property: money, land, cultural property, intellectual property and intellectual capital.

Parameters

Parameters for the behavior of public universities as economic actors were laid forth in two Supreme Court decisions from the beginning of the twentieth century. In *Thomas v. Board of Trustees of Ohio State University* (1904) and *Speer v. Colbert* (1906), the Court used analysis of a land-grant question to specify the powers available to universities. These included the rights to sue and be sued; contract and be contracted with; make, use, and alter a common seal; and to receive a variety of types of property through a variety of means.

These parameters have been revisited recently as universities experiment with the new ways of structuring themselves internally and relating to other institutions made possible by the use of new information technologies. In *NLRB v. Yeshiva* (1980), *Florida Prepaid Postsecondary Education Expense Board* (1999) and other decisions, the Court supported the broadest definition of the ways in which universities are permitted to structure themselves as well as to operate economically.

Money

Fees, gifts and bequests have been treated separately. The decision in *In re Pennsylvania College Cases* (1871) established that colleges could accept payment for classes and that those payments would be considered contracts. The question of whether or not other ways of acquiring property were acceptable was addressed in *Board of Public Works v. Columbia College* (1873), in which it was held that commitments to colleges are as important as other kinds of financial commitments, and that resources so committed, as a result, cannot be withdrawn in favor of other needs. Universities do have to follow specific conditions set by gifts or bequests (*Mayer v. American Security & Trust*, 1911), but testators and donors need not be technically precise in their description of intended uses for funds (*Taylor v. Columbian University*, 1912).

If a university sets up a foundation incorporated in another state, the use of its funds is determined not by the jurisdiction in which the university sits, but by the jurisdiction in which the foundation was incorporated; thus, a University of Arkansas foundation incorporated in Texas was prohibited by Texas law from spending funds on a

University of Arkansas medical facility in Arkansas (*Arkansas v. Texas*, 1953).

The Court has also supported entrepreneurial activities on the part of universities. The importance of sports to the income of many universities, for example, was at the heart of the decision in *NCAA v. Board of Regents, University of Oklahoma* (1983) when the Supreme Court would not permit an injunction against broadcasting football games while broadcasters were under investigation for antitrust violations.

Land

The land-grant process[3] raised issues both of property ownership and of the relationships among higher education institutions, state governments and the federal government. The process itself was complex, with numerous opportunities for abuse. The commitment to public higher education had to be reinforced in cases that supported the right of states to establish the financial arrangements necessary to translate funds from the federally-granted lands into capital with which to build state universities (*Bier v. McGehee*, 1893; *Keane v. Brugger*, 1895; *Montana ex rel Haire v. Rice*, 1907); acquire further land (*Cavanaugh v. Looney*, 1919); and decide for themselves which institutions would receive land-grant funds (*Wyoming Agricultural College v. Irvine*, 1907).

Not all land owned by a university is necessarily used directly for educational purposes. Once the Court held that taxable and non-taxable activities of universities could be treated distinctly for legal purposes (*Jetton v. University of the South*, 1908), it became easier to defend the right of the university to rent out land or other property (*Osborne v. Clark*, 1907; *Taylor v. Columbian University, 1912*), or use it for other non-educational purposes (*Millsaps College v. City of Jackson*, 1927; *Seton Hall College, et al. v. Village of South Orange*, 1916).

Cultural objects

Ownership of cultural property by museums, archives, and universities, one of the most urgent of contemporary cultural policy issues, arose as a question first at the constitutional level as early as *Onondaga Nation v. Thacher* in 1903. Plaintiffs (leaders of the Iroquois Confederacy and the University of the State of New York) accused an individual of stealing four wampum belts that allegedly belonged to

the university, to whom rights as 'wampum keeper' had been transferred both through tribal ritual and bill of sale. Lower courts had claimed no commonality of interest among individual members of the tribes, and therefore denied that the tribes had the ability to sue. The Supreme Court declined jurisdiction as well, arguing that the suit was cast in terms of tribal, not constitutional, law. Through contemporary eyes, this position appears to reflect a lack of respect for tribal sensibilities; today it is not uncommon for museums and archives to return property to tribes that claim ownership according to tribal, if not US, law.

Intellectual property

Intellectual property rights were at issue in *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank* (1999). Here, a state governmental entity that offered prepaid annuities to state parents seeking to finance their children's education was accused of infringing upon the software patent of a bank. The Court upheld the university's claim to immunity from lawsuit under cover of the state's blanket. The enormous impact of this decision makes it likely that a related case will again work its way to the Supreme Court so that the issue may be revisited.

Intellectual capital

Aware of the relationship between socioeconomic and informational class, the Court has supported the role of higher education in the formation of a variety of types of intellectual capital beyond that embedded in intellectual property. The right of a professional association to require a degree from an institution of higher education in addition to passing an examination for certification purposes was upheld in *Graves v. State of Minnesota* (1926); Aid for Dependent Children (AFDC) funds must be provided not only to 18–20-year-old students attending vocational schools, but also to those attending colleges and universities (*Townsend v. Swank*, 1971); and access questions, such as those affecting students with disabilities, are considered of constitutional status (*University of Texas v. Camenisch*, 1981).

All of these cases deal with the accumulation of intellectual capital by students. Oddly enough, when the Supreme Court came to the question of the intellectual capital of faculty, it was less sure of the value of knowledge – in *Ollman v. Evans & Novak* (1985), the Court held there was no libel case because there was no defamation when

nationally syndicated columnists Evans and Novak described a professor as being without stature and having a research program that is 'hooted at' by his colleagues!

Public sphere

While the Supreme Court has not been using the language of civil society and the public sphere, it has repeatedly addressed questions arising out of the participation of higher education institutions in the larger public sphere and as venues within which public sphere activities can unfold.

The university in the public sphere

The Court has dealt both with questions of just what the public is for any given university, and of what members of the university community may do within that sphere.

The issue of a geographic locus for a college first rose to the Supreme Court in a fascinating 1871 case, *In re Pennsylvania.* Complaints were put forward by students when a college to which they had committed moved as part of a merger process intended to save the institution's financial life – they claimed their prepayments were contracts for educational services in a particular locale. Though the Court acknowledged that the move added to the cost for some, it took the position that the commitment was to an educational process, not a place.

In 1894, the question was again raised as to whether college administrators could move the college from its original site – and again the Court defended that right, noting this time that geographic location was irrelevant to the relationship between the college and the church that had established it (*Bryan v. Board of Education of Kentucky Annual Conference of Methodist Episcopal Church, South, et al.*, 1894). In the 1970s, however, the Court used government funding to justify the position that geographic limits by the Veterans Administration (VA), which administers the GI Bill, were acceptable. The legal home, rather than the infrastructural home, of a university determines its geographic location for such constitutional purposes.

In *Board of Regents v. New Left Education Project* (1972), the question was whether a state institution's public was local or statewide and, if the former, just what 'local' meant. The Supreme Court believed a University of Texas rule prohibiting a student from selling a newspaper on campus was potentially unconstitutional, but that

further examination of the specific facts was needed to determine whether or not this was the correct analysis of the case. Rather than remand the case to the same state-level District Court that had earlier ruled in favor of the university, though, the Court wanted to send it back to a local-level Circuit Court that seemed more likely to be friendly to the First Amendment issues at stake. In order to justify this, the Court argued that University of Texas issues were merely local to those few communities in which state university institutions were located. While this may have been tactically appropriate given the political tensions of the times, Justice William O. Douglas vigorously dissented, arguing that the public of a state university system is by mandate the entire population of the state itself. Because the US judicial system relies heavily on precedent – dependence upon prior decisions at the same and superior court levels – Douglas' fear was that, irrespective of the momentary utility of the Court's position in this one case, a dangerous precedent had been set for all time.

Whether or not to include transient students within voting area populations for purposes of district boundary definition has also received Court attention. It held that it is constitutional not to include foreign students who do not in any event have voting rights (*Summers v. Cenarrusa*, 1973), but unconstitutional to exclude black students who do have voting rights (*Symm v. US*, 1979). In *Hadley v. Junior College District* (1970), the conflict was over bounding districts for the purposes of higher education itself.

♣

The university as public sphere

Cases involving the make-up of the university community and constraints upon discourse within that community pertain to the university as a public sphere.

The diversity of the student body has been supported in a number of categories, including:

- gender (*Cannon v. University of Chicago et al.*, 1979; *Iron Arrow Honor Society v. Heckler*, 1983; *Mississippi University for Women v. Hogan*, 1982; *US v. Virginia et al.*, 1996);
- race (*Bazemore v. Friday*, 1986; *Bob Jones University v. United States*, 1983; *US v. Fordice*, 1992);
- citizenship (*Kleindienst v. Mandel*, 1972; *Toll v. Moreno*, 1982);
- obesity (*Salve Regina College v. Russell*, 1991);

- tax status (*Toll v. Moreno*, 1982; *Kimel v. Florida Board of Regents*, 2000); and
- percentage of the population receiving aid (*Cleland v. National College of Business*, 1978).

Regents of the University of California v. Bakke (1978) and decisions in lower courts of recent years, however, suggest this trend may see reversal. Educational disabilities not addressable within a particular institution are legitimate grounds for denying admission (*Southeast Community College v. Davis*, 1979).

The Court has upheld the right of universities to make evaluations of students and decisions regarding their participation in academic programs based on those evaluations. It importantly distinguishes between disciplinary and academic reasons for dismissing a student, emphasizing that due process applies to the former but not the latter (*Board of Curators of the University of Missouri v. Horowitz*, 1978).

It was held that students cannot be denied the First Amendment right to associate with others in a case involving the left-wing group Students for a Democratic Society (SDS). Here, the Court held that mere membership in an organization does not necessarily entail other specific commitments or behaviors; however, students could be denied the right to associate with particular organizations within the university environment if they refuse to abide by university regulations or will not disavow violence (*Healy v. James*, 1972).

Students do have speech rights even if content is:

- obscene (*Papish v. Board of Curators of the University of Missouri*, 1973);
- religious (*Widmar v. Vincent*, 1981);
- offered by someone on academic probation (*Papish*); or
- espouses unpopular causes or positions (*Norton v. Discipline Committee of East Tennessee State University*, 1970).

Conditions may be put on a campus seeking constitutional acceptance of a speech restriction (*Barnstone v. University of Houston*, 1980). The Court has several times declined to deal with issues involving speech on campuses by students (*Jones v. State Board of Education of Tennessee*, 1970; *Ratchford v. Gay Liberation*, 1978) and non-students (*Princeton University v. Schmid*, 1982), though Justice William O. Douglas vigorously argued that all such cases should be taken by the Court in his dissent in *Zwicker v. Boll* (1968).

On the faculty side, a university may refuse to renew a non-tenure track contract without explanation (*Board of Regents v. Roth*, 1972; *Perry v. Sindermann*, 1972), but may not prevent a person from seeing confidential peer review documents in cases of unfavorable tenure review (*University of Pennsylvania v. Equal Employment Opportunity Commission [EEOC]*, 1990). Constitutional protections for the First Amendment right to associate with others, threatened by oath requirements for faculty employed by public universities, were slowly built in a group of cases: *Sweezy v. New Hampshire* (1957) specifically linked academic freedom to the building of democratic capacity by the state; *Shelton v. Tucker* (1960) ruled it unconstitutional to ask about those with whom faculty members associated; oaths were declared unconstitutionally broad and vague (*Baggett et al. v. Bullitt et al.*, 1964); and the effort to distinguish between seditious and non-seditious speech that is an inevitable part of judgments regarding those with whom faculty associate was deemed dangerously chilling[4] to education (*Keyishian v. Board of Regents*, 1967). *Keyishian* distinguished between knowledge of aims of a group with whom one associates and the intention to help further those aims; the term 'subversive' itself is also difficult to interpret, and therefore should also not be used as a basis for personnel decisions (*Whitehill v. Elkins*, 1967).

The Supreme Court upheld a decision by the Attorney General to waive his right to prevent a Belgian journalist and Marxian theoretician invited to speak at an academic conference in the US from entering. There were grounds to do so because on an earlier visit the invitee had spoken at places not listed on his visa application. The Attorney General chose not to do so in order to protect the right of US citizens to receive information, a First Amendment right traceable in the courts to the early 1940s (*Kleindienst v. Mandel*, 1972).

A public university is a limited public forum (*Rosenberger et al. v. Board of Visitors, University of Virginia*, 1995; *US v. Irwin*, 1942), meaning that, while it is public space, an institution may balance free speech rights with its own right to protect the efficacy of the educational environment. Thus, an institution can restrict an activity on campus either with respect to its content or its location.

Implications of the cases

Several constitutive questions faced by universities were raised at the opening of this chapter, each affected by the use of new information technologies. The constitutional law reviewed here addresses many, though not all, of those questions. These cases provide the context

within which these activities take place and can be used as weapons or tools at any time. This section looks again at the Supreme Court cases dealing with higher education to see what they have to say in response to each of the constitutive questions.

Autonomy

The use of new information technologies raises a number of questions for the autonomy of the university from the nation-state revolving around ownership of intellectual property rights, degrees of freedom available to universities seeking to restructure themselves, use of universities as an arm of the law, constraints on university activities that may derive from governmental contracts, and the role of universities in serving national economic development through training of the labor force. Legal constraints interact with economic issues in determining the actual relationships between the two, for the relative proportion of government funding of public universities in the United States is significantly reduced from the dominant position it has held historically.

The relationships formed by the long-standing US tradition of government support for university-based research are coming under stress as both institutions of higher education and the government seek to maximize the value of their intellectual property. The government, for its part, is increasingly interested in retaining intellectual property rights over the products of government-funded research, though frameworks for doing so are still emergent and contested; one recent step in this direction could be seen in legislation requiring greater public access to data generated by such research projects. Under these conditions, the reliance of public universities on protection from copyright infringement suits because of their relationship to the government, provided in *Florida Prepaid* (1999), may ultimately prove unfortunate. The tension between universities and the government in this area is likely to be one of the most provocative in coming years, and on this point the constitutional record must be described as ambiguous.

The growing interest in Web-based courses for both distance education and on-campus uses has exacerbated the trend away from tenured faculty towards non-tenure-track full- and part-time staff, and encouraged many universities to believe they can reduce the number of personnel through a restructuring of their activities. While such moves are strongly opposed by most faculty members, the Supreme Court has consistently upheld the freedom of universities to restructure and

relocate at will, including the ability to redefine relationships with their employees. In this area, universities appear to be on firm constitutional ground to do as they wish.

Because universities provide computing and communication infrastructure for its faculty, staff, and students they in essence serve as Internet Service Providers (ISPs). Thus universities must abide by the Digital Millennium Copyright Act (DMCA), which requires ISPs to shut down e-mail addresses of those accused by copyright owners of infringing upon intellectual property laws. The DMCA dramatically changes the balance of power in cases of alleged copyright infringement, for it treats the accused as guilty until proven innocent; historically, in fulfillment of the US historical presumption of innocence until guilt is proven, those accused of copyright infringement were not treated as guilty until and unless they had lost their case in court. The DMCA also reduces university autonomy from the government, using that institution like others as extensions of the government's law enforcement capacity. Just as journalists have successfully relied upon constitutional law to resist being forced to serve law-enforcement functions through turning over information gathered to the government unless specific criteria have been met, universities in future may judicially resist the DMCA in order to protect free speech, as well as university autonomy, from the government.

Government funding in itself cannot constitutionally justify intervention into university activities, but government contracts for research in the area of new information technologies and for development of training programs and curricula are another means by which university autonomy may be constrained. Even First Amendment rights can be abandoned through voluntary acceptance of terms of a contract. Though the Court long resisted examination of course content in order to determine the constitutional status of an institution, *Cleland* set a dangerous precedent by sustaining indirect intervention into curricula through its lack of financial support for student participation in innovative courses. Growing government interest in the intellectual property rights of research products suggests the trend towards use of government contracts and research funds as a means of intervening internally in universities – with constitutional support – may be on an upward swing.

An unspoken issue lies beneath the rush of universities to incorporate the use of new information technologies into their curricula as well as their operations: the societal – and therefore governmental – need for a labor force skilled in, and comfortable with, these technologies. In the same way that the nineteenth century required a

print-literate labor force, so the twenty-first century appears to require a computer-literate labor force. This justification for the transformation in the nature of higher education in the USA has solid constitutional support.

Economics

Throughout the history of US Supreme Court treatment of institutions of higher education, it has consistently upheld the right of universities to expand their domains of economic activity, to use economic arguments to justify internal decision-making and to reorganize at will. The use of new information technologies provides a number of temptations of these kinds, as universities identify possible new products (e.g., Web-based courses that can be marketed in their own right without further involving a faculty member), markets (e.g., via distance education) and means of cutting 'production' costs (e.g., restructuring in ways newly enabled by innovative technologies). In all three of types of efforts, universities have strong constitutional support.

Some very old developments in constitutional law have new applications in these areas. The nineteenth-century Supreme Court decisions that upheld the right of universities to create and control the use of their own seals, for example, may well come into use in the courtroom in Web domain-name appellations, as universities seek to protect both their individual identities and the general sector of higher education on the Web. The latter has come into play in debates over whether or not community colleges, for example, should be allowed to use the coveted '.edu' in their Web and e-mail domain names.

Many universities – traditionally non-profit organizations in the USA – are creating spin-off for-profit entities to engage in additional information industry activities, such as marketing to the public software and research-based patents. Like many other types of organizations, universities are also beginning to turn internal functions into products that can be marketed outside the organization. For example, just as law firms are marketing word processing functions externally, universities are marketing their ability to efficiently acquire intellectual property rights for course reading packets, which enable instructors to compile a set of published articles for their students to purchase, so that other universities do not need to develop that capacity themselves. Again, the Supreme Court has consistently supported treatment of universities as an organizational mixture, including both for-profit and not-for-profit functions and serving both

educational and non-educational missions – though historically the latter has always been justified through the support it provides for the former.

The use of new information technologies has exacerbated the trend towards struggles over control of cultural property because it makes it so much easier to access, use, and alter a variety of forms of culture. Universities are likely to face legal problems around cultural property issues in future, not only through attacks on their ownership of cultural property in museums and archives but also through the way in which forms of cultural property are included in curricula as a means of achieving multiculturalism. Constitutional law provides little guidance in this area, since the Supreme Court declined to fully engage with the one pertinent case.

Public sphere

Despite the popularity of rhetorical claims that the use of new information technologies will expand the public sphere and ensure that a diversity of voices is heard within it, the incorporation of such technologies into universities appears to be reducing their role within the society-wide public sphere, as well as restricting discourse within higher education institutions as public spheres in themselves. The US Supreme Court has, however, used a university-based case to directly oppose one of the most significant current threats to freedom of speech: denial of protection to activities defined as information processing rather than expression (Braman, 1998).

The growing interest in for-profit activities by universities inevitably reduces their presence as critical voices contributing to discourse on matters of public concern within society at large. Here, the use of new information technologies is not, of course, the sole explanatory factor. However, it does play a contributory role in ways that have complete support from constitutional law, despite the constitutive function that higher education has historically been understood to play in the United States.

The contraction of the proportion of tenured faculty and simultaneous expansion of student numbers via distance education have had the combined effect of reducing the function of the university as a public sphere. With fewer tenured faculty staff, there are fewer voices. The vast expansion in distance education blurs the boundary between the university and the outside world, with the result that academic freedoms protected within purely academic contexts no longer have the same justifications for their defense. Quite simply, it is no longer

sustainable to maintain the definition of a public university as a quasi-public forum in which speech rights are fully protected, up to the point at which the institution may constitutionally restrict them in order to serve institutional goals. In bricks-and-mortar institutions that do impose some restraints on speech, it is common practice to continue to promote the public sphere functions of the university by designation of particular places in which full expression on matters of public concern may be completely uninhibited. Finding a way of ensuring the same type of discourse space within university-based Web environments may be the most important issue raised by new information technologies that has not yet been addressed by higher education.

Denial of First Amendment rights to informational activities not specifically listed among the five in the First Amendment[5] is among the greatest threats to freedom of speech today. The Supreme Court has addressed this problem in a university-based case likely to rise in salience, *Kleindienst v. Mandel* (1972). Here the Court relied heavily on distinctions among types of information processing and communication for its decision supporting entry into the USA of a speaker invited to an academic conference whom many opposed because of his ideological position. Following an extended discussion of the ways in which different types of information processing and message transmission perform different functions – including elaboration of the reasons why the Court itself relies upon oral argument as well as written briefs and a variety of types of exhibits in order to form its judgments – the decision held that it is precisely because of such differences that protection for all were needed. The opinion concludes by making clear that the First Amendment protects the entire process of applying reason through public discussion, a definition of discourse that includes every stage of the information production, from reception through to reply.

Conclusions

As has happened during other periods of transformations of the social structure and of the economy, universities are renegotiating their identities, their internal structures, their places in the global information economy and their relations with other types of institutions, from publishers to the nation-state. Among the venues in which these negotiations take place is the court system, with the Supreme Court providing the ultimate battleground in the USA.

This analysis of the entire body of Supreme Court decisions dealing with higher education until mid-2000 yields a picture of a situation in

which the autonomy of the university from the nation-state has largely been reinforced and universities are clearly free to operate at will economically, even if doing so comes at the cost to society of fulfillment of traditional educational missions and to faculty of jobs. Transformations in the nature of the universities tied largely to the use of new information technologies have weakened their roles within, and as, a public sphere – despite continued constitutional support for the public sphere, as for the educational functions.

The circumstances depicted here could alter as cases that may rise to the Supreme Court could be generated in coming years by issues such as tensions between higher education and the nation-state over ownership of the intellectual property produced by government-supported research, the extent to which production of a computer-literate labor force should dominate the mission and realities of universities, and governmental efforts to use universities as extensions of their law enforcement entities.

There will be enormous long-term cost to society of the abandonment of the public-sphere functions of universities, destruction of the circumstances that enable full-time devotion to an intellectual and scholarly life by faculty members and a turn away from traditional topics of study towards a focus on technical skills. While the use of new information technologies can facilitate such trends, and US constitutional law in large part supports such shifts, they are not legally required. Ultimately, the choices universities make as they renegotiate their relations with the nation-state, other institutions and the global information economy remain their own, as institutions with a significant degree of autonomy.

Cases cited in this chapter

Arkansas v. Texas, 346 US 368 (1953)
Baggett, et al., v. Bullitt, et al., 357 US 808 (1964)
Barnstone v. University of Houston, 446 US 1318 (1980)
Bazemore v. Friday, 478 US 385 (1986)
Bertell Ollman v. Rowland Evans & Robert Novak, 471 US 1127 (1985)
Bethel School District #403 v. Fraser, 478 US 675 (1986)
Bier v. McGehee, 148 US 137 (1893)
Board of Curators of the University of Missouri v. Horowitz, 435 US 78 (1978)
Board of Public Works v. Columbia College, 84 US 521 (1873)
Board of Regents v. New Left Education Project, 404 US 541 (1972)
Board of Regents v. Roth, 408 US 564 (1972)

Bob Jones University v. United States, 461 US 574 (1983)
Bryan v. Board of Education of Kentucky Annual Conference of Methodist Episcopal Church, South, et al., 151 US 639 (1894)
Cannon v. University of Chicago, et al., 441 US 677 (1979)
Cavanaugh v. Looney, 248 US 453 (1919)
Cleland v. National College of Business, 435 US 213 (1978)
Culver v. US, 271 US 315 (1926)
Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank, 527 US 666 (1999)
Graves v. State of Minnesota, 272 US 425 (1926)
Hadley v. Junior College District, 397 US 50 (1970)
Hamilton v. Regents of the University of California, 293 US 245 (1934)
Hazelwood School Dist. v. Kuhlmeier, 484 US 260 (1988)
Healy v. James, 408 US 169 (1972)
Hendrick Hudson Central Board of Education v. Rowley, 458 US 176 (1982)
Hopkins v. Clemson Agricultural College, 221 US 636 (1911)
Hunt v. McNair, 413 US 734 (1973)
In re Pennsylvania College Cases, 80 US 190 (1871)
Iron Arrow Honor Society v. Heckler, 464 US 67 (1983)
Jetton v. University of the South, 208 US 489 (1908)
Jones v. State Board of Education of Tennessee, 397 US 31 (1970)
Keane v. Brugger, 160 US 276 (1895)
Keyishian v. Board of Regents, 385 US 589 (1967)
Kimel v. Florida Board of Regents, State University of New York, 528 US 62 (2000)
Kleindienst v. Mandel, 408 US 753 (1972)
Martinez v. Bynum, 461 US 321 (1983)
Mayer v. American Security & Trust, 222 US 295 (1911)
Millsaps College v. City of Jackson, 275 US 129 (1927)
Minnesota Board for Community Colleges v. Knight, 465 US 271 (1984)
Mississippi University for Women v. Hogan, 458 US 718 (1982)
Montana ex rel Haire v. Rice, 204 US 291 (1907)
National College Athletic Association (NCAA) v. Board of Regents, University of Oklahoma, 463 US 1311 (1983)
National College Athletic Association v. Smith, 525 US 459 (1999)
National College Athletic Association v. Tarkanian, 488 US 179 (1988)
National Labor Relations Board (NLRB) v. Yeshiva, 444 US 672 (1980)
Norton v. Discipline Committee of East Tennessee State University, 399 US 906 (1970)
Onondaga Nation v. Thacher, 189 US 306 (1903)

Osborne v. Clark, 204 US 565 (1907)
Papish v. Board of Curators of the University of Missouri, 410 US 667 (1973)
Perry v. Sindermann, 408 US 593 (1972)
Plyler v. Doe, 457 US 202 (1982)
Princeton University v. Schmid, 455 US 100 (1982)
Ratchford v. Gay Liberation, 434 US 1080 (1978)
Regents of the University of California v. Bakke, 438 US 265 (1978)
Regents of University of California, et al. v. Doe, 519 US 425 (1997)
Regents of University of Michigan v. Ewing, 474 US 214 (1985)
Roemer v. Maryland Public Works Board, 426 US 736 (1976)
Rosenberger, et al., v. Board of Visitors, University of Virginia, 515 US 819 (1995)
Salve Regina College v. Russell, 499 US 225 (1991)
Seton Hall College, et al., v. Village of South Orange, 242 US 100 (1916)
Shelton v. Tucker, 364 US 479 (1960)
Southeastern Community College v. Davis, 442 US 397 (1979)
Speer v. Colbert, 200 US 130 (1906)
Summers v. Cenarrusa, 413 US 906 (1973)
Sweezy v. New Hampshire, 354 US 234 (1957)
Symm v. US, 439 US 1105 (1979)
Taylor v. Columbian University, 226 US 216 (1912)
Thomas v. Board of Trustees of Ohio State University, 1195 US 207 (1904)
Thomas Jefferson University v. Shalala, 512 US 504 (1994)
Tilton v. Richardson, 403 US 672 (1971)
Tinker v. Des Moines School Dist., 393 US 503 (1969)
Toll v. Moreno, 458 US 1 (1982)
Townsend v. Swank, 404 US 282 (1971)
Trustees of Dartmouth College v. Woodward, 4 Wheaton (US) 518 (1819)
University of Pennsylvania v. Equal Employment Opportunity Commission (EECOC) 493 US 182 (1990)
University of Texas v. Camenisch, 451 US 390 (1981)
US v. Fordice, 505 US 717 (1992)
US v. Irwin, 316 US 23 (1942)
US v. Virginia et al, 518 US 515 (1996)
Whitehill v. Elkins, 389 US 241 (1967)
Widmar v. Vincent, 454 US 263 (1981)
Witters v. Washington Dept. of Services for the Blind, 474 US 481 (1986)

Wyoming Agricultural College v. Irvine, 206 US 278 (1907)
Zwicker v. Boll, 391 US 353 (1968)

Notes

1 The concept of state action refers to government involvement in activities. State action is required in order to trigger application of the First Amendment's protections for freedom of expression.
2 The GI Bill vastly expanded the number of students in the US higher education system after World War II by providing funding for attendance at colleges and universities by military veterans.
3 Beginning in the 1860s, the federal government passed legislation granting federal lands to states to be used or sold to raise funds for the establishment of universities. This created what is in the USA referred to as the public university system – state universities with governmental support and the mission of providing relatively low-cost higher education in subject areas such as agriculture and engineering believed by the government to be critical to the development of society. By the turn of the twentieth century these universities included in their curricula the broad range of humanities and social sciences as well as the physical and applied sciences. Today the role of state government funds in support of state universities is fast declining relative to other sources of funding, a development that is an important factor in university decisions regarding their uses of new information technologies.
4 'Chilling' is a very common term in US law. It is used to refer to situations in which the law does not directly inhibit speech activities, but it does permit situations to develop that will make it less likely certain types of speech will occur because the consequences would be so unpleasant.
5 The five rights specifically mentioned in the First Amendment are opinion (to think what you want to think); speech (to tell others what you think); press (to transport what you think to others across space and time); association (to get together with others to discuss what you all think); and petitioning the government (to ask for political change if, after the community discusses it together, change is sought). Privacy and the right to receive information are considered to be 'penumbral' to the First Amendment and other elements of the Bill of Rights. Additional information policy provisions, from establishment of the postal system to establishment of property rights in ideas and inventions, are included in the Constitution itself.