

**ACADEMIC FREEDOM
AND CIVIL LIBERTIES
OF STUDENTS
IN COLLEGES
AND UNIVERSITIES**



AMERICAN CIVIL LIBERTIES UNION
156 Fifth Avenue New York 10, N. Y.

November, 1961

Revised Edition
November, 1963

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The costs of printing this pamphlet have been defrayed by the Civil Liberties Educational Foundation, Inc. as an educational public service. The views expressed are those of the American Civil Liberties Union and do not necessarily reflect those of the Foundation.

INTRODUCTION

AMERICAN STUDENTS, like students in other countries, are participating increasingly in the political affairs of their society and are also seeking a larger voice in the determination of college policy. It is therefore appropriate for the American Civil Liberties Union to re-examine the various issues raised by this growing demand, and to state its own views regarding the proper freedom and responsibility of university and college students.*

The relationship between the educational institution and its students must be viewed in the light of the function of the college or university: to transmit to the student the civilization of the past, to enable him to take part in the civilization of the present and to make the civilization of the future.** In this great pursuit, the student must be viewed as an individual who is most likely to attain maturity if left free to make personal decisions and to exercise the rights, as well as shoulder the responsibilities, of citizenship on and off the campus.

I. THE COLLEGE, THE COMMUNITY AND THE EDUCATIONAL PROCESS

Like all complex human enterprises, the American college is made up of many groups — students, faculty, several levels of administration, and boards of trustees — which will at times disagree on means as well as goals. The college also exists in a network of human relations with many other organizations and constituencies, including alumni, parents, legislatures and various governmental agencies, which may desire to influence its policies.

The healthy, strong college asserts its autonomy, its necessary right to decide for itself, even though it is aware that many people constantly scrutinize its policies and can help or harm it by granting or withholding support. The truly independent college will meet criticism not by modifying its policy, but by redoubling its efforts to persuade its constituencies that freedom is an important means toward its educational goal.

* As used in this pamphlet the word "college" refers to all institutions of higher education, including the university. The relevance of the principles and practices discussed, for students in secondary schools, is briefly set forth in Section VII, on page 14.

** Ralph Barton Perry, *Realms of Value*, Harvard University Press, 1954, p. 411.

It is understandable that Boards of Trustees and Boards of Higher Education, to say nothing of college administrators themselves, should be acutely sensitive to public as well as private criticism. Yet it is clear that the *public* interest is not served when the *academic* community is fearful of experimentation, controversy and dissent.

The college which wishes to set an example of open-minded inquiry in its classrooms will defeat its purpose if it denies the same right of inquiry to its students outside the classroom — or if it imposes rules which deny them the freedom to make their own choices, wise or unwise. Limitations on the freedom of students are not then to be seen as simple administrative decisions which adjust the school to the prevailing climate of public opinion. The college's policy vis-a-vis its students goes to the heart of the condition necessary for adequate personal growth and thus determines whether an institution of higher education turns out merely graduates or the indispensable human material for a continuing democracy.

II. BASIC PRINCIPLES

A. Freedom of Expression

The student government, student organizations, and individual students should be free to discuss, pass resolutions, distribute leaflets, circulate petitions, and take other lawful action respecting any matter which directly or indirectly concerns or affects them.

Students should take responsibility for helping to maintain a free academic community. They should respect and defend not only their fellow students' freedoms; but also their teachers' right to the free expression of views based on their own pursuit of the truth and their right to function as citizens, independently of the college or university.

B. Freedom from Discrimination

Just as the college should not discriminate on grounds of race, religion, color, or national origin in its admission policies, so should it not permit discrimination in any area of student life, such as housing on or off the campus, athletics, fraternities, social clubs, or other organizations.

C. Government by Law

Students should live under a government of law, created, where appropriate, by joint action of students, faculty and administration. The United States National Student Association has properly said:

“The functioning of the educational community requires an awareness of mutual responsibility, understanding, trust, and respect in order that all its members actively contribute to the development of policies and programs; this purpose can best be achieved only through the continuous cooperation within the educational community. . . . These policies and procedures should in no case be subject to change without notice under the pressure of a particular situation, and the groups affected should participate at all times in their application.”*

III. STUDENTS AS CAMPUS CITIZENS

A. Student Government

The primary purpose of student government is to provide students with the means to regulate student-sponsored activities, organizations, publications and any other matters properly subject to their jurisdiction. The electorate of such a government should consist of the entire student body and should not be defined in terms of membership in clubs or organizations. Designation of delegates, officers, committees and boards should be by student vote only, should be non-discriminatory and should not be subject to administrative or faculty approval. Academic authorities may, however, set up a uniform and reasonable system of scholastic eligibility requirements for major student offices.

B. Student Clubs

1. ***Freedom of Student Association:*** Students should be free to organize and join associations for educational, political, social, religious or cultural purposes. The fact of affiliation with any extramural association or national organization or political party, so long as it is an open affiliation, should not of itself bar a group from recognition. Any campus group which plans political discussion or action within legal bounds should be allowed to organize in any educational institution. The administration should not discriminate against a student because of membership in any such organization.

2. ***Registration and Disclosures:*** A procedure for official recognition and registration of student organizations should be established

* *Codification of Policy*, United States National Student Association, 1960-61, p. 25.

by the student government. The organization applying for recognition should submit a constitution and provide information about its purposes, affiliations, officers and activities. Such information should be available to all within the college community and should be subject to publication on the campus. If a faculty-student committee has reason to believe that any organization has concealed, misrepresented, or otherwise failed to disclose its purposes or affiliations, it may require the organization to state or clarify them. Should such explanation not be forthcoming, the committee's findings may properly be publicized to the educational institution at large. Such a procedure has proved to be more effective from the educational standpoint than withdrawal of recognition or any other disciplinary action.

3. *Membership Lists:* Organizations should not be required to file a list of members, but, if number of students is a condition of chartering or financial aid, the club's officers and the faculty adviser may be required to attest to the fact of such numerically sufficient membership. The names of officers and members should not, without the consent of the individuals involved, be disclosed to any non-college person or organization or to any college persons having no direct and legitimate interest therein.

4. *Social clubs and fraternities* may be permitted to function provided they do not discriminate on grounds of race, religion, color, or national origin. For non-members, the college should provide living and eating facilities of as good a quality as those offered by fraternities or clubs.

5. *Use of Campus Facilities:* Meeting rooms and other campus facilities should be made available, as far their primary use for educational purposes permits, on a non-discriminatory basis, to registered student organizations. Bulletin boards should be provided for the use of student organizations; school-wide circulation of all notices and leaflets which meet uniform and non-discriminatory standards should be permitted.

6. *Advisers for Organizations:* A student organization should be free to choose its own faculty adviser. No organization should be forbidden to function when, after reasonable effort, it has failed to obtain a faculty adviser. An adviser should consult with and advise the organization but should have no authority or responsibility to regulate or control its activities.

C. Student-Sponsored Forums

Students should be accorded the right to assemble, to select speakers and to discuss issues of their choice. When a student organization wishes to invite an outside speaker it should give sufficient notice to the college administration. The latter may properly inform the group's leaders of its views in the matter but should leave the final decision to them. Permission should not be withheld because the speaker is a controversial figure. It can be made clear to the public that an invitation to a speaker does not necessarily imply approval of his views by either the student group or the college administration. Students should enjoy the same right as other citizens to hear different points of view and draw their own conclusions. At the same time, faculty members and college administrators may if they wish acquaint students with the nature of organizations and causes that seek to enlist student support.

D. Pamphlets, Petitions and Demonstrations

Student organizations and individual students should be allowed, and no special permission should be required, to distribute pamphlets, except in classrooms and study halls, or collect names for petitions concerning either campus or off-campus issues. Orderly demonstrations on campus should not be prohibited.

E. Student Publications

All student publications — college newspapers, literary and humor magazines, academic periodicals and yearbooks — should enjoy full freedom of the press. They are too often denied it by college administrations which fear public criticism. Except for the relatively few university dailies which are independent financially, college publications in general are dependent on the administration's favor in that they use campus facilities and are subsidized either directly by the college or indirectly by a tax on student funds.

The College Newspaper: Whether a daily or a weekly, the campus paper should report news of student interest on and off campus, should provide an outlet for student and faculty opinion through letters to the editor, and make its own editorial comments on college and other matters. While these comments need not necessarily represent the view of the majority of students, fair space should be given to dissenting opinion.

The advisory board of the college newspaper, or college publications board which supervises all student publications, should be composed of at least a majority of students, selected by the student government

or council or by some other democratic method. Other members might include a member of the faculty of the School of Journalism in universities with such schools, an alumnus, a local newspaper editor, or other qualified citizen, and such representation from the liberal arts faculty and/or Dean's office as may be mutually agreed upon.

One of the main duties of the publications or advisory board may be the interviewing of qualified candidates and the selection of the editor-in-chief and possibly of all the major staff writers on the campus newspaper. In colleges where this is not the practice, some other method of selection appropriate to the institution, should be devised by the student government to ensure that competent responsible editors are put in charge and that the college newspaper does not fall into the hands of a self-perpetuating clique.

The editor-in-chief should be left free to exercise his own best judgment in the selection of material to be published. The adults on the board (or the faculty adviser if the paper has a single consultant) should counsel the editors in the ethics and responsibilities of journalism, but neither a faculty member nor an administrator should exercise veto power over what may be printed. Should the board as a whole, after publication, consider that the paper's editor has exercised excessively poor judgment, in one or a number of instances, it may take steps to impeach and remove him from office, after holding hearings and according him due process rights.

Literary and Humor Magazines: Since the literary magazine, in common with other student academic periodicals in such fields as the social sciences, the humanities, the natural sciences, economics, etc., is an extension of classroom activity, students should be as free in writing for and editing such a magazine as in submitting papers to their instructors or in making comments in class. The same freedom of expression should be accorded the college humor magazine. Whether such magazines are responsible to a college publications board or have a single faculty adviser, chosen by the editors, they should be accorded the same freedom to print as the college newspaper. While adult sensibilities may at times be offended by youthful humor and lack of taste, a policy of encouraging the editors to use their best judgment places the responsibility where it belongs, on the editor and not on the college administration. In the long run the editor's product will be accepted or rejected by student readers.

In summary, the college administration which takes no step to control the content of a student publication, and refrains, in a controversial situation, from suspending or discontinuing publication or penalizing one or more student editors, testifies to its belief in the

principles of academic freedom and freedom of the press. The student governing body, for its part, should encourage a sufficiently large number of able, responsible and interested students to seek editorial and writing positions, and should devise appropriate selection procedures if they do not already exist.*

F. Radio and Television

College radio and TV stations whose signal goes beyond the campus operate under a license granted by the Federal Communications Commission and are therefore responsible to the government as well as to the college administration which provides the facilities. Since the law requires that "the public interest, convenience and necessity" be served, all radio and TV stations are obligated to present all sides of controversial issues. Also, under an FCC ruling of 1949, all stations are free to editorialize in the name of the station provided they make answering time available to responsible opponents. While campus, like other radio and TV stations, accordingly enjoy under the law broad freedom of speech, they are forbidden by the Federal Communications Act to broadcast "profane or obscene words, language, or meaning." Inasmuch as radio and TV are a family medium, literary or humorous material which student editors may think suitable to print might be considered an infringement on the FCC law.

On campuses where the radio or TV station is used as a closely-linked teaching adjunct by such departments as drama, speech and communications, faculty direction becomes necessary.

Student directors of campus communications stations which are not used primarily for instruction, after being counselled by the college administration in their responsibility to the FCC and to the public, should thereafter be granted, within legal limits, the same freedom of judgment and action as should editors of college publications. The same freedom should be accorded to student directors of closed-circuit stations which reach only campus listeners and are not used primarily for instruction.

* In summarizing replies to a questionnaire on *Supervision and Control of Student Publications*, sent to 127 colleges and answered by 105, John E. Hocutt, Dean of Students at the University of Delaware, writes, "The three points made most often by those commenting are the difficulty of finding interested, qualified faculty to serve as advisers to student publications; the need to improve the fiscal operation of student publications; and the scarcity of interested, able students who seek top editorial positions." University of Delaware, Office of the Dean of Students, Newark, Delaware, March, 1961, mimeo. 15 pp.

IV. REGULATIONS CONCERNING STUDENT LIFE AND DISCIPLINE

A. Enactment and Promulgation of Regulations

Responsibility for regulations on academic matters naturally rests with the faculty and administration. Regulations governing the conduct of students should be enacted by a committee composed of students, administrators and faculty members if desired.

Regulations governing the behavior of students should be fully and clearly formulated, published, and made available to the whole academic community. They should be reasonable and realistic. Over-elaborate rules that seek to govern student conduct in every detail tend either to be respected in the breach, or to hinder the development of mature attitudes. As a rule, specific definitions are preferable to such general criteria as "conduct unbecoming to a student" or "against the best interests of the institution," which allow for a wide latitude of interpretation.

B. Due Process in Disciplinary Cases

In most institutions the faculty joins the administration in making and enforcing the regulations for the disciplining of students for academic derelictions including cheating. Failure to meet academic standards is patently a ground for probation or dismissal. But since a student expelled for cheating may find it difficult or impossible to continue his academic career, he should be protected by every procedural safeguard. This is particularly necessary since the courts have rarely granted the student legal review or redress; they have assumed that the academic institution itself is in the best position to judge culpability. This places the college in the unique position of being prosecutor and judge and having at the same time the moral obligation to serve as a trustee of the student's welfare.

No student should be expelled or suffer major disciplinary action for any offense, other than failure to meet the required academic standards, without having been advised explicitly of the charges against him, which at his request should be in writing. He should be free to seek the counsel of a faculty member of his choice or other adviser. Should he admit guilt but consider the penalty excessive, or should he claim to be innocent, he may ask for a hearing by a review committee. After ample notice, such a hearing should be held by a faculty-student committee, or if the student prefers, by a faculty committee. The hearing committee should examine the evidence, hear witnesses as to the facts and the student's character, and weigh

extenuating circumstances. The student should be allowed to call witnesses on his own behalf and confront and cross-examine those who appear against him. If the review committee's decision as to the student's innocence or guilt and in the latter case, appropriate punishment, is not acceptable to the college administration, a final appeal to the board of trustees should be allowed.

V. STUDENTS AS PRIVATE CITIZENS

A. Non-Academic Activities

In their non-academic life, private or public, students should be free from college control. On the other hand, the college should not be held responsible for the non-academic activities of its individual students.

The student, like the teacher, is a member not only of an academic community, but of the community at large and of other specific communities. His college must regard him as both a student and a private individual. It must recognize that his being a student is sometimes irrelevant to his private status. In this private status he should not be subject to punitive measures by the college, unless the college can prove (in the course of a hearing with due process safeguards as specified in IV) that he has acted in a way which adversely affects its educational function, or which injures or endangers the welfare of any of its other members.

No disciplinary action should be taken by the college against a student for engaging in such off-campus activities as political campaigns, picketing, or participating in public demonstrations, provided the student does not claim without authorization to speak or act in the name of the college or one of its student organizations. Students should observe the same kind of self-discipline that their teachers accept when they speak as citizens and not as representatives of their educational institution.

When students choose to participate in activities that result in police action, such as demonstrations against segregation, the civilian defense program or nuclear tests, it is an infringement of their liberty for the college to punish such activity. Students who violate a local ordinance or any law which they consider to be morally wrong, risk the legal penalties prescribed by the civilian authorities. Since not every conviction under law is for an offense with which an educational institution must concern itself, it is incumbent on the college to refrain from administrative decisions which would violate the students' academic freedom. The same principle should apply to the

admission of a student who has been expelled from another college because of his arrest in connection with a conscience-motivated activity.

When students run into police difficulties off the campus in connection with what they regard as their political rights — as, for example, taking part in sit-ins, picket lines, demonstrations, riding on freedom buses — the college authorities should take every practical step to assure themselves that such students are protected in their full legal rights, to wit: That they are given fair trials in a court of law where they are defended by counsel. That they are not abused by the police and that charges are brought against the police if the latter act wrongfully. That bail be sought and furnished. That they have speedy trials and that appeals be taken when necessary.

Unless college authorities act in behalf of students, there is the very real danger of alienation: of the weakening of confidence in the university as a community and the resort by students to outside agencies — some of which may very well be self-serving — for support and defense. College authorities have as much responsibility for maintaining that community — based upon mutual trust, respect, and forbearance — as do teachers and students.

B. Teacher Disclosure*

Teachers who are asked to supply information to employers or prospective employers, governmental or private, about students or former students, should be aware of the dangers to academic freedom inherent in this proliferating practice. Since the best education calls for probing, sharing and hypothesizing, and for uninhibited expression and thinking out loud by the student, disclosure by the teacher to a source outside the college community of a student's expressed opinion, or the making of a statement based on such an opinion, becomes a threat to the educational process.

The teacher-student relation is essentially a privileged one. The student does not normally expect that either his utterances in the classroom, or his discussions with teachers outside the classroom, or his written views, will be reported beyond the walls of the college community. If he knew that anything he said or wrote might be revealed indiscriminately, the kind of relation in which he originally felt free to voice his thoughts, would cease to exist. While no detailed prescription can be set down for teachers, who must remain free to use their own judgment, the following standards, with the reasons therefore, are recommended:

When interrogated directly by prospective employers of any kind, public or private, or indirectly by the institution's administrative officers in behalf of prospective employers, a teacher can safely answer questions which he finds clearly concerned with the student's competence and fitness for the job. There is always the chance that even questions of this kind will covertly require the teacher to violate academic privacy. Questions and answers in written form make it easier to avoid pitfalls, but the teacher's alertness is always essential. Ordinarily, questions relating to what the student has demonstrated as a student — for example, the ability to write in a certain way, to solve problems of a certain kind, to reason consistently, to direct personnel or other projects — pose no threat to educational privacy. But, questions relating to the student's loyalty and patriotism, his political or religious or moral or social beliefs and attitudes, his general outlook, his private life, may if answered jeopardize the teacher-student relation.

As a safeguard against the danger of putting the student in an unfavorable light with government representatives or employers of any category, simply as a result of the fact that some questions are answerable and others are not, teachers can preface each questionnaire with a brief *pro forma* statement that the academic policy to which they subscribe makes it inadvisable to answer certain types of questions. Once this academic policy becomes widespread, presumptive inferences about individual students will no longer be made by employers.

Whether or not the student wishes his teacher in a given instance to disclose details which adherence to general academic principles would leave undisclosed, is irrelevant. Personal expediency of this kind has uncertain consequences and does not seem justifiable as an exception to warranted policy. This choice again involves a balancing of risks. An individual student might benefit from having his teacher answer questions about him fully; yet a satisfactory principle would not admit *ad hoc* violations of academic sanctuary.

It is to be hoped that faculty senates or other representative faculty bodies will take cognizance of the teacher disclosure problem, and will recommend action which would leave intact the teacher-student relationship.

* Reprint available from the ACLU of full statement on "Teacher Disclosure", adopted by the Academic Freedom Committee and printed in *School and Society* October 7, 1961. *Five cents per copy.*

C. Housing

Wherever numbers of students are obliged to live off-campus because of insufficient dormitory space, or because they are married, the college administration should ensure that private rentals are on a non-discriminatory basis.*

VI. STUDENTS IN SCHOOLS BELOW THE COLLEGE LEVEL

Considerable progress has been made in extending the principles of free student expression and association to American secondary schools. A good secondary school usually has a student government democratically organized, with a clear budget of power. In the secondary school, student publications should provide as much opportunity as possible for the sincere expression of all shades of student opinion. Traditionally, principals have a legal veto over student activities, but the wise principal in an enlightened community uses this veto seldom and with great reluctance, and explains his reasons carefully. Most American schools include among their educational objectives the development of civic competence, and an acceptance of a responsibility for active participation in the civic affairs of a free society. The imposition of loyalty oaths, arbitrary punishment for editorials on controversial issues, or for participation in orderly demonstrations supporting such causes as integration or nuclear disarmament or in protest against the civilian defense program, will tend to make the objecting students at once cynical and resentful, and the student body as a whole conformist. In rating students for college admission, principals and teachers should not down-grade those who have shown independence of spirit in promoting such activities. It is further recommended that in supplying information about former students to government investigators and private employers, high school principals and faculty members answer no "questions relating to the student's loyalty and patriotism, his political or religious or moral or social beliefs and attitudes, his general outlook and his private life."*

* A study published in 1961 by the New York State Commission Against Discrimination revealed that only 19 out of more than 100 colleges and universities surveyed across the country in 1959 reported having regulations which forbid bias in renting to students. *Housing Bias in the College Community*, N. Y. State Commission Against Discrimination, N. Y. C. 7, 1961, mimeo, 10 pp.

* See page 12 above.

SUMMARY

The principles set forth in this pamphlet on "Academic Freedom and Civil Liberties of Students in Colleges and Universities" are consistent with those expressed by many leading educators. President James F. Dixon of Antioch College, after a group of students had staged an off-campus demonstration against a governmental action, commented as follows in the May 1961 edition of *Antioch Notes*:

"... the college as a total community does not take positions on political matters that are local or international. Our business is education, not politics. But this does not mean that we restrict the positions that members of the faculty or members of the student body may take on social and political concerns.

"As a matter of fact we believe that academic freedom is as important to the student as it is for the faculty member. We recognize that these kinds of activities by students are widely interpreted and, we believe, sometimes misinterpreted in the community. They are misinterpreted because they are not understood to be part of an educational process. They are misinterpreted because, not understood as part of an educational process, they are regarded as irresponsible kinds of actions.

"But I think it is important to recognize that these activities are part of the total educational process that we have in our colleges, and that these are the young people who are going to be deeply involved in the political and social affairs of the next decade; that wise people believe that the problems of the next decade require us to develop leadership with sufficient courage to take positions, that one of the ways in which one learns how to do this is by doing it, and that there should be an opportunity in the educational situation to do this in a fashion that is, shall I say, somewhat experimental. . . ."

Delineating the university's over-all function, Dean Erwin N. Griswold of the Harvard Law School wrote in 1961:

"A university is the place where students learn not merely from the past but also through developing the capacity for and habit of independent thought. If they are well taught, they learn to do their own thinking. There is no 'party line' in any American university worthy of the name. Great

ideas can rarely be developed in an atmosphere of constraint and oppression. The university has a unique function not merely in systematizing the orthodox, but also in providing the soil in which may be nourished the speculative, the unfashionable, and the unorthodox. . . .”*

In common with these educators and others of their persuasion, the American Civil Liberties Union and its Academic Freedom Committee believe that today's young people, who will be responsible in the not too distant future for the conduct of the Nation's political and social affairs, will have been ill-prepared unless they have as students developed "the capacity for and habit of independent thought."

* Criswold, Hesburgh, Sachar and Everett. *The Challenge to American Education*, Anti-Defamation League, 515 Madison Avenue, N. Y. C. 22, 1961, pg. 15.

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