

Self-Regulation Of Faculty In Higher Education

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Abstract

Many of the disciplines in which faculty in institutions of higher education are trained, such as law, accounting or medicine, are characterized by a code of ethics and by the regulation of those guiding principles by the profession. Universally, however, academia, is neither guided by a single code of ethics, nor self-regulated by such a code. The tenure system, while compatible with progressive counseling, is less compatible with progressive discipline because of its limited exceptions for terminating tenure and few options for otherwise correcting problematic behavior. As state legislators seek to implement a system of performance checks through post-tenure review, faculty as a whole should consider implementing a code of ethics, coupled with a system of self-regulation for compliance. This paper will discuss these issues and propose that since all faculty members, not just faculty who are administrators, are potentially affected by the sub-standard performance of a colleague, the collective body of faculty should establish and maintain a disciplinary board for regulating professionalism in institutions of higher education.

1. Ethical Obligations

The classic learned professions are law, theology and medicine (State Bar v. Arizona Land Title & Trust Co., 1961). They are “characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place...” (McMurdo v. Getter, 1937, p. 142). Practitioners of these learned professions are said to embrace a spirit of public service and to abide by a self-regulating code of ethics. Currently, for example, the Model Rules of Professional Conduct as adopted by the American Bar Association set forth the professional ethical obligations of practicing attorneys. The Model Rules address such topics as conflicts of interest, pro bono obligations and other aspects of professional responsibility. In addition to service obligations and a code of conduct, certification or licensing requirements as well as fiduciary or confidential relationships with clients also characterize the learned professions (Ladinsky, 1976). While historically the professions were limited to divinity, medicine and law, the concept has expanded to embrace other vocational callings, which require specialized knowledge rather than skills. (Aulen v. Triumph Explosive, 1944). Characteristics of professions include 1) skills that are intellectual in nature, resulting from extensive training; 2) services that are beyond assessment by non-professionals; and 3) concerns that exceed those of a particular individual. (Morgan, 1977).

Today, many professional associations, including those related to education, expound a code of ethics. For example, the Preamble to the “Code of Ethics of the Education Profession” as adopted by the National Education Association of primary and secondary education professionals provides that

The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of the democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards. The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parents, and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct.

The two overarching principles that follow specify responsibilities with respect to a teacher's commitment to the students and commitment to the profession. Codes of ethics exist in higher education as well. In higher education, some discipline-specific professional associations, such as the American Psychological Association and the American Sociological Association, have a code of ethics that either apply to teachers as well as to practitioners, or include sections related to teaching.

In 1996 Canada's Society for Teaching and Learning in Higher Education began distributing a document entitled "Ethical Principles for College and University Teaching," drafted and endorsed by a select group of exemplary teachers. The principles provide directives with respect to 1) competence in the subject matter including all areas relevant to course goals or objectives taught; 2) pedagogical competence as evidenced by remaining current in instructional methods or strategies that are effective in helping students to achieve the course objectives, 3) the assurance that topics, which students are likely to find sensitive or discomforting, are dealt with in an open, honest, and positive way, 4) the responsibility to contribute to the intellectual development of the student, 5) the avoidance of conflicts of interest with respect to relationships with students, 6) the maintenance of confidentiality with respect to grades, attendance and private communications, 7) respect for the dignity of colleagues, 8) insuring that the assessment of students is valid, open, fair, and congruent with course objectives, and 9) respect for the educational goals, policies, and standards of the educational institution. (Murray, Gillese, Lennon, Mercer, & Robinson, 1996).

The American Association of University Professors ("AAUP") has a five-part statement on professional ethics. It declares that the primary responsibility of professors is to seek and to state the truth and to devote their energies to developing and improving their scholarly competence. Second, professors should encourage the free pursuit of learning in their students, and "hold before them the best scholarly and ethical standards of their discipline." To this end they should foster honest academic conduct and ensure that their evaluations of students reflect each student's true merit, respect the confidential nature of the relationship between professor and student, avoid any exploitation, harassment, or discriminatory treatment of students, acknowledge significant academic or scholarly assistance from them, and protect their academic freedom. Third, with respect to relationships with colleagues, professors should not discriminate against or harass colleagues, but show respect for the opinions of others, acknowledge academic debt, strive to be objective in their professional judgment of colleagues and accept their share of faculty responsibilities for the governance of their institution. Fourth, professors should be effective teachers and scholars and observe the stated regulations of the institution, so long as they are consistent with academic freedom. Fifth, professors should balance other demands in light of their responsibilities to their subject, their students, their profession, and their institution, and promote conditions of free inquiry in order to further public understanding of academic freedom.

Codes of ethics indeed should provide guidance for educators since professors in institutions of higher education share many of the characteristics of the learned professions. Shulman (2000) asserts that the scholarship of teaching and learning is characterized by *fidelity*, a word whose Latin root is shared with the term, *fiduciary*, a relationship recognized under the law as requiring the utmost good-faith and fair dealing, and which personifies the obligations owed by learned professionals, such as attorneys. He identifies four kinds of fidelity: 1) to the *integrity of the discipline* or field of study; 2) to the *learning of students* one is committed to teach and to serve; 3) to the *society, polity, community, and institution* within which one works; and 4) to the teacher's own *identity and sense of self* as scholar, teacher, valued colleague, or friend. (Schulman, 2000). Schulman concludes that "a college professor is a member of a learned *profession*. A professional takes upon herself the obligation to serve others through exercise of the intellectual, practical, and prudential talents that her community has made available to her through education. Rather than make impossible choices between doctor as researcher and doctor as teacher, I argue that possessors of the doctoral degree assume the responsibility to serve as stewards of their discipline or profession." (Schulman, 2000). He further asserts that three characteristics mark the scholar-as-steward: 1) preparation as evidenced through scholarship, 2) responsibility for maintaining standards in one's own work and in the work of others and, to a degree, for the purity of the intellectual environment (stewards of the discipline or domain), and 3) responsibility to share intellectual pursuits with the other members of your community.

However, there are key distinctions between the ethical obligations of faculty in institutions of higher education and those members of other professional organizations like state bar associations or medical boards,

which abide by a code of conduct. First, the ethical obligations of the medical and legal professionals are not optional. While the ABA's Rules of Professional Conduct are advisory, they become mandatory as adopted by state governing boards (Burke, Mechling & Pearce, 1996). In contrast, the AAUP is not a governing body for professors in higher education; its code (as well as membership in the association) is purely optional. Second, unlike other professional associations, there is no mechanism in academia for policing violations of any type of a common code by a professional association. As the AAUP acknowledges in its Statement on Professional Ethics:

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to ensure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group.

Thus, determining whether or not a violation of acceptable behavior has occurred is the responsibility of an administrator, not the community of faculty. Third, while professional associations may impose sanctions for violations of norms, the ethical cannons espoused by the AAUP or in place at individual institutions are not managed consistently through disciplinary actions. In contrast, a state bar association may 1) request the resignation of a member for disciplinary code violations, 2) suspend a member from the practice of law for a period of time, or 3) issue a public or private reprimand for unacceptable behavior. (*Disciplinary Actions*, 2003). These distinctions are indeed critical ones, and cut to the core of whether or not university professors may collectively be recognized as a profession. While professors individually engaged in the practicing of their discipline are subject to regulation, as educators, they are not subject to peer regulation by a clearly articulated, binding, and enforced code of professional conduct. Should the paradigm change?

2. The Need For Self-Regulation In Academia

2.1. The Preservation of Academic Integrity

The idea of a self-policed code of ethics in higher education is not necessarily a popular one. Commentators observe that there seems to be a code of silence about a code of ethics because the concept is viewed as being seen as hostile to academic freedom, but recognize that "not only is there a need for an academic code of ethics, but in fact such a code could potentially expand, not limit academic freedom," particularly since an accepted code of ethics could assist in establishing appropriate teacher/student boundaries, determining how to approach colleagues about controversial teaching practices, and reconciling issues of racism and sexism in the classroom (Felicio & Pieniadz, 1999). Other explanations of the relative neglect of academic ethics include, for example, the possibilities that 1) academics have not experienced a crisis in public confidence, 2) the consequences of academic malpractice are less grave than those of legal or medical malpractice, 3) the temptations of professors are not as large or enticing as those of doctors or lawyers (Nickel, 1990). Nevertheless, a viable code of ethics for university faculty could educate faculty and students about academic standards and expectations, and provide assurance that ethical issues in university life are recognized and taken seriously (Nickel, 1990).

Colleagues in institutions of higher education have at least as much at stake as administrators with respect to faculty performance or non-performance issues. Traditionally, faculty have been viewed as being responsible for discharging professional responsibilities with respect to three areas of performance expectations: service, research and teaching. Certainly under the recognized duty of service, there is an ethical obligation to serve the educational institution in which one works, particularly with respect to achieving or maintaining accreditation, to being faithful stewards of the curriculum and to participating in the self-governance of the institution. As a corollary to this broad directive, faculty should be expected to attend meetings regularly and be prepared to participate in a meaningful manner.

With respect to research, faculty should pursue scholarship within their chosen discipline and share their work product in some recognized public forum. As a corollary to this broad directive, faculty should be honest in their academic pursuits and not claim work as their own, which is not genuinely capable of being characterized as such. The AAUP has policies on plagiarism, multiple authorship and conflicts of interest in funded research;

however, the web has presented new temptations to faculty with respect to copyright issues and the usurpation of materials developed by others (Rosworth, 2002). Further development of ethical expectations in this regard is needed.

In the area of teaching, faculty, in the words of the AAUP, should “ensure that their evaluations of students reflect each student’s true merit” and “be effective teachers.” A professor should be pedagogically competent, that is, communicate the objectives of the course to students, know alternative instructional methods or strategies, and select methods of instruction that are effective in helping students achieve the course objectives; they should also take adequate steps to ensure that assessment of students is valid, open, fair, and congruent with course objectives. (Murray, Gillese, Lennon, Mercer, & Robinson, 1996). As a corollary to this broad directive, faculty should provide a syllabus, deliver instruction on a regular and continuing basis, and assign grades that are relative to student achievement.

In evaluating these broad directives and their more specific corollaries, it is quite easy to discern that the relationship among faculty is interdependent. In other words, if a colleague refuses to share the burden with respect to faculty governance responsibilities, or acknowledges membership in a committee but fails to attend a majority of meetings, other faculty members are adversely affected. If a faculty member “brokers” papers amongst and between colleagues and never contributes to the research effort in a significant matter, other faculty members are affected. If a faculty member fails to meet a substantial number of classes or routinely assigns As or Bs without requiring sufficient effort on the part of students, other faculty members are affected directly and profoundly. Undoubtedly, administrators are affected as well, but not to the same extent of other faculty members who must now shoulder the burden of more service assignments, receive the same credit for research as another who has exerted little effort, and watch as the enrollment declines in their classes while students pursue the easy grade.

2.2. Inadequacies of Post-Tenure Review

In addition to this argument for self-regulation, which is motivated by self-interest in the preservation of academic integrity, there are practical reasons for academicians in higher education to join together as a profession and develop a binding and self-enforced code of conduct. In recent years some critics have characterized professors as “incompetents and slackers who have abandoned their teaching responsibilities and are getting a free feed at the public trough” (Holden, 1997). As other professional groups will attest, if the profession itself fails to maintain standards in a vigilant manner, some other entity will impose them, and self-regulation is usually preferable. This truism is manifested in higher education by the growing acceptance of post tenure review (Robbins, 1998).

Studies indicate that majority of states and a high percentage of all schools have either instituted, or are in the process of instituting, some form of post-tenure review (Kelley, 2000; Aper & Fry, 2003). Legislatures, pushing either for the abolition of tenure or for post-tenure review, are obviously reacting to some perceived accountability issues, whereas faculty view either the repeal of tenure or mandatory review as a real threat to academic freedom (Licata, Gignac & Cuellar, 2003). Often legislatures will mandate the requirement, but not specify the method of compliance, which is often agreed upon by public and university officials in consultation with faculty; as such, reviews may be annual, scheduled and periodic, conducted only for cause, and may or may not result in any personnel action (Kelley, 2000). While tenure can be revoked only in limited circumstances, and then only after due process has been observed, at least one university professor’s dismissal following a negative post-tenure review has been upheld in court (Wilson, 2002).

Although the debate over the proper balance between external authority/accountability and institutional/individual autonomy in this area continues, the ultimate purpose of post-tenure review seems unclear. One study of administrators and faculty members suggests that there is some lack of agreement concerning the primary purpose of post-tenure review, that is, whether it is intended primarily to serve to direct faculty development, to make personnel decisions, or some combination of the two (Aper & Fry, 2003). If post-tenure review is purposeful, it can invigorate and renew the profession and be an important means for ensuring that all faculty utilize the emerging potential of information technology and other pedagogical developments (Plater, 2001). Post-tenure review also could bring faculty together in a spirit of collegiality to provide constructive criticism and

feedback (Robbins, 1998). Several universities have conducted studies of their post-tenure review process to determine if it effectively achieved desired objectives. The results of one study indicated that most of the respondents favored post-tenure review and believed that it was beneficial to the university, although more effectively with star faculty than with faculty performing at deficient levels. The problems with post-tenure review most frequently cited in the study include ineffective implementation and development plans for faculty performing at deficient levels, the lack of a reward system, inadequate training of evaluators, and the absence of mechanisms to measure competence (Robbins, 1998).

But there are two other problems as well. First, in some cases, post-tenure review by design is a response to a legislative directive that is not intended to produce a critical evaluation of the performance of faculty. It is viewed as hoop to jumped through, without any rigor. The implementation of this type of program is particularly troublesome because the process itself, notwithstanding its lack of rigor, adds a stamp of approval to non-productive faculty. If the performance problem worsens, it is very hard to establish cause for dismissal since the faculty member just concluded post-tenure review successfully. In other words, assuming that one of the objectives of post-tenure review is to identify and either remove or rehabilitate non-productive faculty, then it would be better to have no post-tenure review at all than to have a lax review process.

Second, the problem with post-tenure review and with tenure itself is the inherent “all or none approach.” Once granted tenure, faculty may be terminated for limited grounds, such as dereliction of duty, aberrant behavior or moral/criminal misconduct. Thus, in focusing on performance issues, there seems to be no middle ground. When a faculty member’s performance becomes so reprehensible so as to amount to a complete dereliction of duty, then action may be taken. What of the effect on colleagues and students who have had to endure the situation during all the semesters that have passed before the axe finally falls? To the extent that post-tenure review replicates this model, the approach is inherently problematic, even though perhaps in egregious cases, some justifiable terminations may occur that otherwise would not have occurred in the absence of post-tenure review. To the extent that post-tenure review incorporates a developmental approach to faculty, this problem is less severe. But there are cases in which faculty, who are alienated from their position for whatever reason, are not desirous of rehabilitation, do not wish to take advantage of developmental opportunities, and yet are not sufficiently irresponsible to justify the rather high threshold for termination. Overall a different approach is needed.

2.3. Absence of Progressive Development Counseling and Discipline

The purpose of a tenure system, in which scholars can teach and research without fear of losing their jobs for advancing unpopular views, has been recognized since the Middle Ages, although the principles of tenure were first enunciated formally in 1915 in the United States with the creation of the AAUP (Holden, 1997). While the protection of faculty from adverse employment actions resulting from the advocacy of unpopular or unconventional viewpoints is important in institutions of higher education, whose mission includes the search for truth and knowledge, there are some inequities in the system. For example, professors can always take another job without liability; in contrast, their institutions have limited grounds for revoking tenure. More importantly, as previously mentioned, tenure systems do not usually co-exist with progressive discipline systems. Once tenure is granted, there are really few options for disciplining professors who are non-productive, until the situation digresses to such an extreme as to merit dismissal. With today’s budgetary woes in most state and some private institutions, withholding merit pay is either not an issue at all (because there are no merit raises forthcoming) or is of limited value in inspiring productivity because of the nominal nature of the potential salary increase. As some commentators observed about using merit pay as a means of controlling quality: “Many tenured faculty are quite content with their income and are willing to exchange a small pay raise for spending less time on campus” (Helms, Williams & Nixon, 2001, p.324).

Most other work environments couple progressive counseling for employees with performance problems with the progressive discipline of recalcitrant employees; this concept is viewed as being neither radical nor Draconian anywhere outside academia. In fact, the concept developed in the 1930s. Progressive discipline systems usually follow a stepped four-stage model, consisting of 1) an oral warning explaining the violation of workplace norms, 2) a documented, written warning outlining specific consequences for continued non-compliance,

3) suspension without pay, and finally 4) termination of employment; remedial assistance by management often complements the program (Fishman, 2000). Progressive discipline is not synonymous with punishment, but is instead designed to assist employees understand their performance expectations and achieve those goals (McLaughlin, 2003). Well-designed progressive discipline systems improve communication between managers and employees, establish consistency in the treatment of all similarly situated employees, and require a thorough investigation as part of due process before discipline is imposed (Hunsaker, 2003).

In sum, progressive discipline fosters an orderly work environment in which expectations are communicated, problems are properly documented in an organized fashion, and employees are counseled so as to improve overall performance, in contrast to a system in which poor performance is positively reinforced (Madsen & Knudson-Fields, 1987). The opportunities provided in some systems for employees to work with management in identifying and making changes in the employee's work habits so as to achieve acceptable performance levels is sometimes referred to as positive discipline. Both progressive discipline and positive discipline are characterized by coaching, communicating and shared decision-making regarding future performance expectations (Guffey & Helms, 2001). One variation on this common theme suggests that employees should write letters of commitment prior to suspension (Barth, 2002). Whatever the details of implementation, these systems provide a framework for a mutually agreeable resolution of performance issues, rather than either neglecting poor performance problems altogether, or alternatively, terminating employees unilaterally without providing a opportunity for them to modify their behavior.

While unionized faculty may participate in a similar system, most faculty members in universities with tenure systems do not. If a faculty member continually receives poor student evaluations, stops publishing and researching, pursues research that is not beneficial for students or practitioners, stops performing outreach or service activities, fails to serve on department or university committees, spends the majority of their time on outside consulting and only minimal time on teaching and assisting students, then the administration has very little recourse (Helms, Williams & Nixon, 2001). There exists no firmly entrenched system for bringing performance problems to the attention of faculty *and* addressing those performance issues through faculty development/disciplinary procedures. It is not progressive discipline or progressive counseling systems that are Draconian; rather it is a system which has the revocation of tenure and dismissal as its primary, if not sole, means for dealing with non-productive employees.

Lesser sanctions could be imposed and coupled with developmental opportunities in higher education. Franke (2002) asserts that colleges and universities should not assume that termination is always the best solution for faculty misconduct; instead, institutions should address faculty performance issues through other creative approaches, while rules and procedures should be drafted with the flexibility of these lesser sanctions in mind. To this end, Franke suggests, among others, the following sanctions short of dismissal: 1) a warning or reprimand, 2) public censure, 3) salary reduction, 4) restitution or fines, 5) suspension, 6) sanctions involving rank, 7) altered teaching assignment, and 8) mandatory counseling or workshops. Other examples include restricting access to support (research assistance, books, travel allowances, secretarial help), counseling by the dean to encourage an individual to be more productive, placing faculty on academic probation for a period of time, or terminating tenure, but not employment (Robbins, 1998). The violation of what Bayer & Braxton (1999) characterize as being *admonitory* norms, such as negligence in advising, inadequate communication about course details, and inconvenience avoidance (e.g., giving final exam at time other than that scheduled for the test) may justify such lesser sanctions.

Many universities provide faculty resource centers that offer support services, programs and technical assistance for faculty. Therefore, in addition to providing sanctions, the university has the capacity both to offer and to require participation in developmental workshops. It requires no great leap in human resource management to propose that if a faculty member, for example, refuses to advise students by either being unavailable and or not knowledgeable about advising issues, then that member should be required to attend a workshop on advising and document the number of hours spent advising. If the faculty member refuses, then a sanction, such as the withdrawal of travel funds or a reduction in pay, should be imposed. While this dereliction of duty fails to merit the revocation of tenure, it adversely affects students other faculty (who must carry the load) so as to merit some sort of response,

even when the withholding of merit is not an option for practical reasons. Some critics might argue that the implementation of a progressive discipline/counseling system could threaten academic freedom. However, academic freedom should not protect professors that abuse the privilege of autonomy (Rabban, 1988).

3. Academic Freedom

Individual autonomy in an academic setting is not absolute because professors and their disciplines do not exist in a vacuum. Higher education and its constituencies are interdependent. While faculty autonomy in research, teaching and service are integral to the search for knowledge, there are restrictions, the primary of which is the need to adhere to professional norms (Rabban, 1988). An underlying assumption for the validity of academic freedom is the notion that the scholar is both competent and active; therefore, adequate cause for dismissal is a necessary tool to guarantee the integrity of the system (Brooks, 1995). The privilege of academic freedom implies certain responsibilities and demands that credence be given to the ethical demands of fairness and honesty. As Nickel notes, while a professor has the privilege of setting the syllabi and selecting a text, a faculty member does not have the privilege of indoctrination or diverting the subject matter to extraneous topics. Similarly, a university professor enjoys the privilege of being given time and salary to engage in research activities; however, the privilege can be abused by diverting this time to private endeavors or by not making effective use of the time that should be allotted to research (Nickel, 1990).

The Supreme Court of the United States has recognized the free speech implications inherent in the preservation of academic freedom in public institutions: "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." (*Sweezy v. State of New Hampshire*, 1957, p. 250). However, free speech rights on college campuses are not absolute. For example, limitations must exist on college professors' speech in order to provide a learning environment free of harassment (*Bonnell v. Lorenzo*, 2001). The United States Court of Appeals for the Sixth Circuit has held that an instructor's choice of teaching methods is not protected expression, and that a university has the right to disapprove the use of epithets or profanity as a motivational tool. (*Dambrot v. Central Michigan University*, 1995).

Aside from free speech, other values, which are essential to the concept of freedom, must be respected as well. The Supreme Court has described the "four essential freedoms" that constitute academic freedom as a university's freedom to choose "who may teach, what may be taught, how it shall be taught, and who may be admitted to study." (*Regents of University of California v. Bakke*, 1978, p. 312). Nevertheless, the recognition of this principle does not demand automatic deference to a professor's choices with respect to curriculum, course content, or grading practices and policies. The United States Court of Appeals for the Third Circuit has expressly held that "[B]ecause grading is pedagogic, the assignment of the grade is subsumed under the university's freedom to determine how a course is to be taught. We therefore conclude that a public university professor does not have a First Amendment right to expression via the school's grade assignment procedures." (*Brown v. Armenti*, 2001, p. 75). The Third Circuit also concluded "no court has found that teachers' First Amendment rights extend to choosing their own curriculum or classroom management techniques in contravention of school policy or dictates," (*Bradley v. Pittsburgh Board of Education*, 1990, p.1176) and that a public university professor does not have a First Amendment right to decide what will be taught in the classroom in contravention of a public university's right to control its curriculum (*Edwards v. California University of Pennsylvania*, 1998).

In *Wozniak v. Conry* (2001) a professor repeatedly refused to follow the University's grading rules, which required adherence to a prescribed curve. As a consequence, the university barred him from teaching any further classes, canceled his research funds, and reassigned him to manage the engineering faculty's Web site. The United States Court of Appeals for the Seventh Circuit concluded: "No teacher has a fundamental right to hand in random or skewed grades, or to pretend that 95% of his students are better (or worse) than average. No person has a fundamental right to teach undergraduate engineering classes without following the university's grading rules. Quite the contrary, both a university and its students have powerful interests in the comparability of grades across sections, for grades are a university's stock in trade and class rank may be vital to a student's future. By insisting on a right to

grade as he pleases, Wozniak devalues his students' right to grades that accurately reflect their achievements" (Wozniak v. Conry, 2001, p.889). The court further recognized that "[T]ranscripts (and diplomas, if the grades warrant them) are issued by the university, not by members of the faculty individually or collectively. It is the University's name, not Wozniak's, that appears on the diploma; the University, not Wozniak, certifies to employers and graduate schools a student's successful completion of a course of study. Universities are entitled to assure themselves that their evaluation systems have been followed; otherwise their credentials are meaningless."

The United States Court of Appeals for the First Circuit also recognizes the rights and interests of a university with respect to the assignment of grades as marks of achievement, which are integral to a university's mission. "Whether a school sets itself up to attract and serve only the best and the brightest students or whether it instead gears its standard to a broader, more average population is a policy decision which, we think, universities must be allowed to set. And matters such as course content, homework load, and grading policy are core university concerns, integral to implementation of this policy decision." (Lovelace v. Southeastern Massachusetts University, 1986, p.425-26). Only the Sixth Circuit has expressly recognized in limited circumstance that because "the assignment of a letter grade is symbolic communication intended to send a specific message to the student, the individual professor's communicative act is entitled to some measure of First Amendment protection." (Parate v. Isibor, 1989, p. 827).

In sum, courts more strictly interpret the concept of academic freedom in the context of the educational mission of a university. It is a means to an end, not an end in itself; furthermore, its goal is a holistic one representing the freedom to teach and to learn, and not one that is designed to be a personal matter of convenience. The purpose of academic freedom can be distorted beyond recognition if individual faculty members wrongfully assume that it gives them carte blanche to teach whatever they want, whenever they want, however they want, and wherever they want (e.g., cyberspace). All faculty members have the responsibility to preserve the true objectives of academic freedom. Because a few faculty members may take advantage of the individual autonomy and the freedom it conveys, the community of faculty must regulate individual abuses for the greater good.

4. A Proposed Model


The National Conference of Commissioners on Uniform State Laws (NCCUSL) proposes model acts, many of which have been enacted by state legislatures. For example, the Uniform Commercial Code has been adopted in every state except Louisiana, which has adopted parts of it. Sometimes the commission will propose alternatives to a section for a state to choose. For example, three options for the Code's section on third party beneficiaries to a product warranty were submitted for consideration. These model, or uniform, acts are guideline legislation, which states can borrow from or adapt to suit their individual needs and conditions; that is, states may modify the model act to reflect changes that the legislature wishes to make in the proposed law. A variation on this example can be used to develop an enforceable code of ethics for higher education.

For example, the AAUP in conjunction with the American Association of Higher Education and/or the Carnegie Foundation for the Advancement of Teaching could solicit input, similar to an administrative agency's rulemaking procedures, and develop a Model Code of Professional Conduct (or Responsibility) with general directives and specific corollaries. In some situations, it could propose alternative sections for consideration. For example, faculty responsibility for advising students, along with research expectations, might differ depending upon the mission of the university; therefore, alternate sections for both topics could be proposed. This Model Code should also specify procedures for enforcement, and provide sanctions for violations. Each campus, then could elect to adopt the code, reserving the right to modify it in order to custom fit it to the particular mission of the institution.

Of critical importance to the proper functioning of such a Code is the need for self-regulation. In other words, on each campus there should be some disciplinary board comprised of faculty, not administrators, in which complaints can be considered, and if appropriate, sanctions administered. Sanctions should follow a progressive/positive discipline model, and could range from a private reprimand from the grievance board to suspension without pay. The procedure for filing a complaint should permit grievances to be filed by students, as

well as administrators or colleagues; therefore, some sort of administrative filtering mechanism should evaluate the complaints on their merits before being considered by the disciplinary board.

Moreover, the central goal of self-regulation should be faculty development, not punishment. To this end, privacy concerns and confidentiality should be preserved, at least in the initial stages. Also, institutional resources must support such faculty development initiatives, be they those designed to foster progress as a teacher or progress as a researcher. Ultimately, this system of professional self-regulation could progress so as to require “continuing education” as a condition of remaining on the faculty, comparable to the continuing education required of attorneys and accountants as a condition of maintaining a license to practice.

In conclusion, most faculty members in institutions of higher education are professionals in every sense of the word. It is now time for these professionals to mature into a self-recognized and self-regulating profession, in order to preserve academic freedom and to address the problems posed by ad hoc post tenure review systems directed at the few faculty members who choose not to conduct themselves in a professional manner. By focusing on professional expectations and assisting faculty members to meet those expectations, yet requiring the imposition of progressive discipline on faculty who fail to comply with the canons of professional responsibility, respect for the profession as a whole and the constituencies it serves may be preserved. 

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