

The New Challenge to Academic Freedom¹

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Academics have developed principles and policies of academic freedom during the last century in order to protect intellectual inquiry from ideological and political interference. One recent academic freedom case is compared to several earlier in the century in order to illustrate how threats to academic freedom have changed in recent decades. Most importantly, threats now come primarily from within rather than outside academe. Even the best academic freedom policies provide scant protection when an institution fails to enforce them and when the professorate fails to insist that they be enforced. Threatened individuals must then turn to external parties for protection. However, such appeals for outside assistance invite the very political interference that academic freedom policies were originally developed to deter. Academics thus risk losing what they collectively fail to protect.

Social science, by its very nature, addresses political issues, so social science is particularly subject to the political winds of the time. Some political influences in research are generally considered legitimate, as when new administrations retarget federal research funding to better meet their own political priorities; but many are not. Academics in higher education have tried to protect themselves from a whole class of such improper influences, namely, political interference from their own institutions, by developing the concept of academic freedom.

How much protection, however, do current academic freedom policies actually provide academics today? My conclusion is that current policies

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are no match for the new challenges to academic freedom. I argue this point by comparing academic freedom cases in the first half of the century to a recent one that epitomizes the new challenges today (see Hamilton, 1995, for other such comparisons). The earlier cases I highlight are two among those in which the Society for the Psychological Study of Social Issues (SPSSI) intervened (Sargent & Harris, 1986). The recent case involved by own research (e.g., Blits, 1991; Holden, 1992; Kaufman, 1992).

The first SPSSI example is that of Isodore Krechevsky (known today as David Krech), whom the University of Colorado hired in 1938 as an instructor. The next year he was told that he would be reappointed as an assistant professor. However, the offer was suddenly reduced to an instructorship after the board received outsiders' complaints that Krech was a Jew with a radical past. Krech refused the instructorship and was fired. The faculty protested the board's decision and a dean resigned over the incident. At least four major professional organizations protested as well.

The second case involves the infamous loyalty oaths during the anti-communist hysteria of the 1940s and 1950s. After World War II, some state legislatures began holding hearings on so-called un-American activities among college and university faculty. In an effort to preempt such hearings in California, the Regents of the University of California began requiring faculty loyalty oaths. Many UC professors were outraged, and the UC Academic Senate urged the Regents to drop the requirement. Despite various attempts at compromise, the regents soon fired 31 members of the Academic Senate, in addition to 157 other faculty and employees. Protests rapidly followed, both from professional organizations and from faculty at other leading colleges and universities.

These two cases are prototypical of that earlier time: the pressures to impose a political test on faculty originated outside the institution, the university administration was often explicit about imposing a political test, the test focused on extramural speech or activities, the political test was often strongly protested by the faculty and their professional organizations, and the failure of faculty to pass or submit to the political criterion resulted in egregious actions against those individuals, often dismissal.

Colleges and universities may, of course, fire or otherwise sanction their faculty, but not on the grounds of disapproving those faculty members' political or religious views. The American Association of University Professors' (AAUP) 1940 statement on academic freedom and tenure, which is the most authoritative, specifies that "[w]hen [a teacher] speaks or writes as a citizen, he should be free from institutional censorship or discipline." It also specifies that "[t]he teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties."

Virtually all the signatories as of 1982 to the 1940 AAUP statement were professional organizations in the humanities and social sciences, no doubt reflecting the special vulnerability of faculty in those disciplines. Like my own university, many colleges and universities have modeled their own academic freedom policies on the AAUP's 1940 statement.

My experience with the limits of this policy began suddenly in November 1989. In just 1 week, another professor wrote a letter to the university president, leaked to the press, in which he argued that my funding source was racist, anti-Semitic, and should be banned; the press painted a lurid and misleading picture of my work and funding source, even caricaturing me in one cartoon as a Klansman taking money from Nazis, and my department promotion committee (and later the chair), completely reversing its evaluation of a year earlier, recommended against my promotion to full professor.

My research had long disturbed the affirmative action officer and some others across campus, because it deals with sensitive racial issues, such as racial disproportions in results on unbiased intelligence tests, and with related policy questions, such as the merits of affirmative action. A department colleague, political scientist Jan Blits, was also swept up in the controversy and his own upcoming bid for promotion endangered, because it had been our joint work criticizing race-norming (i.e., the use of racial curves in grading employment tests) that my promotion committee in the Department of Educational Studies had singled out as being so unacceptable as to negate my previous 9 years' accomplishments.

Those early actions were followed by many others in the next 3 years, for example, punishment for defending ourselves and threats to remove our tenure because of our public statements about the case. Other actions included the administration's outright ban on my funding source, ideologically-motivated investigations into the content of my teaching, punitive changes in Blits's longstanding teaching assignments, reclassification of our race-norming articles as nonresearch for merit evaluation purposes (a form of censorship), and so on.

Blits and I lodged a series of formal complaints against a variety of faculty and administrators, all but one of which were eventually adjudicated through the internal grievance procedures that are guaranteed in our AAUP union contract. All impartial panels found in our favor, but those victories gained us little protection or redress from the administration.

After holding a hearing on our promotion complaints, the University Faculty Senate's committee on faculty complaints wrote that my department's promotion committee had been dishonest, inaccurate, and unfair in evaluating my credentials for promotion (CFWP, 1991b, p. 8), and that it feared Blits could expect the same unfairness and bias in his own upcoming

bid for promotion (CFWP, 1991a, p. 12). Hearing another of our complaints (CFWP, 1991c, p. 10), the committee similarly found that the Sociology Department had violated by academic freedom in denying its students sociology credit for my sociology of education course (a course the department had approved for credit several years earlier).

But it had long been clear that Blits and I would not be allowed to benefit from any such victories. The seven-member Faculty Senate committee itself had come under shrill personal attack and public vilification as it prepared to hold hearings on our complaints. The pressure to which faculty and administrators subjected it eventually led the committee to suspend deliberations on all complaints, including our remaining one, announcing that interference had made it difficult to render justice (Curley, 1991). The real problem, however, was that the administration, which has final authority in all internally-processed faculty complaints, overturned the Faculty Senate committee's decisions in our promotion complaints. While the administration basically supported the committee's decision against the Sociology Department, it signaled another way for that department to de-credit my course again, which it promptly did.

Our complaint over the funding ban ended up in binding arbitration, where, in August of 1991, almost 2 years after the funding controversy began, a national arbitrator ordered the university to rescind its 16-month-old ban on my funding source. He found (Strongin, 1991, pp. 11-12) that the university had "clearly violated its own procedures [on academic freedom] by doing precisely what it said it would not, and should not, do"—namely, "examine the content of [my] work." The administration heeded the arbitrator's order on the funding ban, but its harassment continued, and in some ways escalated. Our dean went so far as to redefine academic freedom in the College of Education so that he could use it, should he wish, to break our tenure for making statements he disapproved of. The local AAUP chapter twice reprimanded him for threatening our academic freedom, but he seemed undeterred. Despite all the decisions in our favor, it was clear to us that faculty and administrators could act against us with impunity. So we prepared to go to court.

Fortunately, we were able to get the university to settle out-of-court, which was clearly seen as a victory for Blits and me. We had not only survived, but had also won the long war against us. But the costs were high. Although I had won promotion, my reputation was indelibly stained. My research program had been set back many years, and the other professional and personal costs were equally high. Blits was later promoted, but he too had lost many research opportunities. And our lives were in many senses absolute hell for 3 years. Nor did this public victory prevent

personal and professional retribution and chronic harassment by some administrators in the years to follow.

I have given this lengthy but highly abbreviated account in order to illustrate how the challenges to academic freedom today differ from earlier ones in this century. First, as many have noted, the source of political pressure to abridge academic freedom comes today primarily from within, not outside, institutions of higher education. One campus group after another rushed forward to condemn us, sometimes in paid advertisements, and to pressure the administration to demonstrate more political sensitivity by constraining our activities. Ironically and sadly, then, the great challenge to academic freedom today comes from academics themselves.

Second, we received almost no public support from within our institution. With very few exceptions, no one on campus had the courage to voice any support for us, although many gave us their whispered encouragement. None of the professional organizations we approached was willing or able at that time to issue statements that our academic freedom was being threatened. We eventually garnered considerable support, but it was almost exclusively external. In addition, most of it was individual rather than institutional in nature: for example, national colleagues wrote individually on our behalf to the University President, Board of Trustees, or local newspapers; some journalists wrote sympathetic editorials; and, most critically, a local lawyer donated countless hours to our case. Except for the local chapter of the AAUP, only one organization acted in our behalf prior to the settlement—the Center for Individual Rights, a public-interest law firm which assisted us in the arbitration over the university's funding ban.

Our case also illustrates a third chilling shift. Faculty are now being punished, not on the basis of their extramural utterances and activities, but for the content of their research or teaching within the institution. The whole debate over political correctness on college campuses today is surely convincing the public that academic life is a political rather than intellectual battleground, thus undermining academics' claim to academic freedom.

The fourth contrast with earlier times, not surprisingly, is that today's faculty and administrators both generally know better than to apply explicitly political tests, as that would obviously violate academic norms. Instead, our critics appealed to institutional rules and professional judgment as pretexts, requiring Blits and me to show in each case that the appeals to legitimate educational or professional principles were merely pretextual. For example, we had to prove that the Sociology Department had denied credit for the course I taught, not because of supposed "variability" in content across sections, but because its members had ideological objections to the content of my research and teaching. We did so, but proving ostensibly

legitimate rationales to be pretextual was usually difficult (unless the critics were unusually inept), and it always opened us to countercharges that we were paranoid and had a nasty penchant for unjustly attacking the motives of our colleagues.

A fifth and very important contrast is that we were not fired and my research was not forbidden outright. Instead, we were subjected to a relentless barrage of subthreshold or indirect attacks that made working conditions intolerable. It was death by a thousand cuts. However, administrators and formal grievance procedures typically require complainants to grieve one action at a time, meaning that few if any of the complaints will seem impressive or actionable when considered in isolation. As a result, many of the separate actions can be dismissed as benign or inconsequential, and one is apt to be branded a chronic complainer.

The administration's ban on my essential funding source was the single most egregious action, because it devastated my research program. However, the ban was indirect, ostensibly having nothing to do with me in particular (despite my being the only faculty member on campus to have ever received funds from that foundation). The ban was thus the most difficult action to protest, despite its being frankly political (the administration's concern was that the Pioneer Fund's activities appeared to support the belief that "affirmative action...should be abandoned"). I could still research any topic I wished, so I still retained my protected right to "full freedom in research," I was told. Access to funding through university auspices, I was also told, is only a privilege, not a right. One should note, however, that everything from tenure to using the library or one's office and campus telephone is a privilege.

How well, then, did our academic freedom policies, probably among the best in the nation, protect Blits and me? Little directly, because they were not enforced. They were useful in our effort, however, to put the university at political and legal risk. For example, the grievance hearings provided us a credible forum to air the violations of procedure, professionalism, and fairness, which embarrassed the university when the local and national press reported them.

Our case did, however, prompt the AAUP to elaborate academic freedom policy with regard to research funding. Its Committee A later stated (Gorman, 1992, p. 49) that "denying a faculty member the opportunity to receive requisite funding" on the grounds that "the funding agency...represents or espouses ideas alleged to be unpalatable to the university...improperly curtails the researcher's academic freedom no less than if the university took direct steps to halt research that it considered unpalatable." This statement is every important, because it establishes the general principle that institutions may not extend or withhold normal faculty privileges

on political grounds—that is, they may not abridge academic freedom by indirection.

As important as such elaborations are, they will never effectively protect academics if they are not enforced. And administrators are seldom likely to enforce them if they are not convinced that their faculty are truly committed to open inquiry and the tolerance is requires.

Consider the lessons of our case. Our central administration was simply reactive—at first, in appeasing certain politically powerful coalitions on campus and later in resolutely rebuffing all claims that our rights were being violated. The first 2 years of harassment came mostly from faculty, unchecked by any voice with stature or authority in the university community. We survived largely by getting support from outside academe, including from politicians, lawyers, and journalists, as have others in our position throughout the nation.

But all academics should be horrified by the message that some academics have to mobilize outside political pressure to protect themselves from colleagues within their own institutions. In fact, the whole debate over political correctness on campus is teaching the public that the professorate will sacrifice each other and academic freedom for politics, and that it must be protected against itself. That is an open invitation to outside political interference, especially in the social sciences—which is precisely what academic freedom policies were developed to deter in the first place.

Recent history has taught us that democracies can be sustained only if their members have democratic habits of mind. Democratic constitutions are not enough. So, too, must freedom of inquiry be sustained largely by the informal norms and habits of the academic community itself.

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