



## Dean Robert Post's AALS Luncheon Keynote

Robert C. Post, Dean and Sol & Lillian Goldman Professor of Law at Yale Law School, spoke on academic freedom and legal scholarship at the 2015 AALS Annual Meeting Luncheon. A Presidential Program followed his speech marking the 100th Anniversary of the American Association of University Professors' *Declaration of Principles on Academic Freedom and Academic Tenure*. The full transcript of his address is available on [www.aals.org](http://www.aals.org) and will be in the May 2015 issue of the *Journal of Legal Education*.

AALS Executive Committee members in attendance reflected on Dean Post's exploration of the concept of academic freedom and tenure for law faculty. "Dean Post's superb talk at the Association Luncheon gave us much food for thought as we think deeply and broadly as law professors about academic freedom," said Daniel Rodriguez, AALS Immediate Past President and Dean, Northwestern University School of Law.

AALS President-elect Kellye Testy, Dean, University of Washington School of Law, agreed. "Dean Post's keynote address on academic freedom was extremely thoughtful and timely. In tackling the topic, he went right into the heart of one of the most misunderstood concepts in higher education," she noted. "His analysis could not come at a better time. As education becomes more connected with business and industry, it is critical for us to understand the history and the promise of our shared governance model and our deepest values, including academic freedom."

Dean Post addressed the complex relationship between academic freedom and legal scholarship. "At its root, academic freedom is about how universities can fulfill their function of producing new knowledge," Dean Post explained. He observed that the concept of academic freedom did not always exist in the United States. It emerged as a result of a fundamental change in the mission of higher education. By the beginning of the 20th century, American universities had begun to orient toward producing new knowledge instead of merely passing down received truths. Today, Post noted, virtually every university understands its mission in terms of creating new knowledge. "The invention of the concept of academic freedom in the United States is a direct result of this change in the mission of higher education in American universities," Dean Post said.

"At the beginning of the 20th century, American universities were institutions that were owned," Dean Post explained. "Whoever paid the university budget believed it was their responsibility to control what was taught at their university and what was published by employees of their university, including their faculty." He noted that professors feared that if what they published irritated or angered the owner of their university, they could be fired.

As a result of this predicament, professors formed the American Association of University Professors (AAUP) in 1915. The purpose of the AAUP was to defend academic freedom. "[The AAUP] immediately published in 1915 what remains to my mind the single greatest exposition of academic freedom in the United States—the *1915 Declaration of Principles on Academic Freedom and Academic Tenure*," Dean Post stated. "In fact, this year we celebrate the centenary of that great document which fundamentally altered the status of faculty throughout the United States."

Dean Post noted that the Declaration defines academic freedom as consisting of three dimensions: freedom of inquiry and research, freedom of teaching within the university or college, and freedom of extramural utterance and action. He focused his speech on the first of these dimensions, explaining that the Declaration conceives of academic freedom of research as the freedom to pursue the “scholar’s profession” according to the standards of that profession. Unlike First Amendment rights, academic freedom is not fundamentally about rights of individual professors; it is about the autonomy of the scholarly profession. Academic freedom means that judgments of professional competence can be entrusted only to those who are themselves professionals, and they must employ accepted disciplinary standards. “Reduced to its essence, the complex argument advanced by the 1915 Declaration rejected the image of the modern university as an ‘ordinary business venture.’ The Declaration instead conceptualized universities as unique institutions bearing a public responsibility to preserve, enhance, and distribute knowledge,” he said. This responsibility entailed respecting the autonomy of the scholarly disciplines that defined and advanced knowledge.

Dean Post addressed the implications of academic freedom for those who dedicate their lives to legal scholarship. He noted that many have doubted whether law is truly a scholarly discipline capable of producing knowledge. Post argued that contemporary legal scholars study law in two distinct but interconnected dimensions: from an *external* perspective, using accepted methods of social science to study how legal institutions and systems actually work, and from an *internal* perspective, which is the point of view adopted by those who actually participate in the making of law. The internal perspective is characteristic of lawyers and judges.

Post argued that contemporary law schools were unique because they uniquely fused internal and external perspectives. “It is a premise of modern legal education that lawyers will better practice their craft, and be of greater use to society, if they understand how legal institutions and systems actually work,” Dean Post said. He observed that law faculty should seek not merely to instruct students how to think like lawyers, but also to “transmit the knowledge we produce by the internal *and* external study of law.” “We are the only institution within the university comprehensively to study legal institutions in all their many manifestations,” Dean Post pointed out. “Lawyers and judges may claim an expertise in the internal dimensions of law, but neither lawyers nor judges can systematically claim the kind of external knowledge of legal institutions that is routinely wielded by legal scholars.”

“Law schools are the only place on earth where the internal study of law is systematically interrogated by external accounts of how legal institutions actually operate,” Dean Post explained. That is why the AALS was correct to claim that legal scholarship merited the protections of academic freedom of research. “Of course we should make every effort to ensure the future careers and livelihood of our graduates. But at this time of ‘Legal Education at the Crossroads,’ we should also remember that we have something important to contribute to the world, something that cannot be duplicated anywhere else,” Dean Post maintained.

“We are engines of improvement and knowledge. This is the vision for which AALS has always stood, and we ought not to lose sight of it now,” Dean Post concluded. “This is the vision that justifies our claim to academic freedom of research and that testifies to our proper position within the modern research university.”

Wendy Collins Perdue, Dean, University of Richmond School of Law, joined her AALS Executive Committee colleagues in praising Dean Post's talk as particularly timely. "In the current climate, the scholarly enterprise is sometimes attacked as an unnecessary luxury," she noted. "Professor Post offered a spirited defense of the importance of legal scholarship, arguing that it not only increases the knowledge and understanding of legal institutions, but also creates a superior learning environment in which future lawyers, judges and leaders acquire the tools they will need to assure the vitality and responsiveness of our legal system."