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FOREWORD

WILLIAM W. VAN ALSTYNE*

Nineteen ninety is the 75th anniversary of the first declaration of principles on academic freedom by a professional association in the United States. The 1915 Declaration¹ was issued by the American Association of University Professors ("AAUP") within two years of its own genesis just prior to World War I. Nineteen ninety is also the 50th anniversary of the more authoritative successor to that Declaration, the Statement of Principles on Academic Freedom and Tenure of 1940, jointly sponsored by the AAUP and the Association of American Colleges.² The 1940 Statement has been endorsed by over 135 additional learned societies and educational associations in the half century since its appearance. It is frequently incorporated into faculty handbooks, and it has been cited by a number of state and federal courts, including the Supreme Court. By these means it has achieved a certain legal cachet. This 1990 issue of *Law & Contemporary Problems* commemorates these notable academic freedom anniversaries. Most of the articles that appear here address contemporary problems of academic freedom and tenure, with critical attention to the 1940 Statement.

The balance of the articles in this symposium address contemporary problems of academic freedom from a different perspective. This perspective also commemorates an anniversary, which matches the actual release date of

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1. AAUP, *General Report of the Committee on Academic Freedom and Tenure*, 1 AAUP Bull 17 (December, 1915) ("1915 Declaration"); see Appendix A, 53 L & Contemp Probs 393 (Summer 1990).

2. 1940 *Statement of Principles on Academic Freedom and Tenure* ("1940 Statement"), in *Policy Documents and Reports* 3 (AAUP, 1984); see Appendix B, 53 L & Contemp Probs 407 (Summer 1990). Additionally, because of its pertinence to some of the articles in this symposium concerned with dimensions of student academic freedom (as well as professional academic freedom), the 1967 Joint Statement on Student Rights and Freedoms is republished at Appendix C, 53 L & Contemp Probs 411 (Summer 1990).

this issue of *Law & Contemporary Problems*, Spring 1991: the 200th anniversary of the Bill of Rights, the oldest constitutionally entrenched body of basic civil rights law in the world. Parts of the Bill of Rights have had a substantial effect on conditions of academic freedom in the United States, albeit principally during the twentieth century and largely only since World War II.

In some countries (West Germany, for instance), academic freedom has received some degree of express constitutional standing in the nation's explicit basic law.³ In this country, in contrast, it never has—that is, not expressly through any “academic freedom” clause. But even so, major parts of the Bill of Rights have over time proved quite serviceable in resolving academic freedom disputes in the United States. Indeed, in a practical way, a certain synergy has grown up, as it were, between the principles articulated in the 1915 and 1940 Statements on academic freedom and particular provisions of our Constitution, a development also worked out largely since the 1940 Statement came of age. This development is also reviewed in this issue of *Law & Contemporary Problems*. Several articles take up the matter not simply historically or generally, moreover, but quite specifically and concretely, in terms of current campus disputes.

There is a good deal of intellectual trafficking among the documents, principles, and neighboring 1990-1991 anniversaries brought together in this symposium. Varieties of academic freedom will be found to draw sustenance from certain constitutional provisions, but sometimes rather weakly. The 1940 Statement may fill some interstices, yet may also leave a great deal out of account. Contemporary academic freedom problems in our universities pose hard tests and generate strong differences in how best to respond to these problems. Differences in custom, differences in institutional practice, differences in public and professional expectations, differences in judicial attitude, and large degrees of constitutional uncertainty abound. Even so, on behalf of those who contributed their talent and energy to this project, as special editor for this issue, I am confident the reader will find this an excellent resource. A little more than a quarter century ago, *Law & Contemporary Problems* provided the first professional journal symposium review on academic freedom in the United States.⁴ It is all the more appropriate on that account that we should return to it again in 1990-1991.

3. See, for example, Article 5 of The Basic Law of the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland von 23 Mai 1949 (BGBl. 1, BGBl. III Nr. 100-1)) (§ 1 protecting a general freedom of speech; § 3 separately and expressly protecting freedom in art, science, research, and teaching).

4. See *Academic Freedom: The Scholar's Place in Modern Society*, 28 L & Contemp Probs (Summer 1963) (Hans W. Baade and Robinson O. Everett, eds). Since then, of course, the subject has been addressed in other symposia, most recently in the *Symposium on Academic Freedom*, 166 Tex L Rev (June 1988) (Julius Getman and Jacqueline Mintz, eds). See also the many listings in Janet Sinder, *Academic Freedom: A Bibliography*, 53 L & Contemp Probs 381 (Summer 1990). Among earlier general works on the subject, perhaps rightly best known is Richard Hofstadter & Walter P. Metzger, eds, *The Development of Academic Freedom in the United States* (Columbia Univ Press, 1955).