to create methods by which the governments will recognize the qualifications of professionals received in other member nations. Greece, which seems determined to hold tight control over the recognition of degrees for workers within the country, was one of only two members who voted against the directive (Jackson, 2006). Despite an October 2007 deadline to implement such laws, Greece still had not enacted all elements as of November 2009 (European Commission, 2009). It is not clear if this will have an impact upon teaching standards or the future recognition of private universities within the country.

Simultaneously, the present Greek government is also pushing for reforms that would greatly overhaul Article 16 of the constitution. Most important for faculty is the possible recognition of private universities within the country. The ability to work at an accredited private university would give faculty the protections afforded their public sector colleagues while seemingly placing private institutions on an equal level with public universities. However, there are also numerous impacts to consider (Jackson, 2006). Passage of this reform would likely require private universities seeking accreditation to meet the same standard required of public universities. This would mean all academic departments would be required to offer doctoral degrees, would have to employ a large percentage faculty with terminal degrees, and would be required to provide evidence of scholarly and scientific research. Furthermore, it is likely that private institutions would be required to cede significant decision-making power in the selection of upper administration position to the students, similar to what currently happens at public universities (Jackson, 2006). These requirements could force many of the decisions typically regarded as falling under the prerogative of the faculty into the hands of outside agencies,

including curricular and research decisions. Therefore, it is not surprising that many faculty oppose these reform efforts (Marseilles, 2008). Additionally, these barriers would likely dissuade many interested parties from establishing private institutions (Jackson, 2006). It is important to note that these reforms were proposed prior to the beginning of the current financial crisis that made headlines across the world in 2010. Impacts related to new austerity measures will be discussed later in the paper.

Finally, recent attempts to pass a European Union Constitution succeeded as the Treaty of Lisbon took effect on Dec. 1, 2009. As part of this treaty, the “respect” of academic freedom is guaranteed throughout all member states (European Commission, n. d.).

Private Education and Current Austerity Measures

Throughout the first half of 2010, Greece has made headlines for their financial problems and their inability to meet debt repayment deadlines. As part of a €110 billion bailout by the European Union and the International Monetary Fund, the Greek government was required to institute strict austerity measures to cut government spending (Hansen, 2010). Although the full extent of government cuts is not yet known, it appears as though few areas will be untouched. Consequently, one must wonder the impact this will have on the proposed Article 16 revisions. Even as both parties favor some degree of reform on this issue, the ruling party has changed since the revision debate began and the parties approach it from differing viewpoints (Embassy of Greece, 2007; Katz, Lutz, & Petrakis, 2010). This makes predicting what will happen to the proposal difficult to foresee. However, this uncertainty means there is likely to be an extended period of ambiguity before the issue is resolved. If this happens, tangential issues, such as academic freedom for faculty at private institutions, will follow the same course, making it imperative that faculty seeking appointments at these institutions make themselves fully aware of

the situation before entering employment with a private institution, as the protections associated with such an employment may change rapidly.

Conclusion

Faculty in both Greece and the U.S. currently enjoy strong academic freedom protections. In spite of this, there are fears among the faculty in both countries that recent legal proceedings, whether judicial or legislative, will erode some of these safeguards. Paradoxically, the greatest viewed threat to academic freedom in Greece is the possibility of public recognition of degrees earned at private institutions, which would allow U.S. institutions to offer accredited degree programs there. A recent example has demonstrated the difficulty in monitoring the daily happenings by U.S. administrators of their international campuses, which is causing fear among many faculty that the academic freedom of the faculty at these international campuses could be compromised. As the AAUP and other faculty groups continue to battle for faculty protections, the junction that exists where these two points intersect is likely to be a point of contention for many years to come.

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