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## How did academic freedom make US Universities the best in the world?

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By Chibli Mallat

Daily Star staff

### ***Book Review***

What makes American universities great? Despite the recession and the stigma of an overbearing foreign policy, higher education in the United States remains universally recognized as the best in the planet. No doubt their larger endowments allow top US colleges and universities to hire the best minds anywhere, but this is just one aspect of a far more complex success story. Another fundamental part is the mental structure that prevails as an encapsulation in academia of the famous First Amendment of the US Constitution: freedom of speech. Because of the professional responsibility that comes with teaching and research, however, protecting academic freedom is special, and the US experience is unique.

“For the Common Good” uncovers a little known story of a short set of academic freedom principles established in 1915 (and refreshed in 1940) by the American Association of University Professors (AAUP), and of its Committee A, a sui generis institution of “soft law” established to apply the rules of academic freedom to inevitable disputes between professors and administrators. Professor Matthew Finkin, who teaches in Illinois, and Professor Robert Post, who has just been appointed dean of the prestigious Yale law school, succeed in treading little known ground in the deconstruction of higher education freedom in this delightful little book. Despite an impressive scholarship of 50 pages of footnotes, it retains the reader’s avid curiosity for the next page.

Through a body of Committee A cases, the book analyzes the four aspects of that important structure of academic protection: freedom of research and publication, freedom to teach, and intra- and extra-mural freedom of expression. It recounts those many stories investigated by Committee A, which almost invariably led to the success of the individual teacher against a far more powerful board of trustees or directors in various universities across the United States.

One of the most colorful cases is that of Scott Chisholm, dismissed in 1967 from the Indiana State University for burning an American flag in class. Chisholm was an instructor in English writing, who was arguing a fundamental difference between his burning the flag “so long as it is understood that he is not attacking the abstract value for which the flag stands – that he is not entering into an unpatriotic act or a quarrel with his government or with its principles.” Despite the not totally convincing distinction Chisholm made between “burning the concrete object as opposed to a symbol of abstract values,” the Committee found

that his action was pedagogically relevant and did not constitute indoctrination, and that he was therefore protected by the academic freedom to teach. He was reinstated.

Has this body of law succeeded in sheltering academia from the unpleasant censorship of teachers, inside or outside the classroom, who are accused of endangering “orthodox views”? Considering the success of American universities, the answer is generally yes. People of the academic standing of the late Edward Said, or of Noam Chomsky, are generally untouchable. Here, tenure as an institution of higher learning provides a well known bulwark of academic strength. Once tenured, there must be extremely grave professional failings to terminate a professor’s contract. For the Common Good is not about tenure, which is a narrow part of the rules that protect the profession. Yet time and again stories emerge that hurt the moral standing achieved overall.

Where I know universities fail is on a more slippery terrain, and in more subtle ways: oftentimes the crucible is the Arab-Israeli conflict, with groups and institutions mobilizing to deny an applicant of a generally anti-Israeli persuasion to a professorial position they would otherwise have far more easily earned. Although it excludes from its mission taking positions on careers, “Campus watch” is one such set-up, which Professor Daniel Pipes animates. I share Pipes’ positions on some issues – for instance on the lack of democracy in the Arab world and the need to see its dictators go home, – but I find the whole Campus Watch endeavor in poor taste, a modern version of witch hunting that appears as an American branch of the Israeli government making sure that no word is uttered to criticize Israel on campus. One example: Two years ago, Professor Juan Cole, a leading scholar of the Middle East based in Michigan, was denied a position at Yale. The various faculty committees had largely endorsed his candidacy in the history department, but then some higher wand was brandished, and his candidacy was rejected.

It is hard not to ascribe that rejection to an intellectual vigilante-like atmosphere created by organizations like Campus Watch’s criticism of “Juan Cole’s obsession with Israel.”

As a matter of fact, the Arab-Israeli conflict has poisoned the atmosphere on universities across America in a way only matched by McCarthyism in the 1950s. Well-organized pro-Israel groups are not alone in the witch hunt, and the endangering of academic freedom takes other no less unpleasant shapes. The Saudi government has succeeded in stifling the academic debate by pouring money into US institutions, which become naturally averse to tackle the Saudi governance system. This was the case for several years at Harvard law school, where the Islamic Legal Studies Program had received millions of dollars from Saudi sources. Hardly a note of critical endeavor on the shameful legal practices in Saudi Arabia was registered through a decade a half, especially the transformation of the rich legacy of Islamic law into an authoritarian monochromatic doctrine. This only started to change after 2006, with a renewal of the leadership of the program under Professor Baber Johansen, but the overbearing power of money is real and far from restricted to Saudi Arabia. In

the case of Harvard, it is to the credit of its former President Derek Bok to have consistently “warn[ed] that universities must remain especially vigilant to ensure that this mounting dependence [on donors] does not seriously undermine professorial and institutional autonomy.”

There is little Committee A can do about Campus Watch or Saudi “charitable” money to US higher education, so it may be a great sequel for the book that the rules on academic freedom be refined to ensure that ‘no string’ donations mean what they say.

*Chibli Mallat is editor of **The Daily Star** law page. Matthew W. Finkin and Robert Post, *For the Common Good: Principles of American Academic Freedom* has just appeared at Yale University Press.*