

Academic Freedom Post-9/11

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Be careful what books you buy or borrow from the library. The Department of Homeland Security, under the terms of the Orwellian-named Patriot Act, could monitor you. A further provision of that law threatens criminal prosecution of anyone alerting you to government inspection of your selections.

Be careful what readings you assign in your classes. The University of North Carolina at Chapel Hill was sued by the American Family Association Center for Law and Policy for assigning a brief introduction to Islam for incoming freshman students. Fortunately, the University held firm and the Court of Appeals dismissed the suit despite additional attacks by local politicians and some university trustees.

Be careful what articles you accept for publication. The U.S. Treasury Department's Office of Foreign Assets Control declared in February of 2004 that American publishers cannot edit works authored in nations under trade embargoes which include Iran, Iraq, Sudan, Libya, and Cuba. The consequences are fines up to a million dollars and jail terms of up to ten years.

Be careful what you teach. In the fall of 2003 the U.S. House of Representatives unanimously passed Resolution 3077 to establish an "Advisory Board" to monitor area studies centers in order to ensure that they advance the "national interest." While the law would apply to all centers funded under the federal Title VI program, the target is clearly the nation's seventeen centers for Middle East Studies. The Association of American University Professors (AAUP), the American Civil Liberties Union (ACLU), the Middle East Studies Association (MESA), and most professional organizations have raised alarms about this unprecedented government invasion of the classroom. Among their concerns are the Board's sweeping investigative powers, lack of accountability, and makeup, as its members would be comprised, in part, from two agencies with national security responsibilities. If HR3077 is passed by the U.S. Senate a government-appointed investigative body would be allowed to police the classroom by deciding, for example, what constitutes a "diverse" or "balanced" lecture. This would effectively replace professional academic standards with arbitrary political criteria.

Be careful what you say in class or off-campus. The American Council of Trustees and Alumni (ACTA) founded by Lynn Cheney (spouse of Vice-President Dick Cheney) and Joseph Lieberman (Democratic Senator and former vice-presidential candidate) issued a report entitled, "Defending Civilization: How the Universities are Failing America and What Can Be Done about it," which accuses universities of being the weak link in the war against terror and a potential fifth column. A list of 117 "Un-American Professors" was posted on the organization's website with the offending statements they allegedly made.

Be careful if you apply for funding from the Ford or Rockefeller foundations. You will be asked to sign new standard grant letters which require you and your organization, in the case of Ford, not to promote or engage in "violence, terrorism, bigotry or the destruction of any state." Those familiar with public debates on the Palestinian-Israeli conflict long before September 11 will instantly recognize the code of this new language. It should come as no surprise to them that

Academic freedom in the United States is facing its most important threat since the McCarthy era of the 1950s. In the aftermath of 11 September 2001, government agencies and private organizations have been subjecting universities to an increasingly sophisticated infrastructure of surveillance, intervention, and control. In the name of the war against terrorism, civil liberties have been seriously eroded, open debate limited, and dissent stifled.¹

those changes were made in response to criticisms from—and then in consultation with—several Pro-Israel Jewish organizations upset at the fact that some of the human rights groups that censored Israel at the Durban Conference in South Africa had received funds from the Ford and Rockefeller Foundations. One of the problems with this language is that the terms are not defined. Would a lecture advocating the right of Islamist organizations, such as Hizbullah, to participate in the Lebanese political system be construed as promoting terrorism? Would research that argues in favor of the establishment of a bi-national state in Israel/Palestine instead of a two-state solution, be accused of promoting the "destruction" of a state? Elite universities such as Harvard, Yale, Princeton, Cornell, Columbia, Stanford, the University of Pennsylvania, Massachusetts Institute of Technology, and the University of Chicago have objected to this language, prompting some minor changes to it. So minor, in fact, that the ACLU, the major civil rights organization in the U.S., recently turned down a one million dollar grant from Ford and a \$150,000 grant from Rockefeller. The ACLU press release stated that it was "a sad day when two of this country's most beloved and respected foundations feel they are operating in such a climate of fear and intimidation that they are compelled to require thousands of recipients to accept vague grant language which could have a chilling effect on civil liberties."

Be careful if you criticize Israeli government policies. National "Take Back the Campus" campaigns by privately funded organizations are targeting students and faculty connected academically or culturally to Muslim and Middle Eastern countries. Some of these organizations openly recruit students to inform on their professors and fellow students who are then "outed" under the charge of anti-Semitism. This is not simply a rhetorical battle: many professors who have been falsely accused were subjected to humiliating and damaging investigations by their own universities and the media. Major donors have been mobilized to pressure university administrators, leading the president of Harvard University, for example, to issue a statement that effectively equates criticism of Israeli policies with anti-Semitism.

Be careful if you are a non-U.S. citizen who is going to the U.S. to teach or study. Your visa could be revoked if you have views critical of U.S. policies as illustrated by the case of Professor Tariq Ramadan. Barriers to the entry or re-entry of non-US citizens based on political "profiling" (selective implementation of new policies depending on one's national/ethnic/religious background) have disrupted academic programs and sharply lowered the number of foreign graduate students in the U.S. The home institutions of those who do get visas are required to monitor these students and submit regular reports to government agencies. All these policies put into question the entire international component of U.S. academia.

The meanings of academic freedom

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Are the dark clouds hovering over academic life in the United States a passing storm, albeit with "Islamic terrorism" replacing communism as the source of evil and danger, or are they harbingers of long-term structural

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changes in the political economy of the production of knowledge in the age of empire? And what are the best strategies for protecting and enhancing academic freedom? These two questions raise many others such as: What are the legal structures, philosophical foundations, ethical practices, and political meanings of academic freedom? When and why did this concept emerge, and how have the ways it has been understood and practiced changed over time? How have institutions of higher education been transformed in terms of sources of funding, organizational structure, overall mission, academic programs, and social composition of the faculty and the student body? What is the relationship between areas studies and language acquisition, on the one hand, and the perceived needs of government agencies, on the other? What organizations, groups, and political forces are behind the current attacks on academic freedom and what are their goals?

Developing the best strategies for defending academic freedom depends on how this concept is understood and on what legal sources it draws. For example, is academic freedom primarily an individual right based, as most have come to believe and expect, on the First Amendment of the United States Constitution which enshrines the right of free speech? Or is it an institutional prerogative of private institutions having to do with a specific understanding of employer/employee relations? Robert Post, author of the Academic Freedom language for the University of California system and a leading member of the AAUP Committee on Academic Freedom, argues for the latter view. Just like justice is best advanced by judges who are employees yet have the right to freely exercise their judgment according to the law, not the whims of the government, knowledge as a public good is best served by the unfettered pursuit by faculty of three key areas of their work: research and writing, teaching, and to a lesser extent, extra-mural speech. In this scheme of things, professional academic standards and norms constitute the shield that protects this freedom while internally regulating and constraining it.

The invocation of professional norms may indeed be the most effective immediate defence, but what about public universities, students, the right of free speech outside of campus, and the epistemological problem of how norms are defined? If professional norms have a history, then academic freedom is the product of ongoing critical scrutiny and reinterpretation of the norms themselves combined with an ethical practice that negotiates between multiple norms in contestation with each other. As Judith Butler has argued, it is important to deconstruct and historicize the notion of professional norms in order to provide greater freedom for extramural political speech so that the lines between areas of expertise and political commentary, between individual rights and institutional prerogative, and between the public good and the institutional autonomy, are not too rigidly drawn. Under the pragmatic rationale of "social benefit" of the free pursuit of knowledge, the U.S. Supreme Court issued several decisions that have made academic freedom an important part of the First Amendment, but only when it comes to public institutions. Considering the fairly brief history of academic freedom in U.S. Constitutional law, the very conservative make-up of the current Supreme Court, and the increasing weight of "security considerations" during a time of war, the very same pragmatic bent can undermine hard earned freedoms.²

Since the Second World War, institutions of higher learning have radically changed: universities are no longer the preserve of a tiny elite, nor limited to the classical curriculum of liberal arts and the sciences. The "multi-versity" of today is home to a much larger and more diverse student body and its mission has expanded to serve a stunningly wide range of intellectual, research, and service objectives. At the same time, universities have become much more dependent on donations from wealthy donors, on joint ventures with corporations, and on government funds for research projects and academic programs. In the current economic environment, most are starved for resources and administrators are much more vulnerable to the myriad ways in which outside forces are reshaping the landscape of intellectual production. Political engagement by faculty and students is essential if they are to have a say in shaping the demographic, economic, and institutional transformation of higher education.

Of war and peace

It is no accident that the issue of academic freedom was thrust into the limelight after 11 September 2001. The two authoritative statements on academic freedom in the United States were both articulated



PHOTO BY SUSAN C. DRUDING, 2001

by the AAUP one year after the outbreak of major wars. The first was the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*. The second was the 1940 *Statement of Principles on Academic Freedom and Tenure*. In the aftermath of 11 September the Bush administration declared a "war against terror." Unlike previous wars, however, this one is not against specific countries or regimes, but against an ill-defined enemy to be pursued everywhere with no end in sight. It is also the first global war in the information age, and a deeply unpopular one everywhere except in the United States and Israel. Consequently, it has to be discursively won and re-won on a daily basis by dominating the framing of debate and by stifling dissenting voices.

We are at a crossroads and need to think carefully about how to reconfigure the concept and praxis of academic freedom so that it can serve just as well in a world where war and systematic misinformation campaigns are the norm and where peace and the free pursuit of knowledge the exception. At stake is the continuation of the academy as the bastion of informed, independent, and alternative perspectives crucial to a better understanding of the world we live in. If teachers and students cannot think and speak freely, who can?

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Free speech rally at Sproul Plaza, UC Berkeley, September 2001

Notes

1. This article is based on issues raised at a University of California, Berkeley conference in February 2004 under the title "Academic Freedom After September 11." See the forthcoming edited volume by B. Doumani, *Academic Freedom After September 11* (Zone Books).
2. This and the following paragraph are based on Philippa Strum's legal history of First Amendment cases and Kathy Frydl's study of the institutional transformation of the University of California system, both of which address in very concrete terms the theoretical and legal issues raised by Post and Butler (in Doumani, forthcoming).