



Academic Freedom and Tenure: The University of Illinois at Urbana-Champaign¹

(APRIL 2015)

I. Introduction

In the middle of summer 2014, Dr. Steven Salaita, associate professor of English at Virginia Polytechnic Institute and State University, having resigned his tenured position, was preparing to relocate to the University of Illinois at Urbana-Champaign, where he had more than nine months earlier accepted a tenured appointment as associate professor in the Program of American Indian Studies (AIS). Both the administration and his prospective colleagues had made arrangements for him to assume his position in the fall term. The appointment still needed final approval by the

¹. The text of this report was written in the first instance by the members of the investigating subcommittee. In accordance with Association practice, the text was then edited by the staff and, as revised with the concurrence of the subcommittee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the subject faculty member, to the administration of the University of Illinois at Urbana-Champaign, to the chair of the University of Illinois board of trustees, and to other persons directly concerned. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

Board of Trustees of the University of Illinois, but Professor Salaita and the AIS faculty had reason to believe that this was a formality. The fall term was set to begin on August 25, more than two weeks before the board was to meet and confirm new appointments on September 11.

At the same time, on the other side of the world, fighting was raging between Israeli troops and Palestinians in Gaza, culminating months of rising tension. Professor Salaita, who is of Jordanian and Palestinian descent, was outraged by these events and expressed his views in a series of impassioned “tweets” on Twitter, a popular social-media forum. Many supporters of Israel and others found his statements deeply offensive, with some branding them as “hate speech” and as “violent” and “threatening.”² The tweets also came to the attention of UIUC chancellor Phyllis Wise, UI system president Robert Easter, and members of the board when it met on July 24.

On August 1, Chancellor Wise wrote to Professor Salaita to inform him that his appointment would “not be recommended for submission to the board of trustees” and that a board vote to confirm the appointment was unlikely. In a statement issued on August 22, Chancellor Wise explained that the University of Illinois could not and would not “tolerate . . . disrespectful words or actions.” On the same date, the board of trustees and President Easter issued a joint statement supporting the decision not to forward Professor Salaita’s appointment. The statement declared UIUC “a community that values civility as much as scholarship.” Some weeks later, however, Chancellor Wise did submit the appointment to the board with a negative recommendation, and on September 11 the board voted to reject it.

These actions by the chancellor, the president, and the board sparked a firestorm of controversy on the UIUC campus and throughout higher education, attracting extensive media coverage. The decisions raised a number of critical questions that this report will seek to answer:

1. What sequence of events led to the chancellor’s letter of August 1 and the board’s decision of September 11, and did the UIUC board and administration conform to the institution’s own policies and to AAUP-supported principles in

their decision not to confirm Professor Salaita’s appointment?

2. What was Professor Salaita’s faculty status at the time that his appointment was rejected by the chancellor and the board, and to what extent was he entitled to the academic freedom and due-process rights accorded to tenured faculty members?
3. What is the relevance of extramural expression, including expression on social-media forums like Twitter, in determining the fitness of a faculty member for a university position?
4. What role should standards of “civility” play in assessing the qualifications of a prospective or current faculty member?
5. What is the overall climate for academic freedom and shared academic governance at UIUC in the wake of these events?

II. The Involvement of the Association

Responding to initial media reports about the Salaita matter, AAUP president Rudy Fichtenbaum and first vice president and chair of Committee A on Academic Freedom and Tenure Henry Reichman issued a statement on August 7, 2014, expressing concern that if media reports were accurate, there was “good reason to fear that Professor Salaita’s academic freedom and possibly that of the Illinois faculty members who recommended hiring him have been violated.” The statement did not reach any conclusions about the controversy, but it affirmed that

while opinions differ among AAUP members on a wide range of issues, the AAUP is united in its commitment to defend academic freedom and the free exchange of ideas more broadly. On the basis of this commitment, we have opposed efforts by some pro-Palestinian groups to endorse an “academic boycott” of Israel. This commitment has also led us to defend the rights of critics of Israel, including the right of faculty members such as Professor Salaita, to express their views without fear of retaliation, even where such views

². The appendix contains a selection of Professor Salaita’s controversial tweets, submitted by university counsel in behalf of the administration,

along with a selection of other tweets from the same period provided by Professor Salaita.

are expressed in a manner that others might find offensive or repugnant.

Following a request from the director of the Program of American Indian Studies for national AAUP assistance, the Committee A staff wrote to Chancellor Wise on August 29 to convey the Association's concerns. On the core issue of Professor Salaita's having a UIUC faculty appointment, the staff wrote as follows:

Only this August, after Professor Salaita had resigned his tenured appointment at Virginia Tech and prepared for his assignments, and shortly before the semester was to begin, did he receive notification that, because the board of trustees would not be acting on the matter, he did not have an appointment at the University of Illinois. Aborting an appointment in this manner without having demonstrated cause has consistently been seen by the AAUP as tantamount to summary dismissal, an action categorically inimical to academic freedom and due process and one aggravated in his case by the apparent failure to provide him with any written or even oral explanation.

On the issue of academic freedom, the staff's August 29 letter referred to the general presumption that the refusal to approve the Salaita appointment was triggered by his tweets condemning recent Israeli military activities. Stating that the online tweets were extramural utterances by a citizen rather than pedagogical or scholarly discourse, the letter observed that both AAUP policy and UIUC policy permit an administration to bring charges if it believes that extramural activity has been "such as to raise grave doubts concerning the teacher's fitness for his or her position" but that the administration "should remember that teachers are citizens and should be accorded the freedom of citizens." Finally, noting that the UIUC academic senate's Committee on Academic Freedom and Tenure (CAFT) had decided to initiate an examination of the issues raised by the case, the letter stated that Committee A saw the case as that of a faculty member suspended from his academic responsibilities pending a hearing on his fitness to continue. Under both AAUP and UIUC policy, any such suspension is to be with pay. With Professor Salaita's having incurred major expenses since accepting the UIUC offer and receiving no salary, the staff's letter urged that he be paid the salary offered in his appointment letter pending the result of the CAFT inquiry.

Faculty members in the AIS program also submitted a formal request to CAFT on September 5 for an investigation of specific academic freedom issues, and

CAFT promptly authorized a subcommittee to serve as the investigative body. A September 9 AAUP staff letter to Chancellor Wise took note of the subcommittee, calling it "a positive step that accords with AAUP-recommended procedures for adjudicating disputes arising over issues of academic freedom and tenure." "The issues raised in this case," the staff wrote, "are so critically important, and seen as such nationally, that an investigation by the Association would have commenced by now were it not for the role being assumed by the university's committee."

With the UIUC administration unresponsive to the AAUP recommendation that Professor Salaita be paid salary while unresolved issues of academic freedom were being investigated by CAFT, the AAUP on October 13 announced approval of a \$5,000 grant from the AAUP Foundation's Academic Freedom Fund under a provision allowing temporary financial aid to faculty members whose means of support are cut off because of their involvement in academic freedom controversies.

The CAFT investigating subcommittee's report was approved by the full committee, which released it on December 23. Committee A staff confirmed its receipt in a December 30 letter addressed to Chancellor Wise, stating that the report reinforced the Association's belief that the issues raised by the case were of highest importance for the university and for higher education nationally. The letter added that "in this case charging an AAUP ad hoc committee with conducting a site visit as the basis for a report would be redundant. . . . The CAFT subcommittee has investigated essentially the same issues as would an ad hoc AAUP committee." The AAUP's executive director then asked Committee A to prepare a draft report based on the CAFT report, supplemented by Committee A's own comments and recommendations.

On January 13, Chancellor Wise wrote to the Association requesting that Committee A "pause" with its investigation pending the opportunity to resolve the case. She also requested a meeting with representatives of Committee A during which she would provide reasons for the action of the administration and the board. In a letter sent two days later, the staff responded that it saw "no good reason for 'pausing' in the sense of holding off with the draft report," which was sent to the chancellor and other interested parties for comment the next day. This letter also anticipated "a visit by a small Committee A subcommittee, which will also be available for meetings with the CAFT subcommittee and the senate officers." The initial draft report, which consisted of the text of the CAFT report supplemented by introductory and interspersed commentary, endorsed many, but not all, of the findings of the CAFT report, while criticizing its

recommendations, which were soon made moot when both Chancellor Wise and the board of trustees rejected them.

On February 2, UIUC legal counsel Scott Rice wrote at length to the staff urging the AAUP to refrain from further action in light of the decision by Professor Salaita to file a lawsuit.³ This letter also criticized the Association’s decision to utilize the CAFT report as the basis for its initial draft, calling the Association’s “failure to conduct a thorough and detailed investigation” of its own “deeply troubling.” The staff replied on February 6, reiterating its offer to accept Chancellor Wise’s request for a meeting with representatives of Committee A and offering dates for a visit by committee members serving as an investigating subcommittee. During this period the staff also received a response to the draft report from a member of CAFT questioning aspects of the AAUP’s approach but emphasizing “that Committee A’s overarching concern is with the actions of the administration and trustees, not the moot recommendations of CAFT.”

Members of the Committee A subcommittee decided that it would be preferable for the AAUP to produce its own independent investigative report rather than to provide comments based on the CAFT report. CAFT’s role was, in good measure, not only to apply relevant university policies and determine the facts at issue but also to seek an acceptable resolution to the controversy. The Association’s role differs; its concern is both to establish what happened and to measure the actions of the chancellor, the president, and the board against the principles and standards supported by the AAUP. In particular, the AAUP was deeply concerned about the impact of this controversy on the broader climate for academic freedom at UIUC, a matter that the CAFT report did not consider.

On February 26 and 27, the undersigned members of the subcommittee visited the UIUC campus, where they met with Chancellor Wise, university counsel Rice, and other principal and concerned parties.

The staff had previously interviewed Professor Salaita. All persons interviewed were helpful, cooperative, and courteous. During its investigation, CAFT invited members of the board of trustees to comment on their role, but they declined. They also did not respond to the initial draft that had been sent to them with an invitation for comment. The subcommittee did not, therefore, make efforts to interview members of the board.

The report that follows is based on the subcommittee’s campus visit and on the CAFT report. The subcommittee wishes to emphasize its appreciation for CAFT’s efforts and to reaffirm its previously expressed agreement with CAFT’s most important findings. These include continuing agreement with the CAFT report on the seriousness of the disregard by the chancellor, president, and trustees for stated principles of shared governance; shared criticism of the stance taken by the chancellor in initially declining to forward Professor Salaita’s appointment to the trustees; agreement that “[r]egardless of the tweets’ tone and content, they are political speech—part of the robust free play of ideas in the political realm”; and, lastly, agreement with CAFT that “holding civility up as a standard of conduct conflicts with academic freedom.”⁴

III. The Institution

One of the original thirty-seven public land-grant institutions created after President Abraham Lincoln signed the Morrill Act in 1862, the University of Illinois at Urbana-Champaign was chartered in 1867 as the Illinois Industrial University. It was renamed the

³. Responding on March 25 to a draft of this report, Chancellor Wise wrote: “The University remains concerned and bewildered that the AAUP apparently continues to maintain that it is entitled to usurp the authority of the Federal judicial system regarding determining questions of fact and law currently in dispute.” The AAUP claims no such authority. As its staff wrote to

counsel Rice on February 6, “Committee A’s core concerns are not with whether or not an administration’s actions have been legal but rather with whether or not they conform to sound academic practice as reflected in AAUP-supported principles and procedural standards, principles that the University of Illinois at Urbana-Champaign has endorsed.”

University of Illinois in 1885. In 1967, the university reorganized into a system with campuses at Urbana-Champaign, Chicago Circle, and Medical Center (Chicago). In 1982, the two Chicago campuses merged and became the University of Illinois at Chicago. In 1995, Sangamon State University, founded in 1969, was joined to the University of Illinois system and renamed the University of Illinois at Springfield. The system is

governed by a board of trustees and administered by a president, with each of the campuses administered by a chancellor.

The University of Illinois board of trustees consists of thirteen members, eleven of whom have official votes. Nine are appointed by the governor for terms of six years, and three student trustees (one from each campus) are elected by referenda on their campuses for one-year terms. The governor selects one of these student trustees as a member who has an official vote. The governor himself serves as an ex-officio member. During the events discussed in this report, Mr. Christopher Kennedy served as chair of the board. Dr. Robert A. Easter was appointed president-designate of the University of Illinois in March 2012 and became the university's nineteenth president that July. Dr. Phyllis M. Wise is chancellor of the University of Illinois at Urbana-Champaign and a vice president of the University of Illinois system. Chancellor Wise was interim president of the University of Washington in 2010–11, where she had served as provost and executive vice president for five years, and was previously dean of the College of Biological Sciences at the University of California, Davis.

UIUC enrolls more than 32,000 undergraduate students and more than 12,000 graduate students, including approximately 9,000 international students, in seventeen colleges, schools, and divisions. The university employs approximately 2,500 faculty members, about 1,850 of whom are tenured or on the tenure track. The College of Liberal Arts and Sciences (LAS) enrolls approximately 11,500 undergraduate students. LAS dean Barbara Wilson, who holds an endowed chair as professor in the Department of Communication, took her current office at the start of the 2014–15 academic year, after Professor Salaita's appointment was denied. She had also worked in the provost's office, successively as vice provost for academic affairs and as executive vice provost with responsibility for oversight of tenure and appointment issues.

The Program of American Indian Studies within LAS was approved by the trustees in 2005, the first tenure-track faculty members in the field having been appointed in 2004. The board approved an undergraduate minor in 2008 and a graduate minor in 2009. The program director is Professor Robert Warrior. Associate professor Jodi Byrd served as interim director during the search that recommended the appointment of Professor Salaita. In a 2010 statement on the program's website, its faculty declare:

American Indian Studies is committed to the highest standards of professional and scholarly conduct and the best ideals of academic freedom. We are also committed to developing strong and sustaining

4. The investigating subcommittee does not, however, agree with the CAFT report's characterization of Professor Salaita's appointment status (about which see section V below) or with its now moot recommendation for an additional review of his professional qualifications (see section VI below). The full text of CAFT's *Report on the Investigation into the Matter of Steven Salaita* may be found at <http://www.senate.illinois.edu/af1501.pdf>.

partnerships with people and programs in American Indian and Indigenous communities. These commitments will sometimes create tensions and might at times be in conflict, but we see them both as necessary to our conception of the work we do. Free academic inquiry helps us to test the limits of accepted wisdom, seek out new approaches to chronic problems, and recognize that being creative about the future might lead us to embrace people and ideas that have been in various ways excluded from the American Indian social and political world.⁵

In the early 1960s, UIUC was the site of one of the more significant academic freedom controversies in the history of the AAUP, one which helped define the extent of a faculty member's right to extramural expression.⁶ In 1960, Dr. Leo Koch, an assistant professor of biology at UIUC who had been notified of nonreappointment, published a letter in the student newspaper that condemned Victorian prudery and appeared to condone premarital sexual relations among students. In response to public outcry led by a local clergyman, the letter was condemned by the university's president, who ordered prompt termination of Koch's services. The matter came before the faculty senate, which recommended a reprimand, but the trustees found the "language, tone, and contents of the letter" to be a "reprehensible breach of . . . academic and professional responsibility."

The AAUP's investigating committee found important due-process violations in the university's treatment of Professor Koch, but the case centered on the substantive issue of "academic responsibility." The committee concluded: "Once one excludes from consideration the 'offensive' nature of the substantive ideas in Professor Koch's letter, as it is conceded the principles of academic freedom require, the finding of a breach of academic responsibility because of language and tone seems to us wholly untenable." Further, the committee explained, "the concept of 'irresponsibility' is exceedingly vague. Any one of us

can easily call to mind statements by our colleagues which might be termed by some as unrestrained,

5. "Identity and Academic Integrity," University of Illinois American Indian Studies Program, September 2010, <http://www.ais.illinois.edu/about/identity/>.
6. "Academic Freedom and Tenure: The University of Illinois," *AAUP Bulletin* 49 (1963): 25–43.

defending the tradition and faculty members generally supporting the mascot's retirement—nonetheless

undignified, or lacking respect for the opinion of others. Any serious application of the standard would tend to eliminate or discourage any colorful or forceful utterance. More likely, . . . the standard would be reserved as a sanction only for expression of unorthodox opinion." The Association placed UIUC on its list of censured administrations in 1963 and removed it in 1967.

Of some relevance to the concerns dealt with in this report is the controversy over Chief Illiniwek, commonly referred to as "the Chief," that has gone on for more than two decades. The Chief, until recently the official mascot and symbol of the UIUC intercollegiate athletic programs, was portrayed by a student dressed in Sioux regalia to represent the Illini, the state's namesake, at athletic events and rallies. Several American Indian groups and their supporters charged that the Chief was a misappropriation of indigenous cultural figures and rituals and that the use of the mascot perpetuated stereotypes about American Indian peoples. The Native American House, the AIS program, and the Native American student organizations all called for the Chief's retirement, as did organizations beyond UIUC, including the National Association for the Advancement of Colored People, the National Education Association, Amnesty International, the Modern Language Association, and the Society for the Study of the Indigenous Languages of the Americas. In contrast, the Illinois state legislature in 1989 passed a resolution supporting retention of the Chief.

As a result of the controversy, in August 2005 the National Collegiate Athletic Association termed Chief Illiniwek a "hostile or abusive" image and banned the university from hosting postseason activities as long as it continued to use the mascot. In 2006, the UIUC board of trustees passed a resolution calling for "a consensus conclusion to the matter of Chief Illiniwek," but in February 2007 the chair of the board issued a unilateral directive retiring Chief Illiniwek, and a month later the trustees voted to retire Illiniwek's name, image, and regalia.

The controversy over the Chief that roiled the campus—with students and alumni often passionately continues today as unofficial student groups have maintained the tradition. In April 2014, an indigenous student complained of daily insults she felt because of the continued presence of the Chief on campus, including other students wearing the old image and name on sweatshirts and continued unofficial performances by the current chief at some events.⁷ The president of the Native American Indigenous

Student Organization and the Campus Faculty Association (CFA) rallied behind the student.

In interviews with this subcommittee, the issue of the Chief came up repeatedly in the context of the AIS program's advocacy for the mascot's retirement, which made AIS a target of hostility for those who insisted on perpetuating the tradition.

IV. Chronology of Events⁸

On May 23, 2012, Professor Robert Warrior, then AIS director, submitted a hiring request for a faculty position that would facilitate the program's planned expansion into the broader field of indigenous studies. The request was approved on July 10 by then dean of liberal arts and sciences Ruth Watkins. The advertisement for the position sought a scholar at the assistant or associate professor level whose work provided "evidence of innovative transnational, comparative, creative, or interdisciplinary approaches to American Indian or Indigenous Studies." The program received more than eighty applications, and six applicants were invited for campus visits. Dr. Steven Salaita visited the campus in February 2013 and was the unanimous choice of the faculty for the position.

Professor Salaita, who was born in West Virginia, earned an undergraduate degree in political science and a master's degree in English at Virginia's Radford University and a doctorate in Native American Studies with a literature emphasis at the University of Oklahoma. His teaching experience began with three years at the University of Wisconsin–Whitewater, where he taught American and ethnic American literature. In 2006, he moved to Virginia Tech, recruited by the English department as an assistant professor, teaching English while writing not only about literature but also about Arab Americans, indigenous peoples, and race and ethnicity. In 2009, he was granted tenure and promoted to associate professor.

7. Vincent Schilling, "Indigenous Student Discusses Public Suicide over Chief Illiniwek Pain," *Indian Country Today Media Network*, April 4, 2014, <http://indiancountrytodaymedianetwork.com/2014/04/04/indigenous-student-discusses-public-suicide-over-chief-illiniwek-pain-154316>.

In a September 6, 2013, letter to the acting dean of LAS, Professor Warrior provided evaluations of both Professor Salaita's scholarship and his teaching and offered a rationale for the appointment. The letter emphasized Professor Salaita's "fresh and compelling contributions to the intellectual project of a critique of the concept of indigeneity, which is . . . the core of what has made us an international leader in our field." The appointment, Warrior argued, would expand the purview of AIS and "engage with the broader implications of comparative indigeneity within and beyond the scope of US imperialism and militarism in North America and the Pacific to include the Middle East." In addition, Warrior noted, Professor Salaita's expertise in Arab American studies would contribute to the university's Middle East curriculum.

On September 23, the Promotion and Tenure Committee recommended that Professor Salaita be appointed with tenure. Two days later, Dr. Reginald Alston, associate chancellor and dean of the graduate college, concurred. He wrote:

After closely reviewing Dr. Steven Salaita's dossier, I support the Department of American Indian Studies' request to grant him the rank of Associate Professor with indefinite tenure at the University of Illinois. The uniqueness of his scholarship on the intersection of American Indian, Palestinian, and American Palestinian experiences presents a rare opportunity to add an esoteric perspective on indigeneity to our cultural studies programs on campus. . . . I support offering Dr. Salaita a tenured position because of the obvious intellectual value that his scholarship and background would bring to our campus. His presence would elevate AIS internationally and convey Illinois' commitment to maintaining a leading academic program on the historical and sociopolitical intricacies of American Indian culture.⁹

On September 26, Chancellor Wise approved the recommendation for tenure. The next day the provost authorized the appointment. On October 3, the interim dean of LAS sent a letter with an offer

of appointment as associate professor with tenure to Professor Salaita, noting the presumably standard formality—that the appointment was contingent on approval by the board of trustees. Another letter followed from Professor Jodi Byrd, at that time acting director of AIS, with additional information,

8. Unless otherwise noted, this chronology is based on the CAFT report.

9. E-mail message submitted on behalf of Alston, September 27, 2013.

including possibilities of employment for his wife. On October 9, Professor Salaita accepted the offer, requesting a start date of August 2014. As August approached, he was given teaching assignments and asked to submit course syllabi, which he did. Arrangements were made to pay for his moving expenses and to see to his computer needs. He and his wife visited the campus in late spring and made a deposit on a condominium. All seemed to be in order as he prepared to move to his new position.

On July 21, 2014, the chancellor was alerted to tweets Professor Salaita had been posting about the war in Gaza. She told this subcommittee that she did not remember who first brought them to her attention, but there is evidence that she received many e-mail messages protesting the appointment over the course of the next ten days, as did President Easter.¹⁰ The chancellor was concerned enough about the tone of the tweets, she told the subcommittee, that she brought them to the board of trustees at its July 24 meeting. However, according to the CAFT report, President Easter on July 21 had already asked the chancellor to discuss the matter with him. Several board members were also aware of the content of the e-mail messages. Meeting in executive session, the board apparently indicated it would not approve the Salaita appointment.¹¹

On August 1, Chancellor Wise and Dr. Christophe Pierre, the UI system vice president for academic affairs, wrote to Professor Salaita informing him that the chancellor had decided not to submit the appointment to the board and that “an affirmative Board vote confirming [his] appointment” was “unlikely.” Time was of the essence, Chancellor Wise told the subcommittee; since Salaita was in the process of getting ready to move, she wanted to act before he did. She described her motive as “humanitarian.” Her decision, she told the subcommittee, was based solely on the

tone of the tweets and not on their political content. The tweets, she said, raised the issue of Salaita’s “professional competence” and presented new evidence to question it. The university is a place where difficult debates happen, she said, “but it has to be a place where students feel safe.” In the subcommittee’s interview with her, the chancellor repeated what she had told the CAFT subcommittee: she saw no distinction between Salaita’s extramural utterances (contained in the tweets) and his probable classroom demeanor.

The CAFT report notes that in its interview with her on November 14, Chancellor Wise

confirmed that she had not consulted with the Provost, the Dean of LAS, or other faculty representatives about her decisions not to forward Dr. Salaita’s offer of appointment to the Board of Trustees and to notify him in advance of this decision. She indicated that her initial understanding of the process was that it was her prerogative not to forward Dr. Salaita’s appointment to the Board and she only later discovered this understanding to be incorrect. She expressed much regret that she had not consulted more widely with the faculty and administration, and attributed her neglect of shared governance to the rapidity with which decisions had to be made.¹²

On August 22, in response to a growing number of objections to her actions, the chancellor issued “The Principles on Which We Stand.”¹³ It came along with a mass mailing to the university community from the president and the trustees supporting her position. In this statement, she affirmed her commitment to academic freedom and insisted that “the decision regarding Professor Salaita was not influenced in any way by his positions on the conflict in the Middle East nor his criticism of Israel.” She continued, “What we cannot and will not tolerate at the University of

10. Following a Freedom of Information Act request, the UIUC administration released some 280 pages of e-mail correspondence related to the Salaita case, which are available at <http://www.news-gazette.com/sites/all/files/pdf/2014/09/03/document.pdf>. These include numerous communications from

alumni, parents, donors, and others and contain references to a two-page document allegedly submitted by a major donor to the university, which some of Professor Salaita’s sup-

Illinois are personal and disrespectful words or actions that demean and abuse either viewpoints themselves or

those who express them. . . . Most important, every student must know that every instructor recognizes and values that student as a human being. If we have lost

that, we have lost much more than our standing as a world-class institution of higher education. . . .

porters have suggested played a role in motivating the board's actions. The administration has acknowledged the document's existence but to date has failed to locate a copy. 11. However, chair Kennedy later told a reporter, "We [the board] weren't saying if you recommend him, we were not going to approve. We were never close to that." 12. CAFT, *Report on the Investigation into the Matter of Steven Salaita*, December 23, 2014, 8–9. 13. Phyllis M. Wise, "The Principles on Which We Stand," *University of Illinois at Urbana-Champaign Chancellor's Blog*, August 22, 2014, <https://illinois.edu/blog/view/1109/115906>.

Tenure . . . brings with it a heavy responsibility to continue the traditions of scholarship and civility upon which our university is built."

In their statement, the president and trustees emphasized the need to protect students: "Disrespectful and demeaning speech that promotes malice is not an acceptable form of civil argument if we wish to ensure that students, faculty, and staff are comfortable in a place of scholarship and education." They concluded, "We look forward to working closely with Chancellor Wise and all of you to ensure that our university is recognized both for its commitment to academic freedom and as a national model of leadingedge scholarship framed in respect and courtesy."¹⁴

Early in September, the chancellor reconsidered one of the steps she had taken and forwarded the Salaita appointment to the trustees, recommending that they not approve it. On September 11, the board (voting eight to one) accepted her recommendation and rejected the Salaita appointment.

On September 5, CAFT, responding to a grievance filed by two AIS faculty members and citing the bylaws of the university senate, commenced an investigation of the Salaita case as an instance of "possible infringement of academic freedom." In the same period, the provost's office and the academic senate convened a committee to review hiring policies and procedures at the university.

In the interim, sixteen academic departments at UIUC voted no confidence in the administration (some other departments, however, voted to support the chancellor); petitions protesting and supporting the chancellor's decision were circulated online; letters

and e-mails objecting to her actions poured in to her office from on and off campus; the Modern Language Association, the American Historical Association, and the Society of American Law Teachers, among other groups, condemned the chancellor's actions; and a boycott of the university, endorsed by more than five thousand scholars, many of whom canceled planned conferences and lectures, gained momentum.¹⁵ On December 12, the Hiring Policies and Procedures Review Committee issued its report. It found that, for the most part, general procedures were

in conformity with standards of shared governance. It noted, however, the danger of the board's attempting to "conduct substantive reviews of candidates' qualifications," which "would be fundamentally incompatible with the board's deliberative, policyformulating role," warning that "the competitiveness of the campus would be seriously damaged." To avoid such a practice, the committee recommended that "the board of trustees should formally delegate its responsibility for tenured and tenure-track academic appointments that do not involve administrative positions at the level of deans and above to the president, who in turn should continue the existing policy of delegating to the chancellor and provost."¹⁶

The CAFT report was issued on December 23. It concluded that the process of reviewing the proposed appointment "did not follow existing policies and procedures in several substantial respects, raising questions about the institution's commitment to shared governance." Although the report noted that Professor Salaita's status was complex, "more than an applicant and less than an employee," it maintained that "the academic freedom and liberty of political speech afforded to members of the faculty . . . should reasonably apply." CAFT rejected the reason the chancellor had given for her actions—that the tweets lacked "civility"—arguing that this was "not consistent with the university's guarantee of freedom of political speech." The report called upon the chancellor to renounce the idea that "the incivility of a candidate's utterance may constitute sufficient grounds for rejecting his appointment." One additional recommendation granted the possibility that new information about Salaita's professional competence may have been revealed by the controversy. To determine if this were the case, the report proposed that the candidacy "be remanded to the College of Liberal Arts and Sciences for reconsideration by a committee of qualified academic experts" and that Professor Salaita "be provided the opportunity to respond to any proposed findings of

professional unfitness before the body concludes its proceedings.”

appoint Professor Salaita was final. On January 29, Professor Salaita filed a lawsuit against the university, alleging violations in his case of the constitutional

[.com/2014/08/civility-massmail.pdf](http://www.senate.illinois.edu/sc1508.pdf).

15. Corey Robin, “Over 5000 Scholars Boycotting the UIUC,” *Corey Robin* (blog), September 9, 2014, <http://coreyrobin.com/2014/09/09/over-5000-scholars-boycotting-the-uiuc/>.
16. Office of the Provost and Vice Chancellor for Academic Affairs, *Hiring Policies and Procedures Review Committee: Final Report*, December 12, 2014, <http://www.senate.illinois.edu/sc1508.pdf>.

right to free speech and of principles of academic freedom. On February 9, the UIUC academic senate endorsed all the recommendations of the CAFT report.

On February 26, the day the AAUP subcommittee arrived in Urbana, the chancellor sent a mass mailing to the university community that was meant to be the final word on the Salaita affair. In it she announced a series of steps taken after “productive discussions with faculty, staff, and students.” The first was to ask the trustees to schedule final approval of faculty appointments well before the proposed arrival date of new appointees. She did not address the recommendation of the hiring policies committee that would remove the board from substantive review of faculty appointments. The second was to include “faculty fellows” in the chancellor’s office to “enhance the shared governance system that guides our campus.” These fellows would be chosen by her office, not elected by the faculty. The third step she announced was a refusal to remand the Salaita case to LAS for further consideration. And the fourth was an attempt to clarify what she had meant by civility in

On January 15, 2015, the board effectively rejected the CAFT report, announcing that its decision not to

14. University of Illinois president and trustees to University of

Illinois community, August 22, 2014, <https://cfaininois.files.wordpress>

her August 22 statement. On the one hand, she insisted (citing the AAUP’s 1994 statement *On Freedom of Expression and Campus Speech Codes*) that she was not establishing a speech code for the campus. On the other hand, she reiterated the need for “respectful discourse” and tolerance as a guarantee for positive “educational experiences of . . . students.”⁴

V. Professor Salaita’s Appointment Status

At the heart of this case is the question of Professor Salaita’s employment status at the University of Illinois when Chancellor Wise informed him that she would not forward his appointment to the board of trustees. Was he merely an applicant, since his appointment had not received final board approval? Had he already been appointed and was he thus entitled to the full complement of academic due-process protections for tenured faculty members? Or was he in some kind of “in-between” status, which CAFT has posited?

The AAUP has taken the view from the beginning that Professor Salaita had already been appointed when he was informed of the chancellor’s decision not to forward his appointment to the board of trustees for approval. A letter to Chancellor Wise sent by AAUP staff shortly after her announcement noted that “[t]he exchange of letters between Interim Dean Ross and Professor Salaita appears to have been in accordance with generally established procedures by which academic appointments are tendered and accepted,” adding that “we look upon Professor Salaita’s situation as that of a faculty member suspended from his academic responsibilities pending a hearing on his fitness to continue.” This subcommittee thus views the decision not to forward Professor Salaita’s appointment

⁴. The text of the e-mail Wise’s Email to Campus,” February was published in the the 28, 2015, <http://www.news-gazette.com/news/local/2015-02-28/text-wises-email-campus.html>. Champaign *NewsGazette*: “Text of

to the trustees, as well as the subsequent vote by the trustees to reject his appointment, as tantamount to summary dismissal.

Between 1958 and 1971, the Association investigated some eight cases that share similarities to this one: each featured the withdrawal of an appointment offer to a faculty member after it had been made and accepted.⁵⁶

A 1962 case at George Washington University appears to have been the first time that the distinction between a dismissal and “a refusal to employ” received extended discussion in a Committee A investigation. The case involved a faculty member, Professor Richard W. Reichard, who, after accepting an offer for a two-year appointment from the institution in 1959, invoked the Fifth Amendment in front of the House Un-American Activities Committee. As a result, the administration withdrew his appointment before the beginning of the semester, claiming that Professor Reichard “at the time of the action taken in his case had not yet become a regular member of the faculty and therefore was not entitled to the procedural safeguards of normal dismissal proceedings.” The investigating committee rejected that analysis, stating that “the services a teacher renders to the institution that employs him do not begin when he first sets foot in the classroom. His teaching, if it is to be of any value, must be prepared

long before that. To divorce preparation for one’s academic duties from the execution of them is to take a narrow view of a teacher’s relation to his institution and to disregard facts that are a matter of common experience of all men in academic life.” The institution escaped censure by paying Professor Reichard his salary for the term for which he had been appointed and by performing a “complete revision of the University regulations governing tenure and faculty appointments.”⁵⁷

A 1968 investigation at Northern State College (South Dakota) followed the summary dismissal of Professor Frank P. Kosik in the middle of his first semester over (1) alleged “un-American” utterances in his government class; (2) alleged use of profanity and vilification of students; and (3) alleged attacks on the College administration and faculty colleagues.” The board of regents voted not to approve his contract after he had begun to teach, an action that it claimed absolved it from the necessity of providing him with a dismissal hearing. The investigating committee concluded that “the conception of academic freedom as dependent upon a technically or formally entered contract is completely unacceptable,” adding that “the members of the Tenure Committee of the Board agreed that the contract would have been approved *pro forma* had it not been for what had occurred during the first several days of classes.” The last point is of particular relevance to this case, as Professor Salaita’s

5. For reports of similar cases, in addition to the three cases discussed below, see “Livingstone College,” *AAUP Bulletin* 44 (1958): 188–91; “Academic Freedom and Tenure: The University of South Florida,” *AAUP Bulletin* 50 (1964): 44–47; “Academic Freedom and Tenure: Wayne State College (Nebraska),” *AAUP Bulletin* 50 (1964): 50–54; “Academic Freedom and Tenure: State College,” *AAUP Bulletin* 54 (1968): 43–48; and “Academic Freedom and Tenure: University of Hawaii,” *AAUP Bulletin* 55 (1969): 29–40. In its analysis of the same precedents, CAFT concludes that Professor Salaita was in a status “in-between” that of an applicant and an employee. However, CAFT further concludes that he was entitled

to “the academic freedom and liberty of political speech normally afforded a member of the faculty” (16) yet not to a dismissal hearing. This investigating subcommittee cannot accept CAFT’s analysis of Professor Salaita’s status, for the reasons outlined here. The subcommittee further rejects the contention that a faculty member in Salaita’s position can be entitled to the same academic freedom as other members of the faculty yet not be entitled to the same degree of academic due process. 7. “Academic Freedom and Tenure: The George Washington University,” *AAUP Bulletin* 48 (1962): 240–47; “Report of Committee A, 1962–1963,” *AAUP Bulletin* 49 (1963): 135.

appointment would clearly have been approved pro forma had it not been for his tweets. The subcommittee thus concludes that Professor Salaita was entitled to the same due-process protections of academic freedom as faculty members whose appointments had been approved by the board of trustees.⁸

As a final example, the AAUP in 1971 investigated the refusal of the governing board of Columbia College (Missouri) to approve the appointment of Professor William Wickersham after he had participated in peace demonstrations at the neighboring University of Missouri. The investigating committee noted in this case that

[w]hile he had not yet begun to serve at the College, there is no question that the proposal offered by the President and accepted by Professor Wickersham some nine months earlier constituted a *bona fide* appointment under accepted academic standards. No reservations regarding the need to seek Board approval had been entered by the administration at the time the offer was made and accepted; during the intervening months Professor Wickersham's courses were added to the College catalogue, and he entered into communication with several foundations seeking support for the contemplated programs in community service.⁹

The primary difference between the cases cited here and the case of Professor Salaita is that in none of these cases does it appear that the faculty member was informed together with the appointment offer, as Professor Salaita had been, that the appointment was subject to approval by the board of trustees. This raises the question whether the notice that was provided makes a significant difference in

comparison to the other cases cited. This subcommittee finds that it does not.¹⁰

As at Northern State College, it was generally expected at the University of Illinois that approval by the board of trustees occurred pro forma. In fact, CAFT was unable to find a single additional case of board intervention in appointments of new tenured faculty members. This view of the approval process is further strengthened by the fact that it occurs after the beginning of the semester. Nonetheless, the administration maintains that the mention in his letter of appointment of the need for final approval by the board of trustees was intended to inform Professor Salaita that the approval was not in fact pro forma, that the offer to him was contingent on board action. This position is at odds with generally established procedures for academic appointments. The AAUP *Statement on Recruitment and Resignation of Faculty Members*, formulated jointly with the Association of American Colleges (now the Association of American Colleges and Universities), notes that an appointment offer should "be a 'firm' one, not subject to contingencies." Similarly, the statement on *The Ethics of Recruitment and Faculty Appointments*, formulated jointly with the Council of Colleges of Arts and Sciences, notes that "the formal offer itself should be an unequivocal letter of appointment signed by the responsible institutional officer." An appointment offer that does not become final after the applicant has accepted it until the governing board has approved it, in particular when the date of that approval regularly falls after the beginning of the semester, is neither "firm" nor "unequivocal."

Finally, it should be stressed that while the Association does recognize the final authority of governing boards, under widely accepted standards of academic governance, that authority is not absolute.

⁸. "Academic Freedom and Tenure: Northern State College (South Dakota)," *AAUP Bulletin* 54 (1968): 306-13. court precedents, assure us that it is," adding that "this is of clearly a nuanced issue of contract law, not a matter of opinion, and it will be settled in due course by the courts." But, once again, the AAUP's concern is not with the legality of the university's actions but with their conformity to AAUP-supported principles and procedural standards.

⁹. "Academic Freedom and Tenure: Columbia College (Missouri)," *AAUP Bulletin* 57 (1971): 513-17.

¹⁰. In her March 25 response to a draft of this report, Chancellor Wise disputes our contention that this difference is not significant, claiming that the university's "legal advisors, citing actual

According to the Association's *Statement on Government of Colleges and Universities*, "[f]aculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." The *Statement on Government* further provides that "[t]he governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." As this report discusses in the sections on extramural speech and on civility below, the reasons cited by the chancellor and the trustees for Professor Salaita's summary dismissal were in violation of his academic freedom. As such, the stated reasons clearly failed to be "compelling," and thus the summary dismissal of Professor Salaita, in addition to violating principles of academic freedom, also disregarded widely accepted standards of academic governance.

VI. Extramural Speech

Since its founding in 1915, the AAUP has posited that freedom of extramural speech is an element of academic freedom. Dismissal cases of outspoken social scientists during the late nineteenth and early twentieth centuries fueled public debate over academic freedom and influenced the early development of the AAUP, including the formulation of the Association's seminal 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, which defined "academic freedom" as comprising three elements: "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action." The 1940 *Statement of Principles on Academic Freedom and Tenure*, jointly formulated by the AAUP and the Association of American Colleges, contains the following provision on extramural speech in paragraph 3 of the section on academic freedom: "College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations."

Determining whether speech is "extramural" can be challenging when, as has been alleged in this case, such speech relates to a faculty member's

disciplinary expertise: is the faculty member speaking as a citizen or as a member of a learned profession? The definition of extramural speech offered in the Association's *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos* provides clarification. It states that "[p]rofessors should . . . have the freedom to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline or restraint, save in response to fundamental violations of professional ethics or statements that suggest disciplinary incompetence." According to this definition, the primary characteristics of extramural speech are that such speech is addressed to "the larger community" and that it is concerned with "social, political, economic, or other interest"; the status of an utterance as extramural does not depend on its relationship to a faculty member's disciplinary expertise. Professor Salaita's tweets were clearly addressed to the larger community and were concerned with matters of public interest and intense political debate. Thus, his tweets were extramural, regardless of whether they were related to his area of expertise.

The AAUP has stated that disciplinary competence cannot be judged by a faculty member's extramural utterances. The 1940 *Statement* contains the following provisos regarding extramural utterances: "As scholars and educational officers, [college and university teachers] should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution." The status of these provisos has changed over time. Immediately following the endorsement of the 1940 *Statement*, the AAUP and the Association of American Colleges agreed to the following interpretive comment:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the

administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

This interpretation raised the status of the provisos closer to that of enforceable standards. In Committee A's discussions of the Koch case, the unambiguous nature of this interpretation was cited as a reason why Professor Koch could be disciplined for his extramural speech by university authorities and why Committee A had to reject a portion of the investigating committee's report disclaiming this possibility. In 1964, following the Koch case, Committee A adopted a *Statement on Extramural Utterances*, which asserts as follows: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar." This provision reduced the scope of the earlier joint interpretation and was subsequently enshrined in the 1940 *Statement* by an interpretive comment that the AAUP and the Association of American Colleges jointly agreed upon in 1970. Since that time, the provisos on extramural utterances of the 1940 *Statement* have generally been seen as hortatory statements rather than as enforceable standards. Even so, extramural speech, as the Committee A statement notes, can be grounds for dismissal if it clearly demonstrates the faculty member's unfitness. Relevant examples of such extramural utterances, according to *Protecting an Independent Faculty Voice*, are "fundamental violations of professional ethics or statements that suggest disciplinary incompetence."

A previous AAUP case that bears significant similarities to the case of Professor Salaita is the 1971 case of Professor Angela Y. Davis, who was denied reappointment as a part-time teacher at the University of California, Los Angeles, by the system's board of regents in part because of her extramural utterances at political rallies and

elsewhere, although in the Davis case the campus administration opposed the board's action.¹¹ It is worth quoting at some length from the AAUP's investigative report:

What is required by the concept "fitness for one's position?" Most obviously, it means the capability and the willingness to carry out the duties of the position. First among these, for most academic personnel, are the duties of a competent and responsible teacher. . . . Depending on his discipline, rank, or assignment, and the practices of the institution, a faculty member's position may involve other responsibilities, in research, in advising students, in sharing departmental chores or administrative duties, and the like. To meet the AAUP's standard of unfitness, then, the faculty member's shortcoming must be shown to bear some identified relation to his capacity or willingness to perform the responsibilities, broadly conceived, to his students, to his colleagues, to his discipline, or to the functions of his institution, that pertain to his assignment.

Thus, under the quoted principles, institutional sanctions imposed for extramural utterances can be a violation of academic freedom even when the utterances themselves fall short of the standards of the profession; for it is central to that freedom that the faculty member, when speaking as a citizen, "should be free from institutional censorship or discipline" except insofar as his behavior is shown, on the whole record, to be incompatible with fitness for his position.

The Davis report notes further:

At some stage in a contested argument over academic responsibility and fitness to teach, appeal must be made to someone's judgment in applying what are necessarily somewhat imprecise standards for the limits of propriety of extramural controversy. The judgment to be made is how far the condemned polemics fall below a professionally tolerable norm, and about the gravity, the frequency, and other circumstances of the incidents along with other evidence bearing on the speaker's overall academic responsibility. It is entirely possible, even likely, that the balance might be struck differently on the

¹¹. "Academic Freedom and Tenure: The University of California at Los Angeles," *AAUP Bulletin* 57 (1971): 382-420.

same evidence by leaders of the academic community and by members of a governing board, especially where political and other public controversy is involved. . . . In the light of these considerations, the wisdom of the AAUP procedural standards— which require careful exchange of views between faculty committees, administrations, and governing boards in disciplinary actions of the present kind—is apparent.

These standards, however, were manifestly not adhered to in the case of Professor Salaita, who was afforded no due-process protections and no opportunity to participate in the decision-making process.

The CAFT report states that, “[i]n explaining the decisions first not to forward the appointment and then to forward it with a negative recommendation, the Chancellor characterized Dr. Salaita’s tweets as ‘harassing, intimidating . . . hate speech’ and as ‘inflammatory.’” In a public statement on her blog, Chancellor Wise explained her decision not to forward Professor Salaita’s appointment to the board of trustees in the following terms:

The decision regarding Professor Salaita was not influenced in any way by his positions on the conflict in the Middle East nor his criticism of Israel. Our university is home to a wide diversity of opinions on issues of politics and foreign policy. . . .

What we cannot and will not tolerate at the University of Illinois are personal and disrespectful words or actions that demean and abuse either viewpoints themselves or those who express them. We have a particular duty to our students to ensure that they live in a community of scholarship that challenges their assumptions about the world but that also respects their rights as individuals.

As chancellor, it is my responsibility to ensure that all perspectives are welcome and that our discourse, regardless of subject matter or viewpoint, allows new concepts and differing

points of view to be discussed in and outside the classroom in a scholarly, civil and productive manner.

A Jewish student, a Palestinian student, or any student of any faith or background must feel confident that personal views can be expressed and that philosophical disagreements with a faculty member can be debated in a civil, thoughtful and mutually respectful manner. Most important, every student must know that every instructor recognizes and values that student as a human being. If we have lost that, we have lost much more than our standing as a world-class institution of higher education.¹²

This statement contains a variety of explicit and implicit charges against Professor Salaita. Primarily, it alleges that his extramural speech demonstrates that he would be unable to conduct himself appropriately in the classroom. Chancellor Wise offered similar explanations to CAFT and to this subcommittee. Asked why she had initially decided not to forward Professor Salaita’s appointment to the board, she told this subcommittee that her decision was based entirely on Professor Salaita’s tweets and that the tone of the tweets, in particular, convinced her that students would not feel comfortable in Professor Salaita’s classes. She further added that the classroom needed to be “a safe space” for students and that Professor Salaita’s tweets convinced her that he would not provide such a classroom atmosphere.

Of course, concerns raised by extramural speech about the probable classroom conduct of a faculty member *can* relate to that faculty member’s fitness. The Association’s *Statement on Professional Ethics* stipulates that “[p]rofessors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors,” adding that professors “avoid any exploitation, harassment, or discriminatory treatment of students.” While extramural utterances can raise concerns over classroom conduct, Professor Salaita’s tweets can hardly be considered as establishing *clearly by themselves* his unfitness, especially when actual evidence of his classroom conduct, though available to institutional authorities, was not considered by the chancellor. In response to a question posed by the AAUP

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subcommittee, the chancellor indicated that she had neither sought nor received any evidence that Professor Salaita's classroom conduct at Virginia Tech had raised concerns, nor has this subcommittee been furnished any such evidence. Furthermore, evidence of Professor Salaita's conduct as a teacher was reviewed by the departmental search committee and by promotion and tenure committees at various levels. These reviews found no reason to question Professor Salaita's fitness as a teacher. Consequently, CAFT has described the chancellor's concern over Professor Salaita's classroom conduct as "pure speculation." The subcommittee concurs with CAFT's assessment.

While the CAFT report raises questions about Professor Salaita's fitness with respect to his scholarship, recommending further investigation by a faculty committee, this subcommittee sees no reason to address or explore that scholarship. Chancellor Wise did not explicitly raise any concerns about Professor Salaita's scholarly work as the initial reason for refusing to forward his appointment to the board, nor did she retrospectively offer such a concern as a reason during her meeting with the subcommittee. It would therefore be presumptuous for this subcommittee to construe the chancellor's reasons for her actions against Professor Salaita in a way that she has not stated herself or to consider any reasons beyond those that she has cited.

Concern about Professor Salaita's scholarship also does not appear to have motivated President Easter or members of the board of trustees. In his August 22 statement, President Easter made no reference to scholarship, addressing only the alleged "incivility" of Professor Salaita's tweets. Nor did members of the board of trustees make any reference to scholarship or even to professional fitness when they voted on September 11 to reject Professor Salaita's appointment. Board member Patrick Fitzgerald simply declared that, "at the end of the day, we need to look out for the students and potential students first and foremost."

VII. Civility

Statements by Chancellor Wise and the trustees insisted that "civility" was a standard by which the fitness of a scholar and teacher could be judged. They used synonyms such as courtesy and respect, and they maintained that incivility threatened the comfort and security of students. The trustees claimed that disrespectful speech "is not an acceptable form of civil argument" and "has no place . . . in our democracy."

There are three objections to these claims. The first is that "civility" is vague and ill-defined. It is not a transparent or self-evident concept, and it does not provide an objective standard for judgment. Historians have shown that over the centuries (whether used by aristocrats to distinguish themselves from the bourgeoisie, by the bourgeoisie to elevate themselves above the lower classes, or by Christians to establish their superiority to Jews and Muslims) the notion of civility consistently operates to constitute relations of power. Moreover, it is always the powerful who determine its meaning—a meaning that serves to delegitimize the words and actions of those to whom it is applied. So, to take one example, students engaged in peaceful sit-ins in the 1960s in Greensboro, North Carolina, were deemed by local police to be behaving in an uncivil manner. Or to take another from the nineteenth century, Western European imperial powers often justified their conquests as efforts to "civilize" native populations.

The second objection is that, inevitably, the standard of civility conflates the tone of an enunciation with its content. In many cases that the AAUP has investigated over the years, unacceptable emotive qualities have been ascribed to the *ideas* a teacher has endorsed. In the 1915 Scott Nearing case, for example, the alumni who called for his dismissal from the Wharton School referred to "his intemperate, persistent, and astonishing expressions of untested theories and . . . [his] unrestrained condemnations of institutions and rules which form the basis of civilized society."¹³ Among other things, Professor Nearing had criticized the practice of child labor. In the previously mentioned Koch case at UIUC, the president, succumbing to protests from parents about Koch's advocacy of free love, said that "the views expressed are offensive and repugnant, contrary to

¹³. "Report of the Committee of Inquiry on the Case of Professor Scott Nearing of the University of Pennsylvania," *AAUP Bulletin* 2, no. 3, part 3 (May 1916): 19 [139].

commonly accepted standards of morality.” Challenges to normative beliefs, in other words, are deemed uncivil, whatever the tonality of their delivery.

The third objection is that, even if the tone of one’s expression is highly charged, it does not constitute grounds for punishment. Whether it is a matter of First Amendment rights or of the principles of academic freedom, there is concurrence on the dangers to democracy of attempting to outlaw emotionally provocative speech. The CAFT report cites a 1971 Supreme Court case that struck down punishment because of a speaker’s use of an offensive expletive—“an expletive Dr. Salaita’s tweets are much given to.” The Court ruled, “We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which practically speaking may often be the more important element of the overall message sought to be communicated.” In the Davis case at UCLA, one of the dissenting regents put it similarly: “In this day and age when the decibel level of political debate . . . has reached the heights it has, it is unrealistic and disingenuous to demand as a condition of employment that the professor address political rallies in the muted cadences of scholarly exchanges. Professors are products of their times even as the rest of us.”

The AAUP has repeatedly expressed views of this kind in its policy documents and reports. *On Freedom of Expression and Campus Speech Codes* notes that “some may seek to defend a distinction between the regulation of the content of speech and the regulation of the manner (or style) of speech. The subcommittee finds this distinction untenable in practice because offensive style or opprobrious phrases may in fact have been chosen precisely for their expressive power.” *Ensuring Academic Freedom in Politically Controversial Personnel Decisions* states that “politically controversial academics are frequently found to be abrasive individuals who are difficult to work with. Consequently, lack of collegiality or incivility may easily become a pretext for the adverse evaluation of politically controversial academics.” *Freedom in the Classroom* addresses the issue of the comfort and safety of students. The notion of a hostile learning environment

assumes that students have a right not to have their most cherished beliefs challenged. This assumption contradicts the central purpose of higher education, which is to challenge students to think hard about their own perspectives, whatever those might be. . . . Ideas that are germane to a subject under discussion in a classroom cannot be censored because a student with particular religious or political beliefs might be offended. Instruction cannot proceed in an atmosphere of fear that would be produced were a teacher to become subject to administrative sanction based upon the idiosyncratic reaction of one or more students.

Finally, while the AAUP has recommended civility and tolerance as informal alternatives to speech codes, it has also maintained that “adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers” and, further, that “consideration of the manner of expression is rarely appropriate to an assessment of academic fitness.”

VIII. Academic Freedom at the University of Illinois at Urbana-Champaign

Faculty opinion at UIUC concerning the actions of Chancellor Wise and the board of trustees with respect to Professor Salaita’s appointment is clearly divided. In the wake of the chancellor’s initial announcement and the board’s subsequent statements and actions, petitions supporting and opposing Professor Salaita’s appointment were widely circulated, and both sides could claim significant support. Some sixteen departments voted “no confidence” in the chancellor’s leadership, but other departments rallied to her support. The subcommittee heard reports of faculty members who felt intimidated and were fearful to speak out against the administration, but there were also reports of individuals who were fearful of voicing support for the administration. It was impossible for the subcommittee to verify the truth of such charges on either side or to gauge the extent of the problem they would appear to represent. That the divisions are genuine and deep, however, is undeniable. Indeed, one faculty member told the subcommittee that “friendships have been destroyed” over the issue.

In her meeting with the subcommittee, Chancellor Wise characterized faculty opinion as divided into three groups: those who support her actions, those who oppose her actions and believe she should resign, and those who oppose her actions but do not believe she should resign. No doubt a fourth group of faculty members exists: the

indifferent. Which group represents the majority is not only difficult, if not impossible, to determine; it is fundamentally irrelevant. After all, academic freedom, like all liberties, will be meaningful only insofar as it can protect minority viewpoints. Therefore, as long as a significant minority of the faculty believes its academic freedom is imperiled, there is cause for serious concern.

And it would appear that at least a sizeable minority of faculty members do fear that academic freedom at UIUC is endangered. Such concerns are most widespread in the College of Liberal Arts and Sciences, but the subcommittee also heard of concern about a “chilling effect” of the Salaita decision among faculty members in the Graduate School of Library and Information Science. In addition, there were reports that nontenured faculty members in particular feel threatened and that many, especially in the humanities, are seeking positions elsewhere because they fear the university will not support them if there is outside criticism of their work. One prominent professor called the Salaita decision “tremendously devastating” to faculty morale. The subcommittee was also troubled by the following comment about Professor Salaita made to the subcommittee by a prominent leader of the academic senate, who supported the chancellor’s action: “People say, yes, academic freedom, but they are very uncomfortable with this gentleman.”

Faculty members in AIS and other ethnic studies programs, the subcommittee was told, consider themselves especially vulnerable. They reported feeling pressure to avoid challenging the assumptions of students, including the kinds of prejudicial assumptions that their very disciplines seek to overturn, a direct product of the chancellor’s and the board’s claims that the decision not to approve Professor Salaita’s appointment was designed to “protect” students from “disrespectful and demeaning speech.” One professor told the subcommittee, “I don’t know of one faculty member [in these programs] not looking for another job,” an observation reiterated by an administrator. These

faculty members believe they are vulnerable to attack by the local conservative newspaper for their teaching, their scholarship, and their extramural comments, and some report incidents of harassment. They lack confidence that the university will defend them.

Here the continuing resonance of the debate over the Chief should be considered. Faculty members in AIS and elsewhere expressed concern that the current storm over the Salaita appointment is at once informing and fueling a revival of that controversy. They were vocal in their criticism of the Chief and were blamed by some for his retirement. They retain memories of harassment to the point of death threats and of the 2008 vandalism of an art exhibit critical of the Chief, which, they charge, the university left them to handle on their own with minimal support. Currently, the department’s efforts to have Chief music removed from football half-time shows have been dismissed, the subcommittee was told, as “too complicated” for quick solution.¹⁴

It is important to add, however, that the subcommittee also heard evidence, from both the administration and some faculty members, that meaningful efforts are under way to provide additional support for ethnic studies in general and AIS in particular, and these efforts should not be taken lightly. Nevertheless, it remains troubling that Chancellor Wise, as late as the subcommittee’s visit, had yet to meet with the entire AIS faculty to explain her decision.

In 2010, UIUC dealt with a case of academic freedom involving allegations of bigotry against a part-time professor, Dr. Kenneth Howell, who was teaching a class on Roman Catholicism when he sent an e-mail message to his students concerning gay relationships that offended the friend of one of them, who complained about it. The chair of the religion department at the university decided not to reappoint Howell to teach the class again in the fall, fearing that gay students and others might be offended. Out of concern about academic freedom, however, the UIUC administration decided to overrule an academic department and hired him to teach the course while awaiting a report by CAFT. The CAFT report in the

¹⁴. Responding to a draft of suggest that the board’s decision
this report, both Chancellor Wise about Professor Salaita’s appointment
and CAFT questioned the was influenced by disputes about
relevance of this issue. While the Chief, given that the
this subcommittee would not

argued that in the wake of the Salaita decision a rejection of the campus committee’s recommendation by the board would seriously exacerbate tensions.

Rightly or wrongly, many non-tenure-track faculty members at UIUC fear that what happened to Kilgore could happen to them, and they point out that

28. Weissberg himself has commented on the Salaita controversy in an online essay, arguing that “[t]he trustees are not guilty of violating free speech; their sin is cowardice in overseeing the faculty. They did not perform their job.” See Robert Weissberg, “Another Take on Salaita: Not an Abridgment of Academic Freedom, but a Failure to Uphold Academic Standards,” *John William Pope Center for Higher Education Policy*, September 1, 2014, <http://www.popecenter.org/commentaries/article.html?id=3064#.VAd9xflidUIR>. For additional quotations from and links to Weissberg’s work, see John K. Wilson, “The Racist Professor at the University of Illinois,” *Academe Blog*, September 4, 2014, <http://academeblog.org/2014/09/04/the-racist-professor-at-the-university-of-illinois/>.

29. In a statement issued after its November 2014 meeting, the board said it had engaged in a wide “robust debate that represented a range of divergent viewpoints” on Kilgore, adding that “the Board traditionally has not been involved in part-time and adjunct employee hiring decisions.” A board spokesperson said board members could not reach a consensus “other than to direct the president to work with the the campus provosts and chancellors on a policy that would cover hiring practices for part-time, adjunct, nontenured employees” (Julie Wurth, “UI Trustees: Kilgore Free to Teach Again; Kennedy to Call It Quits,” *News-Gazette*, November 13, 2014, <http://www.news-gazette.com/news/local/2014-11-13/ui-trustees-kilgore-free-teach-again-kennedy-call-it-quits.html>).

part-time basis. Faculty who teach Arabic or who are Muslim reportedly feel particularly intimidated by Professor Salaita’s dismissal.

many in their ranks would be incapable of sustaining sufficient income during a period of de facto suspension while their cases were investigated, as Kilgore had done. Especially vulnerable, the subcommittee was told, are foreign-born, noncitizen faculty members, many of whom teach in language programs on a

The fears of many non-tenure-track faculty members have been exacerbated as well by the administration’s response to their efforts to unionize. In May 2014, the Campus Faculty Association presented a majority of signed union authorization cards to the Illinois Educational Labor Relations Board (IELRB). The board then certified CFA Local 6546, affiliated with both the American Federation of Teachers and the AAUP, to include fulltime, non-tenure-track faculty members employed at the Urbana-Champaign campus, excluding those with appointments in the colleges of law, medicine, and veterinary science. At the time of this writing, the unit includes 495 faculty members, of whom 75 percent are teaching faculty, 5 percent clinical faculty, and 20 percent research faculty. The IELRB’s certification decision also determined the composition of the bargaining unit, a ruling the university subsequently challenged in court. Although the court directed the administration to commence bargaining for a first contract while it appealed the challenge to the unit composition, such bargaining has so far been mostly pro forma, as the administration has yet to respond to union proposals and has offered none of its own. Although the union issue is not connected to the Salaita case (and so will not concern us in detail here), the perceived stance of the administration toward contract negotiations has arguably contributed to an atmosphere of anxiety, especially among some non-tenure-track faculty members.³⁰

In its 1994 statement *On the Relationship of Faculty Governance to Academic Freedom*, the AAUP declared that “sound governance practice and the exercise of academic freedom are closely connected, arguably inextricably linked. While no governance system can serve to guarantee that academic freedom will always prevail, an inadequate governance system—one in which the faculty is not accorded primacy in academic matters—compromises the conditions in which academic freedom is likely to thrive.” In this context, it is important to note that members of both the faculty and the administration are working hard to address some of the problems in governance revealed by the Salaita controversy. All sides in the discussion appear to agree that the process involved in the Salaita decision was deeply flawed. The joint academic senate–provost committee that reviewed faculty appointment processes has recommended a number of significant changes. In response to that report, the administration has agreed to facilitate final faculty

appointment approval by the board much sooner. This was not, however, the main recommendation of the committee, which urged the board to delegate its authority to the campus. Indeed, some faculty members fear that earlier decisions by the board might increase rather than decrease its influence on the appointment process.

Several faculty members called the subcommittee's attention to renewed interest in shared governance. By all accounts, recent meetings of the academic senate have been lively and engaged. The fate of the CAFT report is, however, of concern. Although on February 9, 2015, the academic senate, by a fifty-one to forty-one vote, called on the chancellor, president, and board of trustees to implement the recommendations of the report promptly, Chancellor Wise in her February 26 letter declared that she had decided not to act

30. The AAUP's *Statement on Collective Bargaining* provides that, "[w]here a faculty chooses collective bargaining, the trustees and administration have a corresponding obligation to bargain in good faith with the faculty-selected representative and should not resort to litigation or any other means intended to avoid this obligation." According to *Protecting an Independent Faculty Voice*, "the academic freedom of a faculty member pertains to both (1) speech or action taken as part of the institution's governing and decision-making processes (for example, within a faculty committee or as part of a grievance filing) and (2) speech or action that is critical of institutional policies and of those in authority and takes place outside an institution's formal governance mechanisms (such as e-mail messages sent to other faculty members)." Clearly, speech or action in support of or in opposition to union organizing is included in such protections.

decades said he could not recall the board's ever being so involved in faculty appointments, noting, however, that previous boards had been elected rather than appointed by the governor, a more recent development.

The subcommittee was informed of several examples of such board interference. In addition to the Salaita and Kilgore incidents, in 2010, in what the *Chicago Tribune* called "an unusual move," the board unanimously declined a faculty recommendation to award emeritus status to retiring University of Illinois at Chicago faculty member William Ayers, a former leader of the militant Weather Underground. Actual board interventions may have been rare, but the perception remains that the current board may be inclined to intervene more frequently and forcefully. As

on the report's recommendations. This refusal is especially troubling, given the report's own conclusion about the state of shared governance at UIUC: "The Chancellor's, the President's, and the Trustees' disregard for the principles of shared governance and the very specific policies and procedures of the university and the campus is a serious matter. It violates the foundational arrangements designed to assure excellence as well as the trust necessary for a complex web of interdependent relationships to function well and with integrity."

While a large number of faculty members blame the chancellor for this situation, there is broader agreement that a major share of responsibility lies with the board of trustees. A retired but still actively engaged faculty member who has been at UIUC for

the AAUP's report on the Davis case at UCLA concluded, "academic freedom cannot flourish when governing boards and faculties confront each other as if they were adversaries." As in the Davis case in 1971, it is indispensable that the trustees and faculty members at UIUC "find means of communication that will enable them to regain a sense of being engaged in a common enterprise with a shared commitment to intellectual freedom."³¹

In light of the conditions described above with respect to shared governance and the fears of significant segments of the faculty, the subcommittee concludes that the overall climate at the University of Illinois at Urbana-Champaign with respect to academic freedom is at best uncertain.

IX. Conclusions

On the basis of the above findings, the subcommittee concludes

1. The administration of the University of Illinois at Urbana-Champaign and the Board of Trustees of the University of Illinois, in rejecting Professor Steven Salaita's appointment without demonstrating cause, and in doing so only after the appointment had been approved and courses had been assigned to him, acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the university's own stated policies on the subject.
2. The stated reasons for the rejection of the Salaita appointment by the chancellor and the board of trustees violated Professor Salaita's academic freedom and have cast a pall of uncertainty over the degree to which academic freedom is understood and respected.
3. The chancellor's decision to oppose the appointment—announced without first having revealed her intention to those at several previous levels of evaluation, all of whom had recommended

making the appointment— contravened widely accepted standards for the conduct of academic governance.

4. This investigation has confirmed the Association’s

JOAN WALLACH SCOTT (Social Science) Institute for Advanced Study

HANS-JOERG TIEDE (Computer Science)

31.
403.

position that aborting an appointment in this manner without having demonstrated cause is tantamount to summary dismissal, an action categorically inimical to academic due process.

In concluding its 1963 report on the Koch case at UIUC, the AAUP investigating committee expressed its hope that out of that controversy the University authorities will come to take a broader view of the function of a university and the value of academic freedom for the faculty and the student body. The University of Illinois is a great university. Its concerns and contributions extend beyond the local to the national and international sphere. It must, of course, operate within the community in which it is located. But if it is to function on the scale and in the manner which it is capable, its top administration and its board of trustees must be ready to recognize its maturity, its ability to absorb a few gadflies, and its need for uninhibited freedom of discussion.³²

More than half a century later, the undersigned subcommittee expresses its similar hope that the current controversy will ultimately yield a similar result. ■

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HENRY REICHMAN (History)
California State University, East Bay, *chair*

The following tweets were provided to CAFT by the counsel for the trustees:

You may be too refined to say it, but I’m not: I wish all the f**king West Bank settlers would go missing. [Note: this

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“University of California at Los Angeles,”
32. “University of Illinois,” 34.

Illinois Wesleyan University

Investigating Subcommittee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay*

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Law), New York, NY; **CHRISTOPHER HOOFNAGLE** (Law), University of California, Berkeley; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study*; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University*; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **BARBARA M. JONES** (Legal History), American Library Association, *consultant*; **JAMES TURK** (Sociology), Ryerson University, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences* *Did not participate in the vote.

Appendix

Selection of Professor Salaita’s Tweets

statement was in reference to a report that three Israeli teens had been kidnapped and were presumed murdered.] (June 19)

Let’s cut to the chase: If you’re defending #Israel right now you’re an awful human being. (July 8)

By eagerly conflating Jewishness and Israel, Zionists are partly responsible when people say antisemitic sh*t in response to Israeli terror. (July 10)

Zionist uplift in America: every little Jewish boy and girl can grow up to be the leader of a murderous colonial regime. (July 14)

The @IDFSpokesperson is a lying motherf**ker. (July 15)

Do you have to visit your physician for prolonged erections when you see pictures of dead children in #Gaza? (July 16)

“If it weren’t for Hamas, Israel wouldn’t have to bomb children.” Look, motherf**cker, if it weren’t for Israel there’d be no #GazaStrip.” (July 18)

If #Israel affirms life, then why do so many Zionists celebrate the slaughter of children? What’s that? Oh, I see JEWISH life. (July 18)

Zionists, take responsibility: if your dream of an ethnocratic Israel is worth the murder of children, just f**king own it. (July 19)

At this point, if Netanyahu appeared on TV with a necklace made from the teeth of Palestinian children, would anybody be surprised? (July 19)

I repeat, if you’re defending #Israel right now, then ‘hopelessly brainwashed’ is your best prognosis. (July 19)

Zionists: transforming ‘antisemitism’ from something horrible into something honorable since 1948. (July 19)

F**k you, #Israel. And while I’m at it, f**k you, too, PA, Sisi, Arab monarchs, Obama, UK, EU, Canada, US Senate, corporate media, and ISIS. (July 20)
Ever wonder what it would look like if the KKK had F-16s and access to a surplus population of ethnic minorities? See #Israel and #Gaza. (July 20)

When I am frustrated, I remember that, despite the cigarettes and fatty food, I have a decent chance of outliving #Israel. (July 21)

We can argue into eternity, but in the end this is what matters most: the people in #Gaza are there because they’re not Jewish. (July 26)

If you haven’t recently been called a terror-loving antiSemite, then I’m sorry to say your critique of #Israel is totally weak. (July 29)

It’s silly when white American kids pretend to be Middle Eastern. It’s unconscionable when they go play soldier in the Middle East. (July 31)

#Israel’s message to #Obama and #Kerry: we’ll kill as many Palestinians as we want, when we want. p.s. fuck you, pay me. (August 1)

Professor Salaita has provided the AAUP the following selection of tweets from the same period:

I absolutely have empathy for Israeli civilians who are harmed. Because I’m capable of empathy, I deeply oppose colonization and ethnocracy. (July 17)

It’s a beautiful thing to see our Jewish brothers and sisters around the world deploring #Israel’s brutality in #Gaza. (July 18)

My stand is fundamentally one of acknowledging and countering the horror of antisemitism. (July 19)

Those said to be expressing anger are in reality often articulating love for fellow humans who are suffering. #Gaza #FreePalestine. (July 22)

#ISupportGaza because I believe that Jewish and Arab children are equal in the eyes of God. (July 23)

#ISIS and #Gaza make me pessimistic. Seeing so many Jews, Muslims, Christians, and Hindus join to oppose sectarianism gives me great hope. (July 23)

I refuse to conceptualize #Israel/#Palestine as JewishArab acrimony. I am in solidarity with many Jews and in disagreement with many Arabs. (July 27)

I don’t necessarily agree with everything being said about #Gaza, but I identify deeply with the pain and sadness people feel right now. (July 31)