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Academic Freedom and Academic Values in Sponsored Research*

Rebecca S. Eisenberg**

I. Introduction

Scientists on university faculties today depend heavily on sponsors outside the university to fund their research. But these outside funds often come with strings attached. Research sponsors increasingly seek to control the agenda of sponsored research and the dissemination of its results. The lure of research funding may tempt scientists to acquiesce in the sponsors’ terms, thereby compromising academic values traditionally protected by academic freedom. But the traditional American conception of academic freedom is ill-suited to the task of protecting academic values in externally sponsored research. Indeed, its emphasis on defending faculty members against university administrations could potentially tie the hands of universities, precluding effective responses to these threats to academic values.

The potential for corruption of academic values is manifest in research sponsored by industry and by the Department of Defense. These sponsors often have a palpable interest in directing the choice of research topics and restricting the publication of research results. Many universities have responded by adopting formal research policy statements setting limits on the acceptable terms of contracts with these research sponsors. A survey of some of these policies reveals both significant similarities and significant differences among universities as to the meaning and scope of academic freedom in sponsored research. Different universities use the rhetoric of academic freedom to justify diametrically op-
posed positions on the acceptability of sponsor-imposed restrictions on academic research. These contradictory approaches reflect confusion and disagreement as to the proper role of academic freedom in this context.

In this Article I examine the traditional American conception of academic freedom and analyze its implications for universities formulating policies on the acceptance of sponsored research. I begin by reviewing the basic policy statements of the American Association of University Professors (AAUP) on academic freedom to identify both the academic values implicit in those statements and the assumptions about institutional relationships and individual incentives underlying their prescriptions for advancing those values. I then evaluate the validity of those underlying assumptions in contemporary sponsored research and argue that academic freedom as traditionally conceived might no longer effectively advance academic values in externally sponsored research. Against this background, I examine recent policies of thirty-nine universities on the acceptance of classified and proprietary research and analyze the roles of academic freedom and academic values in formulating university research policy.

II. The Traditional American Conception of Academic Freedom

The classic statement of the traditional American conception of academic freedom is that set forth in the AAUP's 1915 Declaration of Principles (1915 Declaration). This statement defines academic freedom as the freedom of individual faculty members to research and publish, to teach, and to speak or write as citizens outside the university. Although the statement does not specify the types or sources of restraints on these activities that would constitute violations of academic freedom, its pri-
mary concern is the protection of faculty members from the universities that employ them. This American definition of academic freedom is narrower than its German forerunner in its specific focus on the protection of faculty members, and broader in its inclusion of extramural utterances in the categories of protected activities. The justification for academic freedom offered in the 1915 Declaration is that faculty members can best fulfill their social function of expanding and disseminating new knowledge if they are protected from lay interference. The lay trustees and administrators who run universities present a particularly acute threat because of their direct power over faculties and because their concern with the financial aspects of university governance may lead them to

5. Other definitions of academic freedom point to government and religious authorities, in addition to universities, as potential violators of academic freedom. See, e.g., Lovejoy, Academic Freedom, in 1 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 384, 384 (1930); Machlup, On Some Misconceptions Concerning Academic Freedom, 41 AAUP BULL. 753, 753-54, 759-60 (1955). Lovejoy defined academic freedom as

the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics.

Lovejoy, supra, at 384. Under Machlup's definition,

[a]cademic freedom consists in the absence of, or protection from, such restraints or pressures—chiefly in the form of sanctions threatened by state or church authorities or by the authorities, faculties, or students of colleges and universities, but occasionally also by other power groups in society—as are designed to create in the minds of academic scholars (teachers, research workers, and students in colleges and universities) fears and anxieties that may inhibit them from freely studying and investigating whatever they are interested in, and from freely discussing, teaching, or publishing whatever opinions they have reached.

Machlup, supra, at 753-54.

6. The German model of academic freedom comprises three principles: Lehrfreiheit, the "teaching freedom" of professors; Lernfreiheit, the "learning freedom" of students; and Freiheit der Wissenschaft, the freedom of the academic institution to manage its own affairs. See Metzger, Academic Freedom and Scientific Freedom, DAEDALUS, Spring 1978, at 93, 94-95. The American model of academic freedom focuses primarily on the freedom of professors. See Fuchs, Academic Freedom—Its Basic Philosophy, Function, and History, 28 LAW & CONTEMP. PROBS. 431, 432 (1963); cf. Finkin, On "Institutional" Academic Freedom, 61 TEXAS L. REV. 817, 850-54 (1983) (arguing that academic freedom supports claims to autonomy by academic institutions only when institutional autonomy furthers individual freedom of teaching and inquiry within the institution); Yudof, Three Faces of Academic Freedom, 32 LOY. L. REV. 831, 834, 848, 851 (1987) (identifying three distinct faces of academic freedom: personal autonomy of individual scholars, limits on government restrictions on expression within schools, and autonomy of academic institutions).

7. William Van Alstyne argues for distinguishing between claims of academic freedom for professional activities of scholars, with attendant professional duties and accountability, and general free speech rights of scholars as citizens. Van Alstyne, The Specific Theory of Academic Freedom and the General Issue of Civil Liberty, in THE CONCEPT OF ACADEMIC FREEDOM 59, 61 (E. Pincoffs ed. 1972). Walter Metzger notes that although the inclusion of extramural utterances under the rubric of academic freedom has proved "awkward and burdensome," it was a logical extension of the rationale for academic freedom advanced in the 1915 Declaration—that social interests in the academic profession require university trustees to abstain from imposing a political orthodoxy on faculty members. Metzger, supra note 6, at 100-02.
be co-opted by the interests of university patrons. Academic freedom and tenure protect faculty members from these powerful figures who might otherwise distort the academic enterprise in favor of particular political or financial interests.

The bottom line of the 1915 Declaration is a call for protecting the individual rights of faculty members. But in the argument presented in favor of academic freedom, social interests predominate over individual interests. Academic freedom is justified primarily on the ground that it is essential to the social function of the academic profession:

That function is to deal at first hand, after prolonged and specialized technical training, with the sources of knowledge; and to impart the results of their own and of their fellow-specialists' investigation and reflection, both to students and the general public, without fear or favor. The proper discharge of this function requires (among other things) that the university teacher shall be exempt from any pecuniary motive or inducement to hold, or to express, any conclusion which is not the genuine and uncolored product of his own study or that of fellow-specialists.

In other words, academic freedom protects faculty members from trustees and university administrators so that professional scholars will say what they think. In the absence of academic freedom, students and the public at large could not be certain that the views presented by scholars were in fact the candid opinions of those experts, undistorted by the less informed views of laypersons on whom the scholars depend for their livelihood.

The authors of the 1915 Declaration do not argue for unqualified professional autonomy for individual faculty members or for an unregulated academic profession. Quite the contrary, they warn that the only

8. I use the term "individual rights" to mean individual claims to freedom from certain types of restraints, rather than individual claims of entitlement to institutional support or resources. Van Alstyne distinguishes academic freedom from "rights" in the latter sense:

Academic freedom is a "freedom" (i.e., a liberty marked by the absence of restraints or threats against its exercise) rather than a "right" (i.e., an enforceable claim upon the assets of others) in the sense that it establishes an immunity from the power of others to use their authority to restrain its exercise without, however, necessarily commanding a right of institutional subsidy for every object of professional endeavor that might engage the interest of the individual professor. Van Alstyne, supra note 7, at 71.

9. Dean Yudof notes: "[A] personal right to academic freedom suggests that it should prevail even where, in instrumental terms, it does not advance sound educational objectives. Yet, the reasons generally proffered for academic freedom are highly instrumental in nature." Yudof, supra note 6, at 837.

10. Academic freedom is also justified in part as a lure into the academic profession, serving "to enhance the dignity of the scholar's profession, with a view to attracting into its ranks men of the highest ability, of sound learning, and of strong and independent character." 1915 Declaration, supra note 3, at 161.

11. Id. at 162.
way to preserve freedom from lay interference is through a system of accountability to professional peers. But the authors urge that the task of regulating the academic profession should be committed to professional scholars rather than to their lay employers.

A number of academic values are implicit in this argument for academic freedom. The most obvious of these are the related values of inquiry and dissemination of knowledge. Academic freedom promotes the advancement of knowledge by protecting scholarly investigation and reflection. It promotes dissemination of knowledge by protecting scholars who convey their learning through teaching, publication, and extramural utterances. Academic freedom also serves the value of critical objectivity by permitting scholars to challenge received wisdom and insulating them from pressure to adhere to a prescribed orthodoxy. Finally, the 1915 Declaration reflects a value of academic professionalism. Academic freedom ensures that the enterprise of scholarship will be left to professionals operating with minimal lay interference.

The terms of this argument suggest that academic research was a central concern of the authors of the 1915 Declaration. Yet the authors give only passing attention to the subject of research in defining the scope of academic freedom, focusing instead on contemporary threats to freedom of teaching and extramural utterances. They broadly define aca-

12. The 1915 Declaration warns:
If [the academic] profession should prove itself unwilling to purge its ranks of the incompetent and the unworthy, or to prevent the freedom which it claims in the name of science from being used as a shelter for inefficiency, for superficiality, or for uncritical and intemperate partisanship, it is certain that the task will be performed by others—by others who lack certain qualifications for performing it, and whose action is sure to breed suspicions and recurrent controversies deeply injurious to the internal order and the public standing of universities.

13. Id. at 170.
14. Id. at 173.
15. The 1915 Declaration notes that “[t]he modern university is becoming more and more the home of scientific research. . . . [T]he first condition of progress is complete and unlimited freedom to pursue inquiry and publish its results. Such freedom is the breath in the nostrils of all scientific activity.” Id. at 164.
16. The 1915 Declaration continues:
[It] is the first essential that the scholars who carry on the work of universities shall not be in a position of dependence upon the favor of any social class or group, that the disinterestedness and impartiality of their inquiries and their conclusions shall be, so far as is humanly possible, beyond the reach of suspicion.

17. Academic freedom comes with a corresponding duty of professional competence and adherence to the “scholar’s method.” Only other academics are competent to determine whether this duty has been met. See id. at 169.
18. Although by 1915 American universities had already begun to emulate their German counterparts as centers of research, the primary activity of university faculties was still teaching. See R. Hofstadter & W. Metzger, The Development of Academic Freedom in the United States 369-83 (1955); L. Veysey, The Emergence of the American University 67-72, 125-33 (1965). Early controversies about the professional autonomy of faculty focused less on research
ademic freedom as comprising "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action." But after giving "freedom of inquiry and research" top billing in this opening definition, they immediately dismiss this category of freedom from their list of concerns in the next two sentences: "The first of these [freedoms] is almost everywhere so safeguarded that the dangers of its infringement are slight. It may therefore be disregarded in this report." The 1940 Statement of Principles on Academic Freedom and Tenure (1940 Statement) of the AAUP and the Association of American Colleges (AAC) gives slightly more attention to the subject of academic freedom in research, but the 1940 Statement still follows the basic structure of the 1915 Declaration. Both statements define academic freedom in terms of rights of individual faculty members to be free from university-imposed restraints, and both statements call for protecting this freedom through tenure. The 1940 Statement also justifies academic freedom in terms that echo the 1915 Declaration, arguing that "[t]he common good depends upon the free search for truth and its free exposition" and that "[f]reedom in research is fundamental to the advancement of truth." per se than on ideas conveyed by faculty in the course of teaching and through their "extramural utterances," or statements made outside the university. Thus, in the 1870s and 1880s, trustees of sectarian colleges dismissed faculty who taught Darwinism, see R. HOFSTADTER & W. METZGER, supra, at 320-66, and around the turn of the century university boards of trustees and presidents proceeded against faculty who proclaimed views likely to antagonize wealthy benefactors, see id. at 413-67; L. VEYSEY, supra, at 397-418. 18. 1915 Declaration, supra note 3, at 158. 19. Id. Research freedom occupies a similarly prominent place in the proffered justification for academic freedom. The 1915 Declaration justifies academic freedom in terms of three purposes of universities: to promote inquiry and advance knowledge, to teach students, and to develop experts for public service. See id. at 163-64. 20. American Ass'n of Univ. Professors & Association of Am. Colleges, Statement of Principles on Academic Freedom and Tenure (1940), reprinted in ACADEMIC FREEDOM AND TENURE, supra note 3, at 33-39 [hereinafter 1940 Statement]. The 1940 Statement, which has been widely endorsed by educational organizations, was updated in certain respects through a set of "Interpretive Comments" endorsed by the AAUP in 1970, see American Ass'n of Univ. Professors, 1940 Statement of Principles and Interpretive Comments, 56 AAUP BULL. 323 (1970), but it has not yet been superseded and remains the operative document of the AAUP on academic freedom. This statement provides the standards for AAUP investigations of claimed violations of academic freedom and has had a significant influence on interpretations of academic freedom in universities and in the courts. See Brown & Finkin, The Usefulness of AAUP Policy Statements, 64 AAUP BULL. 5 (1978); Jones, The American Concept of Academic Freedom, in ACADEMIC FREEDOM AND TENURE, supra note 3, app. D at 224, 231. 21. The 1940 Statement justifies tenure as "a means to certain ends, specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability." 1940 Statement, supra note 20, at 34-35; see also 1915 Declaration, supra note 3, at 174 (calling for the protection of academic freedom through tenure). 22. 1940 Statement, supra note 2C, at 34.
In elaborating on the scope of academic freedom in research, the 1940 Statement introduces the following limitations: "The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution." This approach to "research for pecuniary return" departs from the overall thrust of the 1915 Declaration and the 1940 Statement. Rather than enjoying "full freedom" of research and publication, answering only to their professional peers for the quality of their work, faculty who do research for pecuniary return need the consent of the university's lay administration. It is not clear from the text of the 1940 Statement what concern prompted this exception to academic freedom. Perhaps the authors felt that universities should have the opportunity to claim their share of the pecuniary return accruing to faculty members. Or perhaps they believed that faculty members earning a profit from their research would find themselves torn by conflicting commitments or that their financial interests would compromise their scholarly objectivity. Beyond these thinly delineated limitations, the authors of the 1940 Statement had nothing new to say about freedom of research and publication.

The topic of faculty research for pecuniary return in the form of consulting for industry is analyzed further in the 1964 Statement on Preventing Conflicts of Interest in Government-Sponsored Research at Universities (1964 Statement on Preventing Conflicts) of the AAUP council and the American Council on Education. The primary concern of the 1964 Statement on Preventing Conflicts is protecting the integrity of relationships between universities and government research sponsors. This statement reverses the traditional assumptions of academic freedom: the villain is the faculty member co-opted by industry rather than the university administration co-opted by benefactors, and the victim is the university and its public benefactor rather than the faculty member. The perceived threat arises from consulting arrangements between industry and individual faculty members. Although the statement affirms that consulting arrangements "serve the interests of research and education in the university," it itemizes a long list of hazards that such arrange-

23. Id. at 35-36.
24. See Metzger, supra note 6, at 104.
26. Id. at 82.
ments present. For example, faculty members working under a government contract while simultaneously benefiting financially from relationships with companies might orient their government-sponsored university research to meet the needs of the private company, purchase equipment from the company, transmit to the company government-sponsored work product not made generally available, or make unauthorized use of privileged information acquired in connection with government-sponsored research.\textsuperscript{27}

The 1964 Statement on Preventing Conflicts conveys a strikingly different image of faculty members than the 1915 Declaration. The earlier document carefully distinguishes faculty members from mere employees, using the honorific term “professor” or the noble designation “scholar.”\textsuperscript{28} The 1964 Statement on Preventing Conflicts gives no recognition at all to the professional status of faculty, instead subsuming faculty under the broader category of “university staff members.”\textsuperscript{29} It portrays faculty members not as responsible professionals, dedicated to inquiry and needing a large measure of professional autonomy, but as self-dealing and readily corruptible individuals, prepared to sell the store unless restrained by their university employers.

But despite the difference in language and tone, the concern that faculty members will be co-opted by the interests of their corporate consulting clients reflects the same public interest in protecting the professional objectivity of faculty members that underlies the traditional justification for academic freedom and tenure. The 1964 Statement on Preventing Conflicts focuses on protecting the government as research sponsor rather than the public as consumer of university knowledge. Nonetheless, it speaks to a similar concern that hidden influences from outside the academy may distort the professional judgments of faculty.

The insight of the 1964 Statement on Preventing Conflicts is limited by a significant blind spot. The statement recognizes a potential that faculty will be co-opted by the interests of off-campus corporate consulting clients, but fails to note the risk that faculty will be co-opted by the interests of government and corporate sponsors of on-campus research.\textsuperscript{30}

\textsuperscript{27} Id. at 82-83.

\textsuperscript{28} See 1915 Declaration, supra note 3, at 169, 173. The 1940 Statement continues the distinction, although substituting the term “teacher,” defined to include investigators in academic institutions without teaching duties. 1940 Statement, supra note 20, at 35 n.2.

\textsuperscript{29} See 1964 Statement on Preventing Conflicts, supra note 25, at 82-83.

\textsuperscript{30} This oversight may be due in part to the assumption that government research sponsorship creates a relationship between the government and the university in which faculty members participate only in behalf of their employers, whereas consulting arrangements create relationships directly between faculty members and private companies. The following passage indicates that the authors of the 1964 Statement made these assumptions:
Academic Freedom in Sponsored Research

When faculty members depend on financial support from outside the university, whether for off-campus consulting or on-campus research, they stand to be influenced in favor of their outside patrons' interests. In these circumstances the social interests and academic values that traditionally have justified academic freedom may be better served by institutional monitoring and control over sponsored activities than by scrupulous deference to the individual autonomy of faculty members.

III. Changed Conditions

The traditional American conception of academic freedom, with its focus on infringements of the professional autonomy of individual faculty members by universities, reflects the institutional structures and concerns of an earlier era. The focus on universities as the primary violators of academic freedom made more sense in 1915 than it does today. University administrations today share control of the academic enterprise with government in matters that would have been purely internal campus affairs in 1915. This is particularly true of public universities, which have grown much faster than private universities in this century. For example, state governments exercise control over academic decisions in public universities by requiring those institutions to educate large numbers of students and by pressuring them to lend their services and expertise to stimulating economic development. Even private universities are increasingly viewed as public resources and called upon to contribute to the solution of social problems. The federal government uses its leverage as a funding source for both public and private universities to regulate university admissions policies, curricular offerings, faculty hiring...
decisions, and ethical standards for research. These demands from outside the university threaten academic values directly and encumber the power of university administrators to a degree that was unprecedented in American universities in 1915.

The emphasis on individual faculty autonomy as a mechanism for furthering academic values also made more sense in 1915 than it does today. The justification for faculty autonomy rests on the assumption that if universities leave their faculties alone, individual faculty members will be immune from corrupting influences outside the academy as they fulfill their social function of expanding and disseminating new knowledge. This assumption may have been reasonable before the era of project grants obtained by individual faculty members to cover the costs of their own research. The primary cost items in university research of 1915—faculty time and laboratory facilities—were financed through institutional expenditures rather than through funds procured to support the research of specific faculty members. Fund raising was primarily an institutional task rather than a faculty task; it was therefore university administrators and trustees rather than individual faculty members who interacted directly with benefactors and stood to be co-opted by their interests.

Today, by contrast, faculty members themselves submit grant proposals and establish relationships with both private and government research sponsors. Indeed, in the initial stages of applying for project grants, faculty members often interact directly with potential sponsors with minimal university involvement, although the university ultimately enters the negotiations and becomes a party to any grant or contract for the performance of sponsored research on campus. Faculty members who depend on the support of outside sponsors to keep their laboratories running have a professional incentive to accommodate the interests of their sponsors whether or not their universities pressure them to do so. When faculty members themselves stand to be influenced or controlled by sponsors with interests hostile to academic values, academic values may suffer if universities rigidly adhere to a conception of academic freedom that precludes institutional restraints on faculty members' sponsored research activities.

In addition to presenting a risk that faculty members will be co-opted by the interests of their outside patrons, sponsored research tends

35. See id. at 38-39.
to enhance the power of faculty members within their universities.\textsuperscript{37} Academic science today depends heavily on the "grantsmanship" skills of academic entrepreneurs who secure funding to pay for large research staffs and laboratories.\textsuperscript{38} Faculty members able to attract research grants are in demand among universities and are therefore less dependent on their current university employers for their livelihood. At the same time, universities depend on the continued flow of funds from research sponsors to reimburse them for the indirect costs of research, including fixed costs for research equipment and facilities. Faculty members doing sponsored research thus tend to gain power in their relationships with their universities. A conception of academic freedom premised on the need to protect faculty members from their all-powerful employers may therefore be beside the mark in this context.

Finally, contemporary sponsored research in universities requires the cooperation of universities, faculty members, and sponsors. It simply is not practical in the context of these tripartite relationships for universities to stand back and let faculty members do as they please. The scale of modern scientific research requires significant commitments of university facilities and personnel for academic research projects. Universities obviously need to decide how to allocate these resources at the institutional level. It is one thing to say that individual faculty members should be free to decide for themselves what they will read and write, and quite another to say that they should be entitled to command scarce university resources for research projects of their choice. When sponsored research takes place on campus using university facilities and personnel, the university must enter into an agreement with the sponsor to protect its own interests as well as the interests of the faculty members doing the research. For that matter, few sponsors would be willing to commit funds to university research without first entering into an agreement with the university to protect their interests. Universities are thus inevitably involved in negotiating the terms of agreements for sponsored research.

In sum, the traditional American conception of academic freedom is designed to fit an institutional context for academic research that bears little resemblance to contemporary sponsored research. The 1915 Declaration and the 1940 Statement define academic freedom in terms of individual rights of faculty members and call for protecting these rights against university administrators. Yet the statements justify academic freedom as an expedient means of furthering social interests in the aca-

\textsuperscript{37} See Kidd, The Implications of Research Funds for Academic Freedom, 28 LAW & CONTEMP. PROBS. 613, 615-16 (1963).
\textsuperscript{38} See M. Kenney, supra note 1, at 17-18.
demic enterprise and academic values favoring inquiry, dissemination, critical objectivity, and professionalism. As long as faculty can be counted on to further these values if university administrators leave them alone, the definition and the justification are more or less in harmony. The prescription for universities seeking to further academic values and to avoid violating the rights of faculty members is to keep a low profile and let faculty members do as they please. But the definition and the justification begin to diverge when faculty members themselves face temptations to compromise academic values in favor of outside interests. Faculty members who are financially dependent on research sponsors may not be counted on to uphold academic values on their own. In such situations the protection of academic values may require limiting the autonomy of potentially co-opted faculty members. Moreover, the institution of faculty-procured research grants has increased the power of outside funding sources and individual faculty members relative to that of universities. These changed circumstances call for a reassessment of traditional mechanisms for preserving academic values in sponsored research.

IV. Academic Freedom and Academic Values in Contemporary Sponsored Research

Before considering what mechanisms might be appropriate for protecting traditional academic values in sponsored research, it is necessary to identify how sponsored research threatens these values. The essence of the problem—control and consequent distortion of the academic enterprise by outside interests—is not new. External support of universities, whether from public or private sources, has always carried with it the risk that the academy will be used to serve the political or financial interests of its benefactors. But while it was primarily university trustees and administrators who stood to compromise traditional academic values in favor of outside interests in 1915, today the list of suspects includes research sponsors and the faculty members who collaborate with them.

Two categories of sponsored research—classified research for the federal government and proprietary research for industry—have generated particular concern in the academic community. It is therefore useful to focus on these two types of research in analyzing the implications of sponsored research for academic freedom and academic values. But many of the same issues arise in other types of sponsored research as well, including research sponsored by private foundations and nonclassified research sponsored by the government.
A. Threats to Academic Values

1. Secrecy of Research Results.—Sponsors of classified and proprietary research often seek to restrict the dissemination of research results. This interest in secrecy is probably the single most important factor in explaining why classified and proprietary research have generated so much concern in the academic community. Secrecy ranks foremost among the concerns of the AAUP in its recent reports on the academic freedom implications of research sponsored by corporations and the Department of Defense.

A requirement that research results be kept secret, whether to protect national security or to preserve intellectual property rights in new discoveries, blatantly conflicts with traditional academic values favoring open dissemination of new knowledge. Moreover, by preventing universities from fulfilling their traditional role of expanding the storehouse of publicly held knowledge, secret research on campus calls into question the very purpose of academic research.

Long-term secrecy also cuts researchers off from the larger academic community. In the process, faculty members involved in secret research lose the benefits of critical feedback and acclaim from professional colleagues. This loss undermines the professionalism of the academic community because secret research isolates researchers from normal professional interaction and accountability to their peers. Secrecy also undermines critical objectivity in research by precluding criticism and challenges of claims that are never made public.

2. Distortion of the Viewpoints and Claims of Academic Researchers.—A possibly more pernicious threat to the integrity of the academic enterprise is the incentive for academic researchers to distort their viewpoints or scientific claims in order to please their research sponsors. The threat that financial dependence might distort the teachings of professional scholars was precisely the danger invoked to justify academic freedom in the 1915 Declaration. Although the 1915 Declaration focused on relationships of financial dependence between faculty members and their
employers, sponsored research creates similar relationships of financial
dependence between faculty members and their research sponsors.

A particularly egregious distortion might arise if scientists were to
falsify or exaggerate research results to appear more productive and suc-
cessful and thereby attract more funding. One might hope that profes-
sional scholars would refrain from making false research claims, if not
out of a sense of professional integrity then out of concern for their repu-
tations in the larger scientific community. Yet reports of fraud in science
are increasing, and pressure to obtain research grants is frequently cited
as a factor contributing to the problem.41

A less extreme distortion of research claims could arise if scientists
elected not to publish research results that undermine the sponsors' inter-
ests. For example, a scientist doing research under a grant from a phar-
maceutical firm on the effects of a drug manufactured by the firm might
hesitate to publish unfavorable results for fear of losing future research
funding. The scientist might therefore dismiss data revealing a drug's
harmful side effects or inferiority to alternative treatments as inconclu-
sive or too trivial to include in the published report, or she might simply
never get around to writing it up.

In government-sponsored research, the investigator may have an in-
centive to refrain from taking positions that are politically unpalatable to
the sponsor. Consider the notorious example of a recent public state-
ment by Donald A. Hicks, Undersecretary of Defense for research and
engineering, that scientists who criticize the Strategic Defense Initiative
should not receive Department of Defense funding.42 It takes little imag-
ination to foresee the likely impact of such a statement on the critical
objectivity of scholars receiving, or hoping to receive, research funding
from the Department of Defense. When the nature of the inquiry calls
for the investigator to give subjective interpretations rather than strictly
quantitative observations, the possibilities for distortion of research
claims in favor of the sponsor's interests are especially great.

3. Distortion of the Academic Research Agenda.—Perhaps the most
intractable threat to academic values arising in sponsored research lies in
the distortion of the academic research agenda in favor of research for

41. See W. Broad & N. Wade, Betrayers of the Truth 53, 86 (1982). See generally
Fraud in Biomedical Research: Hearings Before the Subcomm. on Investigations and Oversight of the
House Comm. on Science and Technology, 97th Cong., 1st Sess. (1981) (reporting two days of hear-
ings on falsification of data).
42. See Hicks Attacks SDI Critics, 232 SCIENCE 444 (1986); “No Political Litmus Tests” for
which funding is available. This threat is particularly acute in research sponsored by industry and by mission-oriented government agencies. These sponsors fund research with specific goals in mind, and the research problems presented by their goals may or may not coincide with the research problems that would claim the attention of scientists who were not constrained by the need to secure research funding. But even purely philanthropic sponsors necessarily make decisions about what sorts of research they want to sponsor, and these decisions push the frontiers of academic research in altered directions.

Control of the academic research agenda by sponsors outside the scientific community compromises the professionalism of academic research. In addition, such outside control can be expected to retard the progress of science in the long run compared to that attainable with a comparable level of research funding if the academic community retained discretion over what research to pursue. Professional control of academic research is preserved somewhat by a system of peer review in which members of the scientific community decide what research projects should receive funding based on scientific merit. But research sponsors will often have more specific ideas about what research they want to pay for based on goals more concrete than the advancement of knowledge. In some cases, the sponsors' goals may happily coincide with the research interests of academic scientists. In other cases, however, the lure of research funding undoubtedly will distract research scientists from the inquiries that they otherwise would have pursued on the basis of academic interest alone.

One might nonetheless argue that the academic enterprise as a whole cannot be any worse off if scientists and universities can choose


44. For example, research funding through project grants from the Rockefeller Foundation in the 1930s helped to create the field of molecular biology by favoring researchers who applied new physical and chemical techniques to biology. See M. Kenney, supra note 1, at 10-11.

45. See Wolfe, supra note 43, at 33-34. See generally Polanyi, The Republic of Science, Mnerva, Autumn 1962, at 54, 54-73 (arguing that interference with the internal mechanisms of the scientific community that guide scientists in their choice of research problems would retard the progress of science).

46. Using peer review to allocate research funds might still tend to distort the research agenda in favor of projects that conform to prevailing views of the scientific community, disfavoring more unorthodox projects that challenge the received wisdom. Thus, even sponsored research with funding allocated by peer review might tend to undermine the academic value of critical objectivity.

47. Even in such cases, one might wonder, in the words of Walter Metzger, "whether freedom of choice is not subtly constrained by the workings of the well-known principle that a man need not marry for money, he may simply seek out the company of wealthy women and marry one of them for love." Metzger, supra note 31, at 23.
between either pursuing the most academically interesting research problems, to the extent that this is possible within their own research budgets, or redirecting their research plans to avail themselves of outside funding opportunities. As a practical matter, this choice may not seem very meaningful to scientists and universities that depend on outside funds to keep afloat financially. When scientists and universities accept research funding that is restricted to a specific purpose, they simultaneously enhance their ability to perform costly research and restrict their ability to control their directions of inquiry on the basis of professional academic considerations. Although this bargain may seem advantageous to the faculty members and universities that receive the immediate benefit of research funding, it may in the long run be disadvantageous to the public as the primary sponsor and beneficiary of the knowledge generated in universities.

B. The Limits of the Traditional American Conception of Academic Freedom

The list of threats enumerated above—secrecy of research results, distortion of the viewpoints and claims of academic researchers, and distortion of the academic research agenda—is by no means exhaustive of the ways sponsored research might compromise the integrity of the academic enterprise. I highlight these three issues because they illustrate how sponsored research gives individual faculty members incentives to cooperate with sponsors in undermining the very values that academic freedom is supposed to protect. Unfortunately, the traditional American conception of academic freedom is of minimal value in seeking to preserve academic values against violators other than universities.

Recent reports on academic freedom in sponsored research prepared by subcommittees of the AAUP's Committee A on Academic Freedom and Tenure show the limits of this traditional conception. Consider first the 1983 report on Corporate Funding of Academic Research. This report analyzes the academic freedom implications of corporation-funded research on university campuses. The report recognizes a potential for


49. Other possibilities that have been noted elsewhere include the creation of conflicts of commitment, conflicts of interest, and opportunities and incentives for faculty members to abuse their power over academic subordinates, as well as the proliferation of government regulation of research. See infra notes 52-61 and accompanying text.

50. AAUP, Corporate Funding, supra note 39, at 18a.

51. The report describes a variety of university-industry research relationships, including the following: faculty consulting off campus; industrial associates programs in which industrial representatives receive publications and attend on-campus briefings, seminars, and conferences; research

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both universities and faculty members to be co-opted in favor of the interests of corporate research sponsors. But the subcommittee identifies the problem as a violation of academic freedom only when the university acts to thwart the will of a faculty member. For example, the subcommittee sees a “very serious” threat to academic freedom in the potential for interference with the dissemination of corporate-sponsored research results, but only if the university itself permits the sponsor to block or censor publication:

We know of no instances in which universities have agreed to more than short-term delays in publication, on the one hand to allow time for the filing of patents, on the other hand to allow the funding source to check the projected publication for the presence in it of proprietary information, owned by the corporation but furnished by it to the university’s scientists in order to assist them in carrying out the research project. . . . [I]f a university agrees to more than this—if it grants a corporation the right to veto, or even to censor, the publication of the results of research it has funded—then the threat to academic freedom would be very serious indeed.

In other words, although the sponsor rather than the university wants the restriction, the restriction is not a violation of academic freedom unless the university stands behind it.

An unspoken assumption in this conception is that all faculty mem-

consortia in which one or more universities arrange with several companies to do research in an area of interest to the companies; larger research centers that may involve participation of industry scientists; research partnerships involving joint planning and joint implementation of the research program by the university and the company; and the formation of for-profit corporations by universities. See id. at 19a. For some reason, the list does not include ordinary project grants by corporations to fund the research of university scientists.

52. See id. at 20a. The analysis of the potential for corporate interests to co-opt faculty members resembles the 1964 Statement on Preventing Conflicts in its speculations about the self-interested behavior of faculty members. Industry research might tempt faculty members to divert time away from academic research and teaching toward work for corporations. Or, faculty members’ corporate ties might influence their assessment and treatment of junior colleagues and graduate students, leading them to favor those whose work is commercially valuable, or to channel them into work that is profitable but not educationally valuable. Finally, faculty members might exploit the work and ideas of junior colleagues and graduate students for private profit. See id.

The subcommittee also sees universities as potentially subject to co-option in favor of corporate interests. For example, a sponsor’s interests might tempt the university itself to give preferential treatment to faculty members whose research yields profits to the university or attracts additional corporate funds for research. The university administration may lose credibility if the outside world or even the rest of the faculty believes that commercial considerations are influencing what previously had been purely academic decisions.

The subcommittee does not analyze any of these scenarios as presenting an issue of academic freedom in so many words. Its prescription for dealing with these problems is that universities, acting through their faculties, should adopt written guidelines governing faculty conduct, limiting outside commitments of faculty members, requiring disclosure of ties between faculty members and corporations, and limiting the share of patent royalties accruing to faculty members as individuals. See id. at 22a-23a.

53. Id. at 21a.
bers would be stalwart defenders of academic values if only the university would not sell their rights of publication to the sponsor. But what if some faculty members want the university to go along with a sponsor’s restrictions in order to secure research funding? If the university refuses to sign the contract on the sponsor’s terms, might the faculty members complain that the university is violating their academic freedom? Under a traditional individual-rights conception of academic freedom, the faculty members could argue that the university is interfering with their freedom of inquiry by refusing to accept the research funding. But if freedom from meddling by universities is not an end in itself but merely an expedient means of furthering academic values, then those values might be better served if the university interposed itself as an intermediary to prevent the faculty members from acquiescing in the sponsor’s terms. Indeed, it might be an improper betrayal of academic values for the university to ratify an agreement permitting the sponsor to restrict dissemination of research results, even if that is what the faculty members want the university to do. In this situation, a strict individual-rights conception of academic freedom directly conflicts with the academic values that justify academic freedom. The Committee A report avoids confronting this conflict by limiting its analysis to situations in which only the university wants to go along with sponsor-imposed restrictions in research agreements and the faculty members oppose the restrictions.

In analyzing the possibility that corporate sponsorship of research will influence faculty members’ choices of research topics, the report again sets up the university as the villain in order to define an issue of academic freedom:

Much fear has been expressed that university scientists may be pressured into undertaking work on research problems that do not interest them by a university eager to acquire a profitable patent, or to please or attract a corporate associate. . . . A related fear is that a university may allow its corporate associate to interfere in a faculty member’s choice of research topic.54

The report does not address the possibility that faculty members might channel their research into areas in which corporate funding is available on their own initiative, without any pressure from their universities. Either way, academic values are compromised because corporate sponsors rather than academic professionals are selecting research topics. But in order to identify a threat to academic freedom as traditionally conceived, the report focuses on hypothetical situations in which the university abuses its power over faculty members. In the process, it fails to

54. Id. (emphasis added).
identify the source of the problem as the sponsor—and the co-opted faculty member who is willing to go along with the sponsor's terms—rather than the university.

A similar distortion is evident in the 1981 report of the AAUP's Committee A on Academic Freedom and Tenure and Committee R on Government Relations discussing regulations governing research on human subjects. This report analyzes the academic freedom implications of federal regulations issued by the Department of Health and Human Services (HHS) in 1981. The regulations require approval by an Institutional Review Board (IRB) of all HHS-funded research on living human subjects that does not fall within specified exemptions. In addition, the regulations require any institution receiving HHS funding to provide written assurance that the institution will abide by a statement of principles protecting the human subjects used in all research carried out at the institution, regardless of the source of funding. Without assurances as to all of the institution's research on human subjects, including research conducted without HHS funding, HHS will not finance any research at the institution.

In analyzing the academic freedom implications of this policy, the joint committee considers the impact of this regulation on the academic freedom of two investigators doing human subjects research at the same university: Smith, who seeks HHS funding for his research, and Jones, who does not. The joint committee concludes that HHS would not violate Smith's academic freedom in requiring IRB approval of his research project before funding it, but that the university might violate Jones's academic freedom by subjecting his research project to a similar review.

Although it may seem counterintuitive to view a restriction as violating academic freedom if imposed by an academic institution, but not if imposed by the government as a condition of research funding, this conclusion follows inexorably from the traditional American conception of academic freedom. If academic freedom protects individual faculty members against restrictions imposed by university administrators, then it makes perfect sense to distinguish between a condition imposed unilaterally by the university and a condition that a faculty member voluntarily accepts in order to receive funds from a sponsor. The traditional American conception of academic freedom protects faculty members

56. Id. at 359.
57. Id.
58. Id. at 361.
59. Id.
from restrictions imposed within the university but does not bar them from agreeing to restrictions originating from the outside.

On the other hand, if one views academic freedom as an expedient means of advancing academic values, the cases of Smith and Jones look more alike than different. In both cases the need to formulate a research protocol that satisfies the IRB threatens the values of free inquiry and professionalism. The traditional conception of academic freedom is of little use in fortifying these academic values in Smith's case, however, because a sponsor rather than the university imposes the restraint and because Smith is willing to go along with the sponsor's terms.

A different subcommittee analyzed the academic freedom implications of defense-related restrictions on scientific research in three separate reports published in 1982 and 1983. These reports clearly depart from the traditional conception of academic freedom as protecting individual faculty members against universities. The subcommittee does not dwell on an individual-rights conception of academic freedom and has no difficulty in characterizing the government's actions as a threat to

60. See supra note 40.

61. Unfortunately, none of the reports directly addresses the academic freedom issues arising when faculty members and universities accept government restrictions as part of the terms of sponsored research. The first report, *Federal Restrictions on Research: Academic Freedom and National Security*, analyzes government efforts to restrict open communication of nonclassified research information through the use of export control laws and the power to deny visas to foreign scholars. This report aims to persuade the federal government of the wisdom of academic freedom rather than to define the boundaries of academic freedom or to analyze its implications for universities. It documents a series of incidents in which the federal government restricted participation by foreign scientists in scientific conferences in the United States and the responses to these actions by the academic community. AAUP, National Security, supra note 40, at 19a. For a more recent and complete account of these incidents, see American Civil Liberties Union, Free Trade in Ideas: A Constitutional Imperative (1984).

The second report, *The Enlargement of the Classified Information System*, analyzes the academic freedom implications of the classification system, arguing for drastic revision of Executive Order 12356, issued by President Reagan on April 2, 1982. Exec. Order No. 12356, 3 C.F.R. 586 (1983). Executive Order 12356 departs from the practice of prior administrations by broadening considerably the authority of government agencies to classify information, expanding the categories of information subject to classification, and permitting classification for indefinite time periods. Again, the report is primarily addressed to the federal government rather than to universities. The authors repeat their appeal to the government that its own self-interest calls for respecting academic freedom, warning that "[i]f the government's executive order or its successor continues to deny due recognition to the need of the independent research scholar for academic freedom, the cost will be borne not only by the researchers who are affected but by the nation as a whole." AAUP, Classified Information, supra note 40, at 12a.

The third report, *Government Censorship and Academic Freedom*, focuses on a Presidential Directive on Safeguarding National Security Information dated March 1983. The directive requires each executive agency to adopt internal procedures to ensure that all persons with access to classified information sign prepublication review agreements to safeguard against disclosure of classified information. Again, the report attempts to talk the government out of implementing the directive rather than to define the scope of academic freedom in sponsored research. AAUP, Government Censorship, supra note 40, at 16a.
academic freedom even without the complicity of universities. The reports emphasize social interests and academic values rather than individual rights, justifying academic freedom as a means of serving the broader public interest and arguing that national security is better served by safeguarding academic freedom than by restricting it.

One report even suggests that academic freedom considerations argue against universities accepting classified research:

Universities generally recognize that [contracts with the Department of Defense to perform research having immediate and direct national security implications] may compromise their commitment to academic freedom, and they vary in their policies respecting the wisdom and acceptability of such arrangements. The AAUP has thought it inappropriate to condemn faculties and universities for making such arrangements per se, but it has regularly expressed concern that inconsistency with academic freedom is a genuine danger which all academic institutions should weigh carefully in the research and restrictions they accept.

The assertion that classified research on campus may compromise the commitment of universities to academic freedom necessarily implies a conception of academic freedom that goes beyond protection of the individual rights of faculty members. If academic freedom merely defined individual faculty rights, it would follow that individual faculty members should be free to waive their publication rights in order to participate in classified research. The subcommittee apparently believes that this conception of freedom of inquiry is illusory, reasoning that "in an era of reduced federal support for research except in the area of national security, ... the academic researcher is under enormous pressure to submit to classification no matter how restrictive or apparently arbitrary the

62. The subcommittee labels the government's actions "a threat to academic freedom" and projects that "the trend toward increasing restrictions on research foreshadow[s] not merely a threat to, but a significant infringement of, academic freedom." AAUP, National Security, supra note 40, at 18a.

63. The subcommittee comments:
Academic freedom certainly benefits professors, but its primary purpose is to advance the general welfare. Learning, intellectual development, and progress—material, scientific, and technological—require freedom of thought, expression, and communication within colleges and universities, and the freedom to carry the results of inquiry beyond academic institutions. Academic freedom can scarcely fulfill its role in contributing to the general welfare, including national security, if those professionals engaged in research are prevented from learning the results of investigations carried out by colleagues in this country and abroad.

Id. at 20a.

64. "The path to safety lies in the opportunity to discuss ideas freely. The need is for more academic freedom, not less." Id.

65. AAUP, Classified Information, supra note 40, at 9a-10a; cf. Fox, Classified Research, 54 AAUP BULL. 453 (1968) (noting that several leading American universities recently had reexamined their policies on classified research and reprinting policies adopted by the University of Pennsylvania and Stanford University).
considered together, these recent AAUP reports reveal an increasing dissonance between the need to preserve academic values in the face of threats originating outside universities and the traditional conception of academic freedom, which protects individual faculty members against university administrations. Research sponsors threaten academic values when they seek to control the dissemination of research results, the conduct of research, or the choice of research topics by faculty members, even when faculty members themselves acquiesce in the sponsor’s restrictions. What remains unclear is how universities can respond to these problems without doing violence to the traditional conception of academic freedom.

Some limits on the freedom of potentially co-opted faculty members to accept research funding contingent on compromising academic values are clearly appropriate. If sponsored research subjects faculty members to the same temptations to compromise academic values to which university trustees were subjected in an earlier era, then academic freedom as traditionally conceived will no longer adequately protect the integrity of the academic enterprise. Strict adherence to an individual-rights conception of academic freedom in the face of these changed conditions ignores the traditional policy justification for academic freedom.

Practical considerations may force universities and faculty members to submit to sponsor-imposed restrictions to obtain needed funding. On the other hand, sponsors may ultimately back down from their demands for restrictions if universities stand firm in their commitment to academic values. Either way, it makes little sense to exalt a compromise of academic values in response to financial exigencies as a tribute to academic freedom. A conception of academic freedom that precludes universities from setting limits on sponsor-imposed restrictions can only weaken the position of universities and faculty members in defending academic values against competing outside interests.

V. Academic Freedom and Academic Values in University Research Policies

Many universities have set limits on the permissible terms of sponsored research in formal research policy statements. I have examined the policies governing classified and proprietary research at thirty-nine universities as of 1985. Although the provisions of these policies vary considerably and reveal disagreement among universities as to the propriety

66. AAUP, Classified Information, supra note 40, at 11a.
of accepting sponsor-imposed restrictions on research, they illustrate a variety of mechanisms other than faculty autonomy for preserving academic values in sponsored research.

A. The Policies Studied

The policies studied are those gathered by the University of Michigan in reviewing its own policy on classified research. The universities were asked to send copies of any written policies covering either classified or proprietary research. Some universities responded with unitary policies applicable to both categories of research, and some responded

[67. For a list of universities whose policies are included, see supra note 2.

with one or more policies applicable to one or the other category. Those policies focusing on classified research were generally adopted in the late 1960s to early 1970s; those policies focusing on proprietary research”); 4 University of Wash., University Handboook 5 (1977) [hereinafter Washington Handbook] (pertaining to “classified and proprietary research”); Letter from Irving Shain to Judith A. Nowack (Dec. 5, 1985) [hereinafter Wisconsin Letter] (quoting University of Wisconsin-Madison’s Guidelines on Policies and Procedures—Soliciting and Administering Extramural Support, which pertains to “restriction of publication and proprietary information”); Yale Univ., Faculty Handbook 100 [hereinafter Yale Handbook] (pertaining to “secret or classified research projects”).


Two universities, California Institute of Technology and University of Oregon, indicated that although their written policies on their face addressed only classified research, as a matter of practice the same rules applied to proprietary research as well. Enclosure to letter from Allan J. Lindstrom to Judith A. Nowack (Dec. 6, 1985) [hereinafter Cal Tech Enclosure] (enclosing part of Cal Tech Faculty Handbook); Letter from Allan J. Lindstrom to Judith A. Nowack (Dec. 6, 1985) [handwritten note on the face of another letter from Judith A. Nowack to Allan J. Lindstrom (Nov. 18, 1985)] (answering request for policies of California Institute of Technology); Letter from John Moseley to Judith A. Nowack (Dec. 10, 1985) [hereinafter Oregon Letter] (answering request for the policies of University of Oregon); University of Or., Policy Statement on Classified Research (May 10, 1967) [hereinafter Oregon Policy]. On the other hand, Brown University indicated that while its policy was nominally applicable to all research, its primary concern was not to accept classified research from the government. Letter from Thomas K. Wunderlich to Judith A. Nowack (Dec. 11, 1985) [hereinafter Brown Letter] (answering request for policies of Brown University).

70. E.g., Columbia Statutes, supra note 68, §§ 400-401 (classified research policy adopted in 1971); Cornell Manual, supra note 69, at 6-1 (faculty resolution on classified research passed in 1967); George Washington Enclosure, supra note 68 (policy for sponsored research adopted in 1969); Harvard Report, supra note 68, at iii (principles regarding sponsored research adopted in 1970); Illinois Policy, supra note 69 (classified research policy adopted in 1968); Indiana Manual, supra note 68, at 22 (policy on secret and classified research adopted in 1971 and modified in 1985); Johns Hopkins Policy, supra note 69, at 2 (classified research policy adopted in 1968); Michigan
Research were generally adopted or modified in the early to mid-1980s.\footnote{71} Several universities were either reviewing their existing policies or indicated that they might revise their policies in the near future.\footnote{72}

The thirty-nine universities whose policies I studied vary in the extent of research funding they receive from the Department of Defense and industry. The group includes seventeen of the top twenty-five university recipients of research funding from the Department of Defense during fiscal year 1984\footnote{73} and eighteen of the top twenty-five recipients of research funding from industry during calendar year 1984.\footnote{74} Ten of the

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\footnote{71} E.g., Case Western Guidelines, supra note 69, at 2-3 (proprietary research policy adopted in 1983); Harvard Proprietary Guidelines, supra note 69 (proprietary research policy adopted in 1983); Indiana Univ., Report of University-Industry Relations Comm. 2-5 (Jan. 25, 1984) (recommending changes to the Indiana Research Manual on proprietary research); Maryland Policy, supra note 68, at 1 (proprietary research policy adopted in 1985); Pennsylvania Enclosure, supra note 68 (proprietary research policy adopted in 1981).

\footnote{72} See, e.g., Chicago Letter, supra note 68 (University of Chicago revising its policy on classified and proprietary research); Colorado Letter, supra note 68 (University of Colorado reexamining policy on classified research); Letter from Alexandra Van Gelder to Judith A. Nowack (Dec. 5, 1985) [hereinafter Connecticut Letter] (University of Connecticut may be revising its classified and proprietary research policies in the near future); Letter from Murray W. Hill to Alan R. Price (Apr. 19, 1984) (University of Iowa considering changes to its research policies); Oregon Letter, supra note 69 (University of Oregon's research policies "due for a re-evaluation"); Letter from Thomas L. Sweeney to Judith A. Nowack (Dec. 5, 1985) (Ohio State University revising its guidelines on sponsored research). The University of Michigan replaced its policy on classified research with a new policy on sponsored research in 1987. In the interest of consistency I have analyzed only the policies in effect as of 1985 for each university.

\footnote{73} These 17 universities and their rankings among recipients of Department of Defense funding in fiscal year 1984 are Johns Hopkins University (1), Massachusetts Institute of Technology (2), University of California (3), Stanford University (5), University of Southern California (6), Pennsylvania State University (9), University of Washington (10), University of Illinois (13), University of Maryland (16), Columbia University (17), Cornell University (19), California Institute of Technology (20), University of Wisconsin-Madison (21), University of Pennsylvania (22), Rutgers University (23), Yale University (24), and University of Michigan (25).

Other universities in the top 25 recipients of Department of Defense funding, for which policies are not included, are University of Texas (4), Georgia Institute of Technology (7), University of New Mexico (8), University of Dayton (11), New Mexico State University (12), Carnegie-Mellon University (14), Utah State University (15), and Oregon State University (18). See Top Non-Profit Defense Contractors, Chronicle of Higher Educ., July 10, 1985, at 16, col. 3 [hereinafter Top Defense Contractors].

\footnote{74} These 18 universities and their rankings among recipients of research funding from industry in 1984 are Massachusetts Institute of Technology (1), Cornell University (3), Pennsylvania State University (4), Stanford University (7), University of Minnesota (9), University of Arizona (10), University of Maryland (11), University of Michigan (12), University of Washington (14), Colorado State University (15), Ohio State University (16), Virginia Polytechnic Institute (17), Miami Univer-
universities studied fall into both of these categories and fourteen fall into neither.

B. Selecting a Decision Maker

A preliminary issue to consider in regulating the terms of sponsored research is who should formulate institutional policy. Of the policies studied, only eleven indicated on their face whether they had been adopted by faculties or by governing boards of universities. Of these, seven were adopted by faculties,\textsuperscript{75} and four were adopted by trustees or regents.\textsuperscript{76} It is possible, of course, that some of the policies adopted by governing boards were actually formulated by faculties and then promulgated as university policy by the trustees or regents.

The AAUP favors assigning the task of formulating research policy to faculties rather than to university administrators or lay governing boards.\textsuperscript{77} This approach may be a sensible way of steering around both co-opted faculty members and co-opted university administrations. The traditional conception of academic freedom holds that university administrations are likely to be co-opted by the interests of the universities' benefactors and therefore may not be trusted to protect academic values.\textsuperscript{78} Thus, if university trustees or regents formulate research policy, one might expect them to write the policies in a manner that compromises academic values in favor of the interests of the universities' research sponsors. Financial dependence on industry may also strain the commitment to academic values of the individual faculty members who do corporate-sponsored research. Financial considerations may be less likely to dominate the concerns of the faculty acting collectively to for-
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inulate research policy. The value of academic professionalism provides further support for assigning the formulation of research policy to the faculty rather than to lay administrators or trustees.79

C. Institutional Policy and Faculty Autonomy

Whether faculty members or trustees formulate research policy, they need to decide on appropriate limits to individual faculty autonomy in the name of academic freedom. No clear consensus on the proper role of faculty autonomy in sponsored research emerges from a review of the policies. Indeed, academic freedom appears to be a nose of wax, equally serviceable to justify diametrically opposed conclusions on this issue.

Most of the policies that do not limit acceptance of secret research invoke the traditional American conception of academic freedom to justify their positions, reasoning that faculty members who want to participate in secret research should be free to do so. For example, the University of Florida’s policy recites that “[u]niversity researchers should be as free as possible to seek new knowledge without constraints to share their findings with other scholars.”80 For these universities, concern for academic freedom argues against restrictions on the acceptance of funding for secret research. A university that insists on openness in sponsored research violates the freedom of inquiry of faculty members who want to participate in classified or proprietary research.

Those universities that limit the acceptance of secret research also invoke academic freedom to justify their positions, but they analyze the matter quite differently. Rather than seeing the academic value of open dissemination as conflicting with the academic freedom of individual faculty members, they see the sponsors’ interest in secrecy as conflicting with the academic community’s interest in openness. In this conception, it is the sponsor rather than the university that threatens academic free-

79. See 1915 Declaration, supra note 3, at 169-70.
80. Florida Policy, supra note 69; see also Arizona Policy, supra note 68 (noting that “the values of openness of research and academic freedom sometimes come into conflict”); Colorado State Manual, supra note 68, § D.8.15.2 (stating that “when circumstances so warrant, faculty, staff, and students have the prerogative to engage in classified research”); Illinois Policy, supra note 69, at 7 (noting that it is necessary to consider “[t]he research interests of individual faculty members” in formulating a policy on classified research); Iowa Policy, supra note 68, at 19, § 70.042(b) (“Where the advancement of science and the proper protection of the right of research investigators make limited classification of research unavoidable, [classified research] may be permitted . . . .”); Michigan Policy, supra note 69, at 529 (“If [the University] elects not to participate [in classified research], the full freedom of scholars to select areas of investigation of their own choice is potentially denied to some.”); Virginia Tech Policy, supra note 69, § 3.13 (“The University does not encourage the conduct of classified research projects on campus, because of the potential for conflict with a free and open University. However, it is recognized that some faculty need to be involved in research projects with classified aspects.”).
dom. Consequently, by resisting outside control over the dissemination of research results, the university is protecting rather than infringing the academic freedom of the faculty. For example, the policy of the University of Colorado recites:

[A]cademic freedom requires that members of the faculty must have complete freedom to study, to learn, to do research, and to communicate the results of these pursuits to others . . . . [T]heir efforts should not be subjected to direct or indirect pressures or interference from within the University, and the University will resist to the utmost such pressures or interference when exerted from without.81

These universities also emphasize the individual rights of faculty members, but they depart from the traditional conception of academic freedom at least to the extent of identifying the outside sponsor rather than the university as the villain. By assuming that universities and faculty members have a shared interest in open dissemination of research results, these universities avoid confronting the potential conflict between an individual-rights conception of academic freedom and academic values favoring open dissemination of research results.

A conception of academic freedom that focuses on protecting individual faculty members against universities arguably demands that universities permit individual faculty members to decide for themselves whether to waive their freedom of publication in order to procure research funding. On the other hand, a conception of academic freedom as

81. Colorado Letter, supra note 68 (quoting from University of Colo., Laws of the Regents art. X); see also Colorado State Manual, supra note 68, § D.8.15.1 (“The University shall serve as a haven of free inquiry and scholarly investigation unaffected so far as possible by the impediments of industrial classification and governmental security regulations . . . .”); George Washington Enclosure, supra note 68 (“[T]he university should participate in no research project which . . . would prevent the investigator from making the results of his/her investigations known to an appropriate professional audience.”); Maryland Policy, supra note 68, at 2 (“The University will enter into no agreement that bars investigator(s) from publishing or otherwise disclosing the findings publicly.”); Michigan State Policy, supra note 68, app. C at 64 (“The University shall retain for its scholars the right of first publication.”); Pennsylvania Enclosure, supra note 68 (“[T]he University must reserve the right to accept only that support which does not in any way compromise the freedom of inquiry of its faculty . . . .”); USC Handbook, supra note 68, app. 7 at 118 (“The University policy . . . is not to accept or to renew extramural contracts . . . which restrict the rights of the faculty to free conduct of inquiry or to free scholarly dissemination of results within a reasonable time.”); Wisconsin Letter, supra note 68 (“It is the policy of the [University] not to accept extramural grants . . . which restrict the right of a University employee to publish, release, or otherwise share findings derived from the supported activities.”) (quoting Guidelines on Policies and Procedures—Soliciting and Administering Extramural Support)).

Pennsylvania State University, which does accept secret research, includes a similar recital in its policy. See Penn State Enclosure, supra note 69 (“The University reserves the sole and exclusive right to publish freely new scientific findings and to preserve this right when prospective sponsors threaten it.”). Penn State’s policy also calls for the consent of the faculty member before the University will agree to restrict publication, id., as does the policy of the University of Maryland, see Maryland Policy, supra note 68, at 2.

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a means of furthering academic values rather than as a zone of protection for individual rights arguably compels universities to intervene when sponsors seek to restrict publication. University policies against accepting classified or other secret research may limit the opportunities for inquiry available to some faculty members, but they may also promote the dissemination of research results and thereby fortify the critical objectivity of faculty members and the professionalism of academic research. These important academic values are jeopardized when sponsors with an institutional interest in secrecy control the terms of university research. Individual faculty members may lack the will or the bargaining power to resist the sponsors’ terms, leaving universities as the sole champions of academic values. Incidental restrictions on research opportunities may be justified as a by-product of policies aimed at furthering the shared interests of the university and faculty in protecting academic values.

Many of the universities that set limits on the acceptance of sponsor-imposed restrictions purport to do so to protect the interests of individual faculty members. Yet there is an inherent contradiction in using university policy to protect the faculty from research sponsors: whatever autonomy the faculty thereby gain vis-à-vis sponsors they lose vis-à-vis the university. This may be a worthwhile trade-off for faculty members, assuming that universities are more likely than outside sponsors to share the values and interests of the faculty. Nonetheless, the adoption of a university-wide policy forbidding secret research denies some faculty members the opportunity to make certain choices for themselves.

Perhaps recognizing that university control invariably compromises faculty autonomy in certain respects, a number of the policies expressly limit the reach of their provisions and point out unregulated areas in which faculty members may carry out otherwise prohibited activities. Some policies, for example, state that they apply only to sponsored research on campus and not to outside consulting. In addition, some

82. See, e.g., Harvard Report, supra note 68, at 3; Indiana Policy, supra note 68, at 22; Iowa Policy, supra note 68, at 25; Johns Hopkins Policy, supra note 69, at 1; Maryland Policy, supra note 68, at 3; Minnesota Statement, supra note 68, at 2; Oregon Policy, supra note 69; USC Handbook, supra note 68, app. 7 at 119; 4 Washington Handbook, supra note 68, at 5.

Off-campus consulting activities of faculty are often governed by separate policies on conflict of interest, which are generally more permissive of secrecy than policies pertaining to on-campus research. Although some of the universities studied included conflict-of-interest policies in their responses, see, e.g., Harvard Report, supra note 68, app. (Statement of Policy on Conflicts of Interest), the University of Michigan did not specifically inquire about such policies. It seems likely that other universities have similar policies that are not set forth in their sponsored-research policies.

Some devotees of faculty autonomy might argue that university-imposed limits on consulting activities violate a faculty member’s freedom of inquiry. On the other hand, the 1940 Statement states that a teacher’s entitlement to freedom in research is “subject to the adequate performance of
universities that do not permit classified research projects on campus nonetheless allow faculty members to obtain security clearances in their individual capacities or to gain access to classified materials or facilities.83

The universities differ in their attitudes toward separate individual agreements between sponsors and faculty members concerning research conducted on campus. Some universities state that faculty members may agree in their personal capacities to restrictions beyond those that the policy permits the university to accept in its institutional capacity,84 but others state that faculty members should not enter into such agreements.85

As a practical matter, few sponsors are likely to be satisfied with restrictive agreements that bind only the individual faculty member and not the university. But when individual agreements will satisfy the sponsor, such agreements could effectively undermine the university's ability to protect academic values through its research policy. Sponsors could use individual agreements with researchers to circumvent university limits on the acceptance of restricted research.

Permitting individual faculty members to enter into their own separate agreements concerning university-based research might make sense under a narrow individual-rights conception of academic freedom. If the university itself signs an agreement giving a sponsor the right to block publication of research results, it becomes a party to the restriction, thereby violating the faculty member's academic freedom as traditionally

his other academic duties." See 1940 Statement, supra note 20, at 35-36. This qualification arguably allows universities to limit the time faculty members spend working outside the university to ensure that they have enough time to discharge their on-campus academic responsibilities.

83. See, e.g., Memorandum from Thomas K. Wunderlich (July 25, 1985) (discussing Brown University's policy on Strategic Defense Initiative research); California Letter, supra note 69; Pennsylvania Enclosure, supra note 68; USC Handbook, supra note 68, app. 7 at 119; Stanford Handbook, supra note 68; 4 Washington Handbook, supra note 68, at 5.

84. See, e.g., Harvard Report, supra note 68, at 8 (noting that individual scholar may agree in personal capacity to accept conditions from collaborators which the university could not accept in its institutional capacity); Johns Hopkins Policy, supra note 69, at 1 ("When access to classified information is important to the research of individual scholars within the University, it should be achieved, whenever possible, through arrangements between the agency holding the information and the individual scholar, rather than the agency and the University."); Penn State Enclosure, supra note 69 ("The University seldom seeks to limit information releases; however, faculty may elect to do this in regard to their own research work.").

85. See, e.g., Case Western Guidelines, supra note 69, at 2 (stating that university seeks to avoid “[r]equirements that graduate students or employees enter into separate individual agreements with outside sponsors to maintain confidentiality"); NYU Proprietary Guidelines, supra note 69, at 2 ("Faculty are not authorized to sign off on agreements for University-based research . . . ."); Virginia Tech Policy, supra note 69, app. I § 19.1.1.2 ("[F]aculty members are asked not to negotiate general terms of arrangements with industrial sponsors, but to refer such negotiations to the Office of Sponsored Programs.").
conceived. But if the faculty member voluntarily assumes the restriction without the complicity of the university, no such violation occurs.

On the other hand, permitting such individual agreements limits the university's ability to protect academic values, especially when the individual faculty members signing the agreements stand to be co-opted by competing outside interests. In addition to facilitating sponsor-imposed restrictions on the dissemination of research results, individual agreements create the risk that the critical objectivity of faculty members will be compromised by influences and controls that are not known to the university community and the larger public. Suppose, for example, that a faculty member enters into an individual agreement with a research sponsor to submit manuscripts to the sponsor for prepublication approval and to allow the sponsor to censor research results that in the sponsor's view are unfavorable to its business or political interests. The sponsor-approved text could seriously mislead members of the public if they believed that the published article reflected only the dispassionate views of an academic researcher, when in fact it had been prescreened and approved by a sponsor with a direct financial or political stake in the research results. Here again, the protection of academic values is at odds with a strict individual-rights conception of academic freedom:

D. Policy Provisions Concerning Secrecy of Research Results

1. Provisions Prohibiting Secret Research.—The most striking similarity among the universities studied is that all but six have some policy against accepting sponsor-imposed restrictions on publication of research results beyond short-term delays. Nineteen of the universities categorically prohibit either classified research in particular or nonpublishable research in general. The remaining fourteen universities prohibit such research as a general rule, but provide for exceptions in situations of na-

86. See supra Part II.
87. The six universities that do not prohibit such restrictions are University of Arizona, Arizona Policy, supra note 68; University of Florida, Florida Policy, supra note 69; University of Illinois, Illinois Policy, supra note 69, at 16; Ohio State University, Ohio State Guidelines, supra note 68, at 2-3; Pennsylvania State University, Penn State Enclosure, supra note 69; and Virginia Polytechnic Institute, Virginia Tech Policy, supra note 69, § 3.13, app. I § 19.1.1.2.
88. Sixteen universities have general policies against the acceptance of nonpublishable research. See Brown Handbook, supra note 68, § 9, at 9.3; Case Western Guidelines, supra note 69, at 1-2; Chicago Letter, supra note 68; Columbia Statutes, supra note 68, at § 400; Connecticut Enclosure, supra note 68; Harvard Report, supra note 68, at 7; Indiana Manual, supra note 68, at 22; Iowa Policy, supra note 68, at 19, § 70.042(a); Maryland Policy, supra note 68, at 2; Miami Policy, supra note 69, § 4.51; NYU Guidelines, supra note 68; Northwestern Form, supra note 68; Rutgers Handbook, supra note 68, at 80; Stanford Handbook, supra note 68; Utah Form, supra note 69; Yale Handbook, supra note 68, at 100.

Four of the sixteen universities, Harvard, NYU, Northwestern, and Yale, specifically note that their general policies necessarily mean that classified research is unacceptable. Harvard Report,
tional emergency or other extraordinary circumstances.89

Among the six universities that accept more than short-term delays in publication of research, other than on an exceptional basis, only two ranked among the top twenty-five recipients of Department of Defense funding.90 Among the other fifteen top recipients of Department of Defense funding, six categorically prohibit either classified research in particular or unpublishable research in general,91 and nine prohibit such research except in extraordinary circumstances.92

 supra note 68, at 7; NYU Guidelines, supra note 668, at 1; Northwestern Form, supra note 68, at 1; Yale Handbook, supra note 68, at 100.

Three universities have policies expressly prohibiting classified research. Enclosure to Colorado Letter, supra note 68 (University of Colorado policy on classified research); Cornell Manual, supra note 69, at 6-1; Oregon Policy, supra note 69.

89. See California Letter, supra note 69 (noting that University of California policy allows exceptions if "the national interest is directly involved and the services of the campus are unique and essential"); Cal Tech Enclosure, supra note 69 (allowing exception in case of "urgent government request in times of national emergency or critical need"); Colorado State Manual, supra note 68, § D.8.15.3 (containing an exception for "national crisis"); George Washington Enclosure, supra note 68 (containing an exception to meet "urgent needs of the nation" or "urgent problems of local, national, or international community"); Johns Hopkins Policy, supra note 69, at 1 (allowing an exception if "clearly in the national interest" and faculty members or divisions are "peculiarly qualified to perform the task"); MIT Policy, supra note 68, § 4.12 (allowing exceptions "only in those very rare instances where the area of work is crucially important to MIT's educational mission and the exception is demonstrably necessary for the national good"); Michigan Policy, supra note 69, at 529 (allowing an exception when "proposed research is likely to contribute so significantly to the advancement of knowledge as to justify infringement of the freedom to publish openly"); Michigan State Policy, supra note 68, app. C at 64 (recognizing that an exception may be required by "[e]xigencies of national defense"); Minnesota Statement, supra note 68, at 1 (containing an exception "for reasons found compelling by the University community" in review process); Pennsylvania Enclosure, supra note 68 (allowing an exception "only on rare occasions marked by special circumstances, such as the exceptional public need of a national, regional or local emergency"); Princeton Enclosure, supra note 69 (allowing an exception "only under extraordinary conditions" as determined by a special review procedure); USC Handbook, supra note 68, app. 7 at 119 (allowing an exception "in rare instances involving national security, exceptional national need, or other special circumstances"); 4 Washington Handbook, supra note 68, at 6 (allowing an exception when "the merits of the proposed research and the potential benefits to be realized clearly outweigh the disadvantages of the restrictions," taking into account "unique University capabilities," "substantial scholarly, scientific or educational benefits," and "substantial public service"); Wisconsin Letter, supra note 68 (noting that although university policy provides for exceptions under unspecified circumstances, no exceptions have been approved in twenty years).

Provisions for exceptions beyond short-term delays generally pertain to classified research rather than proprietary research. See infra notes 99-102 and accompanying text.

90. These two universities are University of Illinois (ranking 13th with $10,922,000 of Department of Defense funding) and Pennsylvania State University (ranking ninth with $18,913,000 of Department of Defense funding). See Top Defense Contractors, supra note 73, at 16, col. 3; supra note 87. For a complete ranking of recipients of Department of Defense funding, see supra note 73.

91. These six universities are Columbia University (ranking 17th with $6,447,000 of Department of Defense funding), Cornell University (ranking 19th with $5,900,000 of Department of Defense funding), University of Maryland (ranking 16th with $7,016,000 of Department of Defense funding), Rutgers University (ranking 23d with $5,053,000 of Department of Defense funding), Stanford University (ranking fifth with $30,359,000 of Department of Defense funding), and Yale University (ranking 24th with $4,950,000 of Department of Defense funding). See Top Defense Contractors, supra note 73, at 16, col. 3; supra note 88.

92. These nine universities are University of California (ranking third with $44,631,000 of De-
Each of the six universities that do not prohibit the acceptance of restrictions on publication ranks among the top twenty-five recipients of research funding from industry. Among the other twelve top recipients of industry funding, only four have categorical prohibitions on long-term secrecy without exceptions. Two of the universities studied actually permit increasing degrees of secrecy for sponsors that are willing to pay more money.

A superficial reading of this evidence might suggest that universities are more likely to be co-opted by dollars from industry than by dollars from the Department of Defense. Upon closer inspection, however, the evidence is harder to interpret. Some of the top recipients of Department of Defense funding, California Institute of Technology (ranking 20th with $5,709,000 of Department of Defense funding), Johns Hopkins University (ranking first with $272,814,000 of Department of Defense funding), Massachusetts Institute of Technology (ranking second with $260,882,000 of Department of Defense funding), University of Michigan (ranking 25th with $4,859,000 of Department of Defense funding), University of Pennsylvania (ranking 22d with $5,163,000 of Department of Defense funding), University of Southern California (ranking sixth with $26,140,000 of Department of Defense funding), University of Washington (ranking 10th with $18,114,000 of Department of Defense funding), and University of Wisconsin-Madison (ranking 21st with $5,594,000 of Department of Defense funding). See Top Defense Contractors, supra note 73, at 16, col. 3; supra note 88.

93. These six universities are University of Arizona (ranking 10th with $7,837,000 of industry funding), University of Florida (ranking 21st with $5,000,000 of industry funding), University of Illinois (ranking 22d with $4,922,000 of industry funding), Ohio State University (ranking 16th with $6,559,000 of industry funding), Pennsylvania State University (ranking fourth with $12,995,000 of industry funding), and Virginia Polytechnic Institute (ranking 17th with $5,806,000 of industry funding). See Friedman & Friedman, supra note 74, at 37; supra note 87.

94. These four universities are Harvard University (ranking 23d with $4,883,000 in industry funding), University of Maryland (ranking 11th with $7,691,000 in industry funding), Miami University (ranking 19th with $5,600,000 in industry funding), and Stanford University (ranking seventh with $9,043,000 in industry funding). See Friedman & Friedman, supra note 74, at 37; supra note 88. Cornell University (ranking third with $13,229,000 in industry funding) has a categorical prohibition that is limited to classified research. See Friedman & Friedman, supra note 74, at 37; supra note 88. The other seven top recipients of industry funding—Colorado State University (15), Massachusetts Institute of Technology (1), University of Michigan (12), University of Minnesota (9), University of Southern California (24), University of Washington (17), and University of Wisconsin-Madison (20)—have policies generally prohibiting secret research, but allowing for exceptions. See supra notes 74, 89.

95. Pennsylvania State's policy permits sponsors paying "premium overhead" to see advance copies of publications, to hold up disclosure for up to six months to file a patent application, and to block publication of information owned by the sponsor. Penn State Enclosure, supra note 69. The University will only enter into a contract that grants these rights with the consent of the principal investigator and co-workers. Id. Virginia Polytechnic Institute has a more complicated scheme providing different rights under four different types of research sponsorship arrangements: under research grants, no restrictions on publication are permissible, Virginia Tech Policy, supra note 69, app. I § 19.1.1.3; under cooperative research contracts, delays in publication of up to one year are permissible, id. § 19.1.1.4; under full-cost recovery contracts, delays of up to two years are permissible, id. § 19.1.1.5; and under technical service contracts, results will be reported to the sponsor only, id. § 19.1.1.6. As the interference with publication increases, so does the share of the research costs borne by the sponsor. Id. §§ 19.1.1.2-.1.1.6. Sponsors may arrange technical service contracts only "[w]hen the University can provide a unique technical service not available to Virginia industry through normal commercial channels," and may not use such a contract in the same area in which a faculty member has a consulting agreement with the sponsor. Id. § 19.1.1.6.
of Defense funding are affiliated with off-campus laboratories in which classified research proceeds without restriction.\footnote{Universities that administer off-campus laboratories performing research for the Department of Defense include MIT (Lincoln Laboratory) and the University of California (Lawrence Berkeley Laboratory, Lawrence Livermore Laboratory, and Los Alamos Scientific Laboratory). See Baer, The Changing Relationships: Universities and Other R&D Performers, in 2 B. Smith & J. Karlesky, supra note 43, at 5, 54-55.} It may be relatively costless for these universities to take a tough stand against classified research on campus, while permitting their faculties to work on classified projects in nearby facilities. These arrangements undoubtedly ease the pressure from faculty members for permission to engage in classified research on campus, and in some cases the university may even benefit financially from funding for research in the off-campus institute.\footnote{For example, MIT, which has a reasonably strict policy against accepting classified research on campus, accepts classified research at Lincoln Laboratory, an off-campus facility run by MIT, and collects overhead on research done at Lincoln Laboratory. See generally id. (discussing the shifting of classified research from universities to off-campus sites).}

Moreover, direct comparisons between policies governing classified and proprietary research are somewhat misleading because of a basic difference in the negotiating contexts for the two types of research. The secrecy provisions for classified research are set forth in relatively inflexible government regulations, and may not be varied appreciably from one research contract to the next.\footnote{See generally DEPARTMENT OF DEFENSE, INDUSTRIAL SECURITY MANUAL (1984) (establishing "the requirements for safeguarding all classified information to which contractors and their subcontractors, vendors, or suppliers have access or possession").} Industrial sponsors are more likely than the Department of Defense to negotiate the secrecy provisions of contracts on a case-by-case basis at the time a contract is signed. Because of this basic difference, a university may fine-tune its research policy in advance to accommodate limited proprietary restrictions, but it would have little reason to try to fine-tune its research policy in advance to accommodate limited research classification. If the university's policy sets any limits at all on the acceptance of secret research, it will probably be necessary to make an exception to the policy to accommodate the relatively inflexible secrecy requirements of classified research.

The policy provisions generally reflect this difference between classified research and proprietary research. For the most part, the policies set forth limits on acceptable proprietary delays in publication with a precision and definiteness suggesting that the limitations are routine and formulaic. Typical provisions for proprietary delays permit sponsors to review manuscripts before they are published or submitted for publication to ensure that the manuscripts do not disclose proprietary information of the sponsor and to delay publication for periods ranging from
ninety days to one year to file a patent application. Some of the universities without written policies applicable to proprietary research nonetheless indicate that their practice or unwritten policy conforms to this pattern.

By contrast, provisions for the acceptance of classified research generally take the form of allowing for future ad hoc exceptions to the policy. The policies tend to define these exceptions in general terms that call

99. See, e.g., Case Western Guidelines, supra note 69, at 1-2 (allowing 90-day to 12-month delays in publication to identify patent opportunities or prevent inadvertent disclosure of proprietary information); Connecticut Enclosure, supra note 68 (allowing reasonable delays in publication, not to exceed 60 days from project’s completion, for protection of proprietary rights); Harvard Proprietary Guidelines, supra note 69 (allowing prepublication review for potential patents, but ordinarily not allowing agreements to withhold publication or delay it significantly or to permit sponsors to modify materials submitted for publication); Indiana Manual, supra note 68, at 22-23 (allowing publication delays of up to one year for patent purposes and prepublication review for no more than 90 days to protect sponsor confidential information); Maryland Policy, supra note 68, at 2 (allowing publication delay of 90 to 180 days with concurrence of investigator); Miami Policy, supra note 69, § 4.51 (allowing short delay in publication if results include proprietary information); Michigan State Univ., Handbook for Research and Other Scholarly Projects § 4.3 (Sept. 1985) (allowing brief delays in order to file for patents); Penn State Enclosure, supra note 69 (allowing prepublication review, delay of up to six months in disclosure of patentable invention, and agreement not to publish information owned by sponsor when sponsor pays “premium overhead”); Princeton Proprietary Policy, supra note 69, at 2 (allowing limited publication delays and prepublication review to protect patent rights, to identify inadvertent disclosure of sponsor proprietary information, and to inform the sponsor of contents of publication); Rutgers Handbook, supra note 68, at 80 (allowing prepublication review for up to one year to investigate patent or commercialization possibilities); USC Hand- book, supra note 68, app. 7 at 118-19 (allowing prepublication review and publication delays of no more than three months to one year if project involves use of privileged data from sponsor, is part of larger program, or involves possible patentable invention); Stanford Handbook, supra note 68 (allowing prepublication review and delay for up to 90 days for sponsor to screen for disclosure of confidential information or apply for patent); Utah Form, supra note 69 (allowing prepublication review and publication delay for up to six months following completion of the project); Virginia Tech Policy, supra note 69, app. I §§ 19.1.1.2-.1.1.5 (allowing publication delays of up to one year or longer, depending on type of agreement).

100. See, e.g., Brown Letter, supra note 69 (stating that Brown University allows short delays in publication for patent purposes and prepublication review to screen for inadvertent disclosure of proprietary information of sponsor and disclosure of patentable inventions); Chicago Letter, supra note 68 (stating that University of Chicago allows 90-day delay in publication for a sponsor to request a deletion of proprietary or confidential information or to file a patent application); Testimony of Professor J.T. Wilson before the University of Michigan Research Policies Committee (Nov. 21, 1967) (stating that Cornell University allows prepublication review period of up to 90 days, provided sponsor has no right of censorship or right to stop publication); Letter from Carl J. Lange to Judith A. Nowack (Dec. 2, 1985) (indicating that George Washington University will agree to delay submission for publication when question of proprietary information may be concerned); Comments on the Application of MIT Policy Section 4.12 Furnished to the University of Michigan by Professor Kenneth Smith, Vice Provost for Research (indicating that MIT would allow 30-day delay for prepublication review for disclosure of either patentable inventions or sponsor proprietary information, plus additional 60-day delay if a patent application is to be filed); Letter from David Mintzer to Judith A. Nowack (Nov. 26, 1985) (stating that Northwestern University allows publication delay to permit sponsor review for comment on disclosure of patentable inventions or confidential information supplied by sponsor); NYU Proprietary Guidelines, supra note 69, at 1 (allowing publication delays of up to 90 days to identify patent opportunities or to check for disclosure of proprietary information); Oregon Letter, supra note 69 (stating that University of Oregon allows negotiated publication delays for proprietary research).
for the exercise of judgment and discretion at a later date. Many of the policies limit exceptions to crisis situations or other extraordinary circumstances.\textsuperscript{101} They typically call for approval by high-level administrative officers, university faculty committees, or both.\textsuperscript{102} Without more information on how this discretion is exercised, it is difficult to assess the degree to which universities might compromise academic values to receive Department of Defense funding.

2. \textit{Policy Measures Other Than Prohibiting the Acceptance of Secret Research}.—Even those universities whose policies sometimes permit them to accept funds for secret research tend to discourage secret research in other ways. Many of the policies provide that secret research cannot form the basis for awarding academic credit, making appointments, or granting promotions.\textsuperscript{103} Withholding academic rewards from

\textsuperscript{101} See \textit{supra} note 89.

\textsuperscript{102} See, e.g., Cal Tech Enclosure, \textit{supra} note 69 (requiring approval of the president upon recommendation of responsible division chairman); California Letter, \textit{supra} note 69 (stating that exceptions at the University of California are made by the chancellors); George Washington Enclosure, \textit{supra} note 68 (requiring approval of the president after consultation with departments and consent of committee on research); Illinois Policy, \textit{supra} note 69, at 16 (requiring approval of faculty committee); Iowa Policy, \textit{supra} note 68, at 19, § 70.042(b) (requiring approval of vice president for educational development and research following consultation with university research council); Johns Hopkins Policy, \textit{supra} note 69, at 2 (requiring approval of joint faculty-administration committees on research within each academic division chaired by provost and including chief administrative officer of the division); Memorandum from William E. Kirwan to Provosts, Deans, Directors and Department Chairs (Oct. 29, 1985) (stating that exceptions to the policy of University of Maryland require approval of the president on recommendation of the chancellor); MIT Policy, \textit{supra} note 68, § 4.12 (requiring approval of provost with advice of committee); Ohio State Guidelines, \textit{supra} note 68, at 3 (requiring written certification by dean or director to provost and vice president for academic affairs that proposal is consistent with university policy); Pennsylvania Enclosure, \textit{supra} note 68 (requiring approval of president); Princeton Enclosure, \textit{supra} note 69 (requiring approval of the university research board upon determination of extraordinary conditions in special review in which the board, the faculty, and the council of the university community participate); USC Handbook, \textit{supra} note 68, app. 7 at 119 (requiring approval of ad hoc committee of faculty appointed by provost); 4 Washington Handbook, \textit{supra} note 68, at 6 (requiring approval of faculty review committee); Wisconsin Letter, \textit{supra} note 68 (requiring approval of the dean or the director and the chancellor).

\textsuperscript{103} Four of the six universities whose policies do not prohibit acceptance of secret research nonetheless provide that such research does not qualify for academic credit or professional recognition from the university. See, e.g., Arizona Policy, \textit{supra} note 68 (precluding the use of a secret thesis or dissertation as the basis for any degree, the awarding of academic credit for secret research, or the consideration of secret research in connection with appointments, reappointments, tenure, promotions, merit pay raises, or salary adjustments); Illinois Policy, \textit{supra} note 69, at 17 (precluding the acceptance of a classified thesis for any advanced degree and the consideration of reports not accessible for study by promotional review committees in decisions on appointments, reappointments, or promotions); Ohio State Guidelines, \textit{supra} note 68, at 2 (precluding the acceptance of a thesis or dissertation if restricted from publication); Penn State Enclosure, \textit{supra} note 69 (stating that research which cannot be reported to public cannot be used in thesis or dissertation).

Provisions restricting university credit or recognition for secret research also appear in the policies of other universities. See, e.g., Colorado State Manual, \textit{supra} note 68, § D.8.15.2 (stating that the university will not contribute overhead or tuition scholarship support to classified research and will not allow classified research results to be used to satisfy any thesis, dissertation, report, or course
faculty and students who do secret research may be a way of discouraging such research without actually forbidding it. Arguably, this approach interferes with individual opportunities for inquiry less than an outright prohibition on secret research because the work may still go forward if the researchers are willing to forego the rewards.

On the other hand, a university could undermine academic values by withholding academic rewards for improper reasons. For example, suppose a university refuses to grant academic credit or professional recognition in the form of appointments, promotions, or salary increases for abortion-related research because the university's benefactors believe that abortions are immoral. Such an effort to restrain research in accordance with an imposed orthodoxy undoubtedly violates traditional academic values, and an aggrieved faculty member or student might well characterize it as a violation of academic freedom. Of course, universities withholding academic credit or professional recognition for secret research may claim legitimate academic reasons for so doing: the university cannot assess the academic merit of work that is never subjected to professional scrutiny in the larger academic community. Because the restrictions further academic values rather than merely encouraging adherence to a prescribed orthodoxy, they should not be rejected a priori as violating academic freedom.

Two of the universities studied have policies that, without actually prohibiting the acceptance of publication restrictions, encourage the university to try to minimize such restrictions through negotiations with the sponsor. 104 This approach may seem less restrictive of opportunities for inquiry than a prohibition on secret research, because if negotiations to lift the secrecy provisions fail, the university may still accept the funding and the faculty member may go forward with the research. On the other hand, this less rigid approach may result in more interference by sponsors in the dissemination of research results. Sponsors that might be will-

104. See Johns Hopkins Policy, supra note 69, at 1; Ohio State Guidelines, supra note 68, at 1.
ing to forego restrictions on publication when negotiating with universities that give them no choice may be less flexible when negotiating with universities whose policies permit such restrictions.

Assuming that universities and faculty members would ideally like both to obtain research funding and to remain free to publish research results, it is unclear whether they are in a better tactical position with a flexible or an inflexible policy. The answer may depend on how important a particular sponsor is to the university and faculty member, how important secrecy is to the sponsor, whether the sponsor can get the research done elsewhere on more agreeable terms, and the relative bargaining skills of the sponsor and the university. Unique or superior faculty researchers or laboratory facilities will obviously enhance the bargaining position of the university. The judgment about whether a flexible or inflexible policy is more likely to be advantageous will vary from one university to the next. One should not, however, confuse this sort of tactical consideration with the issue of whether an inflexible prohibition on secret research violates academic freedom.

Finally, over a third of the universities studied have policy provisions requiring that the university remain free to disclose certain aspects of arrangements for sponsored research, such as the nature of the project, the amount of funding, and the sponsor's identity. These provisions

105. See, e.g., Arizona Policy, supra note 68 (requiring public information about “the amount of funding, the time period, a title, the nature of the project and the sponsor,” unless the requirement is waived by the vice president for research in consultation with the university research policy committee); Brown Handbook, supra note 68, § 9, at 9.3 (stating that the university must be free to disclose the purposes of funds and the character of sponsorship); George Washington Enclosure, supra note 68 (stating that the university should not take part in a project “the existence of which or the identity of whose principal or subsidiary sponsors could not be revealed”); Harvard Report, supra note 68, at 6 (requiring that the university be free to disclose “the source of sponsorship and the purpose of the research”); Harvard Proprietary Guidelines, supra note 69 (requiring that the “[g]eneral information on the subject, duration, funding sources, and budget of each industrially-sponsored research agreement should be openly available, along with information on whether there are any associated exclusive or nonexclusive patent agreements or other restrictions on open communication”); Illinois Policy, supra note 69, at 16 (requiring that the university be free to disclose “the existence of the grant or contract[,] the general nature of the work to be pursued under the grant or contract[,] and [the] identity of the supporting agency”); Indiana Manual, supra note 68, at 22 (requiring public information about “the purposes of the research, the identity of the investigators, the amount and sources of funds expended, and the University facilities utilized in the research”); Iowa Policy, supra note 68, at 19 § 70.042(a) (requiring publicly available information about “the purposes of research projects, the names of the investigators, the amount and sources of funds expended, and the University facilities utilized in the research”); Minnesota Statement, supra note 68, at 1 (requiring that the university be free to disclose “the existence of the contract or grant... the identity of the sponsor or the grantor, or prime contractor... and... the purpose and the scope of the proposed research”); NYU Guidelines, supra note 68 (requiring that summaries of sponsored research projects be made available to the academic community on an annual basis, including “a summary of its purposes and a record of its sponsorship... the name of the project, its principal investigator, and dollar value”); Ohio State Guidelines, supra note 63, at 1 (requiring that the university be free to disclose “the sponsor, the existence of the contract, [and enough information about the research to permit] adequate review of the appropriateness of the program to academic pursuits of the University”); Penn-
afford a minimum safeguard against compromises in the integrity of the academic enterprise through undisclosed commitments and interests. In addition to interfering with the dissemination of research results, secret research may also camouflage conflicts of interest and limit the accountability of faculty members and universities for their use of facilities and other university resources. Provisions for public disclosure of information help protect social interests in academic research. Although disclosure may not undo the co-opting effects of sponsored research, it will alert the academic community and the public at large to the existence of potentially distorting influences in university research.

The call for candor about extraneous influences in the academy has an antecedent in the 1915 Declaration. The authors of that document recognized that some university charters bound their institutions to propagate specific doctrines, but urged that these institutions should disclose these restrictions to the public and “not be permitted to sail under false colors.” 106 Otherwise, the public might support such institutions in the mistaken belief that they were dedicated to unfettered inquiry, or accept as the uncolored views of academic professionals the distorted views claimed by faculty members beholden to lay patrons. The same concern argues for requiring universities and faculty members to disclose the terms of their relationships with research sponsors. The public—both as sponsor and as consumer of university-generated knowledge—has a right to know of any interests and obligations that might influence what research universities pursue and what viewpoints they proclaim.

E. Policy Provisions Regarding the Substantive Content of Research

Academic values are threatened by sponsor control over the substantive directions of research as well as by sponsor control over the dissemination of research results. Both the Department of Defense and industry sponsor university research in the hope that it will yield results that are useful to them. Faculty members seeking to persuade these sponsors to fund their research have an incentive to formulate research proposals that meet the sponsors’ needs, rather than choosing research topics strictly on the basis of academic interest and intellectual signifi-
This intrusion of lay concerns in setting the research agenda arguably compromises the professionalism of the research enterprise. But assuming faculty members decide to pursue sponsors’ research interests without any pressure from their universities, the problem does not fit the traditional paradigm of an academic freedom violation. The traditional conception of academic freedom would seem to call for universities to defer to faculty members in their choices of research topics.

Nonetheless, a significant minority of the policies studied set substantive restrictions on the appropriate content of sponsored research pursued within the university. Most of these substantive restrictions are limited to ensuring that the sponsored research is of high quality and consistent with the educational and intellectual goals of the university and the relevant department.107

Restrictions on faculty research because of its ethical or political content are less common. Several of the universities studied expressly exclude political and moral considerations from the permissible grounds for restricting research.108 Such political and moral restrictions strike at the core of traditional notions of academic freedom, curtailing inquiry

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107. See, e.g., Brown Handbook, supra note 68, § 9, at 9.2 (stating that sponsored research “should fit within the framework of the primary objectives of the University . . . should be soundly based, [and] its primary goal should be a significant contribution to knowledge rather than product development”); Florida Policy, supra note 69 (requiring that sponsored research be “appropriate academic research” giving consideration to “the humanitarian nature of the research and the appropriateness of the scientific inquiry within a university environment”); Harvard Proprietary Guidelines, supra note 69 (requiring that industry-sponsored research, which is not subject to peer review, be carefully examined for “scientific content” before the dean approves it); Illinois Policy, supra note 69, at 16 (requiring that a faculty committee scrutinize classified research to establish that it is “creative research as judged by the professional standards of the unit in which it is performed”); Iowa Policy, supra note 68, at 19, § 70.041 (requiring that sponsored research be consistent with “the advancement of the public welfare” and “be soundly based and give promise of significant contribution to knowledge”); Michigan State Policy, supra note 68, app. C at 63-64 (requiring that sponsored research be consistent with “the University’s goals” and “the policies and plans of the department or departments of the college or colleges in which the research will be conducted” and compatible with “the functions and purposes of research at a university”); Ohio State Guidelines, supra note 68, at 1 (requiring that sponsored research be “demonstrably supportive of the instructional and research objectives of the departments, centers, and institutes in which the research is to be conducted”); Pennsylvania Enclosure, supra note 68 (requiring the approval of sponsored research for “academic merit” by department chairs and deans); Penn State Enclosure, supra note 69 (requiring that classified research within the university be monitored “in order that the mission of the University will be honored and not distorted”).

108. See, e.g., Harvard Report, supra note 68, at 5 (“The reviewing process [for approval of proposed research agreements] never has and should not include political criteria.”); NYU Guidelines, supra note 68 (“Questions of the suitability of research in terms of intellectual, social, or moral criteria are best handled through peer contact and communication.”). Other universities do not include such statements in their formal research policies, but indicated in letters or enclosed memoranda that they do not restrict research on the basis of its political content. See, e.g., Statement of R.A. Reichley on Research Policy (May 1985) (“As an institution, Brown University remains neutral and will not take a position for or against political issues that may be related to the ongoing research efforts of individual faculty, as long as that research remains unclassified.”).
not to further other academic values but rather to advance or inhibit particular viewpoints. Nonetheless, three of the thirty-nine universities studied—George Washington University, University of Michigan, and Ohio State University—expressly restrict the acceptance of war-related research, and another—University of Florida—directs its vice president for research to consider “the humanitarian nature of the research” in deciding whether to approve a proposal for classified research.

These few universities that expressly restrict war-related research may differ from the others more in their candor than in their principles. Some of the universities that restrict the acceptance of classified research may do so at least in part for political reasons unrelated to the dissemination of research results. Classified research often pertains to weapons systems or has other direct military applications, and universities might restrict their faculties from participating in this research at least in part because of its ethical or political implications.

The language of the policies, with the few exceptions already noted, provides little direct support for the view that restrictions on the acceptance of classified research are politically motivated. It nonetheless seems likely that policies restricting the acceptance of classified research gained support in the late 1960s and early 1970s from people who opposed classified research on ethical and political grounds, and not merely because of its secrecy. That so few of the policies openly justify their refusal to accept classified research on the ground that they wish to avoid involvement in weapons research might suggest that politically based restrictions on the content of research are widely viewed as violating traditional academic values. On the other hand, it might suggest that policy formulators have been unable to agree among themselves about the political

109. George Washington University’s policy provides:
Although it is recognized that it is impossible to maintain effective control over application of the results of research once those results are published, it is believed that the university should support no research the immediate and obvious implications of which would facilitate the destruction of human life or the impairment of human capabilities.
George Washington Enclosure, supra note 68. University of Michigan’s policy as of 1985 (which has since been modified) provided that “[t]he university will not enter into or renew any agreement or contract, or accept any grant, the clearly foreseeable and probable result of which, the direct application of which, or any specific purpose of which is to destroy human life or to incapacitate human beings.” Michigan Policy, supra note 69, at 530. Ohio State University’s policy provides in part that “[t]he University does not accept sponsored programs requiring the University to develop weapons or weapons systems whose intended effect is the destruction or degradation of human life.” Ohio State Guidelines, supra note 68, at 2.

110. Florida Policy, supra note 69.

111. The plausibility of this hypothesis is fortified by the fact that many of the policies governing classified research were adopted in the late 1960s to early 1970s, when antiwar sentiment on campuses was at its peak. See supra note 70. Another plausible explanation for the timing of the policy adoptions is that the increased availability of research funding from the Department of Defense in the late 1960s made the issue of classified research policy ripe for decision.
acceptability of war-related research. Curiously, although the provisions setting general rules against the acceptance of classified research tend to avoid mentioning political considerations, the provisions for exceptions to these general rules frequently invoke extraordinary political circumstances. These politically based exceptions may represent compromises between those who oppose classified research for political reasons and those who favor it for political reasons. Or, the exceptions may reflect an effort to strike a compromise between ostensibly neutral academic values and the political context of academic research in the real world.

VI. Conclusion

The traditional American conception of academic freedom, with its emphasis on defending the professional autonomy of individual faculty members against universities, is ill-adapted to the task of protecting academic values in sponsored research within universities. Research sponsors having interests at odds with traditional academic values may use the lure of research funding to entice academic scientists into serving their interests. In these circumstances it is counterproductive to presume that faculty members are victims and universities are villains. It makes little sense to immunize faculty members from institutional supervision and control in their relationships with research sponsors if faculty members cannot be counted on to uphold academic values on their own.

Although most universities set limits on permissible terms of sponsored research through institutional research policies, the language and provisions of these policies reveal confusion and disagreement within the academic community as to when such limitations violate academic freedom. The confusion arises because the traditional formulation of academic freedom in terms of faculty autonomy is no longer in harmony with its traditional justification of furthering academic values. The academic community would do well to rely on mechanisms other than faculty autonomy to protect academic values in sponsored research.

112. See supra note 89.