

# The Tensions Between Academic Freedom and Institutional Review Boards

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Academic freedom and the protection of human research subjects are central tenets of American universities. Academic freedom protects the rights of tenured professors to conduct autonomous research; human subject protection ensures that research causes as minimal a risk as possible to study participants. Although the two principles are mutually exclusive, recent trends in Institutional Review Board jurisdiction have placed the two principles in increasing conflict with one another. This article outlines three ways in which Institutional Review Boards potentially infringe on academic freedom: (a) by regulating who is required to consent to research, (b) by stipulating the type of questions allowed and location of research interactions, and (c) by limiting research design.

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In a democratic society, principles often come into conflict with one another insofar as absolutist definitions rarely exist. Irrespective of what the more conservative members of society may suggest today, democracy in the United States always has been a noisy conversation not simply about “goods” and “bads” but also how to ameliorate differences when two ostensibly good principles are on a collision course with one another. How one interprets free speech, for example, at times is at odds with standards for decency or national security. Capital punishment, the right to bear arms, who is qualified to serve in the military, and a host of other issues frequently revolve around not simply whether the idea is right or wrong but two ideals that apparently are in conflict with one another. How we, as citizens, resolve these conflicts goes to the heart of what it means to live and participate in a democracy.

Colleges and universities are fundamentally democratic institutions—that is, institutions that promulgate and advance democracy. Accordingly, one

should not be surprised that similar conflicts arise in academe as well. We address one such conflict here. A central totem of the academy for more than a century has been its commitment to academic freedom. At the same time, the protection of human subjects when one does research has been paramount. In what follows, we shall suggest that these two core principles are currently at odds with one another; how these conflicts get resolved will help determine the role and function of colleges and universities in the 21st century.

We begin with an overview of academic freedom and Institutional Review Boards (IRBs) and then turn to three tensions that exist between the two. We conclude with a discussion about the implications for academe with regard to how these conflicts get resolved. One caveat is in order: frequently, criticism of IRBs has centered on their misunderstanding of qualitative research and/or social science research (e.g., Lincoln & Tierney, 2004; Nelson, 2004; Pritchard, 2002). Although we appreciate the concerns, we begin with the assumption that the tension is actually much broader (Oakes, 2002). The point is not merely that “they” (read: behavioral and quantitative researchers) do not understand “us” (read: social science and qualitative researchers). If the problem was merely a lack of translation, then the solution would be simply to pack the IRBs with more translators (i.e., qualitative social scientists). However, the challenges are no longer simply about qualitative versus quantitative orientations of IRBs; the argument turns on what it means to be an academic in the 21st century.

## **Academic Freedom**

Academic freedom has been a foundational value for postsecondary institutions in the United States throughout the 20th century. The concept pertains to the right of faculty to enjoy considerable autonomy in their research and teaching (Tierney, 1993). Academic freedom has been inextricably linked by the importance of the university to society. When faculty are able to search for truth and they do not need to be constrained by external interference, the assumption has been that the country benefits. Faculty do not need to tailor their findings to please or accommodate interest groups. Faculty are evaluated by their peers based on the quality of their ideas rather than by administrators or legislators for instrumental or ideological reasons. A brief review is in order about how such a compelling idea became enshrined in academic life in the United States.

In the late 19th century, discussions about academic freedom began to take place. Graduate students returned from study in Germany and had

learned about the idea of *Lehrfreiheit*. The concept pertained to “the right of the university professor to freedom of inquiry and to freedom of teaching, the right to study and to report on his findings in an atmosphere of consent” (Rudolph, 1962, p. 412). The idea was popular among young faculty, and they wanted to use the concept in their work (Hofstadter & Metzger, 1955; Veysey, 1965). The late 19th century was also a period of enormous growth. Johns Hopkins University, Stanford University, the University of Southern California, and numerous other public and private institutions were established. The size of the faculty rapidly expanded, as did the size of the administration. Professional associations began to take hold. Research became of interest to the professorate. At the same time, college presidents still ruled in a manner to which they had been accustomed; authority remained vested at the top of the organization. Conflict was bound to occur, and it did.

Who was to determine what a professor could do and say? Up until that time, the answer was quite simple: the president and senior administration. Over time, however, faculty debated what their role should be, and they decided that academic freedom was critical. A faculty association—the American Association of University Professors (AAUP)—came together, elected John Dewey as president, and began to consider how to define academic freedom and how to protect it. The AAUP codified a statement that has become a hallmark declaration for American higher education. The AAUP (1995) argument on academic freedom reads, in part, as follows:

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further interest of either individual teacher or the institution as a whole. The common good depends upon the free speech for truth and its free exposition. Academic freedom is essential to these purposes. (p. 3)

The vehicle to protect academic freedom was tenure. After a significant trial period, an individual was to be judged by his or her peers about whether lifetime employment was warranted. Tenure protected academic freedom. At times, individuals have misunderstood the meaning of tenure and academic freedom (Tierney & Lechuga, 2005). If a department chair makes a reasonable request that an individual teach a class in the morning, for example, one cannot claim that because the person has tenure, he or she does not have to teach at that time because academic freedom would be

infringed. Academic freedom does not mean an individual can say whatever he or she wants to say in a classroom or that any research can be done and viewed as worthy simply because an individual has tenure. Indeed, the linchpin of academic freedom is that it is a communal value—one's work is judged by a community of peers and the judgment is free of whim, political interference, or ideology. To be sure, as with any value, the academic community has at times failed or not lived up to it, but the ideal of academic freedom has become a goal of academic life to which academics aspire.

## IRBs

Just as the AAUP's statement on academic freedom is the central document that one uses to launch discussions about the topic, discussions about human subject protection often refer to the Nuremberg Code and the Belmont Report as the foundational documents of modern IRBs (Corwin & Tierney, in press). The Nuremberg Code outlined the ethics and actions guiding biomedical research on human subjects and was the result of the Nuremberg War Crime Trials. The Belmont Report, disseminated in 1979, provided guidelines for ethical practice based on three major principles (respect for persons, beneficence, and justice), emphasized the central role of informed consent, and created distinctions between research and practice.

Subsequently, the Common Rule was adopted by the federal government that required universities to have IRBs if researchers wanted government funding. With the new federal oversight, how one defines *research* and *human subject* is critical. By and large, postsecondary institutions have adopted what the federal government has defined and now virtually all research—federally funded or not—that involves human subjects must receive approval from the campus IRB. The government defines the terms in the following manner:

*Research* means a systematic investigation, including research development, testing, and evaluation designed to develop or contribute to generalizable knowledge. (34 Code of Federal Regulations [CFR], 97.102 [d])

*Human Subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information. (34 CFR 97.102 [f])

At face value, one is hard pressed to argue against the protection of human subjects when research is done. How could anyone claim that individuals should not be protected when they are involved in research—whether behavioral or social science, quantitative or qualitative? Some have argued, however, that the demand by the federal government to oversee an academic's research by demanding IRB approval is an infringement of the professor's academic freedom (AAUP, 2001). We disagree with this logic. An academic does not have an automatic right to funding. Any number of constraints may be placed on federal research dollars. The government prioritizes funding and simply because an individual wants to do a study that does not have a high priority does not mean that his or her academic freedom has been infringed. Peer review panels give greater credence to some criteria than others. Yes, we may quarrel with a government's priorities or criteria. Yes, a government may concoct an unfair and biased review panel. However, we are not focused here on the mechanics of how to remediate flawed procedures. Rather, we are pointing out a principle: Academic freedom is not automatically at risk because the federal government requires human subject oversight.

Similarly, a more recent criticism is that campus IRBs, by definition, are an infringement on academic freedom if everyone conducting research has to submit a proposal to gain approval. As Cary Nelson (2004) has commented, "I believe it is safer in the long run for IRBs to declare most pedagogy and most humanities and social science research none of their business" (p. 207). Again, we disagree. As a report by the AAUP (2001) has noted,

the absence of a direct financial connection between the government and the individual scholar, however, does not relieve the researcher of the professional obligation not to harm human subjects. Accordingly, a university's effort to ensure that all researchers comply with its human-subject regulations does not offend academic freedom. (p. 59)

The point here is that academic freedom and the protection of individuals from undo harm are two core principles of the academy, and they are not in conflict with one another.

One might also quarrel if IRBs were not faculty-run committees. If administrators or the general counsel's office determined what was, and was not, adequate protections of human subjects, then one could claim that the very IRB structure itself was at fault. However, IRBs are faculty-run committees. If tenured faculty account for the majority of IRB members and the governance processes of the institution are functioning, then the protection of human subjects and the maintenance of academic freedom should not be at risk. What, then, are the problems?

## Constraints on Academic Freedom by IRBs

Presumably, engagement of any kind involves risk. That is, there are numerous scenarios one might develop where a researcher contacted someone and the human subject experienced some degree of discomfort. The issue revolves around, of course, three primary questions: What is the nature of the risk? To what degree does someone experience discomfort? and What measures have been taken to ensure that discomfort is avoided or minimal? A researcher on a project about school effectiveness in California could wear a perfume, for example, that causes an allergic reaction by the interviewee. Most individuals would assume it absurd if an IRB stipulated the kind of cosmetics researchers could wear. Similarly, an elderly White woman in a nursing home in Mississippi may harbor racist beliefs about African Americans and feel discomfort when the interviewer on a project about social security benefits is African American. Yet it is beyond IRBs' jurisdiction to account for discomfort caused by latent racist beliefs.

At the other extreme are any number of examples where a researcher has not protected a human subject or informed the individual in as full a manner as possible. This occurred between 1932 and 1972 in the Tuskegee syphilis experiment when researchers failed to inform 399 African American males, many of whom were sharecroppers, that they were (a) suffering from syphilis and (b) not being offered a cure treatment (Brunner, 2005; National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979). Take another example. Most individuals would concur that if a researcher's goal is to understand the sexual behavior of gay men, illegal actions to find out if someone is gay or lack of disclosure about why a person is being interviewed is wrong (Humphreys, 1975).

Our simple point here is that the protection of human subjects is a continuum; at one end, human subjects have a 100% chance of not having any risk done to them because no research is done—the individual is never contacted. At the other end of the continuum is an “anything goes” mentality where individuals could be routinely harmed without any protections whatsoever. Obviously, although these examples are clear cut, the vast majority of research will involve some sort of risk and how one defines the risk is an interpretative act.

Federal and university offices have tried to minimize interpretation by offering definitions and guidelines. Minimal risk to a patient or interviewee, for example, is defined as “where the probability and magnitude of harm or discomfort anticipated in the proposed research are not greater, in and of

themselves, than those originally encountered in daily life” (Oakes, 2002, p. 456). Thus, one might conclude that the perfume example involves minimal risk, but what about the elderly White woman? We believe it is minimal risk, but we also acknowledge that one’s subject position may influence the data one receives from an interviewee. Again, the point here is that most research involves risk and admirable attempts can be made to standardize processes and procedures, but there will always be a matter of interpretation on the part of the researcher. Enter the idea of academic freedom and tenure.

Tenure has suggested that the individual has a degree of autonomy in what he or she does, which protects not only the academic freedom of the academic but also the idea of academic freedom for the institution and society. As we noted above, autonomy does not imply that an individual can do whatever he or she chooses, but it also does not mean that an individual has to follow a script developed by others. IRBs have recently moved in a direction that severely restricts the autonomy of the tenured academic. Here are but three examples that are emblematic of a larger movement to constrain the actions of the academic:

*The informed consent of whom.* Although the requirement varies from campus to campus—bringing into question the interpretation of guidelines—an increasing demand of IRBs is not only that the individuals to be interviewed be provided with an informed consent and agree to participate but also those institutions with which the individuals are affiliated. For example, in a study where an individual wished to understand the relationship between teaching pedagogy and classroom climate, the IRB on our campus required that the researcher first receive approval from the university where the study would be conducted. What is the risk here? Is the IRB intent on protecting the study participants or the university? Indeed, the risk potentially increases to the research subject when an institution knows who is to be interviewed on its campus. If an individual receives standard guarantees and protections—anonymity, ability to stop the interview at any point, and so forth—then there is no point in receiving additional approval from an organization. The organization is not the one being interviewed. Furthermore, assume that the interviews focus on conflict between the university and the faculty. Are we to assume that if the institution rejects the request that academic freedom has not been threatened?

Conversely, with this example, we were told that if someone wished to interview us from another campus, the IRB would expect that the outsiders should first receive institutional permission. Thus, the likely scenario is that a tenured professor at one institution needs to seek approval to interview a

tenured professor at another institution prior to the discussion taking place. The assumption is that the individuals are not able to conduct the interview within the guidelines currently outlined (and interpreted) by the IRB. Whither academic freedom?

*Asking what questions, where.* An increasingly common request of IRBs is to see the specific questions a protocol will have for interviews. Such a request is entirely appropriate insofar as it provides additional information to individuals about the types of questions to be asked. However, any qualitative researcher knows the worth of “grand tour” questions where a respondent’s answers lead to a different question than may have been listed on the protocol (Spradley, 1979). IRBs are increasingly adopting a strict constructionist stance: IRB has given you approval to ask these “X” questions, and you cannot deviate from asking these “X” questions without an amendment to your IRB submission.

Such a stance is lamentable with regard to many of the standard assumptions of qualitative research. One need ask virtually any interviewer, and the person will attest to the worth of asking questions that respond to a particular issue that an interviewee has raised. More important, the assumption at work here is that the interviewer is indeed simply a research “instrument.” The actual approval of the questions springs not from an individual who determined what to ask but from a review board who stipulated that only specific questions are appropriate to ask.

A similar issue arises with regard to where interviews are to be conducted. One study we have done pertains to undocumented high school students. Because these individuals have the potential to be at risk regarding residency status, a great deal of care needs to be taken with regard to providing adequate measures of informed consent. Throughout the years, we also have found that high school students can be nervous when they are interviewed by adults. One way to ameliorate that nervousness is to let the student choose where he or she would like to be interviewed. Some will suggest we sit out in a courtyard, some will have us take a walk with them, and others will want to meet in an empty classroom.

Before the study of undocumented students was approved, however, we received the following query from our IRB:

Number 12 of the Section II application indicates that the student may select the venue for the interview. There is concern that this may be an inappropriate venue with regard to privacy issues. The student may not be aware of the fact their conversation may be overheard or otherwise compromised. (University Park IRB, personal communication, January 18, 2005)



To receive approval to do the study, we needed to stipulate that all students would be interviewed in an empty room with no one else around. Perhaps this is less an issue of academic freedom and more one that assumes the researcher is a moron. The assumption here is that the researcher would take the student into an area where potentially sensitive questions might be overheard. Insofar as the IRB has background on whom the researchers are and the kind of work they have done for a decade, one might assume that such a stipulation is not needed. However, such an assumption is no longer made, which is why academic freedom is at risk. The researcher is not qualified to define questions or determine the venue for interviews. The institution shall determine what is acceptable.

*Defining worthy research designs.* IRB offices also have increased their scope to now comment on their interpretation of the quality of research design, the manner in which questions are posed, and even perceived errors of grammar or style. One, of course, appreciates feedback from colleagues about how to improve a research design. Who does not benefit from a rigorous editing of one's work? Nevertheless, such actions have nothing to do with the protection of human subjects. Whether a research design will achieve the goals of a project is always debatable. How one writes is always open to improvement. But the role of IRBs is not to sit in judgment (or as an advisor) on one's methods or words of choice. The quality of a research design and one's writing is ultimately born out by the peer review process and should have nothing to do with an individual receiving approval to do a study as it pertains to human subjects. By-products of increased IRB surveillance on research design include faculty demoralization when review of design gets mired in red tape or challenged by IRB members with different methodological expertise, decreased likelihood of studying populations that appear "high-risk" (often those most marginalized in society), and stifling methodological innovations to receive IRB approval (Blanchard, 2002).

## Conclusion

Our concern here is a matter of degree. We freely acknowledged that human subjects must have adequate protections. Steps need to be taken so that other faculty oversee what a tenure line faculty member proposes to do. The process of peer review is embedded into the academic culture, and we support it. We also pointed out that however much one may try to create standardized rules, the protection of human subjects is an interpretative

matter. One may paint extreme examples at one end or the other, but the vast majority of research falls into an area that is not so clear cut.

What we are suggesting is that what is being taken out of an individual's hands is the ability to make decisions as an autonomous researcher working within the healthy parameters that the academy previously had established. Instead, in a litigious environment, guidelines are developed that seek to ensure that the institution is not liable to any risk. The individual professor no longer fully decides the research design, who to protect, where to conduct research, or what to ask. The institution determines the answers, and if the individual disagrees, then the research shall not be done.

There are many costs with such a stance. IRB offices have dramatically increased in staff size at a time when universities are downsizing their faculties. Such increases have the effect of increasing indirect costs, thereby making research more expensive to do. The delays and obstacles that occur make research that much harder to do and, of consequence, that much less desirable. More important, as Lincoln (2005) has pointed out, these changes pose a significant threat to researchers and academic freedom, more so than any other issue in the past half century.

There is no simple solution to this problem. Many of these changes are being directed from agents external to the institution, especially the federal government. However, we wish to reemphasize the interpretative nature of these guidelines. When faculty serve on an IRB, we need to take such work seriously and not simply accede to the guidelines of usually well-meaning administrators who seek to minimize an institution's liability but frequently evince little concern for academic freedom. To be sure, we do not wish to suggest a simple dichotomy between black-hatted administrators and academic cowboys riding to academic freedom's rescue. Administrators frequently are trying to do what they were hired to do—to look out for the fiscal health of the institution. Faculty, however, also need to do what they were hired to do, and one key role is to protect academic freedom.

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