AAUP CSU NEWSLETTER

February 2018

IN THIS ISSUE

TOWARDS *ONE* FACULTY

Over the last two years, the Committee on Non-Tenure Track Faculty (CoNTTF) has worked with Faculty Council and administration to improve the working conditions for non-tenure track faculty (NTTF) at CSU. This fall and spring, the Committee on the Responsibilities and Standing of Academic Faculty (CoRSAF) and the Committee on Faculty Governance (CoFG) coordinated with CoNTTF to find ways to update our Faculty Manual that will help to increase all faculty's participation in shared governance, clarify appointments and ranks, and standardize some basic policies for NTTF across the university. CoNTTF supports CoFG and CoRSAF's motions as important steps in the process to end contingency and make CSU a better place for all faculty to work.

The proposed changes to Section E2 of the faculty manual improve the standing of non-tenure track faculty (NTTF) in the following ways:

- **Modernizes appointment types**: The appointment types reflect how people are employed by the university (tenure track, tenured, contract, and adjunct), not how they were historically funded (regular and special).
- **Maintains progress made by the creation of the STA appointment type**: The Senior Teaching Appointment type has been converted to the Senior Instructor rank available to contract and adjunct faculty appointments. This change ensures that STA is treated as a promotion and new rank rather than simply a new employment category and broadens access to the senior rank beyond faculty who primarily teach. The expectation is that current STAs will be immediately converted to Senior Instructors or Assistant Professors, as appropriate, and will have the additional opportunity to advance through the appropriate ranks.
- **Provides more stability**: The contract appointment type sets up the standard expectation that all NTTF who are employed >50% for more than 4 semesters will receive contracts to provide more job stability. This change also provides meaningful access to the grievance process and 12 months' notice of contract non-renewal. Additionally, all faculty will participate in annual evaluation and the salary exercise.
- **Creates more avenues for advancement**: The addition of the senior and master instructor ranks provide a career path for those who do not meet unit-specific criteria for the assistant, associate or full professor.

- **Allows access to faculty governance**: The standard expectation is that contract faculty can serve on committees and have voting rights in departmental and college faculty meetings, though ultimately these decisions are made in the respective unit.
- **Maintains flexibility in hiring**: The adjunct appointments are for <50% faculty, those that don't teach every semester, and for temporary (<4 semesters) faculty to provide flexibility to departments.
- **Ensures all faculty members have academic freedom,** regardless of appointment type.

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ISSUE WATCH:
DEPENDENT ELIGIBILITY AUDIT

Sue Doe and Gamze Cavdar

Dependent Eligibility Audit: CSU has initiated a dependent eligibility audit for the purpose of identifying individuals who may be listed as benefits eligible but are not. Generally speaking, such individuals are people who were once eligible but no longer are—such as adult children who have "aged out" of coverage or divorced partners who are no longer eligible dependents. The Benefits Office recognizes that in most cases the incorrectly listed people are accidental oversights, not deliberate cases of fraud. Regardless, HR reports that the presence of non-covered people on the rolls has a significant impact on the cost of benefits paid by the university and passed along to faculty and staff. HR audits generally find that 2-4% of listed dependents are found to be not eligible. A finding of 2% reportedly represents approximately $500,000 in benefits costs per year. In light of this impact, other Colorado colleges and universities, such as the CU, School of Mines, Global Campus, CSU-Pueblo, Fort Lewis College, Metro State, UNC, and Western State have conducted benefits audits.

The main problem pointed out with the auditing process was CSU's contracting with an audit firm, especially since the external vendor is collecting the information digitally. Concerns revolve around the personal and family data that faculty and staff were asked to surrender to the vendor in digital form. At their weekly meeting on January 30, members of Faculty Council's Executive Committee, including at least one faculty member whose research area is digital data security, stated their concerns to HR about releasing such information into a digital environment. On Feb 3 HR responded with an email communication to all faculty and staff with benefits-eligible dependents. Here is a key section from that email, sent by Diana Prieto, Associate Vice President for Human Capital and Chief Human Resource Officer. This email should assist everyone with deciding how to proceed:

"Under the current process [the online documentation process], for added confidentiality:

· You are asked to remove unnecessary identifiable information before uploading documents (account numbers, financial data, social security numbers, maiden name, etc.). There are several methods to remove information. The best method is to make a copy of the document and cut out the unnecessary information before copying and scanning the document. It is acceptable to make a copy of a document for purposes of this audit that indicates do not copy on the face of the document.

· HR will ensure that all CSU employee documents used in the audit are destroyed 90-days after the audit is completed.

If you are not comfortable with the security assurances provided for submitting your documents online, you are invited to come to Human Resources to engage in a manual review of your documents through the Benefits unit. There will be three staff members that can assist with a manual review. If you are experiencing difficulties meeting the documentation requirement of the audit, please contact Human Resources at 970-491-MyHR (6947) for assistance through the Benefits unit.

For more information about the employee survey conducted last spring, future action steps to save medical and pharmacy costs and presentations given to campus about the survey, see http://www.hrs.colostate.edu/benefits/HealthcareCampusConversations.html.

Human Resources recognizes that participation in the audit requires time and effort. We appreciate that many of you have already accessed the system and provided your information and documentation. We will follow up with another communication letting campus know the audit results – and savings those results will provide."

University Benefits Committee (UBC), which represents the current and retired faculty and the administrative personnel, has put this matter on the February 2018 agenda. The Committee will review the issue and make recommendations to the administration, if necessary. If any aspect of this issue concerns you, please feel free to contact Gamze Cavdar at Gamze.Cavdar@colostate.edu.

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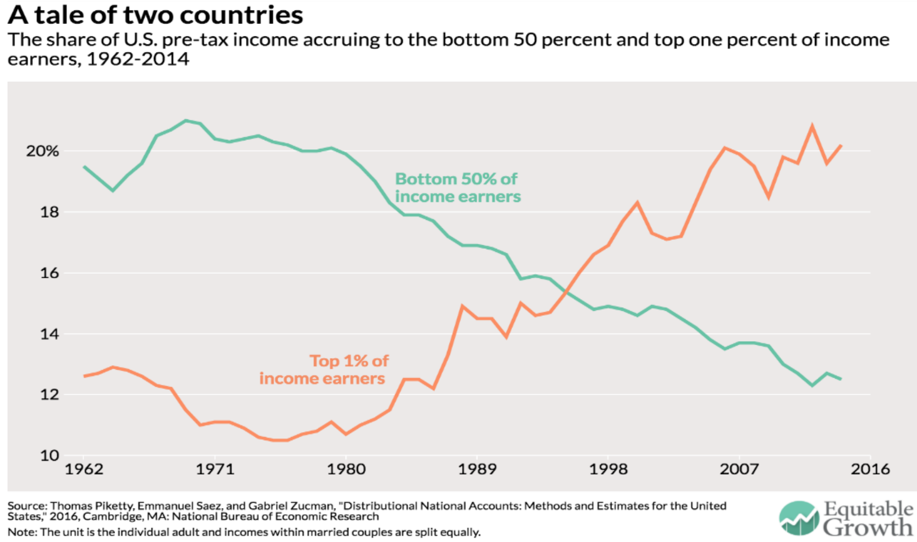
INEQUALITY, LABOR, AND EDUCATION IN THE AGE OF TRUMP: "ALL IN ALL IT'S JUST ANOTHER BRICK IN THE WALL"

Ray Hogler

The related forces of inequality and technological development are driving the American political economy, and they fueled Donald Trump's 2016 presidential victory. Trump's support depended on white, non-college educated men who voted for him by a margin of approximately 52 percent to 44 percent for Clinton. That demographic makes up the core of the American labor movement, and Trump's signature slogan of "Make America Great Again" appealed precisely to those disgruntled workers. He won the Electoral College tally in Michigan, Wisconsin, and Pennsylvania by a total of 107,000 votes, according to the *Washington Post*. That amounted to less than 0.09 percent of the total votes cast in the election and enough to capture the presidency. Clinton carried the national popular vote by nearly three million votes.

Trump's first year in office had important consequences for the wealth gap in the US. Unions and collective bargaining laid the foundation for the flourishing American middle class during the period 1950-1980. Thomas Piketty and his colleagues have convincingly documented the change in wealth distribution in this country from 1962 to 2016, as illustrated in the following chart.



Union decline is an important factor contributing to changes in wealth. According to the Bureau of Labor Statistics, total union membership density in the US fell from over 20 percent in 1983 to 10.7 percent in 2016. In the private sector, membership dropped from a peak of over 35 percent of the non-managerial work force to just over 6 percent in 2016. In the public sector, density fell from a peak of 37 percent in 1970 to 34.4 percent in 2016. Numerous studies confirm that as union bargaining power erodes, economic inequality increases.

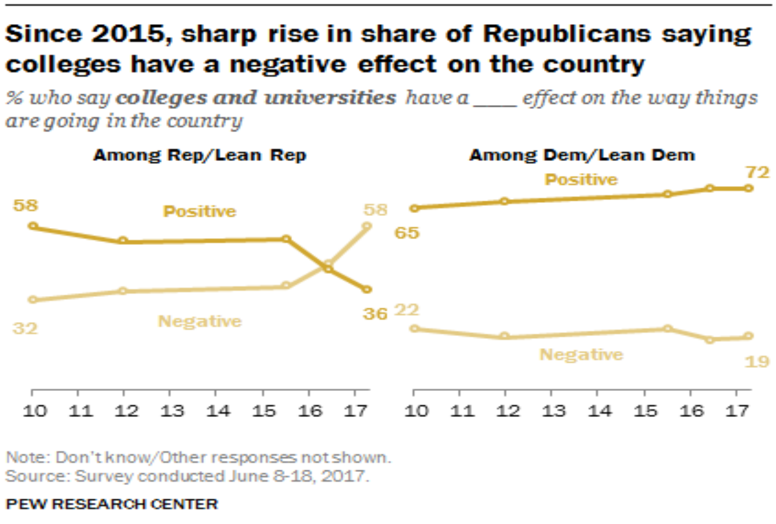
Trump's labor policies will result in further deterioration of union power. His nomination of Neil Gorsuch to the U.S. Supreme Court ensures a constitutional rule that prohibits mandatory union dues payments in public sector employment, including public educational institutions. The *Janus* case, currently on the Court's docket, involves the question of whether or not a public sector employee can be required to pay the union an agency fee equivalent to the costs of representation. When Antonin Scalia died unexpectedly, a 4-4 split on the Court upheld compulsory dues, but the pending case and the participation of Gorsuch will almost certainly overturn that ruling.

At the same time, Trump's appointees to the National Labor Relations Board are busily eviscerating pro-union decisions from the Obama administration that facilitated union formation and collective bargaining. A recent article posted on *Slate*'s website noted that "the NLRB [has] issued a staggering five decisions overturning union-friendly rules that the agency had either enacted or strengthened under President Barack Obama. Stacked with a majority of Republican appointees, the board scrapped policies that helped smaller unions organize, bolstered the bargaining rights of franchise employees, and shielded workers from union-busting tactics." Trump's most recent appointment to the Board, John Ring, worked for a large law firm representing management in labor relations matters. His inclination to support employers is well documented.

Technological change further accelerates economic inequality. In October 2016, a truck named Otto drove itself down the most crowded highway in Colorado to deliver 2,000 cases of beer from the brewery in Fort Collins to its destination in Colorado Springs. A human accompanied Otto on the trip, but he was just along for the ride. Advances in technology such as self-driving vehicles are transforming a crucial sector of the economy where some three million workers, in the words of one driver, "will soon be extraneous – roadkill, so to speak, except we won't be dead." If a skill such as driving eighteen-wheel vehicles on hazardous roads is subject to technological colonization, other occupations will follow the same economic imperative.

The role of higher education in meliorating inequality is questionable because a university degree may appear suspect to a large segment of the population. In Vigo County, Indiana, where voters overwhelming supported Trump, the *Chronicle of Higher Education* featured a detailed portrait of the community and quoted a documentary filmmaker's comment about attitudes of voters there: "I think it was 'the elites versus the rest of us.' They wanted to kick some ass, and they saw Trump as the guy to do it." People with four-year college degrees, the story continues, are often viewed as part of the elite. According to Pew Research data, "Trump's margin among whites without a college degree is the largest among any candidate in exit polls since 1980."

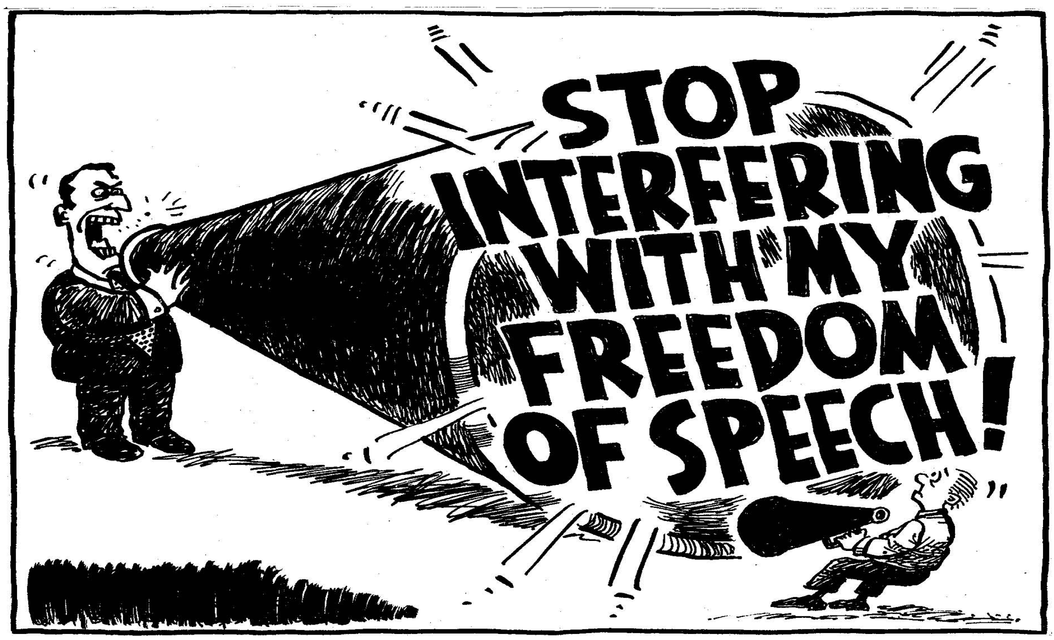
The attack on "elitism" and higher education influences public attitudes, as indicated by the chart below. Since 2015, most Republicans say that colleges have a "negative effect" on the country. Democrats, in contrast, continue to believe that education is associated with positive effects. Trump's posturing as a "leader of the people" and a "populist" who can resuscitate the American working class has corroded the value of education. Because Trump is a threat to the ideals associated with education and learning, institutions should affirm their support for those ideals and their opposition to any further degradation of their mission.



Geographical factors further contribute to political fragmentation, with high-tech communities creating desirable places to live and work while "flyover" country remains sparsely populated but still politically potent through the structure of our government. Such disparity creates hostility and mistrust. Katherine Cramer, a professor at the University of Wisconsin – Madison pointed to the "politics of resentment" as the root cause of Trump's victory. She observed, "For people who were feeling ignored, disrespected and overlooked by the urban elite, the Trump campaign had a strong appeal." Industrialized states in the rust belt, plagued by the loss of good paying jobs, declining wages, drug addiction, and failing communities, delivered the presidency to Trump. Trump is now delivering immiseration to those same citizens.

The most recent betrayal of Trump's base came when his administration delivered a tax plan ostensibly as a means to revive the middle class. The reality is that higher income groups receive a much greater share of benefits under the plan. Nobel laureate Paul Krugman, writing in the *New York Times*, concluded that the plan is largely a reward to wealthy donors that will lead to cuts in medical protections, large increases in the deficit, and an influx of foreign capital resulting in a loss of manufacturing jobs. The "trickle-down" economic theory used as cover for the cuts is unlikely to achieve real results for lower income groups. A detailed study of U.S. incomes published in the November 2017 issue of the *Fordham Political Review* concludes that more affluent citizens have scant incentive to engage in social activism: "Influencers, many of whom comfortably reside in the top 10% of income earners, see no reason to improve conditions for those at the bottom, because the betterment of conditions threaten the comfort of the top 10%." The less wealthy can expect no succor from Trump and his sycophants in Congress.

To sum up, the presidency of Donald Trump will have adverse consequences for the American social fabric, and particularly the U.S. labor movement. His appointments to the National Labor Relations Board will reverse decisions of the Obama Board that facilitated union organizing by strengthening employees' rights to unionize. With the ascension of Neil Gorsuch to the Supreme Court, Trump ensures a continuing tilt toward the politicized jurisprudence of Thomas, Alito, Kennedy, and Roberts on labor issues. The Court's future decisions will degrade workers' opportunities for collective action and enhance managerial power in the workplace, especially in public sector employment. As the conflictual political division in our system ossifies into ongoing stalemate, Trump comes to represent the apogee of incompetence. White working class voters brought him to power, but his loyalty is to his rich and glamorous friends.



CAMPUS SPEAKERS, FREE SPEECH, AND ACADEMIC FREEDOM

Stephen Mumme

Considering the list of controversial speakers invited to campus this semester, most faculty, this writer included, were pleased to read the joint statement on the subject by Provost Rick Miranda and Faculty Council Chair, Tim Gallagher on Monday, January 22, 2018. With conservative agitator Charlie Kirk (Turning Point USA founder and originator of the neo-McCarthyite Professors' Watchlist) first up on the list, it is wise to get out in front of the situation, reminding all of the central importance of free speech on campus as well as the obligation to abide by CSU's Principles of Community irrespective of any incendiary, defamatory, or hateful rhetoric that might issue from the podium.

The focus of the Miranda-Gallagher memo quite rightly centered on respect for the First Amendment of the American Constitution and conforms with AAUPs longstanding views on the matter. Universities, of all places, should be arenas for the clash of ideas, with the proviso that those ideas be expressed in a manner that does not directly harm any others. All speech, on campus or off, as I've observed before, must pass the Brandeis test,[1] which holds that incitement to violence is not protected by the First Amendment.

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[1]. In Whitney v. California (1927), Supreme Court Justice Lewis Brandeis stated, *"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. . . ."* For reference see, U.S. Department of State, **The Rights of the People, Chapter 3, Freedom of Speech**. On the web at: http://www.ruleoflawus.info/freedom_of_speech.htm

Well and good. But were it so simple. As Judith Butler, professor of comparative literature at U.C. Berkeley put it not long ago in her lengthy post to AAUP's *Academe Blog*, the First Amendment isn't the only constitutional principle in play. The Fourteenth Amendment's Equal Protection Clause, says Butler, "obligates us to oppose all forms of discrimination and to maintain an educational institution that embodies those values in its word and it its deed" (Butler, 2017). Federal laws and administrative rules, like Title IX protections, which draw on the Equal Protection Clause for authority, may also apply (Cohen, 2005).

Butler argues that the terms of free speech have altered in our contemporary era, creating new free speech dilemmas. Smart phones, new and more accessible means of video-projection, and apps that enable instantaneous transmission of imagery lend themselves to incitement. Some flame-throwing speakers now travel with their own film crews, video-taping audiences and projecting images in real-time as a means of whipping up emotions and extolling or denigrating attendees. Speakers like Charlie Kirk may encourage the co-religionists in their audience (largely consisting of students) to video-tape and share the speech and mannerisms of their professors on Facebook, Instagram, or Snapchat, not to speak of various blogs supporting the speaker's cause. The potential to whip up anxiety, stoke anger, to provoke individuals to lash out at others with whom they disagree raises real risks of incitement that ought to concern university faculty and administrators alike—and students.

The problem here is that incitement under Brandeis is a very high bar—it must be determined case by case. Hate speech, denigrating speech, insulting speech, all are protected unless the content, context, circumstances, and consequences suggest otherwise. As John K. Wilson puts it in his Academe Blog response to Butler, "inspiration is not the same as incitement" (Wilson, 2017). New technologies enable free speech and because they do they carry a risk of abuse. But the bar to speech should be exceedingly high. To the greatest extent possible, Wilson argues, the First Amendment should prevail over other constitutional protections (Wilson, 2017). Free discourse is the stuff of a free society, and it certainly belongs on campus.

But it's not an exaggeration to say professors are in the free speech cross-hairs. As controversial speakers parade through campus their messages reverberate in hallways and classrooms. Professors, even in highly unrelated disciplines, are confronted by students, asked for their opinions, or may feel the need to comment on something said or in the press related to something the speaker said. Individual faculty may feel obligated to correct factual errors or narratives that appear to violate community norms. When they do, they may find themselves in conflict with students, faculty peers, and administrators, or even denigrated or parodied on social media. They may find themselves on Professors' Watchlist.

So the corollary to Miranda-Gallagher memo has to be a reminder that in times when campus speech is especially provocative and controversial the faculty's academic freedom, the freedom to respond to queries, dissect arguments, offer alternative points of view or passionately disagree with the views of extramural speakers, or other faculty, must also be protected. And as faculty/citizens, their right to organize peaceful protests and countervailing events must also be respected. Academic freedom is an essential tool for refining free speech, insuring the worthiest speech is honored and the worst ideas are set aside.

References:

David Cohen. 2005. "Title IX, Beyond Equal Protection," *Harvard Journal of Law & Gender*, Vol. 28, 217-283.

Rick Miranda and Tim Gallagher, Email to Academic Faculty: Campus Speakers: Joint Message from Faculty Council Chair Gallagher and Provost Miranda, January 22, 2018.

Judith Butler, "Limits on Free Speech?" *Academe Blog*, December 7, 2017.

John K. Wilson, "In Opposition to Butler's 'Limits on Free Speech'," *Academe Blog*, December 12, 2017

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CHAPTER MEETING OF AAUP CSU

Friday, February 16, 12-1 at LSC 372. Part of the meeting will be dedicated to information that is useful to colleagues considering joining AAUP.

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HOW TO JOIN THE AAUP

To join the AAUP and our CSU chapter, sign up at the national AAUP site: http://aaup.org. They will notify our chapter and we will be in touch.