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Narrative of Academic Freedom Post-9/11: Deconstructing via Symmetry, Corporatization and American Exceptionalism

*Saby Ghoshray**

Captive by a distortionary dialectic, academic freedom in the post-9/11 United States has transmogrified into a shallow formalism. Prompted by a faulty American exceptionalism,¹ a national security-centric governmental encroachment, and escalating corporatization, the conceptual contour of academic freedom in America is now an evolving paradox. With the spirit of free inquiry slowly becoming a fleeting remnant of the past, it is of vital importance to identify both the locus of this evolving paradigm and the root cause of such evolution. While the institutions of higher learning are becoming *de facto* corporate centers, the underlying narrative of academic freedom has taken on a different hue. This commentary seeks to identify the locus of this evolving narrative, while highlighting the root cause of that evolution. Given the restricted scope of this commentary, an elaborate deconstruction of the existing trajectory of academic freedom is not possible here. Rather, I shall focus on a few dimensions of this emerging phenomenon and provide some guideposts that can be utilized for a more nuanced dissection in a future monograph. Thus, to contextualize the issue at hand, it is of vital importance to trace the historical trajectory of academic freedom within the applicable contours of the relevant legal doctrines.

A review of constitutional jurisprudence related to academic freedom would indicate that academic freedom may not be coterminous with free speech on various grounds. First, academic freedom has neither been clearly articulated within the Constitution, nor, found a robust traction within the

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¹ See generally Saby Ghoshray, *Understanding the Narrative of Dehumanization through the Prism of American Exceptionalism and the Duality of 9/11*, 56 WAYNE L. REV. (2012) (examining the faulty narrative of American exceptionalism and how such flawed conception has impacted both the general consciousness and global policy making).

First Amendment jurisprudence. Rather, the Supreme Court, through handful of cases, has alluded to the rights of universities on a proportionately higher ground compared to individual faculty members.² Second, despite evolving through the quintessential tension between positive law and its normative counterpart, free speech has enjoyed a relatively stable definitional robustness and clarity of purpose. On the contrary, lacking a stable institutional imprimatur from the Court, academic freedom has never been fully encapsulated within a robust legal doctrine.³ This is partly driven by the fact that, implicit in the construct of academic freedom is an institutional bias that imposes limitations on such freedom to fully establish its aspirational norm: discovering truth. The post-9/11 socio-legal landscape has imposed significant institutional limitations on academic freedom, which this Article seeks to elaborate upon next.

The doctrinal journey of academic freedom has evolved through multiple narratives, not finding traction within law, yet, often conflating the search for truth with an institutionally imposed false reality. Moreover, the post-9/11 era's altered socio-legal reality compels us to search for a newer narrative of academic freedom, which raises more questions than it resolves. For example, why has the American academic landscape gradually become captive to a narrower formalism? Why have the dialectics related to the search for truth become sublimated to institutional distortion? Why have the aspiratory ideals of free speech become extrinsic to the core values of academic freedom? Resolving these poignant queries would require a multi-dimensional inquiry into the current landscape of academic freedom. Only by tracing the locus of academic freedom through various socio-psychological and macro-economic factors, will it be possible to understand the shaping effect of the various distortionary forces, such as seduction to symmetry,⁴ false consciousness,⁵ and corporatization⁶ in academia today. While I have written extensively on these distortionary forces elsewhere as has been documented in this commentary, I will restrict my scope here, as a

² See *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); see also *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).

³ See generally Robert M. O'Neil, *Academic Freedom and the Constitution*, 11 J.C. & U.L. 275, 281 (1984) (discussing the relationship between academic freedom and free speech while noting their relative placement in American constitutional jurisprudence).

⁴ See Saby Ghoshray, *infra* note 7 (introducing the concept of seduction to symmetry and its potent effect on general consensus building amongst the citizenry).

⁵ See Saby Ghoshray, *False Consciousness and Presidential War Power: Examining the Shadowy Bends of Constitutional Curvature*, 49 Santa Clara L. Rev. 165(2008) (examining the phenomenon of false consciousness and observing its shaping effect in policy making, law and governance)

⁶ See Saby Ghoshray, *Restorative Justice: An Equilibrium-Centric Interpretation and Evaluation of Execution Difficulties in the U.S.*, 35 CAMPBELL L. REV. 287, at 322-24 (noting how corporate interest can have significant policy implications, where incarceration dynamics is an example).

full deconstruction of these distortionary forces is outside the limited purview of this monograph. Rather, I shall draw a concise outline as how to utilize these socio-psychological factors to provide a new epistemological dimension—a holistic cognitive construct through which we can better encapsulate the current trajectory of academic freedom in America.

First, the role of seduction to symmetry⁷ in shaping the “scholar’s spirit” must be diligently evaluated to understand how it’s shaping effect can effectively stymie the search for truth. The objective of this analysis would be to establish the overpowering influence of symmetry in imposing faulty regulative ideals within academia that distorts the search for truth about many aspects of human existence, as it relates to physical, conceptual, social and psychological understanding.

Second, to develop a cogent narrative of academic freedom, it is paramount that the ideals of academic freedom are liberated from the omnipotent dominance of corporatization. Doing so will shed the much needed revelatory light on this dichotomous genesis of a discordant evolution within American academia. This is because, the fundamental precepts of knowledge advancement often are in contradiction to the market driven corporate philosophy. Yet, this philosophy has become a dominant driving force in charting an academic institution’s future. Unfortunately however, such future evolves in shaping the truth to benefit corporate interests, sublimating the true spirit of academic freedom.

Third, the robust narrative of academic freedom must decouple itself from the post-9/11 socio-political landscape that has been instrumental in shaping a faulty sense of American exceptionalism⁸ in academia. Against the backdrop of a quasi-authoritarian supervisory entity, marked by increasing surveillance and secrecy, a new dialectic between academic freedom and intellectual activism is being institutionally imposed. The shaping effect of this dialectic must be evaluated to sanitize the newer epistemological dimension from the distortionary effect of 9/11 to develop a more scientifically nuanced definition of academic freedom.

Finally, this commentary is about reflection, reexamination, and reinterpretation. Reflecting on the changing trajectory of academic freedom in America, this Article provides a newer interpretative gloss on the root cause of this change. As the gradual erosion of the spirit of free inquiry prompts us to explore the various alternatives, this monograph provides a holistic framework that opens up to a newer interpretation. Noting the

⁷ See generally Saby Ghoshray, *Capital Jury Decision Making: Looking through the Prism of Social Conformity and Seduction to Symmetry*, 67 U. MIAMI L. REV.477 (2013) (providing an example of the phenomenon of the seduction to symmetry can have debilitating social consequences).

⁸ See *supra* note 1 (explaining the relationship between the post 9/11 societal transformation and the genesis of a faulty American exceptionalism).

deeper transformative enhancement academic freedom can impart to individuals and society, this discussion explores the poignant question of why such a holistic narrative has been missing from the contemporary dialectics.