Freedom and Community in the Academy

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As Professor Metzger reminds us, academic freedom in America began as a system of employment ethics; to enforce the norms of freedom, our professional association was to apply moral suasion to those academic employers that failed to observe the individual prerogatives and autonomies that members of our nascent profession enjoy.[1] As other contributors to this Symposium have amply demonstrated, a substantial basis in law now exists for what may be better called academic rights, which often overlap or reinforce the ethical norms of academic freedom prescribed by the American Association of University Professors (AAUP).[2]

My purpose is to observe that academic freedom is more than ethics and rights; it also is an institutional ambience or sharing of values within an academic community. I hope briefly to explain why this is true and to suggest that tension exists between the community values and the individualism expressed in ethical and legal conceptions of academic freedom.

I. The Risks of Academic Expression

The ostensible purpose underlying any claim to academic freedom is to advance learning by protecting the expression of ideas. We members of the academic community are to be protected from the adverse consequences that persons may impose when they are hostile to the ideas we express.[3] The expression of almost any idea worthy of the effort to articulate it, however, poses some threat not only to competing ideas but also

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1. *See* Metzger, *Profession and Constitution: Two Definitions of Academic Freedom in America*, 66 TEXAS L. REV. 1265, 1278-80 (1988).

2. *See, e.g.*, Curran, *Academic Freedom and Catholic Universities*, 66 TEXAS L. REV. 1441, 1453 n.9 (1988); Gray, *Academic Freedom and Nondiscrimination: Enemies or Allies?*, 66 TEXAS L. REV. 1591, 1606-08 (1988); Metzger, *supra* note 1, at 1285-1319; Scanlan, *Aliens in the Marketplace of Ideas: The Government, the Academy, and the McCarran-Walter Act*, 66 TEXAS L. REV. 1481, 1481-84 (1988). Dean Yudof makes the point that academic freedom is rooted in academic policy, not constitutional law. Yudof, *Three Faces of Academic Freedom*, 32 LOY. L. REV. 831, 837-44 (1987).

3. *See generally* W. VAN ALSTYNE, INTERPRETATIONS OF THE FIRST AMENDMENT 50-52 (1984) (providing a serial review of standard interpretations of the speech and press clauses of the first amendment).

to those who hold them. What is one scholar's freedom can be another's doom.

This threat is obviously present in institutions in which peers make decisions regarding the advancement of academic professionals. C.P. Snow elegantly described the selection of an academic officer as a political event in which the competitors' earlier expressions on unrelated matters were major influencing factors.[4] Only the naive can suppose that similar factors do not influence appointments to chaired professorships, institutional compensation decisions, tenure appointments, or even first-job hires. We can and should strive to objectify and depersonalize such evaluations, but even the purest academic evaluations must rest on an assessment of the worth of ideas. No decision maker can make such assessments without giving more stimulation to the circulation of some ideas than others, consequently chilling the expression of some ideas by assigning them a lower value. This point perhaps simply acknowledges a reality frequently observed by adherents of modern European critical theory, which attributes much human conduct to the influence of culture.[5]

To some extent, an institution could neutralize the threat to freedom of expression inherent in making these decisions by appointing faculty for "good behavior" and at a standard rank and level of compensation. Institutions in other countries adhere to this model, perhaps in part to protect the individual's academic freedom from the constraints implicit in any system of evaluation. But even in the least judgmental of institutions, there will be rewards of peer acceptance and regard. Even in such an institution, the danger of a demotion in esteem—of one's peers, of one's institutional colleagues, and of those sharing one's academic field, who are so often our primary or even exclusive readership—would be a serious deterrent to the expression of an idea.

Moreover, for most who teach, another important source of gratification is the esteem of their students, and, consequently, an important fear is student disdain and rejection. To express an idea that one's students evaluate as inferior has consequences that few teachers fail to avoid if possible. Student responses to teaching are based substantially on the values of the local student culture, which often are influenced by the teachers' evaluations of each other.

4. C.P. SNOW, THE MASTERS 322-23 (1960).

5. *Cf.* Levinson, *Professing Law: Commitment of Faith or Detached Analysis?*, 31 ST. LOUIS U.L.J. 3, 14-15 (1986) ("We live lives not as disembodied intelligences behind a veil of ignorance . . . but rather as radically encumbered selves who are defined by our commitments to the traditions, groups, and nations that give us our identities.").

Additionally, the universe external to the academy also judges the worth of scholarly endeavors and sometimes rewards or punishes them with consequences wholly external to the academy. We hardly need to remind ourselves of this, having so recently observed the controversy over Robert Bork's nomination to the Supreme Court. Whatever the merit of the Senate's decision, academic observers can be neither surprised nor disappointed that the Senate took Judge Bork's academic writing seriously. If some votes against Judge Bork were the product of hostility to ideas he expressed as an academic, that is a risk that academic expression shares with other modes of communication. If the academic expressions of legal scholars are the product of the authors' judicial ambitions, or if such expression frequently is suspected of manifesting such ambitions, the polity has a legitimate cause for regret. Even so, immunity from the consequences of being taken seriously by the polity we serve is too much to ask and is not even in the academic community's best interest.

In assessing these noninstitutional risks of harm arising from academic expression, we should acknowledge what may be the greatest risk of all—that academic expression will be unnoticed and ignored. Much academic expression disappears into the ether without a trace of recognition, much less a response. This, alas, is what we often mean when we characterize an expression as "academic," namely, that it does not matter to anyone but the author. Some of what we say may be so inconsequential or redundant that it deserves no recognition or response, but all scholars of experience know that the relationship between recognition and worth is loose. Scholarship has its fashions, perhaps more truly in some disciplines than in others, and those who buck trends run the greatest risk of seeing their expressions disappear without a trace.

These adverse effects of the competition of ideas may be less significant in those academic fields, such as chemistry, in which genuinely demonstrable truths are important features of the landscape. These effects may be most acute in those fields to which empirical truth is less familiar, such as art or law. Although the scientist whose ideas are reviled can seek protection in data, the humanist or the legal scholar has no such sanctuary and instead must find professional recognition and success in argumentation derived from an ephemeral framework of professionally accepted values.

Indeed, effective participation in the enterprise of scholarship often requires an almost religious faith in the significance of the undertaking; tangible evidence seldom indicates that the learning matters or that the scholar's labors actually improve the human condition. Ironically, aca-

demic status may be inversely related to the practical utility of one's scholarly enterprise. Engineers and accountants may enjoy less esteem within the academy because others see what they do as *more* consequential, and hence less an act of faith than is work in such fields as high energy physics (which has, I am told, no imagined applications) or interpretation of papyrus scrolls. To maintain a career devoted to these subjects requires a faith in the worth of the enterprise that is properly admired because the enterprise can be so fragile. To sustain faith for decades without confirmation of its worth rightly qualifies as a morally heroic act.

We cannot expect any system of ethics or legal rights to relieve an idea's academic exponent of the potential adverse consequences of expression. People who express ideas, even if they are academics, must expect a measure of conflict, even odium, to result from their expressions. And, especially if they are academics, they must risk the punishment of going unnoticed. Even more gravely, they must risk error and face the awful hazard that their assertions may prove to be wrong, even demonstrably wrong. Neither the Supreme Court nor the AAUP can expect to erect shields to diminish these risks significantly. Perhaps to the surprise of nonacademics, courage is thus an important qualification for academic life.

II. Encouragement of Intellectual Risk-Taking

If we are positively to encourage the expression of ideas, the inducement must be in an institutional environment that rewards intellectual risk-taking and, if possible, moderates the harm suffered by those who err or go unnoticed. Such an institutional environment will minimize the frequency and severity of institutional judgments of its members, differentiating among them only to recognize the worth of productive effort and distinctive achievement. The institution will strive to provide lateral support among colleagues and to assure an appropriate level of notice of a scholar's efforts even if, and sometimes especially when, the external "marketplace of ideas," in its slavish devotion to fashion, places low values on them. Thus, academic freedom may be a product of community, and that community may contribute more to its attainment than law or ethics.

Community that nourishes academic expression may arise from a shared sense of purpose or of values inherent in a discipline or academic enterprise. Such sharing insures against the hazards of failure and rejection by enabling colleagues to share in one another's successes and frus-

trations. To use a notable feminist metaphor,[6] an effective academic institution is more a web and less a ladder, more a family that celebrates the triumphs of its members and supports those who fail, are rejected, or are ignored unjustly by a cruelly inattentive universe, and who must try again to express yet another idea that may fail to be accepted or may even prove wrong. Characteristics of that community which begets academic freedom are a plenitude of mutual respect, even affection, among colleagues and a minimum of petty rivalry. Fostering this intellectual community may be the highest achievement of an academic administrator.[7]

This relation between academic freedom and community contains tension and even irony. Indeed, community is the usual fount of conformity and, therefore, a common adversary of creativity and insight. Scholars can be lost in the underbrush of orthodoxy as easily as famished for the nourishment of professional intellectual community. After all, community gives rise to the fashions that withhold recognition and acknowledgment of academic expression which fails to conform. Because of this tension, academic administration is a delicate task. Good judgment and sensitivity are prerequisites if the community is to maintain that sense of itself which enables it to encourage nonconformity while evoking mutual trust among competitors.

The difficulty of the administrative task is exemplified by our protection of the freedom to express ideas that are destructive of community among scholars. What can be said of the right or the *duty* to attack the intellectual premises on which the academic careers of one's colleagues are based? How can an institution accommodate a scholarly contention that one's colleagues are wasting not only their own lives but those of their students, who should revile them for it?[8] What is the proper ad-

6. *See* C. GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 62 (1982) (stating that "the images of hierarchy and web inform different modes of assertion and response . . . leading to . . . different ways of assessing the consequences of choice").

7. This achievement can be one of the more enjoyable aspects of academic administration, balancing some of the more onerous burdens I enumerated in *Afterword: Why Deans Quit*, 1987 DUKE L.J. 342, 344-45. In that essay I weighed the rewards of deanship against the frustration of obligations to multiple constituencies and concluded that almost all success in the job "must be derived from the success of the faculty."

8. This question is distinguishable from another, perhaps equally important, question that is not discussed here: What about the colleague who from purest conviction attacks the intellectual premises on which rest the interests of students in what that colleague has undertaken to teach? This latter question can arise chiefly in the context of a professional school, as, for example, with a professor of divinity who must in candor profess atheism to students seeking from that individual professional training in the transmission of the Word. I do not intend here (or elsewhere) to revisit the moral dilemma this question poses; it is a different dilemma that turns the teacher against self. I continue to adhere to the view that such a teacher ought to look for different students, ones whom the teacher can serve honorably. This is not to say that professional divinity students should be

ministrative response to scholars who seek to impose on fellow scholars the odium of rejection and the terror of solitude in error?

Perhaps all disciplines hold an endemic incentive to engage in this kind of attack on colleagues. It expresses an instinct that is familiar to all of us who have ever engaged in the petty and destructive rivalries of adolescence. Moreover, it is a potentially high-stakes game; a scholar who can demonstrate that her colleagues are oafs is on the way to capturing their former glories. And opportunity as well as motive abound because scholarship so often is vulnerable to a demonstration that it is at least partly pretense.

One hardly can suggest that in the name of academic freedom we should suppress ideas that are destructive of community and dismiss their adherents. If the exponent truly expresses a conviction that an idea, a school of thought, or even a whole academic discipline is in error, or even worse, that it is the product of corrupt self-aggrandizement, we must protect that expression to the extent that no institutionalized harm visits the exponent. Effective intellectual aggression has a right to its rewards.

Yet in the name of that community which fosters, supports, and nourishes freedom, we may justifiably ask persons holding such community-destructive convictions to manifest regard for the competing truths that they wish to extinguish. The community's nourishment of academic freedom merits a practice of elementary civility by its members. To win an academic dispute, one need not destroy the villages of one's intellectual adversaries. The colleague who strives to do so impairs the academic freedom of others in the exercise of her own and, accordingly, may receive proportionally measured odium as a way to encourage greater maturity in future exercises of our reciprocal freedom. Indeed, because an academic community cannot resort to the self-protective devices such as dismissal that other communities might employ, its members have a special duty to bring appropriately measured moral sanctions to bear against those who practice professional intimidation. An academic administrator may be an appropriate voice for such moral suasion to protect the fragile community for which the administrator is responsible.

shielded from such noisome ideas or that such a professor should be dismissed. *See "Of Law and the River," and of Nihilism and Academic Freedom*, 35 J. LEGAL EDUC. 1, 10, 24-26 (1985) (Dean Carrington's response to Professor Robert W. Gordon and Professor Owen M. Fiss). The expression of that view in a few sentences has evoked a sizeable amount of literature, some of it seriously mischaracterizing my position, *see, e.g.*, Fiss, *The Death of the Law?*, 72 CORNELL L. REV. 1, 1 (1986) (speaking of Carrington's "purge"), and some of it quite thoughtful, *see, e.g.*, Levinson, *supra* note 5, at 4-7 (discussing Dean Carrington's view of the place of nihilism in the legal academy).

III. Community and Governance: "Fundamental Issues"

Equally delicate is the problem of institutional governance. In academic institutions, as well as others, the shared exercise of powers of governance obviously can advance community. Mutual respect and trust build among colleagues who share responsibility in the exercise of dominion over the academic institution. For this reason, the academic administrator who professes to promote academic discourse generally will aspire to implement faculty-designed policy. Overbearing administration demeans the professional self-respect of colleagues, stimulates petty rivalry, and reduces the prospect for sharing the values and responsibility which sustain the community that nourishes academic expression.

Framing the agenda for a governing faculty, however, is not a simple task. Passionate and interminable debate over issues of governance, like other community-destructive debates, can stimulate petty rivalry and diminish mutual respect and community. The tension in governance can be illustrated by Jerry Frug's recent call for the institutionalization in law schools of "debate over fundamental issues" of legal education.[9] As one who has sought occasionally to raise such issues[10] and who has known the customary fate of being ignored, I relish such debate; at least in this respect[11] I favor his proposal, even if it is, as he says, "utopian."[12]

Yet there can be a dilemma. Depending on the institution and the issues, debate and resolution of fundamental questions can needlessly harm the community. Some issues may be in a sense too fundamental to bear examination and resolution by colleagues who seek to maintain an

9. *See* Frug, *McCarthyism and Critical Legal Studies* (Book Review), 22 HARV. C.R.-C.L. L. REV. 665, 691 (1987).

10. *See, e.g.*, CURRICULUM STUDY PROJECT COMM., ASSOCIATION OF AMERICAN LAW SCHOOLS, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971, at editor's note iv (1971) (emphasizing the importance of examining the growth and results of American legal education).

11. I strenuously protest Professor Frug's characterization of several persons including myself, Paul Bator, Ernest Gellhorn, and Dan Coquillette as a new wave of McCarthyism. *See* Frug, *supra* note 9, at 685-86, 694-95. This accusation, which a participant in this Symposium described as "thoughtful," derives from a brief utterance or two taken from longer writings to which the quotations were incidental. In comparing these brief utterances to similar words of Senator Joseph McCarthy, also taken out of context, Frug himself employs one of the most distinctive of the Senator's outrageous tactics.

If Frug were not reviewing a book that recounts the history of Senator McCarthy's extraordinary career, one would suppose that he must be quite ignorant of that history. No comparison can be made between Frug's former colleague Paul Bator and Senator McCarthy. The Senator was chiefly known as a liar and a bully. He developed "guilt by association" as a technique of political combat. Frug does not assert nor document his implication that Bator or his other "villains" have lied or used the technique of guilt by association, or even that the few words we have uttered that bear on Frug's subject have harmed anyone. In identifying us as McCarthyists, Frug himself has practiced the dark art of defamation in a manner that would have made the Senator proud of Frug as a protégé. Who is it here who is wearing the iron boots?

12. *Id.* at 701.

appropriate level of civility within an institution. Their resolution depends on articles of faith that we have no means to illuminate. Public venting of such issues, even among mature individuals, risks a rupture of relations and an early resort to the breaking of heads or the burning of villages. Raising avoidable fundamental issues for faculty debate therefore can be improvident for reasons similar to those that make it improvident to insist on resolving the issue of transubstantiation with one's in-laws over a family dinner table.

Illustrative of such a fundamental issue for a law faculty is the nature and extent of a law school's moral obligation for the career objectives of its students. At the beginning of this century, in the university law school's early stages of development, this issue would have held little interest because the prevailing view of the law and legal institutions made the academic study of law and career training a happy unity. Today, this issue sharply divides law teachers.

The academization of law schools[13] has resulted in a belief shared by many professors that status is lost by attending to the career needs of students and is gained by writing and teaching about matters distant from the interests of law students or alumni but of special interest to academic colleagues, especially those in disciplines having higher academic status than law.[14] These professors have planned and are performing their careers on the conviction that careerist objectives are not worthy of either their support or that of their institutions. They might make an institutional exception in order to supply these objectives through a clinical faculty of subordinate status.[15]

13. *See, e.g.*, R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 270-77 (1983) (describing law faculties' increased emphasis on legal scholarship in the 1970s); *see also* C. JENCKS & D. RIESMAN, THE ACADEMIC REVOLUTION 237 (1968) (describing the academization of American graduate schools from a historical and sociological perspective); Wellington, *Challenges to Legal Education: The "Two Cultures" Phenomenon*, 37 J. LEGAL EDUC. 327, 329 (1987) (suggesting that too many capable academic lawyers "scorn the practicing lawyer and his work . . . and look for rewards only from within the universities").

14. In a recent paper, Francis Allen described the movement as one to develop the professional law school as "a colonial outpost of the graduate school." *See* PROPERTY LAW AND LEGAL EDUCATION: ESSAYS IN HONOR OF JOHN E. CRIBBET (P. Hay & M. Hoeflich eds. 1988). This development presented an ethical dilemma to which I pointed in *Of Law and the River*, 34 J. LEGAL EDUC. 222, 227 (1984), which created the recent controversy. *See supra* note 8.

15. This issue has especially troubled the American Bar Association Section on Legal Education and Admissions to the Bar. *See* AMERICAN BAR ASS'N, STANDARDS FOR THE APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS § 405(e) (1985); ASSOCIATION OF AM. LAW SCHOOLS & AMERICAN BAR ASS'N, GUIDELINES FOR CLINICAL LEGAL EDUCATION 120-24 (1980). As a member of the Executive Committee of the Association of Am. Law Schools, I opposed approval of § 405(e), essentially on the ground that it offended the academic freedom of the faculties of member institutions, who should have the right to make such judgments according to their own community lights. I note, however, that the competing argument for the standard can also be rooted in an appeal for the academic freedom of clinical teachers.

Others within the legal academy have planned and are performing their careers on the conviction that law in a somewhat narrower sense is a worthy pursuit and that other disciplines are appropriate for inquiry by law teachers only insofar as they inform our understanding of law and legal institutions. Because this difference in focus is not clearly defined, we cannot place all law professors in one camp or the other; a penumbra better describes their relationships. Yet the issue of careerist objectives is fundamental in the religious sense because opinions are not likely to change in debates among colleagues, and serious injury to relationships can result from their prolonged discussion. When polarized, each side is capable of uselessly despising, demeaning, distracting, and disheartening the other. Wise colleagues led by wise administrators will strive to avoid such bloodshed if they can.

The events at the Columbia University Law School during the late 1920s, fully recounted by Brainerd Currie,[16] illustrate the risk of faculty debate of "fundamental issues." That faculty, in rapture at the novel insights of the Legal Realism Movement, decided collectively to face the "fundamental issues" of legal education and redesign their program to reflect new insights about the relevance of other disciplines to the study of law. Four years of this debate resulted in a substantial exodus of distinguished scholars from Columbia and the collapse of the collective enterprise. Currie observed that if Herman Oliphant, the leader of the redesigning, had invested more effort in his own teaching and writing "instead of building fires in the camps of his colleagues, he might have been remembered, like Langdell, as the founder of a new era in legal education rather than as the leader of a movement which foundered."[17]

Currie certainly does not suggest, nor do I, that Oliphant erred in courageously grasping the nettle that was conventional legal education at that time. His error was in trying to coerce sometimes unwilling colleagues to grasp the same nettle at the same time. In his role as committee chair, his conduct impaired the academic freedom of his colleagues by demeaning their ideas and threatening them with collegial disdain and disapproval. He begot what tyrannical conduct so often begets, resistance; the resistance was directed within the academy, both to the implementation of his ideas and to himself and his fellow messengers. In these few years, he may have caused, if indirectly, the suppression of more than a little academic expression.

The institutionalization of faculty debate over fundamental issues is

16. *See* Currie, *Materials of Law Study* (pt. 3), 8 J. LEGAL EDUC. 1 (1955).
17. *Id.* at 77.

a threat to genuine academic freedom for a second reason. The risk lies in designating which issues are fundamental for the purpose of institutionalizing debate about them. The person or group controlling the academic agenda cannot avoid displacing some ideas with others: characterizing an issue as fundamental is itself a preference of ideas pertinent to that issue over others. Of course, conventional institutional management relies on an acceptance of premises or values that may actually be debatable. But this very mindlessness has the virtue that conventionalism does not express any conscious exercise of power by one colleague over another, which necessarily does result from institutionalization of debate and decision.

Of course, no faculty can avoid all fundamental issues arising in the routine operational decisions faculties must make. To that extent, we cannot avoid harm to one another's academic freedom. But there is a well-recognized difference between harm reluctantly imposed by an unavoidable responsibility of decision[18] and gratuitous harm resulting from faculty resolution of broad nonprogrammatic issues despite beleaguered dissent.

I want to emphasize that even in an academic institution such as a law school, with an institutional commitment that in some ways may be limiting, the mansion is big enough for many rooms. Certainly one can and should make room for marxism and libertarianism, elitism and populism, careerism and humanism, and for diverse views on the importance of legal texts. But the existence of this diversity depends on mutual respect and tolerance that generally will require a faculty and dean in the exercise of governance to minimize the need for resolution of such fundamental differences. Good fences, even in the academy, make good neighbors.

On the other hand, the world holds a place for academic institutions that are more narrowly focused. For example, some law schools may be limited by a specified religious or other ideological bent.[19] Creating such institutions is an important exercise of academic freedom, but having already discovered some truths, religious institutions must necessarily be

18. Choices are legitimated when an institution cannot evade the responsibility to decide. Carrington, *The Function of the Civil Appeal: A Late Century View*, 38 S. CAL. L. REV. 411, 421 (1986); *cf.* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 154 (1803) (holding that the Supreme Court has the power to overturn statutes when they conflict with the Constitution); Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 6 (1959) (tracing the jurisprudential concept of addressing constitutional questions only when necessary for decision).

19. Dean Henry Manne has expressed his desire for such a limitation at the George Mason University Law School. *See First Law Curriculum Based on Both Law and Economics*, Broadside, Dec. 8, 1986, at 10, col. 1. A law school committed to the value of economic analysis of law is limited by its commitment in the same way that a religious institution may be.

less congenial to at least some heresies than are institutions that express wholly agnostic humanism as their preeminent value. One need not go so far as Professor Allen Bloom in decrying the consequences of agnostic humanism[20] in order to find some virtue in the continued existence of academic institutions with distinctive values embodied within their institutional arrangements. Denying to all such academies any form of peer respect would be a curious kind of academic freedom.

Academies with such ideological commitments undoubtedly will need to share collective consideration of those commitments, which may lead to faculty meetings at which fundamental issues are debated fully and resolved democratically. Such debates effectively will chill the expression of unwelcome ideas and thus preserve the ideological stance of the institution. But for those institutions that intend to remain environments for speculation, as open as they can be for innovative thinking and creative teaching, the faculty cannot fully debate all fundamental issues without an unwarranted risk that the community may be lost.

IV. Regulation of Academic Community: University Governance

The relation between freedom and community is important for university administration as well as faculty governance. The academic community, the ambience that nourishes academic expression, is most likely to grow stronger within subgroups of faculty, generally groups organized around a common discipline or profession for which they share responsibility. In such units, all members can achieve a personal sense of participation in governance and obligation to fellow members. University administrators must vigilantly protect the individual nonconformist among such groups, to lend professional and emotional support to those who suffer when a community of peers may unjustly withhold support. With that caution, the wise university administrator will also try to support community and to respect the exercise of shared responsibility by groups. An administrator professing to promote academic discourse should not be an agent for homogeneity among subgroups or for the centralization of academic responsibility; the wiser course is to cherish and protect diversity and autonomy among constituent groups.

The same message could also benefit those groups that have risen to power in a number of universities in order to exercise growing control over appointments, promotions, and tenure. Because review committees are faceless and changing and staffed with persons unaccustomed to the exercise of power, such groups can be a grave threat to academic freedom

20. *See* A. BLOOM, THE CLOSING OF THE AMERICAN MIND (1987).

if they take themselves too seriously. In succumbing to such a natural tendency, they can become the voice of fashion and conformity, the dead hand of orthodoxy. They also can grievously undermine that sense of community within the groups whose decisions they review. The argument that such review processes are necessary to eradicate the evil of mediocrity, if overborne, can lead to self-defeat, because reconciling academic standards with a full appreciation of the importance and the values of community is a delicate task. This message also might be appropriately received by accrediting groups that, if overheated in their ambition to elevate standards, can produce very similar negative results.[21] Indeed, the highest and best use of accreditation of professional schools may be to protect the autonomy in governance which nurtures the community that sustains academic freedom.

V. Academic Change

If we acknowledge the importance of community to academic freedom, how can we constructively change our academic institutions? The ways of the aggressive reformer who wishes to compel colleagues to debate their own dearest assumptions are closed. So are the ways of the strong minded university administrator or committee seeking to impose standards on colleagues. What counsel can we give to those who are impatient with their institutions and wish to see change? They might well consider the relative ease and effectiveness of evolutionary methods that employ as much forbearance and compassion as the reformers can abide.

Legal education has changed substantially in every dimension in the thirty years I have been engaged in it. Moreover, most law schools are superior in every dimension by which quality can be measured to what they were thirty years ago; only an increase in relative cost can be measured as an adverse trend. Change, however, has been wrought in an unself-conscious way. If someone made decisions, who made them or why rarely has been clear. Leadership, if any has existed, has maintained a low profile. Rarely if ever has positive change been effected by an accreditation agency, a university faculty committee, or a university administrator seeking to impose standards externally derived. Substantial

21. Because I have elsewhere emphasized the risks of overmanagement by such groups, I will not elaborate the point here. *See, e.g.*, Carrington, *A Call for a Profession of Truth*, 32 J. LEGAL EDUC. 267 (1982) (parodying the absurdity of some law school accreditation standards by proposing analogous standards for accounting professionals); Carrington, Book Review, 72 CALIF. L. REV. 477, 494 (1984) (asserting that accrediting groups "have difficulty in maintaining a constant view of how the myriad of competing values should be weighed," and thus should "exercise power lightly . . . only when consensus is very strong").

change, in at least some institutions in which we can observe it, has been associated with "institutionalized" patience and compassion and with administration that carefully has tended and maintained the filaments of our webs—those ties of civility that allow persons holding deeply conflicting tenets to share a common institution.

To be sure, the change in legal education does not satisfy all, nor should it. Legal education should be less expensive, more open, more diverse, more effective in enhancing the sound and public-spirited professionalism of lawyers, and more insightful in improving the law. Change often has failed to conform to the hopes or expectations of some ambitious university administrators or their most self-important committees, or of zealous accreditation group members. But even those of us who may be most dissatisfied must acknowledge that the arc of change is generally positive and that the wisdom of our own prescriptions may be erroneous. In this last admission, made to our colleagues and employed as a major premise of our participation in academic governance, lies the essence of academic freedom.