Some Exigent Words about Financial Exigency

Meaningful engagement with faculty is essential in times of crisis.
By Michael Bérubé

I drafted this article in response to a mischaracterization of the AAUP's policy on financial exigency made in February, before the spread of the coronavirus had shuttered campuses and moved all instruction online. Now, as we face a global pandemic that may drastically affect enrollments in fall 2020 and lead many institutions—primarily small private colleges—to close their doors altogether, it is even more imperative that people understand what the AAUP policy on financial exigency does and does not say.

On February 16, 2020, the *Chronicle of Higher Education* published a compelling account of the dismissal of history professor James Patterson at Centenary University—and, more broadly, of the phenomenon of colleges and universities declaring (or not declaring) "near exigency" as a rationale for terminating appointments with continuous tenure. Although Megan Zahneis's article, "The Latest Assault on Tenure," was smart and timely, it unfortunately suggested that the American Association of University Professors had paved the way for the last round of assaults on tenure.

Zahneis speculated that "the dismissal of Patterson and his tenured colleagues may have unwittingly been set in motion by the AAUP itself. Experts on its standards-setting Committee A on Academic Freedom and Tenure revised the definition of financial exigency in 2013." I was one of those "experts." As chair of the subcommittee that issued the report *The Role of the Faculty in Conditions of Financial Exigency*, I revised the guidelines for exigency with the help of many colleagues on Committee A and on the national staff. I see no evidence that Centenary University relied on that report or the revised guidelines in any way (or on the original guidelines, for that matter).

Not one of the eight institutions that the *Chronicle* article lists as having laid off tenured faculty members because of "near exigency" since the issuance of our report in 2013—the University of Southern Maine, the College of Saint Rose, Hiram College, Simpson College, St. Cloud State University, the University of St. Thomas, Centenary University, and Linfield College—has done so based on the AAUP's financial exigency standards. I have detailed knowledge of how Southern Maine flouted our principles because in 2015 I chaired the investigation that led to the AAUP's censure of that institution's administration.

It is true that our 2013 report made the definition of "financial exigency" less draconian. We did so for good reasons, which I will explain. Debate about the viability of our definition goes back to the late 1970s, when the AAUP defined financial exigency as "an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means" than the termination of faculty appointments. Objections were immediately raised as to the general applicability of that standard. As our report states, this definition did not appear

> adequate to the situation in which many institutions now find themselves—in part because the standard of "exigency" was initially drawn from small, private, impecunious institutions, not large state universities, few of which can plausibly be said to face imminent crises that threaten their very existence. In recent decades, and especially in recent years, colleges and universities in the public sector have more commonly experienced intermediate conditions that may fundamentally compromise the academic integrity of the institution but do not threaten the survival of the institution as a whole. Thus most colleges and universities are not declaring financial exigency even as they plan for widespread program closings and terminations of faculty appointments.

Our subcommittee was formed largely in response to the decision in 2010 by the administration of the State University of New York at Albany to shutter five departments as a cost-saving measure: French, Italian, Russian, classics, and theater. The AAUP recognized the need to start over from first principles in defining financial exigency. As our 2013 report acknowledged, the standard of an *imminent* financial crisis that threatens *the survival of the institution as a whole* is simply irrelevant to public institutions. We needed a standard that corresponded to the actual financial conditions of universities and most colleges.

In 2012, the University of Northern Iowa announced a wave of layoffs and program closures dwarfing those at SUNY Albany. Approximately seventy programs were imperiled, although it is impossible to give an accurate number because one of the issues in dispute at UNI was the very definition of a "program." I chaired the AAUP committee that investigated UNI, and in the course of our investigation we learned a curious thing: the physics department was going to be eliminated because of its low number of majors and replaced with a physics program that would award a BAT (bachelor of arts in teaching) in physics in order to offer students credentials for teaching high school physics. Apparently, no one in the UNI administration stopped to think that courses in physics might be necessary *for other science majors*.

This was a lightbulb-over-the-head moment for my subcommittee. We realized that this is what happens when academic decisions are made by bean counters rather than by faculty: decisions with serious implications for the curriculum are construed not in curricular or intellectual terms but rather as budgetary matters over which the faculty should have no jurisdiction. That realization made its way into our 2013 report:

> Program closures on the scale we have recently witnessed represent a massive transfer of power from the faculty to the administration over curricular matters that affect the educational missions of institutions, for which the faculty should always bear the primary responsibility. In most cases the decisions to close programs are made unilaterally and are driven by criteria that are not essentially educational in nature; they are therefore not only procedurally but also substantively illegitimate. Increasingly, administrators are making budgetary decisions that profoundly affect the curricula and the educational missions of their institutions; rarely are those decisions recognized as decisions about the curriculum, even though the elimination of entire programs of study (ostensibly for financial reasons) has obvious implications for the curricular range and the academic integrity of any university.

I should note that unless you taught at the University of Northern Iowa at the time, you probably never heard about those massive program closures and layoffs. That's because they didn't happen: the UNI administration cooperated in good faith with the AAUP investigation and reversed course in response to our report (and the threat of censure). I am pleased to note that the University of Northern Iowa still exists today, which may suggest that the closures and layoffs the administration proposed in 2012 were not, after all, necessary to the survival of the institution—although they certainly would have compromised UNI's academic integrity.

I said above that our new definition of financial exigency is less draconian than its predecessor. I hope I have explained that from the AAUP's perspective, it is also more *accurate* and more widely applicable to institutions that are not facing immediate collapse. As the report notes, "Our new definition names a condition that is less dramatic than that in which the very existence of the institution is immediately in jeopardy but is vastly more serious and threatening to the academic integrity of the institution than ordinary (short- and long-term) attrition in operating budgets." But there is another sense in which our new financial exigency policy is more *exacting*. That is because, after SUNY Albany and UNI, we decided that the most important thing to emphasize about the declaration of exigency is that *the faculty must be even more involved in the determination of whether an exigency is real.* Megan Zahneis's article acknowledges this but appears to reference the old Regulation 4c(1) of the *Recommended Institutional Regulations*, which states, "As a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued." Zahneis seems unaware of the revised regulation, which begins similarly but adds a long list of specific alternatives to layoffs that the faculty must make sure have been considered: "expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration." The new regulation also adds the critical requirement that the participating faculty body is to be "elected."

The article does not, however, mention that such a faculty body must not be appointed by the administration; moreover, it muddies the meaning of consultation, stating that "if an institution is to declare exigency, it must take deliberate steps to tell its faculty so." As the AAUP sees it, that itself is part of the problem: too many administrators "consult" faculty only by announcing what is going to be done to them.

Our exigency report was quite specific about what consultation means to the AAUP:

1. Before any proposals for program discontinuance on financial grounds are made or entertained, the faculty should have the opportunity to render an assessment in writing on the institution's financial condition.

2. Faculty bodies participating in the process may be drawn from the faculty senate or elected as ad hoc committees by the faculty; they should not be appointed by the administration.

3. The faculty should have access to, at minimum, five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years.

4. In order to make informed proposals about the financial impact of program closures, the faculty needs access to detailed program, department, and administrative-unit budgets.

5. The faculty should determine whether "all feasible alternatives to termination of appointments have been pursued," including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration.

6. Faculty members in a program being considered for discontinuance because of financial exigency should be informed in writing that it is being so considered and given at least thirty days in which to respond. Tenured, tenure-track, and contingent faculty members should be involved.

Needless to say, the Centenary University administration did not abide by these guidelines. Neither did the other institutions named in Zahneis's article.

As many colleges and universities face an uncertain post-pandemic future, this is a good time for everyone in American higher education to read our report. It is available on the AAUP website at https://www.aaup.org/report/role-faculty-conditions-financial-exigency. Every aspect of it is as detailed as the excerpts above suggest; we even manage to define "program" and explain what we mean by finding "another suitable position" for a tenured faculty member in a program slated for closure. (We also suggest what to do when, say, a chemistry department refuses to accept the reassignment of a tenured professor of biobehavioral health whose position is being eliminated.) We make provisions for non-tenure-track faculty as well, for the first time in the history of the AAUP's considerations of financial exigency. As always, we acknowledge that programs can be closed not only for reasons of financial exigency but also for legitimate educational purposes, based on "long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance."

In one sense, then, nothing has changed: ill-intentioned administrations ignored AAUP policies and procedures under the old definition of exigency (and risked censure), and they are ignoring AAUP policies and procedures under the new definition of exigency (and risking censure). But a few years ago, I got a request from the leadership of a small private college. The college enrolls fewer than two thousand students, depends heavily on tuition, and was facing a legitimate financial crisis that constituted near exigency. The president and provost had read the AAUP report on exigency carefully. They wanted to bring me out for consultation: how, they asked, can we respond to a financial crisis responsibly, in accordance with what the AAUP requires?

It was not exactly a *happy* assignment; I confess that I would much rather be summoned to a campus to help its leadership figure out how to do massive cluster hires of new tenure-track faculty or to move hundreds of non-tenure-line positions to the tenure track. But I know a good-faith effort when I see one, and upon my arrival on campus I found that the faculty generally agreed that the college's situation was dire—and that everyone acknowledged that all the accounting and bookkeeping measures we enumerated in paragraph 5 of our guidelines for consultation had already been taken.

I spent the day talking with—and listening to—faculty and administrators, all of whom were determined to keep the college afloat in the fairest way possible. At one point, in a small meeting with the central administration, someone asked me bluntly: what are the biggest mistakes an administration can make in a situation like this?

I laughed out loud, inappropriate as that might have seemed, and quickly explained my reaction: for one thing, I was taken aback at the directness of the question and the tacit, welcome admission that administrations do indeed make serious mistakes in these matters. For another thing, the question sounded to me very much like the immortal exchange in *The Princess Bride*, in which Vezzini (played by Wallace Shawn) tells the Man in Black (Cary Elwes) that he has committed "one of the classic blunders, the most famous of which is never get involved in a land war in Asia." So, I said, I am going to assume that you will not get involved in a land war in Asia. I can therefore tell you unequivocally: the single biggest mistake you can make is *not* engaging in meaningful consultation with your faculty at every step of the way—that is, not simply informing them what is going to happen next, but treating them like dedicated professionals and intellectual peers, because shared governance is more important now than ever.

I would emphasize the importance of shared governance to any administrator, anywhere, on any occasion. But it is especially urgent when the subject under discussion is financial exigency. That is what our report was all about, and that is why it is worth your attention.

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