



## ***Cui bono? A Response to Julia Schleck's *Dirty Knowledge: Academic Freedom in the Age of Neoliberalism****

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Evelyn Burg, "Cui bono? A Response to Julia Schleck's *Dirty Knowledge: Academic Freedom in the Age of Neoliberalism*," *Provocations* 6 (2022), pp. 1-25.

**A**cademic freedom is like those life vests that at the start of any flight, we're told to inflate by blowing into, if the plane goes down. In the actual circumstance, it will probably be too little, too late. But I listen to those airline instructions, because if recent events have taught me anything, it's to not discount even a small improvement in survival outcomes.

### **The Provocation**

When I read Julia Schleck's *Dirty Knowledge*, so as to give a response to or "counter" her "provocations," I found the slim volume so intelligent in its argumentation and research that it was less provocative than thorough: there seemed little left to say. So often scholars get caught up in theories and neglect looking at realities. I cannot accuse Schleck of these shortcomings. While I don't question much of her analysis, which still holds, the ground continues to shift since the writing of her book: COVID, renewed interest in unionization, new Supreme Court decisions on prayer in high schools, and direct legislative attacks on college curriculum and teaching in many parts of the U.S. occur daily. Her provocations and solutions would be worthy of serious discussion in any event, but they are certainly timely now.

In her preface Schleck offers several "provocations" which I summarize here:

1. "Academic Freedom" was never meant to be a right but rather "a particular employment relationship," which has now changed. The central change is the rise of contingent or adjunct labor in the university/college/community college systems, which is often 50% or more of the teaching staff.
2. "Academic Freedom" as linked to First Amendment "freedom of speech" protections as a special case is thus outdated. Originally argued for in the

- context of the capitalism of 100 years ago (during the Progressive era) and tied to labor reforms, these concepts are no longer consistent with neoliberal economics.
3. Neoliberalism has radically changed the academy and to keep doing what we do as academics—“knowledge production”—the academy must change its ideas about freedom.
  4. We must acknowledge that our knowledge production was always “dirty,” that is, it was never pure, disinterested, serving a universally acknowledged good. It has always been steeped in perspectives that both served and presented counters to dominant economies.
  5. We must celebrate the university’s role as a forum for contending ideas, as the place where the “most rigorous, long-form arguments over the good take place in our democracy.” Unfortunately, resources play a significant role in the fight over contending ideas.
  6. We must avoid the intellectual monoculture threatening our future survival. The neoliberal university privileges intellectual fields that attract attention and resources; it must devote material resources to projects and fields that “work against the grain of neoliberalism in order to insure a properly diverse seed bank of ideas for the future.”
  7. Finally, Schleck asserts the “new freedom” is “intellectual freedom from the myth of disinterested purity, material freedom to generate the greatest possible range of human knowledge in the academy, now and into the future.”<sup>1</sup>

The university is a crucial agent against any “monoculture,” though I suspect that we’re not all agreed on that culture’s exact character. Administration, faculty, and graduates both oppose and abet whatever this culture is at any time. Despite Schleck’s very adept recounting of the history of “academic freedom” and her rightful concern over contingent labor or the entrance of the academy into the gig economy, I have mixed reactions to her provocations and the arguments developed around them. Some points relate to terminology that due to its original imprecision and subsequent historical investiture with political valences, demands a longer dialectical investigation than she had room for. In any case, there are many moving parts in operation here.

For example, whether or not Schleck's claim is correct that academic freedom was never meant to be a "right" but rather a "particular employment relationship" depends on our reading of the early-20<sup>th</sup>-century arguments in its favor as a "public good." She describes this concept as part of a dated rhetoric that belies the "dirty," interested, or partisan character of all academic practice. Yet in life, academic freedom, like other freedoms (once they are sanctioned), is felt as a right even if not absolutely inalienable: the right for faculty to speak freely within the classroom and extramurally on matters of public interest, including subjects outside their disciplines, without losing their positions.

Second, she argues that since it was never intended as a "right," seeing academic freedom as a subset of the First Amendment is "outdated" in our neoliberal society, which doesn't entirely follow. Schleck dismisses some older liberal concepts such as "the public good" or "marketplace of ideas" to replace them with almost identical ones. We no longer live during the Progressive era, the Cold War, or Revolutionary periods, but their signature concepts remain in the lexicon and may still reverberate with us.

Third, Schleck says that "the academy" must change its ideas about freedom and democracy, yet the academy has never had univocal ideas on these weighty subjects, as she herself implies when she discusses it as a forum for contending ideas. Thus, when she prescribes *ex cathedra* for the academy, she suggests a potential homogeneity in institutional structure and opinion (between faculty and management and between faculty themselves) that, if it is to serve as a "forum," shouldn't exist and never has.

Fourth, Schleck's "solutions" too often devolve into abstract and utopian cheerleading with neither method nor agents denoted, such as her demand that investments be made against neoliberal hegemony by those who fund the university: who will make this happen and how?

Finally, of particular concern to me, her willingness to depart from the rights rhetoric of the Constitution and the First Amendment, while registering certain historical and rhetorical shifts, is a bad idea.

Schleck begins with a celebrated case at her institution, the University of Nebraska-Lincoln. A teaching English grad student lecturer, Courtney Lawton, came upon a table with leaflets and buttons manned by a sophomore, Katie Mullen, who had been "trained" in activism by Turning Point USA, a well-funded archconservative, activist group targeting college campuses that also maintains a professor "watch list." Lawton responded by making a picket, shouting, and name-calling; the student videoed it all and Turning Point publicized it on Twitter and conservative media feeds. After a small firestorm and pressure from the legislature, Lawton's contract was paid out, but she was

no longer allowed in the classroom due to her “incivility” and concerns for her personal “safety”.<sup>2</sup>

The problem as Schleck sees it is not that conservatives are screaming for equal time for their own free speech on campuses. Rather, a quite efficient chilling effect is already in place due to the neoliberal character of the present-day campus, which is one of “flexibility” in the curriculum and labor, exemplified by adjunct labor: “The real threat to academic freedom is contractual, economic, and woven into the very structure of contemporary higher education . . . into almost every aspect of academic life, into faculty contracts and into the faculty’s behavior and mindset.” She continues, “The current fracas over free speech rights is merely a distraction from the wholesale destruction of free inquiry—the very thing academic freedom was designed to protect . . .” (14) In this scenario, teaching at a university becomes a job like any other.

Much truth here. But a few pages later after discussing the famous 1915 case of economist Scott Nearing (dismissed from the University of Pennsylvania for advocating the abolition of child labor), she quotes his contemporary, Henry Pritchett, a leader of the early AAUP, comparing American to European universities: “the watchword is no longer freedom, but accountability to the administration.” The AAUP’s response—tenure—would combine a “negative” freedom (where faculty might be left alone to pursue research and teaching) with a “positive” one via disciplinary norms and peer review (19). So, we see the administration already as a central player in these conflicts many decades before “neoliberalism” was coined.

To start, the original comparison with European intellectual freedom was questionable. While Europe suffered less from the anti-intellectualism endemic to American culture, Germany’s model universities buckled swiftly under fascist pressure, as did Italy’s, which were far older. What we also see from Schleck’s fine historical summary is that the problem is an ever present and unsurprising contest over power, money, and control. Tenure was and remains an imperfect if crucial mechanism since it remains selective, is often subjective (“political”), takes years to earn, and departments with unruly members can always be starved, eliminated or injured in subtler ways (e.g., via salaries, office space, grant support, or promotions). While Schleck et al, are theoretically correct that today’s neoliberal economy should make administrative or political heavy-handedness almost unnecessary, the fact is that whether the US is in the midst of a war (four in the previous century), an economic depression, a McCarthy-type hysteria with hit-lists, curriculum manias, the rise of reactionary legislatures, or whatever else history delivers, there is and likely always will be some socio-political or economic forces at work in the background to chill academic speech. The gig economy can just pile in.

Universities were the first “corporations” in the United States; the profit-oriented corporation is a newer version. It is Schleck’s and others’ premise that—as John Patrick Leary in *Keywords: The New Language of Capitalism* and Wendy Brown in her book, *Undoing the Demos* argue—the “neoliberal” marketization of the university that has snowballed since the 1980s displays a fundamental, rhetorical shift in the conception of the university. The 1915 AAUP Declaration argued for self-governing disciplinary experts responsible for determining their own fitness in a way that was analogous to other developments from that period’s broadening of labor rights and the rise of modern expertise, simultaneous with the rise of a managerial class. Tenure would guarantee the “integrity of the product” and students would benefit by exposure to the newest, possibly controversial ideas of such experts (22-23, 26-28). The American university adopted aspects of both corporations and the political world: a trained executive administrator at the top answering to elite trustees, and competing for control with them, along with faculty bodies: “a workplace governance structure similar to a constitutional republic like that of the United States.” Thus, an academy with tenure would, according to Columbia’s president Nicholas Murray Butler, serve the broader democratic ideal as a “refuge from tyranny” and as a place “to check the hasty and unconsidered impulses of popular feeling . . .” (31-32). The university would be a place and model of reasoned liberty.

However, Schleck sees self-regulation by disciplinary experts who were to be left alone as both analogous and tied to the structure of the market. When the latter moved from an industrial to a post-industrial, global or neoliberal organization, we shifted from a more “democratic” rhetoric of public good to a less democratic one of private benefit. I will venture that this was not wholly structural but was carefully crafted by individuals and that the meaning of “democracy” underwent a change as well. I witnessed the university being drawn into what is now called a “neoliberal” model (as characterized originally by Reaganomics and Thatcherism), which also began the demand for special “accountability” from publicly funded institutions saddling them with bureaucracies while simultaneously shrinking funding—though in fairness, some added personnel were a result of expanded rights protections and litigation. The post-80s slightly more “left” neoliberals neither halted the accountability craze nor acknowledged the cultural result of this shift of resources. Knowledge was identified with profit-making and career-training in principle and, as a result, narrowed rather than expanded. This development was often criticized since administrations stress it while faculty, particularly those in the humanities, recoil from it. But has it really occurred? Is the contemporary American university more focused on careers than those of the last or previous centuries?

There are certainly some structural changes. Schleck notes that, like other institutions, the present neoliberal university is geared to a current “business model” of flexibility tailored to clients’ desires (students, parents or other private or public funders), and a putative concern for “stakeholders.” Thus, the college as “service” institution relies on contingent labor that can be taken on and shed quickly to adapt to “market” demands. Because the justification is economic and accommodation is prized (note the elegant dorms and gyms), the rules of the game have changed and have been internalized by the players—Schleck cites Foucault and Deleuze on this point. The new faculty specializations are not so much disciplinary as skills in shifting forms of discourse (36-37).

So, for Schleck and others, contingent labor, now minimally 50% of teaching staff, is a major threat to academic freedom, since stakeholders and their proportional numbers rule, be they students, administration, taxpayers or politicians.<sup>3</sup> Having grown up in this neoliberal system, most people apparently accept its economic values without question. It is assumed that these workers have little recourse but to stay in their lanes or be dismissed.

The massive number of contingent laborers in higher education is then often identified closely with some of the brutal aspects of neoliberalism. While this situation is certainly a serious concern given the talent involved, I would venture that we see it as not solely a liability but also as an opportunity. We needn’t merely suffer these changes but should think about them creatively. If more than 50% of a large national workforce is in a specific situation, we are looking at a number that, if harnessed and organized, has real power. Stakeholders indeed.

## **Unions**

Do a union’s efforts to save someone’s job via a contract have anything to do with academic freedom generally? I have served for almost a decade as a union grievance counselor at a CUNY community college in New York City. In all the grievance cases I’ve argued, individual grievances or those concerning institutional policies, I have never bet the house on academic freedom per se. Yet in fact, without it we wouldn’t be arguing at all, since rules such as our contracts, governance plans, the declarations by the Board of Trustees, and institutional policies visible and implicit, entail a concept of the faculty’s role in colleges and universities that is fundamental to every case and its argument. There are rights implied and presumed by lawyers (and much of the public), and though some may find them antique, I’d hold off on brushing away this extensive web of legal

protections before we have something better in hand. As our concept of academic freedom must be continually re-articulated, it can also be revised and adapted.

It is sometimes difficult to get even savvy professionals to understand how the grievance process works and on what premises it rests. I find that people not personally involved see little connection between academic freedom and individual challenges to reappointment, tenure, and promotion decisions, nor do they see how these pertain to curriculum and are thus the province and responsibility of the disciplinary faculty not administrators. For intellectually ambitious people who become professors, a union grievance is a worst-case scenario as it directly acknowledges threats to both self-esteem and livelihood. Though accomplished in our worlds of specialized discourses, we are plunged into a new terminological game, shrinking in status from respected professionals to that of griping workers—off with the white collar, on with the blue.

Why do people get tossed aside in the tenure or promotion process? Is it something they said? Ours is a language-based enterprise, so most likely, yes. Social media now guarantees plentiful witnesses to one's *faux pas*. At my college, one of our evaluative standards is “collegiality” or how one interacts with others. What is this but speech?

Owing to their turgid procedural pace, Schleck gives short shrift to grievances in her discussion and, thus, unintentionally to unions. This is a hasty and rather typical judgment about these processes, which are pertinent in the context of contractual rights, the continual maintenance of ground level working conditions, and precedence and establishment of educational case law. They are legal, evidentiary, and time-consuming. Courtney Lawton did have the option of a grievance according to University of Nebraska-Lincoln's administrative policies, even though that main campus still does not have a faculty and staff union despite earlier attempts to form one; two other smaller UN branches do have one.<sup>4</sup>

Schleck also follows Judith Butler, Michael Bérubé and Jennifer Ruth, Robert Post, and others in wishing to uncouple academic freedom from First Amendment rights suggesting that it should instead be understood as a basic/definitive working condition and, thus, presumably under contractual controls and possibly out of local legislative reach, even though contracts are not immune to politics. I am assuming that no one imagines that changing the definition of “academic freedom” alone would be sufficient to guarantee its efficacy.

To reconceive academic freedom as wholly contractual would be playing within the “neoliberal” rules of capital that commodifies all labor. And contracts must be enforced, either by unions, the state (in the case of civil rights Title IX violations), or private

counsel in state or higher courts. Contracts and union actions also involve other rights expressed in the First Amendment including those on assembly and the right to sue the state. Schleck's claim that academic freedom is less a special First Amendment speech right (the right not to lose your job for what you say), than a necessary working condition or term of faculty employment sounds credible, but may just postpone the problem, weakening faculty arguments while making the topic one of lesser public interest.

Tenure may be academic freedom's badge or driver's license, but ideally we want to believe that academic freedom, at least in colleges, "exists" prior to tenure and even without it. The college or university classroom is *by definition* a place for open discussion of significant ideas and opposed views on controversial topics. It is even considered to be the job or responsibility of higher education to allow for such contests as part of the "marketplace of ideas" to use the liberal Mill's well-worn phrase. Yes, it is presumptively a specially protected forum different from ordinary First Amendment rights, but it is a spotlighted proxy for those rights.

A private company may set its own standards for speech and nondisclosure and enforce these within broad limits (e.g., racial or gender discrimination or criminal action). It is moderately newsworthy when an academic employee gets discharged for controversial comments in the public sphere, less so when the person is working in a corporation, unless they are a whistleblower. First Amendment rights protect you from the government, but not from termination by a private employer, unless your employer is the government, a right that has also been limited by the Court in *Garcetti v Ceballos* (2006).<sup>5</sup> Therefore, since a public university employee has greater First Amendment rights than one in a private institution, we can expect these public institutions to be specially targeted and their administrations bullied.

Yet, most people when discussing academic free speech intuit an underlying right or freedom here even if they simultaneously resent it or try to revoke it as a penalty for putatively improper use. The prerogatives of the classroom extend beyond it even in the popular culture. It is expected that those whose job it is to be deeply informed speak out on topics of concern. The spaces where people now do so continually, such as Twitter, have awkwardly redefined borders, and their format and speed rejects gravitas by design. A tweet in 2022 is not a long letter to *The New York Times* in 1972. Whether confusing or not, freedom of speech is a deep rhetorical premise that Americans of all kinds hold sacrosanct, so separating it from the discussion entails risk.<sup>6</sup> It runs so deep that any attempt at muffling one or another expression just creates more (outraged) expression. As a result, decoupling academic freedom from free speech rights generally may be self-defeating, since if we either abandon the concept or assert a new, more

technical definition, we might estrange the passions of our auditors, leaving those passions and powers available to someone else to capture. We will have to check in with Courtney and Katie in a few years and see what they say then.

The Progressive era concept of a “public” or “common good” that Dewey and the early AAUP championed in 1915 was not new even at that time. It was described at the very start of the Constitution, and then reiterated in various manners by Progressive, New Deal, and Great Society policies, and implied in any and all substantive policies subsequently. It is the rationale for government regardless of one’s politics (e.g., for some it means better schools, for others more police). The quintessentially unserious response is a politics of stasis, reaction, or Reagan’s quip, that “the most terrifying words in the English Language are: I’m from the government, and I’m here to help.” Though there has always been a private, personal aspect to a college education as well as a social and professional one, the language of public good and public service has been discredited by populist rhetoric of this sort.

### **Dirty knowledge vs. “a public good”**

I will disagree with Schleck on the sudden necessity to admit that knowledge is “dirty” since it serves certain interests. I do not find the claim of serving a “public good” so opposed to the idea of “interest” and neither did Madison or other constitutionalists. Those liberals, well-versed in Greek and Roman history, were familiar with the play of interests and factions in the public sphere. Who so quaintly ever claimed purity and disinterest for the very public scholarly disciplines? Given the structure of academic success, disciplines and academic departments have always been sites of personal ambition, individualist competition, and anxieties of influence. In a fractious age ruled by big money, the disciplines have all turned out to be easily politicized and even corrupted—arts, literature, history, sociology, economics, along with the supposedly impersonal hard sciences that Schleck suggests are favored and immune. Think of Oppenheimer and the A-Bomb, falsified research results, or recently, masks and vaccines. Even *athletics* via sexual abuse scandals, racial politics, and the big money in college sports, is sullied. If we haven’t yet, we should admit Schleck’s “dirtiness” as even grittier and less philosophical than her abstractions suggest. Thanks to social media, there is no corner of academe that can claim purity. At the same time, our personal interests are also our engagement with our subjects, sometimes of a deep, transformative kind, those we hope our students will share.

Yes, the college/university “experience” is “sold” competitively these days more as a place to purchase “marketable” skills so as to attain or maintain a middle-class lifestyle,

or to socialize in elegant surroundings, or whatever else justifies its escalating costs and less to promote the public good. But a college experience is touted not only as access to a higher paycheck and social safety but also as an avenue toward greater personal expression in labor and life.<sup>7</sup> Higher education has always been recognized as an element in our “pursuit of happiness,” individualistic and liberal. The unfettering of human talent to improve society at large, the idea of a public good rooted in principle in all government, is also classically liberal—see Locke, Smith, and Madison. The Constitution allows for time-limited patents and copyrights—private—to promote the “progress of science and the useful arts”—public. The GI Bill may have been in the public interest as an investment in veteran talent, but individuals serving their own purposes participated. Motives of egoism and altruism are tangled up together. And once “happiness” is mentioned, we step into the world of aesthetic and ethical considerations and those of goods and goodness, public and private, a world the university exists to explore. At the same time, our personal interests are also our engagement with our subjects, sometimes of a deep, transformative kind, those we hope our students will share.

So, on this point we differ slightly: interest and public good are not necessarily opposed, and Schleck actually seems to agree because she also claims that the university serves a social benefit. Name it what you please, the greatest threat to the “public good” as a motive is having never heard it uttered in the first place. Furthermore, if we promote free academic discourse along with the benefits of knowledge creation as our rationale (as we do), we *are* promoting it by implication anyway.

### **Academic freedom today**

*The Chronicle of Higher Education* provides us frequent stories of incursions on curriculum and even on the speech rights of tenured professors. The scrimmage over University of Florida’s attempt to prevent their faculty from serving as expert witnesses on cases regarding environmental protection (which finally collapsed), and Oklahoma’s laws compelling “freedom of speech in the classroom,” potentially making teaching and classroom management impossible by leaving open the opportunity for students to litigate ideological discrimination, are two recent examples.<sup>8</sup> After successful forays into elementary school teaching and curriculum (recall equal class time for Creationism? It’s still there), the arms of the state[s] now reach into higher education.

As I write, recent stories include PEN America and the American Association of Colleges and Universities issuing a joint [statement](#) opposing legislative restrictions—gag orders—on teaching and learning in colleges and universities: seventy bills have been proposed

in twenty-eight states and seven states have already enacted such bills. Hardly exemplars of a politics of national unity, these bills are intended to target the teaching of “divisive concepts” on the left such as the existence of institutional racism. Chilling academic speech scores political points. The Supreme Court has never unilaterally protected speech, and we can expect that our current one will give these statehouse censors leeway.

We find some vociferous First Amendment and academic freedom targets and defenders on the right. There have been actions against individual conservatives such as classics professor Joshua Katz at Princeton, who was recently terminated, and Ilya Shapiro who was investigated, reinstated, and then resigned at Georgetown Law. Both expressed unpopular “rightist” or “racist” views online. Shapiro had posted offensive comments about Biden’s Supreme Court choices on Twitter and soon pulled them—but not soon enough. After the publication in a Princeton organ of an article critical of a campus protest group, Katz’s previous sexual relationship with a student was reinvestigated and a new, more severe penalty was exacted (he had previously been placed on unpaid leave for a year). In that situation, it was the earlier administration that would have been negligent in neither investigating fully nor doling out appropriate punishment, yet it is Katz who loses his position.<sup>9</sup>

In these cases, the individuals were disciplined by the administrations and other faculty jumped onto social media to side for and against. Not the most handsome behavior, but these were valid public discussions over race, protected speech, academic speech, and the question whether dismissal by removal of tenure was an appropriate reaction. Faculty bodies rose to defend Katz. While Princeton as a private institution is less compelled to give faculty full due process rights despite its stated commitment to the Chicago principles, the decision to fire a tenured faculty to fix earlier mistakes by administrators, if that’s what they were, should give us all pause. One wonders not only at the spectacle of highly intelligent people rushing to vent their least considered opinions on social media but at the readiness of professors to vocally denounce their colleagues and support eliminating someone else’s tenure. Removing this major protection from any one person or side makes it easier to eliminate it from others. Common sense would tell us to proceed with caution. But I think like a unionist without an active Twitter account.

Are all ideas equal? Is protecting an inane tweet equal in weight to protecting the teaching of Darwin, exploring the question of institutional racism, or trying to fairly understand the politics of the Middle East? Not intellectually perhaps, though we see how complex a simple sentence can be. But as regards freedoms and rights, it is. The presumption should be towards protection, towards tolerating people and opinions we

dislike or even loathe and attacking them with argument unless they incite an immediate danger of the sort we have seen in Charlottesville or at the Capital. So far, I know of no professors involved in either event. If we look at more recent Oklahoma laws, which are having the intended chilling effect, those of us in the academy should be able to pick a side with alacrity.<sup>10</sup> Since legislatures around the country are involved, clearly these issues will involve the voting public. The American public knows the First Amendment; statehouse rhetoricians have shrewdly enlisted it against academic freedom. I'm not handing it over without a fight.

We would assume that college administrations whose "business" is that of higher education are interested in avoiding mistakes and bad press. Yet due to their awkward positions as business managers in a national institution that is not actually a business and has made itself into a federal financial liability pretending otherwise, when attempting to "manage" problematic speech, they often line up behind the most irrational players. Like scrambling concierges, they move to oblige whomever has the power to make most trouble at the moment, be it students on a tear, donors, foundations, or state sponsors to then backtrack as the ethical and legal issues unravel. Schleck's recounting of the Lawton story clearly shows the university administration buckling under external pressure, but her solutions characterize academe as a single interest group when it clearly is not. It is faculty whom academic freedom is intended to protect and the university as the place where they must work freely. Purse strings are always being tugged, whether by trustees or various government actors including the public, pressuring administrations. Besides the McCarthy era firing of suspected communists, a notorious CUNY example was of the philosopher Bertrand Russell, who was offered a position in 1940 at CCNY (then all male). A public outcry arose once his espousal of then-unconventional opinions such as defending premarital sex and same-sex relations were publicized. The case went to state court, was decided against The Board of Higher Education who stood with Russell, and then Mayor LaGuardia swiftly eradicated the position's funding to ensure no basis for further appeals.

### **How to preserve Academic Freedom**

Does academic freedom exist in law at all? Benjamin Ginsberg, Chair of the Center for Advanced Governmental Studies of Advanced Academic Programs at Johns Hopkins University, claims that there is no Constitutional guarantee of academic freedom though Erwin Chemerinsky, Dean of UC Berkeley law school claims there is.<sup>11</sup> Ginsberg sees academic freedom simply as a practical consequence of tenure. If tenure is eliminated, as in the case of adjunct faculty, so are any substantive academic freedoms. And Schleck's point, made previously by Ginsberg, Joan Wallach Scott, Wendy Brown,

Judith Butler, and many others whom she has consulted, is that the expanding use of these faculty, who are at-will hires, means that there are no solid protections for most faculty. Thus, tying together tenure with academic freedom leaves out more than half the faculty and invariably threatens the concept in the long run, weakening the quality of debate and free thought needed to generate new ideas. These scholars want to conceive of a new way to instantiate it within public discourse and the faculty contract as a basic working condition for all.

Not an unreasonable plan on its face. But it may be both too much and too little, since it buys into an abstract, mechanical, and limited idea of how people actually operate in the academic world. Some adjuncts I know are absolutely fearless in standing up and in being active for parity. By pressuring the union leadership as well as the university management vocally, they have succeeded in getting health care, raising their wages considerably, and even getting short-term but guaranteed contracts as well as securing more respect and protections for their labor. To be sure, they have a supportive, activist union to which they pay dues, work for a public university, and live in a very liberal, polyglot city with many union workers. At CUNY we have extremely high union membership including adjuncts, despite the Supreme Court's *Janus* decision, and frequent external attempts to undermine it.

As suggested previously, academic freedom is already part of our discourse (in our understanding of what being a professor means and our definitions of the free pursuit of knowledge) and, as such, it is already included in our contracts and governance documents. The question is how to best explain, value, and defend it forcefully to avoid chilling speech which, if allowed to proceed, will do real harm to Americans. Speech is defended with better speech—the faculty's *raison d'être*. I do not see all faculties accepting repression of their freedoms so readily. In employing her own rights well and “provoking” our responses, Schleck is doing exactly what she should. And it bears repeating, this is in part because we have governance rules, practices, and even unions, which both empower faculty and defend academic freedom as part and parcel of protecting faculty labor.

Management must be fought when they decide to accommodate funders who interfere or when they stifle faculty who object to their actions. There are celebrated examples of administrations standing up for faculty against the powerful—a case in point was that of Russell or the specific resistance by Robert Maynard Hutchins of Chicago to Walgreen and Butler at Columbia. But the fame of these examples suggests their rarity. Independent presidents are highly vulnerable to trustees and governors.

Schleck says in *Provocation #5* that we must “celebrate the university’s role as a forum for contending ideas.” This seems an updated version of the progressive notion of a “public good” as well as a liberal “marketplace of ideas.” But besides this, the most viable method is heightened union participation and activism. The unions *are* their members. If few participate, the union will either not exist or it will be weak. Bodies must be out there organizing and voting must happen, not just on behalf of unions but also for the local legislators. Too often, faculty are lax about local voting or don’t vote where they teach. Right-to-work states also endanger university independence and free speech; we might look at the gag-rule histories of the states now trying to institute new ones.

Battles lie ahead. If faculty intend to keep their freedom, they will have to fight against these infringements. Unions can pursue grievances, individual and policy, including ones on behalf of contingent faculty, so as to articulate implicit and explicit contract violations and set precedents at major public institutions, which then can become standards for others. To minimize this power is to discard a major form of academic speech and academic speech protection. Don’t dissociate academic freedom from First Amendment protections; it is a clearly expressed representative case of those protections in action. The university is a proxy for everyone’s free speech and as Schleck says, it is the place where ideas “contend,” which means that they compete. We can’t escape those liberal metaphors! Another arena for informed discussion and the raising of faculty awareness on these issues (Schleck focuses mostly on its present subordination) is a revitalized faculty governance, which may have to claw back some of the authority management has arrogated to itself. There is a renewed interest in some places, where I teach, for example. None of this is easy or automatic. It relies on determined individuals.

I will offer a slightly more utopian suggestion or provocation: free access to college for all who want it, if not 4-year public colleges, then at least community college. Why not? One U.S. President has already advocated it. And more provocatively and problematically no doubt, should we require “civics” classes or political philosophy in college? This merits discussion and every American should be invested in this project. As training schools for leaders or clergy in the early days of the Republic, the colleges were closely tied to class interests and were limited in scope. With the 19<sup>th</sup> century’s imitation of the German university systems and the 20<sup>th</sup> century’s expansions into land grant colleges, historically Black colleges and universities, and the absorption of refugee scholars, the GI Bill, and the subsequent establishment of community colleges everywhere, even the most jaded and preoccupied of academics can marvel at the astonishingly rapid growth and impressive democratization of American higher

education. Despite its warts, other nations admire, envy, fear, and imitate this huge system with its creativity, accessibility and its freedom. Let us advocate for pushing this investment further in this century, making it part of everyone's sense of right.

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<sup>1</sup> Julia Schleck, *Dirty Knowledge: Academic Freedom in the Age of Neoliberalism* (Lincoln: University of Nebraska Press, 2022), xi-xiii. Subsequent page references will be cited parenthetically.

<sup>2</sup> Zoe Chase, Steve Kolowich, Dana Chivvis, "My Effing First Amendment," *This American Life*. <https://www.thisamericanlife.org/645/my-effing-first-amendment> This podcast includes interviews with both Lawton and Mullen.

<sup>3</sup> "AAUP Data Snapshot," American Association of University Professors, October 11, 2018. <https://www.aaup.org/news/data-snapshot-contingent-faculty-us-higher-ed#.YtmIkOzMJ8c>

<sup>4</sup> Jasmine Stinson, "Curious Cornhuskers: Are there Faculty and Staff Unions?" *The Daily Nebraskan*, March 18, 2021. [https://www.dailynebraskan.com/curious-cornhuskers-are-there-university-faculty-and-staff-unions/article\\_0a6157c2-877e-11eb-9843-975d7b324db2.html](https://www.dailynebraskan.com/curious-cornhuskers-are-there-university-faculty-and-staff-unions/article_0a6157c2-877e-11eb-9843-975d7b324db2.html)

<sup>5</sup> Pen America, "Free Speech Guide," <https://campusfreespeechguide.pen.org/the-law/the-basics/>

<sup>6</sup> Michael Kent Curtis, *Free Speech, the People's Darling Privilege: Struggles for Freedom of Expression in American History* (Duke University Press, 2000).

<sup>7</sup> Charles Duhigg, "Wealthy, Successful, and Miserable," *The New York Times Magazine* Feb. 21, 2019. [https://www.nytimes.com/interactive/2019/02/21/magazine/elite-professionals-jobs-happiness.html?campaign\\_id=9&emc=edit\\_nn\\_20220715&instance\\_id=66690&nl=the-morning&regi\\_id=186795884&segment\\_id=98571&te=1&user\\_id=16963ee69379f8926986b3f3e4314c1f](https://www.nytimes.com/interactive/2019/02/21/magazine/elite-professionals-jobs-happiness.html?campaign_id=9&emc=edit_nn_20220715&instance_id=66690&nl=the-morning&regi_id=186795884&segment_id=98571&te=1&user_id=16963ee69379f8926986b3f3e4314c1f)

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<sup>8</sup> Josh Moody, “Monitoring Free Speech on Oklahoma’s Campuses,” *Inside Higher Ed*, May 5, 2022. <https://www.insidehighered.com/news/2022/05/05/oklahoma-creates-committee-oversee-college-free-speech#>

<sup>9</sup> Clifford Ando, “Princeton Betrays Its Principles,” *The Chronicle of Higher Education*, July 5, 2022, “Review/Opinion”; <https://www.chronicle.com/article/princeton-betrays-its-principles>; Anemona Hartocollis, “After Campus Uproar, Princeton Proposes to Fire Tenured Professor,” *The New York Times*, May 19, 2022. <https://www.nytimes.com/2022/05/19/us/princeton-professor-joshua-katz.html>

<sup>10</sup> Peter Bonilla, “Confusion, caution over new Oklahoma law continue to impact college teaching,” *thefire.org*, “News” July 8, 2021. <https://www.thefire.org/confusion-caution-over-new-oklahoma-law-continue-to-impact-college-teaching/>

<sup>11</sup> Benjamin Ginsberg, *The Fall of the Faculty: The Rise of the All-Administrative University and Why it Matters* (New York: Oxford University Press, 2011); Erwin Chemerinsky, “President’s Message: Basic Principles Concerning Law Schools and Freedom of Speech.” *AALS Newsletter*: 1, The Association of American Law Schools. <https://www.aals.org/about/publications/newsletters/aals-news-spring-2022/chemerinsky-law-schools-and-freedom-of-speech/>