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*Institutional leaders, faculty, students, and the public need a better understanding of why academic freedom is essential to student learning and to a democracy characterized by open, reasoned, and vigorous political discourse.*

# The Politics of Academic Freedom

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In 2004, faculty member John Yoo returned to his tenured position at the University of California, Berkeley after serving from 2001–2003 in the Office of Legal Counsel at the U.S. Department of Justice. While there, he wrote several now-infamous memoranda that provided legal justification for detention and extreme interrogation techniques (Jaschik, 2008). These memoranda drew sharp public scrutiny after the media starting reporting on abuses and torture that the administration justified as necessary to win the "War against Terror." Several legal scholars publicly challenged Yoo's analysis. Protesters gathered outside the law school. The *New York Times* published an editorial condemning Yoo's position on torture (*New York Times*, 2008). Though not calling for his termination, the editorial noted that Yoo "inexplicably, teaches law at the University of California, Berkeley." The American Freedom Campaign began an e-mail campaign that read, "John Yoo should not only be disqualified from ever serving in government again, but he should also be prohibited from spreading his distorted view of the law and the role of lawyers to young law students. . . . He must be fired" (American Freedom Campaign, n.d.). The dean of the law school, Chris Edley, received hundreds of letters and e-mails questioning Yoo's employment. The San Francisco chapter of the Nation Lawyer's Guild wrote the University Chancellor asking for an investigation into whether Yoo violated the Faculty Code of Conduct. The matter drew ongoing commentary and debate on the *New York Times* "Room for Debate" Web page, drawing nearly 530 posts between August 20 and September 7, 2009 (*New York Times*, 2009). There is now a firejohnyoo.org Web site. On the first day of classes in August 2010, protesters mobilized outside of the law school, demanding John Yoo's termination.

John Yoo's experience pales in comparison to that of other faculty members whose research, teaching, and political speech have been the subject of proposed state legislation, government surveillance and investigations, internal university investigations, trustee calls for action, public protest, targeted

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Web sites, protests by irate students or the public, self-appointed "watch" groups, editorials, blogs, national media storms, radio and television talk-show rants, full-page ads in campus newspapers, e-mail campaigns, vicious name-calling, and death threats. Many who write about the barrage provide, as I have, examples of excesses stemming from all political perspectives (c.f. Gerstmann and Streb, p. 4). In the interest of transparency, I see far more critique coming from what one journalist described as a well-organized, "conservative rapid-response network" (Solow, 2004) than from those with more left-leaning views (see also Barnes, 2009).

Political pressure against higher education is nothing new but, as in the broader public square, the discourse seems to have reached a new level of invective, particularly since 9/11. Much has been written about allegations against the academy for its systemic left-leaning political bias in teaching and for protecting, under the banner of academic freedom, "dangerous" faculty out to indoctrinate students and undermine one version of the American way. Many of these strong accusations reflect not a difference of opinion, but a rejection of the very legitimacy of higher education itself. The claim is not only that the academy is too liberal; it is immoral, unpatriotic, and even dangerous to this nation. Many academics published books, articles, and op-ed pieces in the *Chronicle of Higher Education* or *InsideHigherEd.com* expressing the view that academic freedom is facing its most serious threat since the McCarthy era (Cole, 2005; Schrecker, 2006; Doumani, 2006, p. 11; Streb, 2006, p. 3).

According to researchers Smith, Mayer, and Fritschler (2008), the accusations of liberal bias in the academy lack merit. Instead, the problem is "an emerging risk-averse campus climate that threatens to impoverish the intellectual vitality" of education and inhibits political engagement (Fritschler and Smith, 2009), a viewpoint shared by other authors in this volume (see Hess and Gatti, Chapter Two, and Dzur, Chapter Nine). I can understand why academics might avoid risking choices that attract not just public attention but organized campaigns using misinformation, ridicule, and intimidation tactics. Academic freedom may ultimately protect scholarship and teaching choices, but individual scholars can be badly bloodied along the way. If, as the authors in this volume collectively argue, the academy must teach democracy's issues, principles, and practices, then being timid about tackling politically and socially controversial topics is unacceptable.

Is the prefabricated invective that dominates public life inevitable in academia as well? Are campus-watch groups, publications "outing" faculty for their political views or teaching styles, legislation, and politically motivated investigations a "new normal" for academia? We simply cannot expect embattled professors to tough it out individually. Nor does responsibility rest with the national higher education associations, even those that have issued thoughtful statements on academic freedom (Association of American Colleges and Universities [AACU], 2006; American Council on Education [ACE] 2005). The solution is certainly not to muzzle critics by drowning them out with comparable hyperbole.

Students, public officials, the media, and Americans more broadly need a better understanding of why academic freedom is critical to the work of higher education, and why the work of higher education is critical to a strong democracy. With fewer than half of the nation's young people attending college, it may be that Americans do not understand or value higher education's purpose. Higher education may have devolved in the public psyche to a place where students get credentialed so that our economy grows. Although educating for individual and collective prosperity is important, higher education's responsibilities do not rest there. At their best, the nation's colleges and universities prepare students for active participation in a diverse democracy.

At the risk of sounding cliché, what is called for is a public dialogue, or at least some form of organized public engagement on academic freedom, and even higher education's role more broadly. As part of that process, the academy has some internal housekeeping to do. Academic freedom is a complex concept that warrants far more consideration than space allows in this volume (see Shiell, 2006; Strum, 2006; AACU 2006; Hamilton and Gaff, 2009; O'Neil, 2008 for excellent summaries of academic freedom's history, scope, and purpose). My goal for this chapter is to address three specific concerns: how academic freedom is framed and discussed; faculty neutrality, particularly in the classroom; and student rights. I conclude with some suggestions on how the principles and practices of deliberative democracy can foster understanding of and commitment to academic freedom.

## Academic Freedom's Purpose

Much of what is said and written about academic freedom has to do with the right of professors to free inquiry that leads to the discovery and teaching of new knowledge and the truth. Although this is vitally important, we need to shift the conversation from academic freedom as an individual right to academic freedom as a collective duty, a responsibility implicit in the social contract between American higher education and democracy. It is a duty to study and teach subjects in ways that are publicly relevant and that inform and elevate the public discourse.

We can start by being more attentive to how the academy makes the case for academic freedom. Judicial recognition of academic freedom as a legal standard and constitutionally protected principle and public interest forever changed the way we talk about it.[1] In the often-referenced *Keyishian v. Board of Regents* (1967), the U.S. Court described the classroom as "the marketplace of ideas" (385 U.S. 589, 603). Justice Brennan explained, "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us . . . That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." American colleges and universities excel not by stamping with approval conventional social and political views. They strengthen society when they compel students to explore the complexity of

subjects, analyze, critique, and deliberate when there is disagreement, and generate new ideas and solutions. Academic freedom exists so that colleges and universities *can and will* be places for the robust exchange of ideas and free expression. It is "a constitutionally significant means to a constitutionally desired end" (Barnes, 2009, p. 1468).

In describing academic freedom, we can invoke U.S. Supreme Court Chief Justice Warren's language in 1957 (*Sweezy v. State of New Hampshire*, 354 U.S. 234, 250):

> No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Perhaps Berkeley Law School Dean Chris Edley (2008) offered the best rationale for academic freedom:

> [John Yoo] enjoys not only security of employment and academic freedom, but also First Amendment and Due Process rights . . . It seems we do need regular reminders: These protections, while not absolute, are nearly so because they are essential to the excellence of American universities and the progress of ideas. Indeed, in Berkeley's classrooms and courtyards our community argues about the legal and moral issues with the intensity and discipline these crucial issues deserve. Those who prefer to avoid these arguments—be they left or right or lazy—will not find Berkeley or any other truly great law school a wholly congenial place to study. For that we make no apology.

Embracing this perspective on academic freedom strengthens the democratic purposes of higher education and helps to protect academic freedom from those who seek to erode it in service to a political agenda.

## Neutrality

Many academics dismissed the attacks by the likes of David Horowitz as coming from extremists with their own political agenda. That may be, but we need to take seriously the principle of neutrality. Several studies of faculty attitudes indicate that a majority—slightly more than 60 percent—of college faculty members lean to the left ideologically (Smith, Mayer, and Fritschler, 2008, p. 74). These numbers change dramatically when broken down by discipline. For example, the most liberal departments are English

(85%) and foreign language and sociology (80%); the least liberal are economics (23%), agriculture (31%), and business (34%). Faculties are made up mostly of Democrats (56%) and Independents (30%), with Republicans making up only 14% (Smith, Mayer, and Fritschler, 2008, p. 78).

Do professors indoctrinate students or even demonstrate bias in their classrooms? Seventy-five percent of faculty surveyed (both liberal and conservative-leaning) felt that there is no significant pattern of bias on their campuses (Smith, Mayer, and Fritschler, 2008, p. 83), but that may be because academics avoid politics. Contrary to conventional wisdom, most faculty members keep politics out of their classrooms, and those that do talk politics are not inclined to let their students know how they feel about an issue (p. 84).

It is unrealistic to expect professors to *be* neutral, but they do need to *act* neutrally in the classroom, to be objective and fair about a topic. (When they are out in the public arena, they have the same rights as any other citizen.) The challenge here is largely one of *process*: who gets called on, how to balance individual and group needs, how to manage personal beliefs and opinions, how to broaden a discussion when there is inadequate diversity in perspectives among the students.The job of a professor is to encourage independent thinking and create safe spaces for free expression and deliberation. It is to provide students with opportunities to examine public problems carefully and identify or craft well-reasoned solutions after a respectful airing of diverse perspectives.

The challenge is also one of content, and expert knowledge and opinion count. A desired learning outcome should not be to indoctrinate students or manipulate public opinion, but of course, the lines are almost never this bright. Academics are on the front line of many significant normative debates in society. Some political questions are central to a discipline, and they may demand a definitive stance (e.g., what causes the economy to grow, whether democracy is the best political system, climate change, new forms of energy). As researchers, discover new knowledge and support legitimate perspectives with empirical evidence. As teachers, the goal is to provide a context for a robust exchange of ideas, and those exchanges will inevitably influence learning, career and personal choices such as voting, judging the conduct and decisions of public officials, and public problem solving.

Progressive thinking may be viewed as subversive or radical, but challenges to a professor's legitimacy as a researcher and teacher are best left to peers and others with relevant knowledge and training. Academics appropriately resist challenges to their scholarship and teaching when they feel that the pressure is politically motivated.

## Student Rights

Much of the recent controversy concerns faculty–student dynamics. Do students have the right to refuse an assignment or to learn a topic if they believe a professor teaches from a biased perspective? Generally, the answer to these and

similar questions is no. Students can and should be required to articulate and defend their positions, and it is entirely appropriate for a professor to challenge strongly held viewpoints, even if the student suspects (or even knows) that the professor feels just as strongly. Students do not have the right to avoid an educational experience because they are upset or their perspectives have been challenged by legitimate facts and ideas. Except in rare circumstances, they cannot refuse to study a topic, even if it is against their religious beliefs.

It is entirely appropriate for a professor to insist upon reason in a classroom setting, but s/he needs to consider who decides what is reasonable and whether their standards are linked to the norms established by those with positional power or authority. Faculty should not quash dissenting perspectives under the guise of maintaining classroom order.

Students do not have the right to disrupt the educational process or obstruct teaching and learning. Students generally can challenge the views expressed by faculty, institutional leaders, peers, and guests both in and beyond the classroom, and institutions and faculty have the right to insist upon evidence, respect and other rules for discourse, and reasonable time, place, and manner restrictions, as long as those rules are not tantamount to censorship.

Professors can insist on respect and civility in the classroom, and they should respond in kind. Professors must treat students with respect, but that can mean different things to different people. (Chapter One examines the complexity of civility as a rule for engagement.) Common sense should prevail: professors cannot disparage, harass, humiliate, or exploit students. Some courts have concluded that professors cannot be vulgar, although others have protected obscenity in certain circumstances.

Again, the lines are not always clear. One person's Socratic method is another person's harassment. Members of a classroom or campus activities should collaboratively establish and periodically affirm ground rules in advance of any discussion. Students can be held to higher standards for discourse than are currently modeled in some political arenas.

Allegations of "hate speech" should be managed on a case-by-case basis and both faculty and campuses should avoid preemptive, blanket restrictions. This topic, of course, could be its own book. As a society, we simply must find ways to challenge ideas without personal attacks, and campuses should be communities that encourage and model civil discourse, not by censoring uncivil speech but by exposing and critiquing it.

## Establishing Democratic Culture and Habits of Deliberative Democracy

Members of a campus community can take cues from deliberative democracy advocates and orient teaching and learning to the democratic practices and principles mentioned throughout this volume (see the Clark University case study, Chapter Three, for example). These practices—dialogue, informed deliberation, analysis, and problem solving—and their guiding

principles—inclusion, reason, respect, neutrality, and collegiality—are critical to a strong democracy *and* to the academy as it meets its obligations under its social contract with democracy. Campuses miss the point if they continue to offer the typical, predominantly passive venues—debates, presentations, public lectures, panel discussions followed by Q&A or short roundtable discussions, focus groups, and apolitical service. These are not *deliberative* settings. The campus culture should reflect exemplary principles and practices in democratic dialogue and public deliberation.

My own apprehension stems from the conundrum higher education faces. Academic work—inquiry, study, critique, deliberation, and problem solving—is inherently *progressive*. Shining a spotlight on pressing ethical, social, political, and economic problems in society, not simply as a proverbial academic exercise but as a step toward social change, is the job. To many, that implies an activist role and even a *partisan* agenda, so the public pushback is likely to be not only against scholarly conclusions (and the fact that they are taught), but against the very idea that this is the academy's "place." Our challenge is to communicate publicly how teaching and learning about public problems and their solutions is in the public's best interest, and why that is best accomplished when faculty have the freedom to do so in nonpartisan ways and without political interference.

Berkeley Law Dean Chris Edley suggested, "we do need regular reminders" about the scope and purpose of academic freedom. How do we do that? I am heartened by the promising developments in public discourse and successful experiments in inclusive, reasoned, respectful dialogue and deliberation. There is no reason why those principles and practices cannot be applied to teaching and learning political controversies and to bolstering public understanding and commitment to academic freedom. With the exception of extremists who steadfastly employ divisive, vitriolic diatribe to get their way, Americans want more informed, open, and civil discourse and productive problem solving in public life about pressing social and political problems (Shea, 2009). They should expect it in higher education as well.

## Note

1. Academic Freedom is an amorphous concept in legal jurisprudence. I am not arguing that we can count on the courts to protect all faculty speech from political pressure. Indeed, the U.S. Constitution only limits the actions of the *state*, not *individuals* (e.g., bloggers, citizen watch groups). Further, the constitutionally protected right to academic freedom (distinguished here from academic freedom as a professional standard or contract right) is an *institutional* right enjoyed by faculty members as agents of the university. Finally, academic freedom is not absolute.

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