



1956

Book Review: The Development of Academic Freedom in the United States & Academic Freedom in Our Time

Ralph S. Brown Jr.
Yale Law School

Follow this and additional works at: https://digitalcommons.law.yale.edu/fss_papers



Part of the [Law Commons](#)

Recommended Citation

Brown, Ralph S. Jr., "Book Review: The Development of Academic Freedom in the United States & Academic Freedom in Our Time" (1956). *Faculty Scholarship Series*. 2742.
https://digitalcommons.law.yale.edu/fss_papers/2742

This Book Review is brought to you for free and open access by the Yale Law School Faculty Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship Series by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

churchgoers, and persons who minimize the dangers of Communism.¹⁹ We must still learn, of course, whether, why and how these characteristics affect tolerance, but this is a start.

One may question some of these findings on methodological grounds. The interviews themselves may have dwelt on the threat theme so heavily as to elicit spuriously less tolerant reactions from the more suggestible interviewees.²⁰ The subjects may also have been frightened in some degree by the persistence with which they were sought for questioning (at least five and sometimes ten personal calls were made to ensure that as many as possible of those selected for the sample were interviewed), though if this was a factor it was missed in the observations of the experienced professionals who did the interviewing.²¹ Another point of doubt concerns the "scale" of tolerance used to grade the responses. This scale has real value in summarizing data and ensuring reliability, but it tends to class undecided respondents in the less tolerant category.²² Closer analysis than Stouffer provides might have shown that women, non-leaders, farmers, and others are merely more undecided, not affirmatively more intolerant. Finally, there is the perpetual problem, which the author discusses candidly, of relating expressed opinions to affirmative actions.

Granted all of these reservations, Stouffer's data still provide us with an important starting point for an analysis of the phenomenon of tolerance. It suggests further study aimed at verifying and explaining the relationships indicated here. If we understood better the origins of tolerance, we might expend our efforts more effectively in working to develop the kind of population that could resist simultaneously the Communist threat and the threat to our civil liberties. Stouffer's book is a signal contribution to the task.

RICHARD D. SCHWARTZ†

THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES. By Richard Hofstadter and Walter P. Metzger. New York: Columbia University Press, 1955. Pp. xvi, 527. \$5.50.

ACADEMIC FREEDOM IN OUR TIME. By Robert M. MacIver. New York: Columbia University Press, 1955. Pp. xiv, 329. \$4.00.

ACADEMIC freedom has been the subject of an extraordinary amount of recent discussion, especially since the University of Washington cases in 1948 pre-

19. Pp. 51, 93, 112, 116, 117, 134, 135, 144-46, 201, 206, 207.

20. The interview schedule is given on pp. 250-61. Incidentally, the atmosphere of threat might also have been enhanced by the period in which the interviews were conducted, just after the Army-McCarthy episode.

21. Pp. 240-43.

22. Pp. 262-69.

†Assistant Professor of Sociology, Yale University.

culated the issue of Communist professors.¹ New attempts to restate the general theory of freedom to teach and freedom to learn keep appearing; new rationalizations for barring (or not barring) Communists from the campus abound.² The latest additions to the discussion are two substantial volumes made possible by the generosity of Yale's frequent benefactor Louis M. Rabinowitz. In this instance Mr. Rabinowitz's concern for a substantial inquiry into academic freedom was—shall I say diverted?—to Columbia, and the project was placed under the direction of the eminent political philosopher Robert M. MacIver. Professor MacIver himself took on the toughest part of the project—the assessment of the current state of academic freedom. His colleagues put their massive scholarly labors into tracing the historical background up through the founding of the American Association of University Professors in 1915 and the loyalty dismissals of World War I. They consequently had a vantage point in time from which to survey their subject. The last half-decade was, heaven knows, a precarious and fog-shrouded perch; but it at least removed them from the events they were appraising.

Let me describe briefly the historical work of Professors Hofstadter and Metzger, which as a lawyer I am not equipped to criticize. It is chiefly a chronicle of academic restraints, in which freedom is a shy bloom often ignored even after its late appearance. From a rather ponderous introduction on the European heritage we are plunged into the chill world of Puritan New England. There was no pretense of intellectual freedom in clergy-ridden Harvard or Yale. In 1735 the Harvard Overseers declared their right "to Examine into the principles of all those that are Employed in the instruction of the Students of the College upon any Just Suspicion of their holding dangerous tenents altho no Express Charge be Layed in against them. . . ."³ The Enlightenment brought a milder climate to the late eighteenth century, so that in 1788 the Harvard Corporation only directed the Hollis Professor, "while he is delivering his Philosophical and Astronomical lectures, to make such incidental reflections upon the Being, Perfections and Providence of God, as may arise from the subjects, and may tend seriously to impress the minds of youth."⁴ But then in the first half of the nineteenth century there was "a great retrogression in the state of American collegiate education, [and] a decline in freedom . . .,"⁵ resulting from the promotion of weak colleges fostering narrow

1. On the University of Washington cases, see COUNTRYMAN, UN-AMERICAN ACTIVITIES IN THE STATE OF WASHINGTON c. VI (1951).

2. Compare ASSOCIATION OF AMERICAN UNIVERSITIES, THE RIGHTS AND RESPONSIBILITIES OF UNIVERSITIES AND THEIR FACULTIES (March 24, 1953), with AMERICAN CIVIL LIBERTIES UNION, ACADEMIC FREEDOM AND ACADEMIC RESPONSIBILITY (April 1952); UNIVERSITY OF MICHIGAN, REPORT OF THE SENATE COMMITTEE ON THE RESPONSIBILITIES OF THE FACULTY TO SOCIETY (April 22, 1955) (mimeograph). Many of the essays on Communists in teaching are cited in ACADEMIC FREEDOM IN OUR TIME 312-15. For an able discussion by a proclaimed conservative, see KIRK, ACADEMIC FREEDOM (1955).

3. THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES 157.

4. *Id.* at 199 n.120.

5. *Id.* at 209.

sectarian doctrines, and from the repression both in the South and in the North on the slavery issue.

It was only after the Civil War that the modern university, and with it the modern view of academic freedom, began to emerge. This period saw the impact of the German universities, with their extraordinary freedom of inquiry (political questions notably excepted). Now the Darwinian controversy brought new boldness into scientific investigation. Yet in 1879 President Noah Porter of Yale ordered William Graham Sumner not to use Herbert Spencer's *Study of Sociology* as a textbook, and in the 1890's dominant political and economic groups—both on the right and on the left—proscribed professors who advanced heretical views. The trend was toward freedom, but it was halting and unsure. The American Association of University Professors was formed to consolidate the gains that had been made—and promptly bowed to the patriotic excesses of World War I.

So the story goes. An advance here; a retreat there; but over-all a slow acceptance of the general proposition that a university teacher has a right and an obligation to pursue truth wherever the search leads him. This right is one that a democratic society recognizes in its own interest, and reinforces with the guarantee of tenure so that a teacher of recognized competence and integrity has some protection from economic pressures if his inquiries prove to be unpopular.

Professor MacIver takes up the story in our own troubled times, but not as a narrator; he uses episodes only illustratively. The history of the period from 1918 on will some day furnish material for another stout volume. MacIver devotes himself to advancing principles and prescriptions. He says much that is valuable about the duties of boards of trustees, the rights of students, and other matters. He is mainly concerned, however, to provide for freedom of inquiry a philosophic justification that will be persuasive. The need for persuasion, he feels, is urgent: "[I]t is hardly an exaggeration to say that the weight of authority in the United States is now adverse to the principle of intellectual freedom."⁶

I cannot say whether MacIver's statement of the case for academic freedom is effective, because I already believe in it. He does not undertake, however, to stand or fall on that statement; he has a second line of defense. If enough people cannot be persuaded to care strongly for academic freedom, perhaps they can at least be persuaded to leave it alone, and to let the faculties make the decisions. It seems to me that this second line is a weak one. If the affirmative case for academic freedom does not convince a hard-shelled trustee, or give pause to a scalp-hunting legislator, is it likely that either officer is going to concede that the faculty knows best? MacIver buttresses his line skillfully with arguments for the reasonableness of letting the craftsman select his own tools. But first you must have confidence in the craftsman's mission. If you don't, you're not likely to have confidence in his choice of tools—that is, of colleagues. To have any hope that trustees, given the tradition of lay control,

6. ACADEMIC FREEDOM IN OUR TIME 266.

and legislators, given the investigative itch, will refrain from meddling in the fitness of faculty members, it seems to me indispensable first to win the consensus of responsible officials on the need for academic freedom.

MacIver has three bases for his fear that this consensus is lacking. For one thing, he devotes a good deal of attention—perhaps too much—to the activities of the right wing extremists. He even gives a vigorous beating to William Buckley's dead horse, the cash-bought right of alumni and parents to control the universities.⁷ A second item is the heavy-footed intrusiveness of the investigating committees. The third, related to both of the others, is the widespread alarm about Communists in teaching.⁸

On this currently central issue of Communist teachers MacIver is calm and judicious. He surveys the arguments that are advanced to sustain the automatic dismissal of Communists, in the absence of such clear cause for sanctions as crooked research or attempts at indoctrination of students. These arguments are, first, the charge of intellectual subservience of the Communist to the Party line. MacIver recognizes the apparent inconsistency between such subservience and the academic standard of deference to competent scholarly authority alone, but he also points out that the charge leads into quicksand. There are other commitments to outside authority, especially religious ones, that do not result in dismissal. So long as a man is free to renounce communism, as many thousands have done, the question should not be simply, does he follow Communist teachings, but rather, does he honestly believe that they point the way toward truth? Millions of people all over the world do honestly hold this belief. No matter how abhorrently wrong they appear to the rest of us, the ideal of free inquiry requires us to refute their error, not suppress it. It may be unlikely that his colleagues will credit either the integrity or the competence of an American teacher who subscribes to Marxism on the Russian model. But they cannot avoid the difficult task of judgment by making an automatic assumption that he is a willing tool of our enemies.

The second charge is that a Communist is necessarily committed to the destruction of fundamental liberties, particularly of the very spirit of free inquiry whose protection he claims. MacIver finds "no effective rebuttal to this charge."⁹ "No freedom for the enemies of freedom" is a compelling slogan, but there is a rebuttal to it, most succinctly put by Professor Machlup: "If we silence him [the man who advocates totalitarian institutions], *we* have *actually* abrogated freedom of speech, whereas *he* has merely talked about doing so."¹⁰

The third charge is that a Communist teacher is probably committed to promoting the violent overthrow of the government. If he is, says MacIver, he is criminally disloyal, and can be removed like any other serious criminal without awaiting his conviction by the secular arm. This ready concession

7. BUCKLEY, *GOD AND MAN AT YALE* (1951).

8. See preceding Review, 65 *YALE L.J.* 572 (1955).

9. *ACADEMIC FREEDOM IN OUR TIME* 166.

10. Machlup, *On Some Misconceptions Concerning Academic Freedom*, 41 *AM. ASS'N U. PROFESSORS BULL.* 753, 781 (1955).

avoids the very live controversy about the constitutional reach of the Smith Act into areas of simple advocacy uncontaminated by other criminal acts.

Thus MacIver, without much fuss, accepts two out of three common charges against Communist teachers—charges that do not depend on proof of censurable acts, but that condemn, on the strength of inferences drawn from beliefs, a *potentiality* of bad conduct. If he can fit this much into his ideal of intellectual freedom, why is he attacked in the popular press,¹¹ and why does he feel that he has missionary work to do? He diverges from prevalent sentiment, I suspect, in that, having shown that there is probable cause to proceed against an alleged Communist teacher, he then admonishes us to use no dragnets, no inquisitions, no oaths, no statutory bans. The result in any case should depend on individual guilt, he says, not on the misdeeds of a group. Leave it to the faculties; and let them, if a colleague has a mole-like absorption in the detritus of comparative philology, shake their heads over his political blindness and, if they choose, decline to remove him until a flaw appears in his research or teaching.

This attitude, of course, is not consonant with the prevailing popular view that all Communists are expert spies or skilled corrupters of youth, or both. That some of them are crackpots, and others almost incredible dupes, is not commonly accepted. Nor is it accepted that the careers of such dupes may have been too inoffensive to furnish a bill of particulars, so that if they are tried and condemned it must be for the bad conduct of others. A man is known by the company he keeps, and, to most people, Communists are intolerably bad company.

The fearsome specter of Communism tarnishes the mirror of academic freedom. Instead of a clear image of freedom, the mirror reflects doubt that soft-hearted faculties will execute proper vigilante justice; impatience with subtleties of debate about the relative subservience of Communists and Catholics; belief in the supernatural powers of Communists, so that one Red cell is thought to outweigh a host of articulate democrats on a campus.

These are corrosive influences, and a philosopher's defense of academic freedom, unfortunately, is not powerful enough to neutralize them. Perhaps only a superb journalist can do the necessary job, in which the first step is to present a clear distinction between the malevolent core of American communism and its foolish fringe. Professor MacIver does not claim to be Elmer Davis and I do not mean to criticize him for not trying to be.

There are other sources of disquiet, however, that MacIver could have faced. The confusing implications of resort to the Fifth Amendment are almost ignored in *Academic Freedom in Our Time*. So is another troublesome issue. Some ex-Communists, as the years of inquisition lengthen, now appear to have lied in the past about their affiliation. What weight is to be given such falsehoods, in the scale of scholarly integrity and candor? If we use them as a ground for condemnation, is it because it's a sin to tell a lie, or because the lie was about communism? These failures to speak fully or truly may seem to be side-issues.

11. See Hook, Book Review, N.Y. Times, Book Review Section, Oct. 30, 1955, p. 6.

They are not. They have been the grounds on which most cases have been decided. Despite all the debate about the fitness to teach of the *avowed* Communist, that issue, ironically, is indeed an academic one. So far as I know, there has not been such a case since the day back in 1948 when Professors Phillips and Butterworth acknowledged their Party membership to their colleagues at the University of Washington.

It is more than ironic, it is tragic for the cause of academic freedom, that a brave new ideal has suffered so much for the assumed faults of so few. Except in isolated instances like the New York city colleges in the 1930's, Communists never were significant in American academic life. Now, I am confident, they have practically disappeared. But the damage has been done; and it will take many MacIvers and much goodwill before the bloom is restored.

RALPH S. BROWN, JR.†

NINE MEN: A POLITICAL HISTORY OF THE SUPREME COURT FROM 1790 TO 1955. By Fred Rodell. New York: Random House, 1955. Pp. xii, 338. \$5.00.

PROFESSOR Rodell's book describes and appraises the powerful part the Justices of the Supreme Court play in our government. In the foreword he warns his readers that his appraisals will be influenced by prejudices based on his "ideas and ideals"—which he identifies as those of "that great and unlike group that is fuzzily labeled 'liberal' . . . or lookers-after-the-other-fellow."¹ He hopes that his evaluations of the Justices he has known *are* based on his ideals rather than "petty, personal things," and it is in this light that Holmes is one of his "major heroes," McReynolds one of his "near villains," and Douglas "rated in this book considerably above Justice Frankfurter."² He will try to "give the devils their more than due" and at the same time stick to his most important ideal or prejudice—an "almost fanatical devotion to personal integrity that combines intellectual honesty, with courage."³ He will exclude all matters of interest only to lawyers and will try to write "so that any halfway literate non-lawyer can understand."⁴

The power of the Court is the power of the majority of the Justices, and their power, Rodell maintains, is "unique," "autocratic" and "irresponsible."⁵ Their decisions can override Congress, the President, state legislatures, and all lesser national, state and local officials. Checks on their power provided in the Constitution are too limited and slow-moving to have much effect. Only once in

†Professor of Law, Yale Law School.

1. Pp. xi-xii.

2. P. xi.

3. P. xii.

4. P. ix.

5. Pp. 32-33.