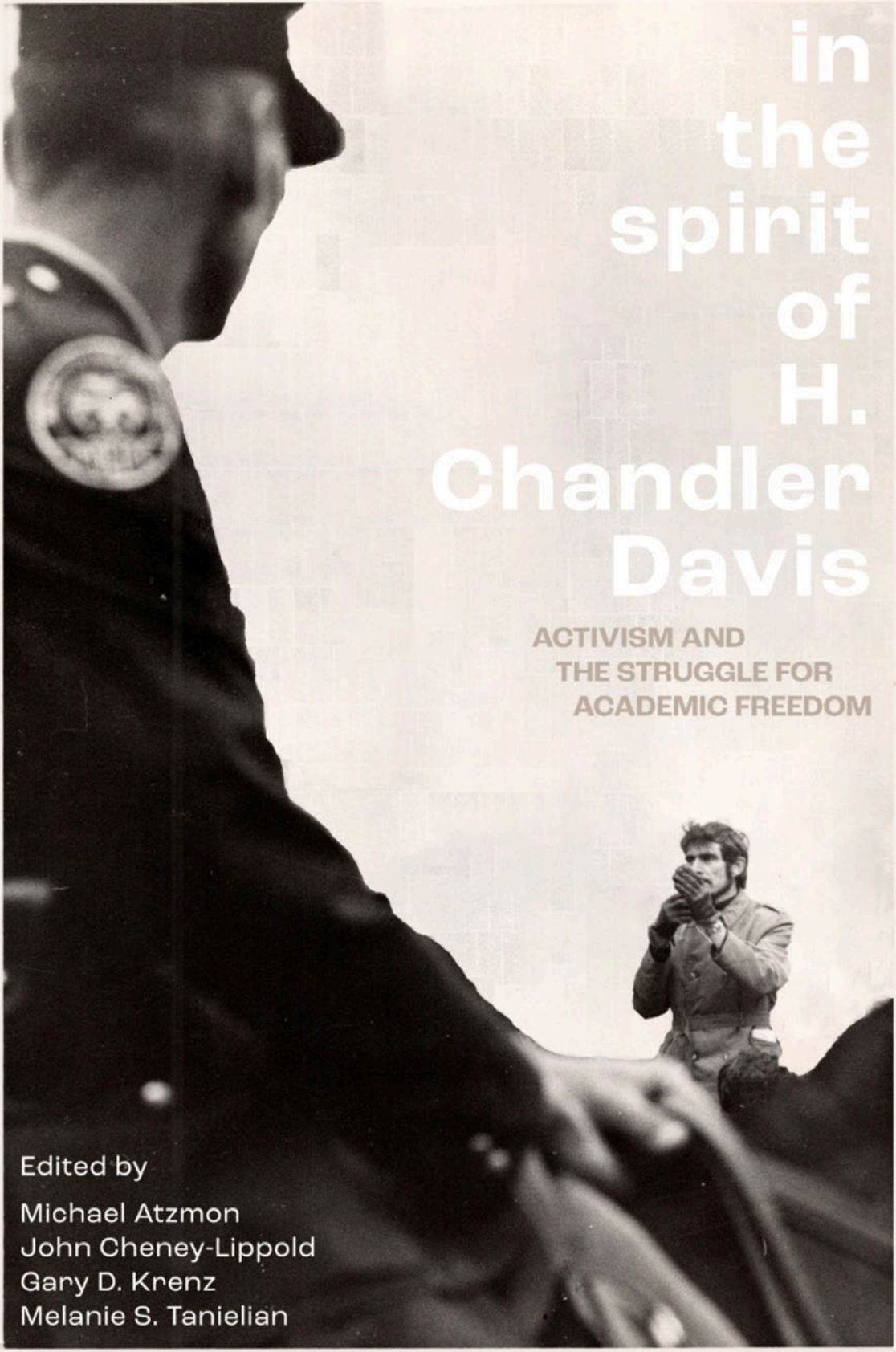

in the spirit of H. Chandler Davis

ACTIVISM AND THE STRUGGLE FOR ACADEMIC FREEDOM

Edited by

Michael Atzmon
John Cheney-Lippold
Gary D. Krenz
Melanie S. Tanielian

IN THE SPIRIT OF H. CHANDLER DAVIS

Constantly guarded speech is not free speech.
It doesn't do the job free speech is needed for, the exploration of ideas and values.

— H. Chandler Davis

IN THE SPIRIT OF H. CHANDLER DAVIS

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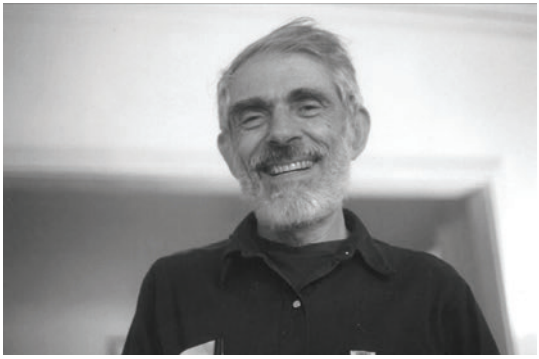

H. Chandler Davis, (1926-2022), photographed by a grandchild.

Printed in the United States of America
First edition 2026
1 2 3 4 5 6 7 8 9

ISBN (paperback): 978-1-964098-10-4
ISBN (e-book): 978-1-964098-11-1

disobedience press

Disobedience Press
Ann Arbor, Michigan
www.disobediencepress.com

Cover by Rebekah Modrak

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CONTRIBUTORS' BIOGRAPHIES

Michael Bérubé is an Edwin Erle Sparks Professor of Literature at Pennsylvania State University. He is the author of twelve books, including *Life as We Know It: A Father, a Family, and an Exceptional Child* (Pantheon, 1996) and *What's Liberal About the Liberal Arts? Classroom Politics and "Bias" in Higher Education* (W. W. Norton, 2006). *Life as We Know It* was a *New York Times* Notable Book of the Year for 1996 and was chosen as one of the best books of the year (on a list of seven) by Maureen Corrigan of National Public Radio.

Juan Cole is the Richard P. Mitchell Collegiate Professor of History at the University of Michigan, focusing on the historical relationship between the West and the Muslim world. His recent works include *The Rubaiyat of Omar Khayyam: A New Translation from the Persian*, *Muhammad: Prophet of Peace amid the Clash of Empires* (2018), and *The New Arabs* (2014). Cole has translated Kahlil Gibran's works and appeared on major media outlets. He writes about the Middle East and South Asia, covering both extremism and peace movements. Cole runs the Informed Comment news site.

Natalie Zemon Davis (1928-2023), a pioneering historian, made significant contributions to early modern and women's history. As the first woman to hold the Eastman Professorship at Balliol College, Oxford in 1994–95, she left an indelible mark on the academic community. Her groundbreaking work, *Society and Culture in Early Modern France* (1975), remains a cornerstone of historical curricula. Davis's innovative approach to microhistory, exemplified by *The Return of Martin Guerre*, brought historical narratives to a wider audience. She was instrumental in establishing women's history as a legitimate field of study,

co-teaching one of the first university courses on the subject at the University of Toronto. Her later works explored global history, religious diversity, and marginalized voices. Davis's final book, *Listening to the Languages of the People*, showcased her enduring commitment to uncovering untold stories.

Stefan Hanß is Professor of Early Modern History and Deputy Director and Scientific Lead of the John Rylands Research Institute at the University of Manchester. Hanß works on material culture, cultural encounters, and global history, and has been awarded, among others, the British Academy Rising Star Engagement Award (2019), the Philip Leverhulme Prize in History (2020), the German History Article Prize (2023), and the Book of the Year Award of the Association of Dress Historians (2024). His research has been widely published in, among others, *Current Anthropology*, *History Workshop Journal*, *Past and Present*, *Renaissance Quarterly*, and *The Historical Journal*.

Marjorie Heins was the founding director of the Free Expression Policy Project (2001–17) and the ACLU Arts Censorship Project (1991–98), where she litigated several school censorship and academic freedom cases. She is the author of *Not in Front of the Children: Indecency, Censorship, and the Innocence of Youth* and *Priests of Our Democracy: Academic Freedom, the Supreme Court, and the Anti-Communist Purge.* She continues to write about censorship, academic freedom, and art history. She is a member of the National Coalition Against Censorship (NCAC) advisory board. Nothing in her essay in this volume reflects any official position of the NCAC.

Dima Khalidi founded and directs *Palestine Legal*, protecting advocates for Palestinian freedom. Previously, she worked as an intern then co-counsel with the Center for Constitutional Rights on cases seeking accountability for Israeli violations of international law. Khalidi holds a JD from DePaul University and an MA from SOAS University of London. She has advocated for Palestinian rights in various media outlets, including *The New York Times*, *The Washington Post*, Democracy Now!, Al Jazeera, NPR, and others. Her work focuses on legal and advocacy efforts to support those speaking out for Palestinian rights.

Gene Nichol is a law professor specializing in constitutional and federal courts. He served as President of the College of William & Mary (2005–2008) and as law dean at the University of Colorado and the University of North Carolina (UNC). Nichol has authored several books, including *Lessons from North Carolina* (2023) and *Indecent Assembly* (2020). He has published in

prestigious law reviews and written for major publications like *The Nation* and *The Washington Post*. Nichol has received numerous awards, including the American Bar Association's Edward Finch and UNC's Thomas Jefferson awards. He holds a philosophy degree from Oklahoma State University and a JD from the University of Texas.

Henry Reichman is Professor Emeritus of History at California State University, East Bay. He is the author of *Understanding Academic Freedom* (2021, 2025), *The Future of Academic Freedom* (2019)—which won the Eli M. Oboler Memorial Award from the American Library Association—and *Censorship and Selection: Issues and Answers for Schools* (1988, 1993, 2001). From 2012 to 2021, he chaired the American Association of University Professors' Committee A on Academic Freedom and Tenure.

Ellen Schrecker is an American historian known for her work on McCarthyism and American higher education. Her latest book, *The Lost Promise: American Universities in the 1960s*, published by the University of Chicago Press, examines higher education's turbulent decade. Her previous works include *No Ivory Tower: McCarthyism and the Universities* (1986), *The Age of McCarthyism* (2017), *Many Are the Crimes* (1998), and *The Lost Promise* (2021). Schrecker has contributed to *The Nation*, *Inside Higher Education*, and *The Chronicle of Higher Education*, edited *Academe*, and even written a Chinese cookbook. She holds a PhD from Harvard and retired from Yeshiva University.

Joan Scott is Professor Emerita at the School of Social Science at the Institute for Advanced Study in Princeton, New Jersey. Central to her work is the question of difference in history: its uses, enunciations, implementations, justifications, and transformations in the construction of social and political life. Scott's recent books have focused on how gender's specificity challenges the universal claims of democratic politics. They include *Gender and the Politics of History* (1988), *Only Paradoxes to Offer: French Feminists and the Rights of Man* (1996), *Parité: Sexual Equality and the Crisis of French Universalism* (2005), *The Politics of the Veil* (2007), *Knowledge, Power, and Academic Freedom* (2018), and *On the Judgment of History* (2020).

Catharine R. Stimpson is Professor/Dean Emerita at New York University. Before NYU, she served as Director of the Fellows Program at the MacArthur Foundation, taught at Rutgers/New Brunswick, where she was Dean of the Graduate School; and began her academic career at Barnard College. The

founding editor of *Signs: Journal of Women in Culture and Society*, she writes about women and gender, the humanities, and education. In 1990, she was the President of the Modern Language Association. Stimpson hosts an interview program with cultural figures, "The Skirball Tapes," through the Skirball Center at NYU.

Alan Wald is the H. Chandler Davis Collegiate Professor Emeritus in English Literature and American Culture at the University of Michigan, where he is a former Director of the Program (now Department) in American Culture. A winner of fellowships from the Guggenheim Foundation, the American Council of Learned Societies, and the National Endowment for the Humanities, he is the author of nine books about the US Literary Left and editor of "The Radical Novel Reconsidered" series at the University of Illinois Press. He writes for *Jacobin*, *Boston Review*, *Against the Current*, *Science & Society*, and other publications.

Silke-Maria Weineck is the Grace Lee Boggs Collegiate Professor of Comparative Literature and German Studies at the University of Michigan. Her second book, *The Tragedy of Fatherhood: King Laius and the Politics of Paternity in the West*, explores what she considers the master trope of power and authority. Weineck is interested in the interplay between philosophy, literature, and figuration from the eighteenth to twentieth centuries. She co-edited *Our Ancient Wars* and collaborated on *It's Football, Not Soccer* and *City of Champions*. Currently, she is thinking about Stockholm Syndrome but is mainly obsessed with Joe Louis.

EDITORS

Michael Atzmon, Professor Emeritus, Nuclear Engineering and Radiological Sciences and Materials Science and Engineering, University of Michigan.

John Cheney-Lippold, Associate Professor, Department of American Culture & Digital Studies Institute, University of Michigan.

Gary D. Krenz, Director, retired, Judy and Stanley Frankel Detroit Observator, University of Michigan.

Melanie S. Tanielian, Associate Professor, Department of History, University of Michigan.

INTRODUCTION

H. CHANDLER DAVIS WAS A consummate political activist, committed throughout his life to the pursuit of peace, justice for the oppressed and underprivileged, gender equity, and the protection of the planet (he once called himself a "red–green eco-socialist"). In his own words, he was dedicated to "keeping resistance alive." Time and again, he supported the freedom of scientists and scholars around the world. He demonstrated solidarity with the subjugated in countries ranging from China to Poland and, of course, the United States. He long agitated for Palestinian rights. Just a few months before his death in September 2022, he gave an address from his hospital bed in support of Russian mathematician Azat Miftakhov, a dissident who has been wrongfully imprisoned by the Russian authorities since 2019.

Davis was also a courageous stalwart and lifelong champion of academic freedom, intellectual freedom, and freedom of speech. In 1954, he was dismissed from the University of Michigan faculty in violation of his academic freedom for refusing to cooperate with the House Un-American Activities Committee (HUAC)— specifically, the HUAC subcommittee chaired by Michigan congressman Kit Clardy. For the same reason, Davis spent six months in Danbury Federal Penitentiary, infringing his First Amendment Rights.

That Davis was an agent in his dismissal and imprisonment lies at the heart of his legacy. His stance before HUAC and the university was profoundly principled and strategic. He chose a defense based solely on the First Amendment protection of free speech rather than *also* invoking the Fifth Amendment's protection against self-incrimination, as nearly all accused of holding communist

sympathies called before HUAC did. He did so to force the question of the constitutionality of HUAC's proceedings, and thus, he risked imprisonment from the beginning. That his strategy ultimately legally failed (see Chapter 1), although not philosophically, morally, and culturally—does not detract from its incisiveness, boldness, and moral aspiration. The legacy of his courage at the University of Michigan during the McCarthy era is the prime inspiration for this volume.

Activism and academic and intellectual freedom go hand in hand. Those who are victims of injustice are typically those whose voices have been silenced or ignored, while those who dare to speak truth to power are often those whose freedom of speech is attacked. Davis knew and understood both sides of the coin of subjugation.

Chandler Davis and Academic Freedom

The first chapter of this book—Joan W. Scott's review of Steve Batterson's recent and indispensable book, *The Prosecution of Professor Chandler Davis: McCarthyism, Communism, and the Myth of Academic Freedom*—lays out key details of Davis's biography, including his prosecution by HUAC, the federal government, and by the University of Michigan. Batterson outlines Davis's reasoning in pursuing the First Amendment defense and the more significant implications of his actions.[1] We will not reproduce those details in this introduction. We do want to make a few supplementary points.

Amidst a culture of fear, one of the most potent tools at the disposal of HUAC, Senator McCarthy, the FBI, and related organizations was an indirect one: the cooperation of employers, private organizations, and other public institutions, including schools and universities, in the "witch hunt" for communists. Relatively few people were sent to prison; vast numbers were fired or blacklisted in one form or another. Chandler Davis's case and those of his Michigan colleagues, Clement Markert and Mark Nickerson, who were both fired but served no jail time, are illustrative. (Although Markert was formally reinstated following the university hearings, Batterson, drawing on new research, shows that the university's intention all along, as communicated to the FBI, was to terminate him one year later. So, effectively, he was fired.) The university's president at the time, Harlan Hatcher, had been working well in advance of HUAC's subpoenas to prepare for such an eventuality. At Hatcher's request, the University of Michigan Board of Regents revised the university

bylaws to align them with the new principles regarding the government's investigations issued by the Association of American Universities. Those principles, at least in Hatcher's interpretation, urged the "naming of names"—identifying other individuals allegedly involved in communist activism. The new bylaws expanded the office of the university president's power to launch investigations of faculty and to dismiss faculty. Even on the eve of the subpoenas themselves, Hatcher and Marvin Niehuss, the vice president for academic affairs, negotiated with HUAC to reduce the number of subpoenas issued to University of Michigan faculty and students from fifteen to seven. In addition to Davis, Markert, and Nickerson, two other University of Michigan faculty members received subpoenas: Lawrence Klein, a professor of economics, who agreed to cooperate with HUAC, and Nathaniel Coburn, like Davis, a mathematician, whose appearance before the committee was subsequently canceled due to his serious illness. Two graduate students, Myron Sharpe and Edward Shaffer, were also subpoenaed and refused to cooperate. The university expelled both.

Upon receipt of the subpoenas, Davis, Markert, and Nickerson were suspended, and their refusal to name names before HUAC initiated a university internal review to determine their fitness to continue as faculty. This review started with the college executive committees—the Medical School for Nickerson and the College of Literature, Science, and the Arts for Davis and Markert. Hatcher sought to modify the rules to enable dismissal by submitting

PRIVATE AND PUBLIC A-POWER

The Michigan Daily

Latest Deadline in the State

PARTLY CLOUDY

ANN ARBOR, MICHIGAN TUESDAY, AUGUST 3, 1954

FOUR PAGES

'U' MAY SEEK DAVIS DISMISSAL

Senate Sets Group To Study Censure

McCarthy Loses Fight to Force Immediate Showdown on Motion

World News Roundup

An Editorial . . .

On May 9, 1954, H. Chandler Davis was an instructor in the mathematics department, whose competence as a teacher or fitness as amember of the University community had not been challenged before the public. May 10, Davis appeared before the Clardy committee in Lansing and came under "suspension without prejudice." July 27, Davis was sent a letter by President Hatcher, stating that the instructor was "unfit to continue" in that capacity.

Davis has not changed since May 9—his capabilities and his character have remained the same. Unfortunately, because he was one of many men across the country brought before the House committee, Davis was called upon to assume a burden of proof, to assure his colleagues, if not the House committee, that he did not hold membership in the Communist party.

Prior to May 10, the University was not concerned with whether or not Davis was willing to discuss the question of political beliefs with his employer, as long as he was willing to take a State loyalty oath. It is regrettable, therefore, that the Clardy Committee has sufficient im-

H. CHANDLER DAVIS STUDIES LETTER FROM HATCHER

Hatcher States Action in Letter

Instructor Has Right to Be Heard By Special 'U' Faculty Committee

President Hatcher's Letter

FIGURE 2. *The Michigan Daily* headline, August 3, 1954. Reproduced with permission of *The Michigan Daily.*

to the Faculty Senate a statement by the Association of American Universities for ratification. Instead, the Senate approved a dismissal procedure based on an expedited review for "exceptional cases which threaten direct and immediate injury to the public reputation or the essential functions of the University." This procedure not only allowed the president to initiate dismissal proceedings but also reduced the waiting period during which a faculty member could appeal a decision from twenty to five days and the number of possible hearing committees from two to one. The Senate also required adherence to the other provisions of the Regents' Bylaws. The Senate Advisory Committee appointed a five-member subcommittee on Intellectual Freedom and Integrity to serve as the hearing committee. The American Association of University Professors (AAUP) later referred to this committee as the Bylaw Committee.[2]

We point to these details for several reasons. First, we want to highlight the trappings of institutionalized due process in these internal reviews. Due process was manipulated and explicitly tailored to undermine the guarantor of freedoms. Furthermore, if the processes are embedded in a system that is skewed against those freedoms, they are all too subject to manipulation by those with power. We note that this is not an isolated event, as recent revisions of the Student Code of Conduct severely curbed due process for pro-Palestinian activists. Second, we want to note the numerous actors' different perspectives and varying interpretations of the meaning of academic freedom. Harlan Hatcher may not have set out to violate the academic freedom of faculty members. But he set out to protect the university and thus embraced a selective understanding of academic freedom that allowed him to see his way clear to dismissals. We now see, and many at the time saw, these dismissals as unequivocal violations of that very freedom. At the time, Hatcher's understanding of academic freedom was not universal. The AAUP would ultimately, in 1957, censure the University of Michigan for the dismissals. But it was not exactly on the fringe, either. The fraught deliberations of the AAUP's various faculty committees suggest that the members had a range of interpretations. Many undoubtedly put in a good-faith effort to do right by the community's shared academic values. Yet beyond healthy debate, the larger issue is the degree to which the climate of fear warped interpretations and understandings of these values.

Academic freedom is premised on, among other things, the idea that those who engage in academic activity may do so freely but must also do so

competently. The entity that determines competence is the faculty itself—the academic community. At the heart of the matter, then, is the question about what sorts of terms and norms constitute that community: what do the community members have a right to know about each other, and what don't they? The idea of an academic community underlay the actions of Hatcher and the committees: a faculty member who refused to be forthcoming with congressional committees had to justify that position to faculty peers. To do otherwise was to withhold vital information not from the government but from colleagues. It raised the specter of dishonesty and lack of integrity. In addition, many people, including members of the academic community, demonized communists as lacking in intellectual autonomy and inherently incapable of commitment to a true academic community.

Davis, Markert, and Nickerson all refused to answer HUAC's questions. With the university committees, Markert and Nickerson were quite open about their politics, their former membership in the Communist Party, and their current thoughts about the Party—Markert indicating his disillusionment with it, Nickerson refusing to repudiate it. This "openness" carried weight with the ad hoc committee and, in Nickerson's case, the Bylaws Committee as well. Davis refused to discuss his political commitments or actions with the university committees, maintaining that his freedom of speech extended to his relationships with the university and academic community. Moreover, to answer the same questions HUAC had put forward was essentially answering HUAC. Agreeing that his intellectual integrity was a legitimate concern of the committees, he averred that the committee could get at his integrity directly in many ways. He would be happy to discuss it, and his political affiliation would have no bearing on the matter.

Without going further into the differences among the three cases, it is instructive to look at how the recommendations of these various committees played out:

§ In Mark Nickerson's case, the Medical School Executive Committee recommended dismissal, but the ad hoc committee and the Bylaw Committee both recommended reinstatement. Nonetheless, Hatcher recommended Nickerson's dismissal to the Board of Regents, saying he was "a Communist in spirit." Nickerson was dismissed.

§ In the case of Clement Markert, the College Executive Committee recommended reinstatement. The ad hoc committee recommended

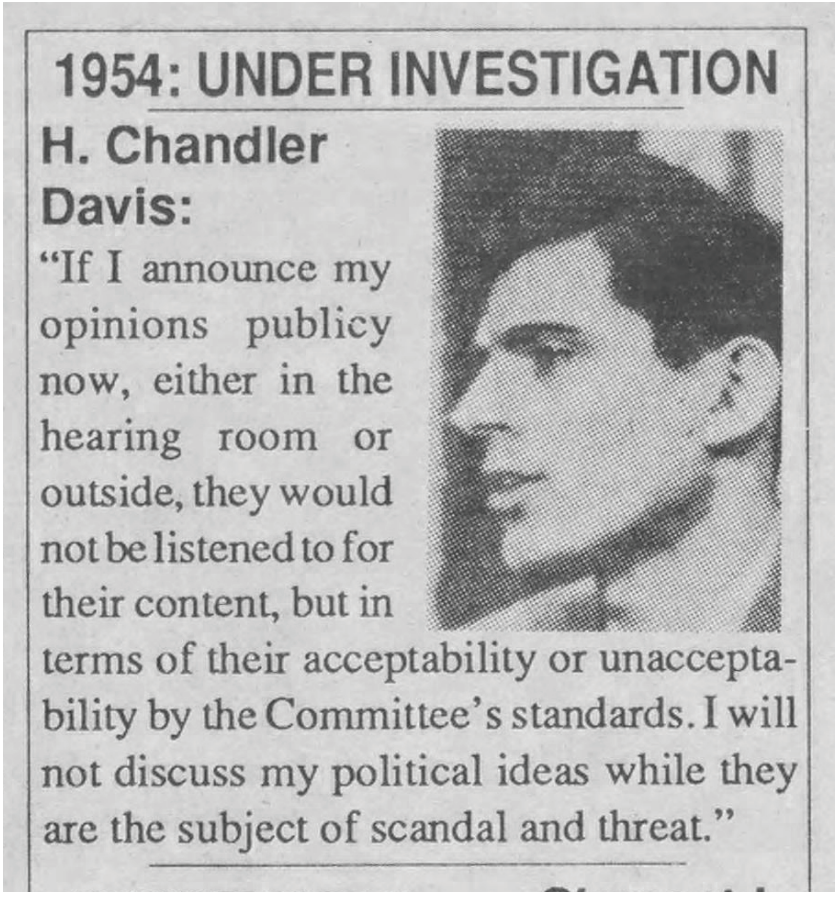


FIGURE 3. *The Michigan Daily* article, April 19, 1989. Reproduced with permission of *The Michigan Daily.*

reinstatement with censure. Markert could appeal the censure to the Bylaw Committee, but he chose not to. He was reinstated but left the University of Michigan (U-M) soon thereafter.

§ In the case of Chandler Davis, the College Executive Committee recommended reinstatement, but the Ad Hoc and Bylaw Committees both recommended dismissal. He was dismissed.

Davis's failure to discuss the Party or his political views with colleagues was fatal as the ad hoc committee put it:

> We believe that a strong, if not absolutely convincing, case exists for disciplinary action or dismissal against a faculty member simply on the basis that he refuses to state fully and frankly to his colleagues and to the University the facts concerning his past or present Communist affiliations and activities, if any.

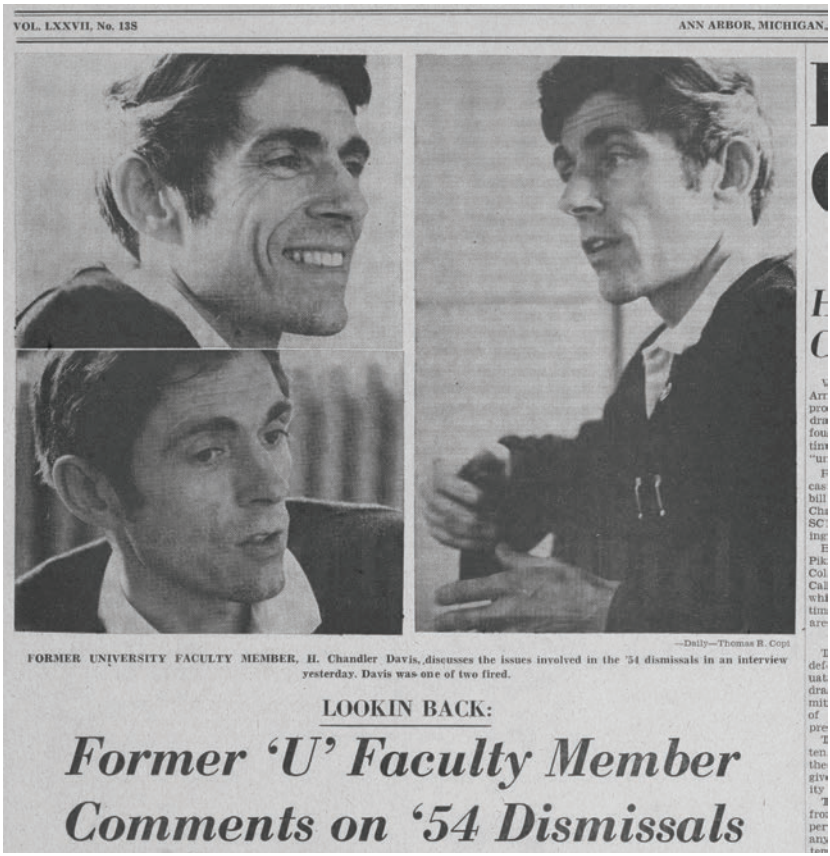
In addition, the committees had no hesitancy in essentially concluding that Davis must have been hiding something and, therefore, must be a proponent of communism in one way or another.

We have Chandler Davis's principled stance to thank, at least in part, for the more robust concept of academic freedom that we now have—even as that freedom is under assault more directly and more ferociously than ever since the McCarthy era. And we may hope, as the academy wrestles with new assaults on academic freedom in circumstances that are in some ways similar to those of the 1950s but in other ways very different, that history can give us valuable perspectives.

The Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom

Following their dismissal, the cases of Davis, Markert, and Nickerson were, sadly, forgotten at the University of Michigan for decades. It was not until the late 1980s that a handful of individuals, including Wilbur McKeachie, David Hollinger, Adam Kulakow, and Peggie Hollingsworth, began working to revive understanding and to bring the university to account. The AAUP Chapter approached university officials, suggesting an apology to Davis, Markert, and Nickerson. Subsequently, the Senate Advisory Committee for University Affairs (SACUA) petitioned the Board of Regents to issue an apology. When these attempts were ignored, the Faculty Senate Assembly passed a resolution in 1990 that bemoaned the "failure of the University Community to protect the values of intellectual freedom" and established the Davis, Markert, Nickerson Annual Lecture in Academic and Intellectual Freedom. It should be noted that the university has yet to issue a formal apology. President Mark Schlissel came close at the winter 2015 commencement. In response to lobbying by SACUA under Chair Silke-Maria Weineck, he called on graduating students to learn from the "horrible mistake," the injustice done to the three.[3]

Since 1990, the lecture has brought an outstanding lineup of speakers to U-M (see Appendix), some of whom have contributed to this volume. All three namesakes were present for the inaugural lecture in 1991. Mark Nickerson died in 1998, and Clement Markert in 1999. Until his death in September of 2022, Chandler Davis attended every lecture—in person and, toward the end, virtually, when COVID or his health prevented his in-person attendance. His generous spirit was always on display. He regularly asked the first question in the Q&A; he met with speakers, students, faculty, and others in the hours surrounding the lecture; he never failed to support campus activists publicly; and he unceasingly brought his incisive intellect to bear on the questions of the day. In re-embracing at least this aspect of the


VOL. LXXVII, No. 138 ANN ARBOR, MICHIGAN,

—Daily—Thomas B. Copi

FORMER UNIVERSITY FACULTY MEMBER, H. Chandler Davis, discusses the issues involved in the '54 dismissals in an interview yesterday. Davis was one of two fired.

LOOKIN BACK:

Former 'U' Faculty Member Comments on '54 Dismissals

FIGURE 4. *The Michigan Daily* article, May 19, 1967. Reproduced with permission of *The Michigan Daily.*

institution that had so wronged him and taking it up again as a forum for engaged discourse, he exemplified the best academic values.

Chandler Davis

In 1988, Chandler Davis recounted his experience at Michigan and with McCarthyism in "The Purge," an essay published in *A Century of Mathematics in America*.[4] Davis was an excellent writer, not just of essays or mathematical papers but also of fiction and poetry. His writings, including science fiction short stories, critical essays, correspondence, and interviews, may be found in *It Walks in Beauty*.[5] It must be said that as a writer, he was of a piece: no matter the genre, the concern for justice is never far away.

He was an outstanding mathematician, publishing around eighty papers. His primary research centered on linear algebra and operator theory in Hilbert spaces. He made significant contributions to numerical analysis, geometry, and algebraic logic. He uncovered the properties of the fractal known as the "Dragon Curve." He was known for the Davis–Kahan theorem, the Bhatia–Davis inequality, and the Davis–Kahan–Weinberger dilation theorem. He was a co-editor in chief of the *Mathematical Intelligencer*. He was a member of the American Mathematical Society and served as its vice president from 1991 to 1993.

Chan's family was deeply involved in and affected by his ordeal. He came to HUAC's attention in the first place because he had arranged to print an essay titled *Operation Mind*, written anonymously by his wife, Natalie Zemon Davis, and Elizabeth Douvan, both graduate students at the University of Michigan.[6] Natalie, who later became a prominent historian, could not travel abroad for her research when the US government took her and Chandler's passports (see Chapter 2). This volume contains a contribution by her. Natalie and Chandler had three children during the 1950s, while she was a graduate student: Aaron Bancroft Davis, Hannah Davis Taïeb, and Simone Weil Davis. We are grateful to Aaron, Hannah, and Simone for their encouragement and support of this project.

This Volume

After Chan's passing in 2022, it seemed clear that an appropriate memorial to him would be a volume addressing contemporary issues of academic and intellectual freedom with which the world, and the United States in particular, is struggling, comprising essays by individuals who have devoted, as he did,

FIGURE 5. Chandler Davis and Natalie Zemon Davis. Photograph reproduced with kind permission of the Zemon-Davis family.

serious attention to the topic. The roster of Davis–Markert–Nickerson lecturers provided a natural source of contributors, and past lecturers wrote most essays herein. We also reached out to other colleagues with expertise in academic and intellectual freedom, and we are honored to be able to present their contributions. Finally, we appreciate the help of the Davis family in including here pieces by Chandler himself and Natalie Zemon Davis. One of us (MA) thanks Professor Caroline Piotrowski for conceiving the idea of this volume. We want to express our gratitude to Rebekah Modrak of Disobedience Press for the cover design, the photographs in the volume, and her help in editing, as well as to Nick Tobier, also at Disobedience Press. Thanks to Chandler's archivist, Daniela Ansovini, for identifying the source of the cover photo. And thank you to the staff of the Bentley Historical Library, especially Karen Wight and Sarah McLusky, the *Michigan Daily*, in particular Kathy Ciesinski, and any other person who has been helpful at that end, procuring images and permissions. The book project benefitted from the financial support of the University of Michigan's Faculty Senate Office.

CHAPTER 1

A Professor's Fight Against McCarthyism Resonates Today[1]

JOAN W. SCOTT

IT FEELS ODD TO be writing a review of this book about mathematician and activist Chandler Davis just days after the October 2023 death at age ninety-four of Natalie Zemon Davis, the legendary historian who was his wife and compatriot for their many years of marriage. Chandler died in September 2022 at age ninety-six. Among his last acts was organizing from his hospital bed the defense of a young Russian mathematician under attack by the Putin regime. Chandler and Natalie were intrepid defenders of free speech and academic freedom. In her foreword to this book, Ellen Schrecker describes Chan (as he was known among friends) as one of those "individual heroes who… thrust themselves into history because of their intense commitment to a better world." The same could be said of Natalie, whom I once called a "historian of hope" because of her insistence on (in her words) "the possibility of communication and curiosity in a world divided by violence."

It's odd to be writing now, not only because my personal sadness is mixed with deep appreciation for author Steve Batterson's careful exploration of the political, legal, and personal aspects of Chandler Davis's challenge to the House Un-American Activities Committee (HUAC) investigations into communism in higher education but also because this book and these recent deaths might suggest a closure that simply isn't the case. As Batterson points out in his last chapter, the challenges Chandler faced in the 1950s have returned with

a vengeance in the form of red state governors and legislators seeking to police what is taught and thought in universities and to punish those teachers whose ideas are at variance with a reactionary political agenda. We are now experiencing what many are calling a new McCarthyism.

Batterson, a fellow mathematician (and now professor emeritus at Emory University), undertook *The Prosecution of Professor Chandler Davis* out of a certain curiosity about what had led the University of Michigan to dismiss the young instructor after his interrogation by HUAC in 1953. With Chandler's (and Natalie's) cooperation, and through extensive archival research, this mathematician has produced a compelling historical narrative that offers important insight into the actions and motives of the principal players.

A precocious student from a left-wing family, Chandler Davis entered Harvard at age sixteen. He attended graduate school there beginning in 1946, meeting Natalie Zemon, a Smith College senior, at a gathering of the Young Progressives, a Communist Party youth organization. Like many other members of their cohort, they responded to the Party's commitment to social justice and its critique of capitalism, but they were firm—as Chandler maintained at his HUAC hearing—in their opposition "to violent revolution as a means of achieving political change." They married soon after, eventually ending up at the University of Michigan in 1950, where Chandler was hired as an instructor and Natalie pursued graduate work in history. They briefly joined the Communist Party in Ann Arbor as well as a liberal group, the National Council of Arts, Sciences, and Professions (NCASP). In 1952, as HUAC announced visits to Michigan, NCASP published a pamphlet—*Operation Mind*, written by Natalie and a friend—that was critical of the congressional committee's attempts at "thought control." Chandler, who was NCASP treasurer, paid for its printing and distributed it to his colleagues. As Batterson recounts it, amid Cold War, Red Scare hysteria, "a worker at the print shop found [its] message alarming." Her husband conveyed their alarm and Chandler's name to the FBI, which sent it on to HUAC. Batterson notes, "When Chandler later appeared before a HUAC subcommittee, a substantial portion of the questioning involved *Operation Mind*." He never mentioned his wife's authorship, and she was never interrogated or charged by HUAC and its affiliates. But the pamphlet continued to figure at every level of the case against him, including in considerations of his ultimate appeal to the Supreme Court.

Those called before congressional investigative committees often invoked the Fifth Amendment right not to incriminate oneself. Chandler's father,

Horace Davis, had used it, along with the First Amendment, when testifying before the Senate Internal Security Subcommittee in 1953. But appealing to the Fifth, which was taken to imply an admission of guilt, overshadowed the First, and Horace Davis and others like him were depicted in unsympathetic press accounts as "Fifth Amendment Communists." As a result, when he received a subpoena from HUAC, Chandler felt he had to take the risk of using only a First Amendment strategy in his defense, even though it could lead to possible jail time for contempt of Congress. While the Fifth Amendment was a protective strategy for individuals, he saw the First Amendment as having an impact beyond himself and as a way of "challeng[ing] the constitutionality of the hearings in the courts." If successful, he hoped, his case "might end the persecution of Americans for left-wing beliefs." Principle always overrode practical considerations for Chandler Davis, even when the financial and personal costs were very high. Batterson characterizes this First Amendment strategy as "a perilous and principled approach."

Davis knew that the constitutional right to free speech had been denied in 1949 by the Court of Appeals for the DC Circuit in the case of the Hollywood Ten (members of the Screen Writers Guild), but the Supreme Court had not yet ruled on the matter. He was convinced that the high court might be persuaded by a defense based on the writings of philosopher Alexander Meiklejohn, who argued that the guarantee of free speech in the constitution could not be qualified: "Congress shall make no law… abridging freedom of speech." Meiklejohn went on to maintain that "since the investigative powers of Congress are restricted to their areas of legislative authority, the Communist question is outside their purview."

Batterson tracks, in careful detail, the Davis case as it wended its way from his indictment in 1954 to the Supreme Court in 1959. There, based on its similarity to a case the court had just decided—that of Lloyd Barenblatt, who had based his appeal in *Barenblatt v. United States* on the First Amendment—the justices denied certiorari. Like Barenblatt, Davis was sentenced to (and served) six months in the Danbury Federal Penitentiary in Connecticut.

Providing important background material on the First Amendment court cases and the differing judicial philosophies revealed in majority and dissenting opinions, Batterson points to the contingencies of court membership to account for the result in Davis's case: "Reviewing the court experience, a striking aspect was the integral part of (what might be called) extraneous factors in the outcome." The location of various trials mattered, as did who served on

the courts. For example, the machinations of Justice Felix Frankfurter, who opposed consideration of many First Amendment aspects in the 1957 case *Watkins v. US* and again in *Barenblatt*, played a major role in the court's decision to uphold Barenblatt's conviction for contempt of Congress. Batterson concludes—speculatively—that "were it not for Frankfurter's aggressiveness in deleting a paragraph from the second draft of [Chief Justice Earl] Warren's *Watkins* opinion, the outcome probably would have fulfilled Chandler's long-shot objective of reining in HUAC."

The Prosecution of Professor Chandler Davis also addresses the failure of academic freedom to protect Davis's job at the University of Michigan. The "myth of academic freedom" in the book's subtitle is an apt characterization of what happened. When Davis received his subpoena in 1953, the university's president, Harlan Hatcher, concerned above all not to draw negative attention to his institution, advised the young math instructor to name names if HUAC required it—this was, after all, Hatcher said, the implication of the guidelines of the prestigious Association of American Universities for those under suspicion of communist ties. Disgusted by this advice, Davis concluded that the university was simply "an appendage of HUAC" if it would not protect his right to his political views on the grounds of academic freedom. He was more accurate than he knew. Batterson cites evidence from a 1958 supplement to the AAUP's 1956 report, *Academic Freedom and Tenure in the Quest for National Security*, and from his own research in the university archives that Hatcher and the head of the ad hoc committee he had appointed to deal with the professors under interrogation met regularly with a HUAC investigator and with another unnamed government agent in the course of their deliberations.

While two of his colleagues (associate professor of zoology Clement Markert and associate professor of pharmacology Mark Nickerson) agreed to cooperate with university committees to the extent of explaining their past and present political affiliations, Davis refused even to acknowledge the fact that he was no longer a member of the Communist Party. Batterson presents lengthy excerpts of the professor's testimony before the university's ad hoc committee—a set of logical arguments about his integrity, his belief in the free exchange of ideas, and his antipathy to indoctrination. Davis refused to answer a question about his membership on the grounds that the committee had no business asking about his political beliefs. When the committee chair noted that he and others believed that Communist Party membership was incompatible with free thought, Davis replied that he had already stated his commitment to free

thought: "I will assert again at as much length as you like, and in as much detail as you like, that I am in favor of the free exchange of ideas; that I am not in favor of forming one's ideas by dictation. If you believe that membership in the Communist Party ipso facto means believing otherwise, then you will have to conclude that I have denied it. I am not willing to comment on it." The committee was offended by these arguments, concluding that it is "highly probable that he is using his professed principles as a means of avoiding full and candid disclosure of Communist affiliation." They went on: "He has artfully contrived to preclude inquiry of him and thus patently lacks the integrity he claims to possess." Not surprisingly, they recommended dismissal.

Hatcher dismissed Nickerson and Davis after much consultation with their respective departments, and with the FBI closely monitoring the situation, but he allowed Markert to stay on for another year, although both Nickerson and Markert had been forthright in admitting their party affiliations to the ad hoc committee. Batterson cites a comment from Ellen Schrecker's book *No Ivory Tower* to explain Hatcher's actions as coming from "the flawed, but common assumption that it was not possible to be an ex-Communist without becoming anti-Communist."

Despite their experiences at Michigan, all three men managed not only to salvage their careers but also to attain distinction in their chosen fields: Davis and Nickerson in Canada and Markert at Johns Hopkins and then Yale. In 1990, after a long campaign by faculty members and others that failed to convince the president and the Regents, the University of Michigan Faculty Senate apologized for "the failure of the University Community to protect the fundamental values of intellectual freedom at the time" and set up an annual lectureship (which continues to this day) on academic and intellectual freedom as reparation for the administration's mistreatment of Davis, Markert, and Nickerson.

In addition to providing a rich account of the inquisitions of the 1950s, *The Prosecution of Professor Chandler Davis* provides food for thought about the fate of the First Amendment in our own times. These days, the absolutist interpretation of the amendment—invoked by Chandler Davis to protect his dissenting left-wing political views, and asserted not only by Alexander Meiklejohn but also by dissenting judges and justices in court cases from the period—has been taken over by the Right without the kind of objections offered by the majority opinions of the 1950s. The *Barenblatt* decision is a nice illustration. Writing for the Supreme Court's minority, Justice Hugo Black,

joined by Justices William O. Douglas and Earl Warren, asserted the primacy of the First Amendment and questioned whether the court had the right to decide on the reasonableness of enforcing it. Balancing the interest of the government against those who refused to reveal communist affiliations left out "the interest of the people as a whole in being able to join organizations, advocate causes and make political 'mistakes,' without later being subjected to governmental penalties for having dared to think for themselves. It is this right to err politically which keeps us strong as a Nation."

Writing for the majority, Justice John Marshall Harlan attempted the very balancing that Black objected to. He noted that the Communist Party believed in "the ultimate overthrow of the Government of the United States by force and violence." Therefore, "though we accept petitioner's contention that compulsory disclosure of an individual's association with unpopular and dissident causes impinges on First Amendment protections… we nevertheless conclude that in this instance such impingement is overcome by the superior governmental interest." This echoed earlier statements in other cases, including the 1948 appeals court decision in *United States v. Josephson*, which affirmed the conviction of a lawyer for refusing to cooperate with HUAC: "When speech, or propaganda, or whatever it at the moment be called, presents an immediate danger to national security, the protection of the First Amendment ceases."

I don't know the history of the intervening jurisprudence between the 1950s and today, but it is striking to note how the uses of the First Amendment have changed in political discourse. In the 1950s, the absolutist interpretation was invoked in defense of dissident minorities on the left and repudiated by those who argued that communist ideas presented a "clear and present danger" to the democratic state. Now the absolutist interpretation holds sway, protecting all manner of dangerous speech, even if it provokes riots (like those on January 6, 2021, at the US Capitol) that seek to overturn democratic institutions and death threats that sometimes lead to actual attempts on the lives of those threatened. The prosecutors and judges in the various Trump cases have gone out of their way to explain why they are not infringing on his freedom of speech; there have been few, if any, citations of "clear and present danger" to justify denying his First Amendment rights. The criminal cases are considered apart from his First Amendment claims when, in fact—as the example of the 1950s suggests—they might be the basis for dismissing those claims, indeed for deeming the MAGA movement the equivalent of the Communist Party in the 1950s. Why, we might ask, has that not occurred?

It's hard not to conclude that differential applications of the First Amendment have a lot to do with the politics of those invoking it. Lately, it's the Right that benefits most from absolutist interpretations, while the Left continues to be subject to "clear and present danger" arguments against that interpretation. The current Israel–Gaza War is the most recent example. An anti-Palestinian furor has overtaken politicians, the media, and some university donors and administrators—all of them rushing to condemn and cancel events about Palestine that have nothing directly to do with the war, as well as protests against Israel's violent overreaction to the violent Hamas attacks. Even calls for a ceasefire are met with demands that such calls should themselves be declared illegal. Free speech must be denied, partisans of Israel declare, because criticism of the Israeli state amounts to antisemitism. This conflation fails to recognize the distinction between antisemitism (a racist outlook) and anti-Zionism (a political critique). Their demands echo the US Department of State's 2016 "working definition of antisemitism," which includes examples such as this one: "Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor." The free speech absolutism the Right uses to deny accountability for its attacks on democracy does not apply to criticism of the Israeli state.

It's a tribute to Steve Batterson's book that we can raise these questions about the politics of jurisprudence and the vagaries and contingencies of the law. His detailed inquiry in *The Prosecution of Professor Chandler Davis* provides the historical insight that I associate with the best accounts of this kind: motives are complex, power a critical variable, timing an unpredictable factor, and rational argument not necessarily a winning strategy. This is a case study with resonance well beyond the specificities of the case. It is an important and worthwhile read.

CHAPTER 2

Experiencing Exclusion: Scholarship after Inquisition[1]

NATALIE ZEMON DAVIS AND STEFAN HANß

Abstract

Natalie Zemon Davis

In 1952, while working on my PhD at the University of Michigan, two men from the Department of State came to our apartment and picked up my passport and that of my husband, Chandler Davis. In 1962, Chandler was finally allowed to immigrate to Canada with his family and take up a professorship at the University of Toronto. The ten years in between were packed with politics: Chandler's refusal to answer questions before the House Un-American Activities Committee (HUAC); his firing from the University of Michigan; his court case challenging HUAC; his six months' prison term for contempt of Congress; and throughout, his inability to get a tenure-track appointment at any American university. I myself was not called to confess my political views

or memberships but investigations against Chandler were based on the publication of *Operation Mind*—a pamphlet which I had co-authored together with Elizabeth Douvan and which is edited here. I was without a passport and not part of a university community for years. This article reflects on the impact of this experience of persecution on my work as a historian, and the relationship between politics, activism, and what Marc Bloch and Lucien Febvre called "the historian's craft" and "consciousness."

Foreword

Stefan Hanß

Among the many academics affected by the "red scare" of McCarthyism was an exceptionally gifted and courageous young couple: Chandler and Natalie Zemon Davis. Chandler was to make pivotal contributions to linear algebra and operator theory in Hilbert spaces, with several mathematical theorems named after him. Natalie's publications were to reshape early modern history, and cultural, gender, and social history more generally. Her work ranks among the finest microhistories ever published, and she was to present some of the discipline's most astute reflections on the theory and practice of historical research and history-writing. As a young couple subject to political persecution, Natalie and Chandler themselves faced history with unsaid bravery. To know more about this episode in their lives means to better understand the nature of Natalie's work to come. This article is a critical autobiographical reflection on the historian's experience of political persecution and its impact on the life, work, and thinking of academic intellectuals. When read alongside *Operation Mind—the original pamphlet that set the machinery of persecution into motion* (see Supplementary Material, https://doi.org/10.1017/S0018246X2400031I), this article reminds us of Natalie's courage, the creativity of the historian's critical, independent mind, and its power to contest totalitarian and exclusionist tendencies and unquestioned authorities past and present. The historian's critical independent thinking establishes an ethical ground for action, and historical research and writing opens a space to express resilience and resistance.

When called to give testimony in front of the House Un-American Activities Committee, Chandler refused to answer questions about political affiliations on grounds of the First Amendment of the US Constitution, thus,

FIGURE 6. Natalie Zemon Davis and Chandler Davis in their home office, May 2015. Reproduced from *Mathematical Intelligencer*, Volume 36, Issue 1, p. 1, https://link.springer.com/journal/283 with permission from the license holder Springer Nature.

freedom of speech rather than choosing the "safer" option of evoking the Fifth Amendment's right to refuse answers that entail self-incrimination. He could have easily chosen the latter or a combined strategy, like friends, colleagues, and his father, who called Chandler once—in Natalie's presence—a "red diaper baby" who "sucked in Marxism with his mother's milk."[2] With their decision, the couple challenged the constitutional legitimacy of the "Red Hunt" itself which resulted in the imprisonment of one of the most gifted mathematicians of the twentieth century.

I was deeply moved and grateful when I first learned about Chandler's position, and I thought about the impact of such an experience on Natalie's life and work—at that time, she was researching the subversive deeds of Protestant printers in Lyon and their creative engagement with censorship, and some of her most celebrated studies like *The Return of Martin Guerre* (1983) or *Trickster Travels: A Sixteenth-Century Muslim Between Worlds* (2006) address the topic of disguise. I got in touch to ask if she would be interested in taking this biographical incident as a starting point to write a short piece on the relationship between politics, activism, and what Marc Bloch and Lucien Febvre called "the historian's craft" and "consciousness."[3]

Only six hours later, I received a surprising response. "I have written a little piece related to your topic," Natalie wrote. "Why don't you read it and let me know what you think?"[4] It was a revised version of the Academic Freedom Lecture, held at the University of Michigan, October 8, 2015, and then revised for a presentation to the program in Book History and Print Culture at the University of Toronto, March 23, 2017. I was at Manchester Airport when receiving this email and read the attached document immediately—with my one-year-old daughter in arms. The text was inspiring; filled with humanity, insight, and critical reflection, and Natalie and I agreed still on the very same day to publish the article. It is a testament to her generosity that she left the text with me for publication. Since she had been on a "health journey," as she used to call it, Natalie asked for editorial suggestions and help with editing, footnotes, and images. Readers will spot the notes that Natalie has provided herself. Those missing, I have added after re-reading her publications with a focus on Natalie's footnoting style. It fills me with sadness that she cannot see the result of her generosity now that Natalie has died on October 21, 2023. Historians all over the world have been deeply saddened by the news of losing one of the most inspiring and generous historians of the century who shaped generations of us, and those to come. I owe special thanks to the editors and editorial board of *The Historical Journal* for making this article available to all of us. I wish to express my gratitude to Natalie's family, who read and commented on this text with generosity and enthusiasm.

What makes this text unique is Natalie's critical autobiographical approach to positionality; her incisive mind, kindness, and close archival and textual scrutiny; her call for optimism in living through history and history-writing; her insistence on the ethics of historical research. This article reminds us of the significance of scholarly community and female solidarity; it is a plea for listening to the "many forms of life in-between" and "possibilities in the past"; it is a powerful ethical stance on historical research and academic freedom, and a reminder that "the historian's task is to understand them [the people] and interpret their actions in terms of the values of their own time." Natalie presents here an astute comment on what she has called, elsewhere, "the historian's compact with the past."[5] Yet there is also an empowering message for the future in her insistence on freedom of speech, scholarly solidarity, and the integrity of both research and researcher, as well as her call for hope. Natalie reminds us of the power of wit, integrity, and intellectual creativity in even the fiercest times. Today, this publication is needed more than ever.

Experiencing Exclusion: Scholarship After Inquisition

Natalie Zemon Davis

I

In the fall of 1952, while I was working on my PhD at the University of Michigan, two men from the Department of State came to our Ann Arbor apartment above the Campus Bike and Hobby Shop and picked up my passport and that of my husband, Chandler Davis (1926–2022). In August 1962, the Canadian minister of immigration finally allowed Chandler to immigrate to Canada with his family and take up a professorship at the University of Toronto. The ten years in between were packed with politics: Chandler's refusal to answer questions before the House Un-American Activities Committee (HUAC); his firing from the University of Michigan; his court case challenging HUAC, ultimately unsuccessful; his six months' prison term for contempt of Congress; and throughout, his inability to get a tenure-track appointment at any American university.[6]

So told, our move to Canada in 1962 may seem like the happy ending to a very trying time. But in fact, we also look at those years as filled with joy and accomplishment (Figure 7). Our three wonderful children were born. We both made important advances in our intellectual work and publication, and I received my history doctorate *in absentia* from the University of Michigan in 1959. (The institutional affiliation of one of Chandler's mathematical papers is "Danbury Correctional Institution.")[7] Nor did we experience the political ups and downs solely as victims. The HUAC subpoena was certainly not welcome—I would not recommend to any young couple the disruption it brought into our lives. But once it happened, we agreed together that Chandler would bring a test of the constitutionality of the Committee by refusing to answer its questions only on the basis of the First Amendment. Supported by some friends and colleagues, we felt our lives were in part of our own making.

I thought it might be interesting to tell you what influence the events of those years had on my scholarship—and to go on to speak as well of a few others in a similar situation. I myself was not subject to inquisition, that is, was not called to confess my political views or memberships either before a congressional committee or a university committee. But I was without a passport for eight years, and was not part of a university community from the time we had to leave Ann Arbor in December 1954 until I began teaching at Brown University in the fall of 1959.

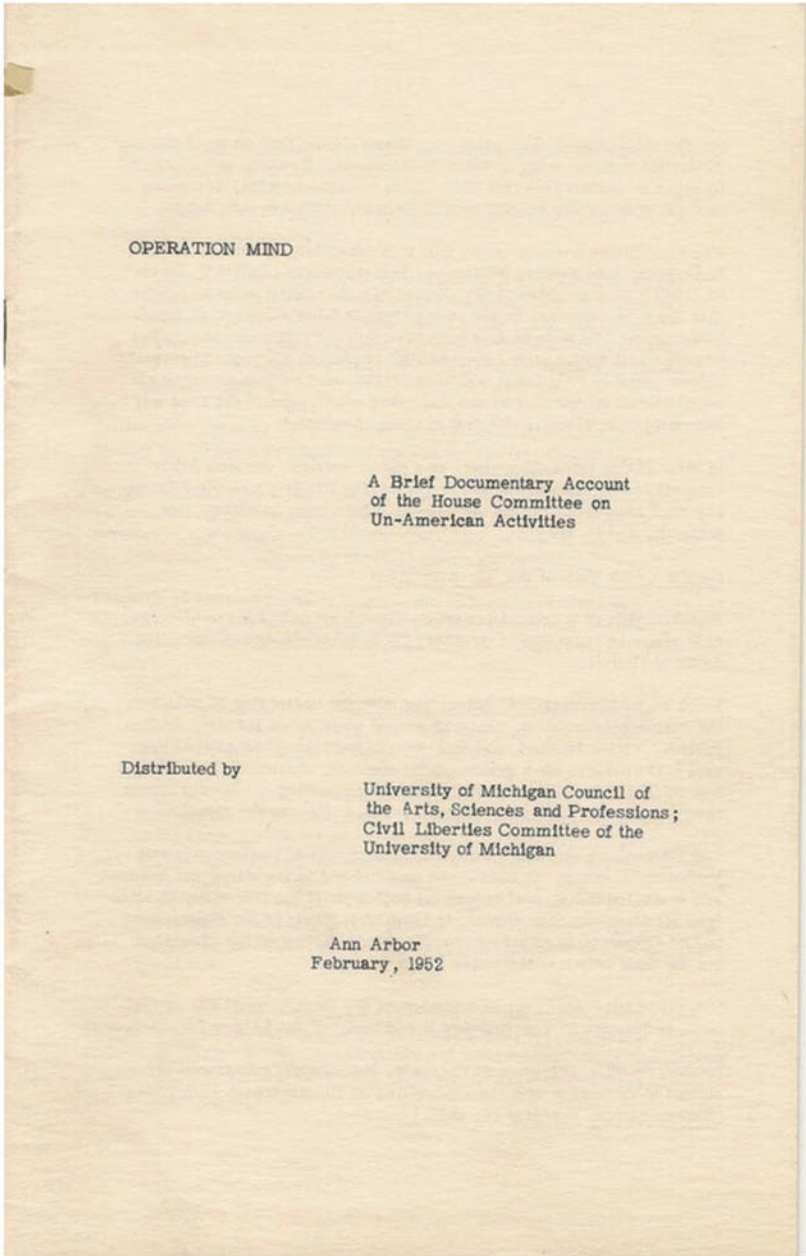
FIGURE 7. Natalie and Chandler with their children Aaron and Hannah during a visit to Sandwich, Massachusetts, 1955–56. Photograph reproduced with kind permission of the family. Image is reproduced as part of the reprint of the open access article.

II

My doctoral dissertation was entitled "Protestantism and the printing workers of Lyon: A study in religion and social class." I wanted to look at the great religious changes of the sixteenth century from the vantage point of "the people"—tradesmen and artisans—rather than from that of theologians like Calvin and Luther and of kings and city councils, as was the usual approach at the time. Were Max Weber and Karl Marx right, I wondered, in the differing connections they made between social forces and religious change? I chose the printing industry of Lyon because many of its members had become Protestants, indeed, had helped bring about a short-lived Protestant revolution in that city; but at the same time, the printing shops were riven by industrial conflict and strikes. So in 1952, I spent six months in the Lyon archives trying to find out which people became Protestant and what happened to them. After Chandler finished his teaching, he came and kept me company in the archives.

My thesis topic was of no interest to the House Un-American Activities Committee, even though it circled around the subversive topic of "class." They did not care about the sixteenth century. Rather, the Committee's attention was caught by a pamphlet produced in Ann Arbor a month before I left for France, entitled *Operation Mind: A Brief Documentary Account of the House Committee on Un-American Activities* (Figure 8). I read extensively in the governmental and other sources, and then, together with the late Elizabeth Douvan (1926–2002), a graduate student in social psychology and dear friend, wrote up an account replete with proper footnotes. Rather than seeking information about acts of force and violence to overthrow the government, HUAC was targeting ideas and associations. We concluded with a call to readers to oppose the announced visit of the Committee to Michigan. Libby and I did not put our names on the pamphlet, which was described only as "Distributed by [the] University of Michigan Council of the Arts, Sciences and Professions; [and the] Civil Liberties Committee of the University of the University of Michigan." It was printed in photo-offset by the Edwards Brothers of Ann Arbor, the only such establishment in town. Their bill was paid by Chandler, who was then treasurer of the University of Michigan Council of the Arts, Sciences and Professions.

Operation Mind seems to have been part of the background for the seizure of our passports. Pressed by us for a reason, however, the Department of State said we were "alleged to be members of the Communist Party." There was no way that I was going to subject myself to the inquisition required to establish


OPERATION MIND

A Brief Documentary Account
of the House Committee on
Un-American Activities

Distributed by

University of Michigan Council of
the Arts, Sciences and Professions;
Civil Liberties Committee of the
University of Michigan

Ann Arbor
February, 1952

FIGURE 8. Title page of the typescript of *Operation Mind*: a brief documentary account of the House Committee on Un-American Activities (Ann Arbor, 1952), co-authored by Natalie Zemon Davis and Elizabeth Douvan. In 2025, *Operation Mind* was republished by Disobedience Press. Image is reproduced as part of the reprint of the open access article.

the truth that I was not then a member—and I still might not have had my passport restored. I had to live without it, and I was disconsolate at its loss. My precious six months in France had been a preliminary exploration before taking my general exams. How could I carry on my dissertation if I could not get more Protestant printers on to my three-by-five cards?

But then I remembered that my Lyon printers had been producing books, some of them heretical books that put them in much greater danger than faced me with *Operation Mind*. These books were all around me in the rare book collections in the New York libraries and at Harvard. (Chandler was then putting his mathematics to use in the unfamiliar setting of a Park Avenue advertising agency.) I needed only a library card, not a passport, to get to them. Among the books I sought were those published in Lyon by the brothers Jean and François Frellon, since they were early converts to Protestantism and Jean Frellon was a friend of Calvin. Many of you will be familiar with one of the most famous books they first brought to the world: *The Dance of Death* by Hans Holbein the Younger, or as it was called on its title page, "The pictures of death." In each picture, skeleton Death seizes an unprepared human: a judge ignoring a poor supplicant while taking a bribe from a rich man, a nun ignoring her prayers to attend to her lover, a merchant greedily opening his treasures, a cardinal giving out a papal indulgence with one hand while receiving money with the other.

When I actually had the original volumes of Holbein's pictures in my hands, I noticed a strange difference between the first edition of 1538, when the Protestant Frellon brothers merely paid for the paper and distributed the book, but the Holbein woodcut blocks and the printing press were in the hands of reform-minded Catholic printers, and the 1542 and all later editions, when the Frellon brothers owned the blocks themselves and had their own printing press. The moralistic verses were the same in the two editions, but the essays elaborating on those morals were very different. In the 1538 edition, the most important humanist Catholic cleric in Lyon drew out lessons about ethical living in the reforming spirit of Erasmus, even while making a crack against the Protestants as "furious iconoclasts." The cleric dedicated Holbein's pictures to the abbess of the most important nunnery in Lyon, a reforming abbess whose nuns several years earlier had been receiving lovers in their cells just as in the Holbein picture. The printers had here given a reforming Catholic frame to Holbein's satire.[8]

In contrast, the only noticeable clerics in the Frellon edition of 1542 are those mocked in Holbein's pictures. An anonymous essay entitled "The Medicine of

FIGURE 9. Hans Holbein the Younger, "The Cardinal," from *The Dance of Death*, c. 1526 (published 1538 by Hans Lützelburger, printer). Woodcut. 6.5 x 4.9 cm. The Metropolitan Museum of Art, New York, 19.57.9, www.metmuseum.org. Image is reproduced as part of the reprint of the open access article.

the Soul" followed the pictures. It had in fact been written by a Lutheran pastor, and while telling Christians how to prepare for death, it included Luther's doctrine of justification by faith alone. The Frellons added a few Catholic sentences to the essay in hopes of getting the book by the Catholic theologians at the University of Paris, but essentially they had given a Protestant frame to Holbein's image of the world. To be sure, their effort to give a Catholic camouflage to their edition did not succeed, and it was soon put on the Sorbonne's index of condemned books. But *mirabile dictu*, the Frellon brothers were not themselves seriously harassed, and the edition became a European bestseller, with reprintings in French, Latin, and Italian.[9]

The discovery of the role printers could play through their editorial choices, including at a time of severe censorship, fascinated me as I sat in the New York rare book library in the mid-1950s. I decided to write up this story for a Renaissance journal, which accepted it, one of my first publications.[10] But more important, I now had a new technique to add to my historian's bag of tricks: what we came to call the new history of the book. Can it be a coincidence that one of the most important founders of that field in the 1950s, the French historian Lucien Febvre (1878–1956), had lived through and coped with the censorship imposed by the German occupiers of Paris and their collaborators during World War II?[11]

But let me give you one other example of scholarship after inquisition, here from the seventeenth century. It, too, illustrates nicely how we can get our ideas around when they are considered dangerous by the powers that be. In June 1633, Galileo Galilei's *Dialogue Concerning the Two Chief World Systems* was placed on the Index of Prohibited Books and he was condemned to spend the rest of his life under house arrest at his villa in Tuscany. Galileo's disciples remained loyal to him and a few friends got papal permission to come and visit him there, so long as they stayed away from discussing the heliocentric theory of the universe. But his extensive correspondence with lovers of science and patrons of letters in Rome dropped precipitously, and printers in Italy were afraid to touch his books, even in Venice, a city proud of its independence from the papacy.[12]

What to do? Encouraged by a loyal friend from Venice, himself a maverick theologian, Galileo reached out to a Calvinist lawyer in Paris who had good connections with the printing industry. As a result, Galileo's books were published by the Elseviers, one of the great houses of the Netherlands (would that the present-day Elsevier were equally dedicated to the defense of free

circulation of science!). In 1635, two years after it had been banned by the pope, Galileo's *Dialogue on the Two World Systems* was published at Leiden in Latin translation.[13] It was followed in 1638 by the first edition of Galileo's *Two New Sciences* in Italian, his important book on motion.[14] In his introductory letter to the reader, the Protestant publisher Louis Elsevier was glad to have the chance to point out how Galileo's astronomical discoveries had "effectively demonstrated fallacies in many of our current conclusions."[15] So much for the Catholic inquisitors.

III

Let me return now to my own time of relative exclusion. In 1956, when my essay on the Holbein printers appeared in *Studies in the Renaissance*, I proudly presented it to my neighbor in Bronxville, New York: Charles Trinkaus (1911–99), who would later become one of our greatest interpreters of philosophy and religious belief of the Renaissance. I had been ecstatic in the spring of 1955, upon moving to Bronxville, to discover that Charles Trinkaus and his family lived across the street. I had not read any of his 1930s essays in the Marxist periodical *Science and Society*, but for my Senior thesis at Smith College a few years before, I had read his 1940 book *Adversity's Noblemen: The Italian Humanists on Happiness*. I thought it was a marvelous book. Hard though it may be for some of you to believe, my Senior thesis was on Pietro Pomponazzi, a radical Aristotelian philosopher of the Italian Renaissance. Trinkaus's book showed with the utmost delicacy and learning how one could link social experience and philosophical thought. The humanists' social unease, their still ill-defined social role, and their constant quest for patronage gave a distinctive cast to their writings on the classical idea of Fortune and its ups and downs in human life. Thought and social experience were in interchange. I learned much from his method also in my later work on themes quite different from Renaissance philosophy.[16]

As it turned out, our two-year-old sons, their Peter and our Aaron, were regular playmates, and Charles's then wife and I had coffee together as our sons ran about and I held my infant daughter Hannah on my knee. But Charles, though always greeting me correctly, never talked to me of scholarly work during our two years as neighbors—not even to respond to my Holbein essay—and never invited me to converse with him or to visit Sarah Lawrence, where he was a longtime much appreciated professor.

I was disappointed, for I was myself, even more than his Renaissance humanists, in search of a scholarly community. I had tried to find it, graduate student though I was, through going to meetings of the American Historical Association and especially of the newly founded Renaissance Society of America and the Society for French Historical Studies. Some people snubbed me there, including one of my former professors at Harvard, but I did make a few woman friends—Nancy Roelker (1915–93) and Rosalie Colie (1924–72)—with whom I remained in touch for many years.

What I did not know at the time was that on June 4, 1953 Charles Trinkaus himself had had an unsettling encounter with the Jenner Committee, that is, the Senate Internal Security Subcommittee. Machiavelli's Goddess Fortuna had sent one of her arrows his way. Accompanied by a lawyer who had advised other Red Hunt victims, Charles stated in closed and open sessions that he was no longer a member of the Communist Party but refused to name names on the grounds of the Fifth Amendment. Sarah Lawrence stood by him. The College review committee found that at no time had Charles Trinkaus indoctrinated students and, though he had tried unsuccessfully to establish a union among the professors, his political affiliation had not interfered with his work as a faculty member. Invoking the Fifth Amendment was not in itself grounds for dismissal, so President Harold Taylor (1914–93) had insisted—a rare voice of honor among college presidents of his day.[17]

Charles had remained uneasy, however. At his open testimony in Washington, the Jenner Committee counsel had commented that Mr. Trinkaus was "in great distress," "very much troubled by his testimony." His lawyer had indicated that he needed more time to think about answering questions, and the committee said that it would subpoena him at a later date. Thus for months Charles lived under the threat that he would be summoned again, an anxiety as unnerving as that of a Florentine humanist in disfavor with his Medici prince. He may, too, have feared a contempt of Congress citation for having invoked the Fifth Amendment after having waived that privilege by answering some questions.

Thus, when a young politically engaged couple moved across the street from him, the husband having been very publicly fired from the University of Michigan and cited for contempt of Congress, it cannot have been good news. Associating with such people would not sit well with the Jenner Committee. Moreover, if Charles was "distressed," "troubled" by what kind of testimony he should make before the committee, Chandler's First Amendment plea would

have added further weight to his uncertainty and fine moral sensibility. Better then to keep apart. So at a time of repression, fear erodes communication and impedes the lines of friendship.

Once these times of trouble were well past, my relations with Charles and his later wife, the historian Pauline Moffitt Watts, herself an outstanding scholar, were most cordial.[18] Charles had moved to the University of Michigan in 1970, and he invited me to participate in a conference he organized there in 1972 on *The Pursuit of Holiness*, and to contribute an essay to the interesting volume he then edited.[19]

Aside: I could not detect an influence of this Red Hunt scare on the scholarly writing of Charles Trinkaus in the years from 1953 to 1970, when he finally published his great two-volume work *In our Image and Likeness: Humanity and Divinity in Italian Humanist Thought*.[20] The main thing I noticed looking through the inventory of his papers, held by Sarah Lawrence College, is how relatively little there was of it, compared to what came before and after. He had completed a manuscript by the late 1940s on "The Individual and Society: Theories of Estrangement and Reunion from the Greeks to Freud," which he never published as such.[21] The impact of the Red Hunt on Trinkaus may have been a kind of silencing or at least a slowing down—a reaction perhaps true of other scholars in a similar situation.

My last example concerns a historian whose organizing energies in the 1940s went well beyond a faculty union: Perez Zagorin (1920–2009), author of major books on the political culture of seventeenth-century England and Europe. Pete, as his friends called him, had worked for the Congress of Industrial Organizations (CIO) for several years after getting his BA from the University of Chicago, but kept his historian's life active writing reviews on economic history for the Marxist periodical *Science and Society*.[22] In 1946, he came to Harvard for graduate studies, initially discussing with his thesis director, the eminent W. K. Jordan (1902–80), "the possibility of writing a Marxist history of the English Revolution."[23] I met him in the spring of 1950 at Harvard, when he looked me up, I think, at W. K. Jordan's suggestion. (I was then discovering the wonders of social history with Jordan, and would have probably started off as a historian of England rather than France, if we had not left for the University of Michigan.) Pete's dissertation ended up less grandiose in scope: *A History of Political Thought in the English Revolution*, which was published in 1954.[24]

As far as I know, Perez Zagorin was never summoned to testify on his politics before a congressional committee, though his name came up several times in HUAC's prying into communist infiltration of labor unions.[25] But, gifted historian though he was, he was let go from Vassar and Amherst, and not awarded his due at Harvard, even though I am sure that W. K. Jordan supported him (Jordan was *not* the Harvard professor who snubbed me at the AHA). With his wife, the artist Honoré Desmond Sharrer (1920–2009), Zagorin moved to Canada and taught at McGill until 1965, when he was able to get a professorship at the University of Rochester.

Zagorin's thought about the world changed over the years. As he said in 2007, not long before his death, "[I] changed [my] ideas very drastically," and "stopped being an idealist." But he still condemned "the lack of courage of universities during the McCarthy period."[26] The book he wrote that shows the impact of that period on his scholarship did not appear until 1990: *Ways of Lying: Dissimulation, Persecution, and Conformity in Early Modern Europe*.[27] Here, Zagorin described strategies for concealment of belief under circumstances of persecution, used and justified by Jews, Protestants, and Catholics in early modern Europe. In his Preface, Zagorin evokes the Red Hunt: "From the 1930s to the 1950s, many people in the United States were faced with dilemmas of truthtelling because of congressional inquisitions into their political beliefs and affiliations."[28] Zagorin gives the example of Bertold Brecht's appearance before HUAC:

> Brecht used equivocation to skew and withhold the truth, although when asked the central question of whether he had ever been a member of the Communist party, he denied it. The next day he left the United States for good… In subsequent disagreements with the East German authorities he acted in the same way. When some of his works were criticized for formalism or lack of positiveness, he complied by making slight changes in performance while leaving their published versions unaltered.[29]

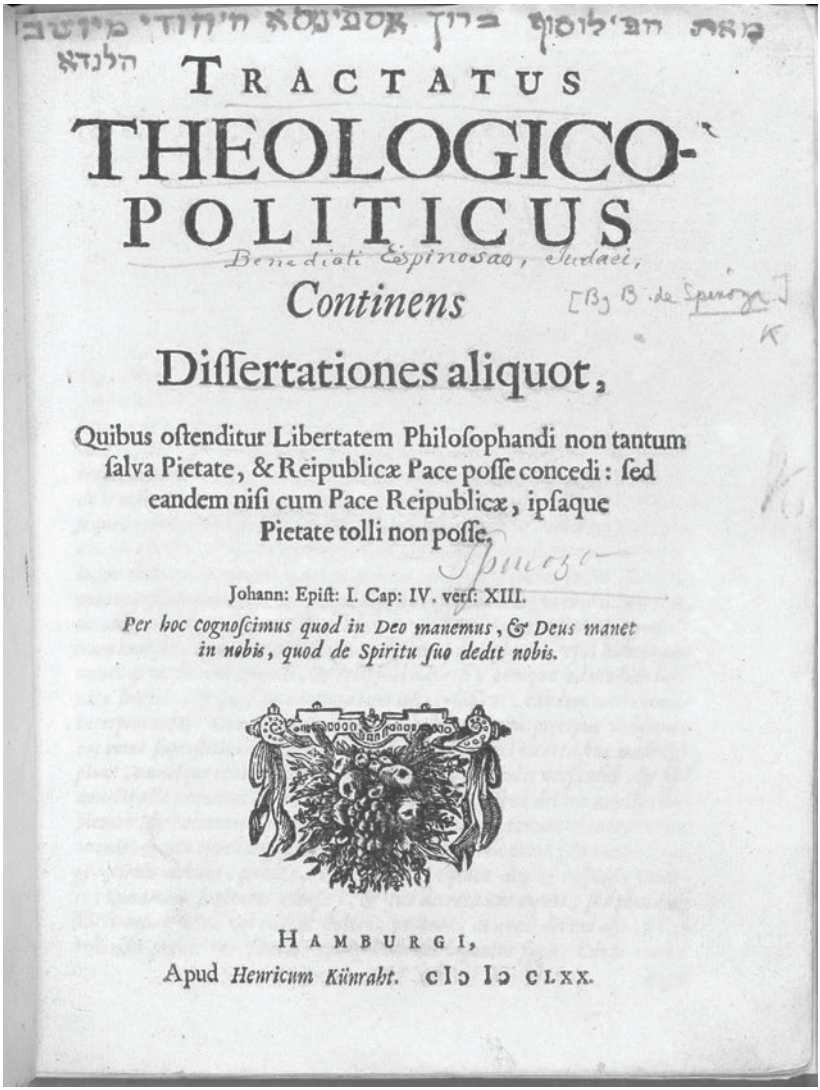
Zagorin went on to describe how Jews in Spain and Portugal, forced to convert, followed Jewish practice in secret while outwardly going to Mass. Protestants in Catholic lands conformed outwardly, rather than becoming martyrs for their faith, some of them claiming that all that mattered anyway was inward belief. Catholics in Protestant lands did the same in the opposite direction, even while their priests exhorted them to avoid deceit and dissimulation.

Zagorin ended with Spinoza's plea for freedom of expression in his *Tractatus Theologico-Politicus*—a work, I might add, which had to be published anonymously after Spinoza's death with a false address of Hamburg: Henry Künraht, instead of the true Amsterdam Cartesian printer Jan Rieuwerts, whose printing shop was the home of radical discussion (Figure 10).[30] As Spinoza put it, if the sovereign insisted on conformity, then "every day men will be saying one thing and thinking another: belief in another's word… will be undermined… and hence will come frauds and the destruction of all honest dealing."[31] Still, Spinoza affirmed, there would always be people with "independence of mind" who would oppose such repression. Zagorin thought Spinoza had been too sanguine here, but I believe Spinoza was right.[32]

IV

Looking back, then, at my time of exclusion, so much less dramatic than the *herem* cast by the Amsterdam rabbis against Spinoza, I am glad that it led me to the history of the book, or what I would call more generally cultural history. Without that, I might have written about peasant social movements, but not found my way to Judge Jean de Coras's 1560 book about the case of the peasant impostor Martin Guerre that he had just settled. It seems as though I, too, picked up early on the role of dissimulation in human behavior. Previously when I had asked myself about the link between my own background and my book on *The Return of Martin Guerre*, I had thought of my years of self-fashioning as a Jew on the margins of a non-Jewish world. But now I see how the HUAC scare may have turned my historian's antennae in that direction as well.[33]

Furthermore, those years, including the examples I have just given you, influenced my way of conceptualizing the destiny of historical actors. Any temptation I had at age twenty-three to categorize oppressed people in binaries, as either heroic resisters or unjust victims, was ended. Yes, there were sixteenth-century printing workers leading illegal strikes and provoking the Catholic clergy with their Calvinist Psalms and, yes, there were Protestant believers—men, women, and children—slaughtered during the St. Bartholomew's Day Massacre. But there were many forms of life in between. People cope in many different ways, and the historian's task is to understand them and interpret their actions in terms of the values of their own time.



TRACTATUS
THEOLOGICO-
POLITICUS
Benedicti Espinosae, Judaei,
Continens
Dissertationes aliquot,

Quibus ostenditur Libertatem Philosophandi non tantum salva Pietate, & Reipublicæ Pace posse concedi: sed eandem nisi cum Pace Reipublicæ, ipsaque Pietate tolli non posse.

Johann: Epist: I. Cap: IV. vers: XIII.
Per hoc cognoscimus quod in Deo manemus, & Deus manet in nobis, quod de Spiritu suo dedit nobis.

HAMBURGI,
Apud *Henricum Künraht.* CIↃ IↃ CLXX.

FIGURE 10. Baruch de Spinoza, *Tractatus Theologico-Politicus*… (Hamburg [Amsterdam], 1670), title page. The John Rylands Research Institute and Library, Special Collections, SC1040B. © The John Rylands Research Institute and Library, University of Manchester. Image is reproduced as part of the reprint of the open access article.

Finally, there is one lesson I might have learned. In 1990, a University of Michigan student named Adam Kulakow made a wonderful film about the firings at the University of Michigan. When I saw it, I gasped after the interview with the aged Harlan Hatcher (1898–1998), who had been president at the time. Long before the congressional hearings, Hatcher had met with the representatives of HUAC, reviewed a list of targeted professors, and negotiated with them about which ones would be called publicly, with the expectation that the unfriendly witnesses would be fired.[34] So that individual man had determined our destiny well ahead of time! That conclusion sat ill with a historian like me who has always seen possibilities in historical situations and assessed the role of the individual actor not as all-powerful as Machiavelli's Prince, but shaped and limited by the society and culture of his or her own time. When I expressed my surprise to Chandler after seeing the film, he reminded me that he had told me this in full detail in late 1953 after he had taken the initiative to discuss with Hatcher the subpoena he had received.

I had completely forgotten, and indeed, it seems to me that I experienced those months in 1954 as though our destiny had not been set in stone by Hatcher's decision, that given the protests at the university, other outcomes were possible. And, in fact, I was right. One of the men destined for discarding, Clement Markert (1917–99), was kept in spite of Hatcher. And look at Chandler and me—we haven't done so badly! I remain a historian who always sees possibilities in the past, and the expectation, with Spinoza, that the future will always contain some brave enough to speak with "independence of mind."

CHAPTER 3

U-M Faculty Political Activism in the Late Twentieth Century

ALAN WALD

TO UNDERSTAND THE RECORD of radical engagement by faculty on a university campus some twenty-five to fifty years ago, one needs to locate a window into the layered history of its rapidly vanishing past. Such a useful opening may be provided by the political ordeal of H. Chandler Davis (usually called "Chandler" or "Chan"), starting in the high Cold War. Unlike the other faculty persecuted at U-M, Davis was initially singled out by HUAC (House Committee on Un-American Activities) not just for his *earlier* political activities before the Cold War hit home with McCarthyism. It was chiefly because he was *still* a campus political activist in the 1950s on behalf of the Left, and there was every indication that he would remain one in a range of causes. Thus, Davis stands as a prototype for a particular variety of faculty activist.

What is the common thread that ties such people together? These are not just individuals who, on this or that occasion, express controversial opinions in the classroom or in public, as in so many high-profile controversies today. Like Davis, they are also Left-wing, long-lasting, involved in political concerns beyond one's specialty, and out front in alliance with students during the good times and the bad. Rather than taking pride in being "above the fray," they find it impossible to carry on routine lives when global atrocities are happening. Decade after decade, they doggedly followed through on this commitment to a better world through social change. Academic freedom should be for them, too.

I

The full picture of the Left political presence at U-M in the early Cold War era has never been thoroughly investigated. HUAC originally targeted fifteen faculty for subpoenas, and many students were harassed and persecuted. Some radical faculty quietly went underground or simply departed. Of the four "uncooperative" faculty on the final list authorized by U-M President Harlen Hatcher to be interrogated in HUAC hearings in East Lansing, we have little information about the political activism of Associate Professor of Mathematics Nate Coburn, who was later excused from his appearance due to a diagnosis of multiple sclerosis. The evidence indicates that neither Clement Markert nor Mark Nickerson were politically active at the U-M before, during, or after their subpoenas; they had once been Communist militants, but while at U-M, they were wholly devoted to research and teaching. Nor is there evidence of sustained radical political engagement later in their careers, although Markert did speak out against the Vietnam War while at Yale University in the 1960s.

In contrast, Davis remained relentlessly politically involved as an independent socialist throughout his career, which is what I take as the meaning of "spirit" in the title, "In the Spirit of H. Chandler Davis." This persistence was highlighted by his 1971 anti-war protest trip to North Vietnam and capped by his support of Palestinian human rights in the last years of his life. It is fitting, then, that a volume about academic freedom includes a study of his type of Left-wing political activism by faculty at U-M in the years after Davis's departure.

There is no perfect way to chronicle this history, to weave a compelling story out of a blizzard of episodes. Space is the most apparent constriction, but I only have access to partial materials from the time of my arrival on the campus in 1975, and these documents address almost exclusively events in one college—LSA (Literature, Science, and the Arts). Moreover, the material under consideration relates specifically to the work of what I judge to be politically Left-wing faculty, even though there were other kinds of valuable activism (for example, working for mainstream political candidates) as well as matters taken up by the AAUP (American Association of University Professors) chapter, which surely addressed issues of race and gender discrimination, and Ann Arbor City involvements.

Within these limitations, I have tried to concentrate on the kinds of campaigns and committees that seem to have been in the tradition of Davis's activism and likely consistent, if not synchronous, with his commitments at

the University of Toronto after 1962. Moreover, the focus is primarily on the larger collective and public efforts by groups of self-identified radicals—not behind-the-scenes lobbying or individual protests. Complicating this report is that much memory must be untangled as many stories unfolded simultaneously, and some committees or actions were short-lived or involved only a few individuals. Nevertheless, in these snapshots of faculty activism before the new millennium, one can identify a relatively standard repertoire of contention.

Initially, there were small meetings in person to formulate policy; then came the launching of petitions to publicize concerns; next were the holding of teach-ins, study groups, and rallies to educate; and finally, the launching of protest demonstrations, sometimes calling for walk-outs and sit-ins, and occasionally symbolic arrests. Faculty activists often published co-signed articles in the press to challenge the U-M administration and US government policy. In every case, collaboration with student groups was sought, and often, faculty participated in the same organizations as the students. Where possible, U-M faculty linked up to national associations. Over decades, a core of committed faculty provided consistency to a sequence of political causes, periodically joined by others who felt an identity with a particular issue that might have related to their field of scholarship. One might say that these organizations were all part of the same chorus but sang somewhat diverse songs.

Beyond this, the priorities in the narrative are shaped by what I know best and the activities for which I have kept records. That means that I'm probably too present in many of the references. It also means there were other events and activities, some involving radical study circles and protests within departments, of which I had only limited awareness. My apologies go to anyone who feels excluded; this contribution aims to elicit more extensive discussion.

II

When I first arrived at U-M, a circle of perhaps two dozen faculty held weekly discussions at noon at the Guild House, a Christian-based interfaith campus ministry on Monroe Street. This was known as "The Wednesday Lunch Group." My understanding is that its origin was among faculty who had considered themselves friendly to SDS (Students for a Democratic Society), which had once been a vital organization at U-M but had gone into crisis and fragmented five years earlier. Nevertheless, I think most of us had a feeling of belonging to a particular generation—that of 1968. I had been a very active SDSer from 1965 to 1968, but afterward, I joined a Marxist group. The past

political affiliations of the others varied; a few had a history with Leninist groups (such as the Progressive Labor Party, the Revolutionary Union, and the CP-USA), but most had been more loosely involved and allied with Left-wing professional associations (such as the Union for Radical Political Economics and the Marxist Literary Group). Still, there was a palpable interest in Marxism and international radical political events.

The Wednesday Lunch Group described itself as "an informal group of independent faculty, staff, and clergy, interested in expanding our contact with people throughout the university community who share some of our concerns," and it held meetings year-round. One of our first public events was a series with discussion leaders on political topics such as "The Cuban Revolution Today" (Bob Hauert, Robin Jacoby, and Anna Rubio) and "China Since the Death of Mao" (Bunyan Bryant and Tom Weisskopf), as well as university-related ones such as "Criteria for Appointment and Promotion at the U. of M." (Bill Rosenberg) and "Faculty Unionization at the U. of M." (Dan Fusfeld).[1] A second series in the fall of 1978 called "Marx at Michigan" featured faculty speakers in different disciplines, such as Joel Samoff in Political Science, myself in English, and Michael Taussig in Anthropology.[2] The purpose was to search for theoretical paths to renew Marxism.

In the fall of 1977, the Washtenaw County Coalition Against Apartheid (WCCAA) was formed, and several U-M faculty were drawn into it. This launched a battle on the U-M campus about divestment from South Africa that went on for over fifteen years—day in and day out for the core activists. There were endless protests, regional conferences, debates (including one with U-M President Robben Fleming), teach-ins, sit-ins, and more. Some of us devoted class time to discussing the issues of apartheid and colonialism. Since we didn't have Facebook, email, X, Instagram, and other apps, the mimeograph and Xerox machines ran around the clock and leafleting was organized between classes in the "Fishbowl" area of Haven Hall.

By the time the struggle ended, when apartheid finally fell in 1994, everyone seemed to be claiming that they had opposed the South African regime and U-M's financial support. Yet only a half-dozen faculty members, along with several campus ministers, were significantly involved in this movement at the start. The WCCAA brought speakers from divested institutions (including Stanford, Columbia, and Hampshire College) to U-M to stir up analogous action here. Still, the U-M administration (the Regents, Presidents Fleming and Harold Shapiro) was intransigent. The administration announced support

of the infamous "Sullivan Principles" as an alternative—which meant sending memos to South African companies urging them to treat all employees equally.

While almost the entire U-M faculty remained passive at the outset, our small circle joined the students in holding meetings to educate people, organize research, draw up documentation, and then mobilize delegations to meet with U-M administrators. These were followed by marches on the Regents' meetings and attempts to get speakers on the Regents' agenda to address the issue. Such mass mobilizations occasionally peaked at 500 or even 700 but were more frequently 200 and very spirited.

It was students who at first tried to speak at the Regents' meetings. Still, in 1978, a group of four faculty volunteered to make the divestment case: myself (an assistant professor, age thirty-two), Joel Samoff (an assistant professor and the main faculty leader of the anti-apartheid movement), Tom Weisskopf (a widely respected tenured radical economist), and Daniel Fusfeld (1922–2007, another tenured economist—the "old man" of the group at age fifty-six). In terms of understanding the kinds of faculty willing to make such a commitment, it may be worth noting that all four were of Jewish backgrounds—well-acquainted with the antisemitic form of racist bigotry as well as the history of fascist regimes.

The truth is that protests at the Regents' meetings in that period were quite raucous, with shouting back and forth. Students were also disrupting official government speakers from South Africa, although they did not prevent the talks from happening. Not surprisingly, then as now, the Regents made an effort to simply close these meetings to the public. We fought this, and when the courts ruled against the Regents, they played a game of switching around the time and place of meetings and passed rules to forbid any disruption under threat of arrest.

This did not lead to many arrests because the protestors suddenly became very disciplined. Before the April 1979 Regents' meeting, 109 faculty and staff issued a public letter of support for divestment.[3] Several of us then joined the students who arrived at the meeting *en masse*, all wearing tight gags over our mouths. Upon a signal, we stood up silently and simply stared at the Regents as the whole room came to a standstill. Suddenly, one of the protestors pushed a tape recorder out front that was turned on very loudly, and an audio voice began to blast out our list of demands. The Regents were taken aback. What to do—arrest the tape recorder for disruption?

Next, a student leader, Heide Gottfried, politely raised her hand to request that she be allowed to present a counter-report we had prepared, repudiating

the Sullivan Principles. President Fleming refused to recognize Heide, so she simply started to read it. However, she completed less than a page before President Fleming shouted her down. In response, we silently arose, again *en masse*, and marched out of the room with our fists raised.

And so the battle went on. In 1981, the first shanty on the U-M Diag was built to represent oppressive living conditions for Black South Africans. It was immediately burnt down but quickly rebuilt and guarded by students night and day. In 1985–86, we began the campaign for U-M to give an honorary degree to Nelson Mandela. Thomas Holt, of the Center for Afroamerican and African Studies, drew up and submitted the paperwork. We then solicited several thousand letters of support, only to discover that none were ever delivered to the Honorary Degree Committee of the university.

In reaction, a crowd of 700 marched on the Fleming Building to address Provost Duderstadt about the matter. The upshot was that the Regents announced that the award could not be made as Mandela was in prison and unable to pick it up in person. In response, we seized the Fleming Building and sat in the conference room all night, where the next Regents' meeting was scheduled. As a bonus, the poet Dennis Brutus (1924–2009), an internationally known South African leader of the boycott movement, arrived in town, and I brought him to the sit-in.

The next day, the Regents quickly relocated their meeting to the Michigan Union. Seeing this room suddenly flooded by an overflow crowd, the Regents did a stunning volte-face. They voted to award the degree despite Mandela's continuing inability to receive the award in person. Three years later, when Mandela came to Detroit to speak at Tiger Stadium, he stopped by U-M to pick it up. In 1989, the Regents finally voted to divest.[4]

There were direct consequences for faculty activism connected with the anti-apartheid movement. The most clear-cut was the retribution meted out to Economics Professor Daniel Fusfeld. When his retirement came up before the Regents in May 1989, Regent Thomas Roach demanded that Fusfeld's emeritus status be denied because, back in 1979, Fusfeld had called the Regents' policy "stupid." Although Fusfeld refused to apologize, emeritus status was eventually granted after it was demonstrated that such punishment violated Fusfeld's free speech.[5]

Earlier, however, in 1979, Joel Samoff, the most public faculty figure in the campaign against apartheid and a well-known social justice activist, was denied tenure by a group within the Political Science department. The LSA

College Executive Committee then ratified this at the beginning of the following year. No one spoke directly of Samoff's political activism, and there were only indirect references to his interest in Marxism. However, to many in the department, he seemed to have met the threshold with an essential book in his field "on the table" and an outstanding teaching record. A group of thirty faculty members and fifteen campus ministers mobilized on Samoff's behalf, circulating a letter protesting the negative tenure decision after Samoff received a Distinguished Service Award from U-M.

We published long articles and short statements in the *Michigan Daily* but were unsuccessful in reversing the decision. One of the concerns raised was that the administration took the firm position that a department's decision on tenure could *never* be overruled, even if there were questionable aspects. Today, however, that policy no longer exists, and several departmental decisions have, in fact, been overruled.[6] In any event, it was hard not to conclude that dubious claims about the quality of one's scholarship might be used to purge or intimidate activist faculty since an association with the CP-USA could no longer be used as an excuse.

III

Along with the South African anti-apartheid and divestment campaign, the most active and consistent faculty interventions in the late 1970s and 1980s involved Latin American and Central American issues. The primary vehicles were the Ann Arbor Committee for Human Rights in Latin American (AACHRLA) and Latin American Solidarity Committee (LASC), although these were intertwined with a Nicaraguan Solidarity Committee, a committee of Faculty for Human Rights in El Salvador and Latin America, and a variety of other organizations on and off campus. Science for the People, which had been formed nationally in 1969, was also active and frequently co-sponsored events.

The AACHRLA was founded in August 1976. The purpose was to aid Latin American political prisoners, publicize facts about political repression in Latin America, and oppose US support for repressive Latin American regimes. Among several faculty members critical to the organization was William "Buzz" Alexander (1938–2018) of the English Department, who spent his 1978–79 sabbatical in Peru. AACHRLA was also an organization with a somewhat feminist atmosphere; twenty-four out of its thirty leading activists were women. Annual

dues were $2 for students and $5 for non-students, so in 1978–79, we had $600 on hand.[7] We also had an office suite on the third floor of the Michigan League, along with a library where we held office hours. An information table was kept up in the "Fishbowl," and business meetings were held on alternate Mondays at 7:30 p.m., usually followed by an educational presentation. There was a regular newsletter, but the most urgent communications were via "Phone Trees," and mailgrams were regularly sent to various US government officials and Latin America to protest repression.

In November 1976, AACHRLA sponsored the "Teach-In on Terror in Latin America," featuring Isabel Allende, daughter of Chilean President Salvador Allende; Isabel Letelier, widow of assassinated Chilean diplomat Orlando Letelier; Abe Feinglass, Vice President of the International Furriers Union; and poet Louise Berkinow. All told, there were thirty speakers from nine nations, with an audience of 3000.

Another significant event occurred on October 13, 1977, when Peruvian peasant organizer Hugo Blanco came to U-M.[8] A month later, there was a well-attended performance by Quilapayun, a group of exiled Chilean musicians. In February 1978, three prominent Chilean exiles spoke on "Changes in Chile" to an audience of several hundred. Miscellaneous other events in this period included the visit of four distinguished Chilean exiled legislators, a reading by the prominent Brazilian poet Thiago de Mello, and the publication of education leaflets and various articles.[9] Opposition to the dictatorship in Chile continued to be a theme, with the September 10, 1979 showing of "The Battle of Chile," with 500 people in attendance.

On April 17, 1978, Hector Marroquin, a political refugee from Mexico, addressed 100 people. There was also a demonstration in support of Marroquin at the Federal Building in downtown Ann Arbor and a music and poetry performance to raise funds at the Ark, a nationally known folk music venue. Interest in Mexico remained vital for the next year. In October 1978, the 1971 film "Mexico: The Frozen Revolution" showed on the tenth anniversary of the Tlatelolco Massacre that had occurred at the Autonomous University of Mexico. Then, on November 7–9, a teach-in on Mexico was attended by hundreds called "Contours of Crisis." The scholars James D. Cockcroft, Sheldon Liss, and journalist Julia Preston were featured.[10]

In this same period, interest in the Nicaragua Revolution, culminating in the summer of 1979, intensified. On February 21, 1979, AACHRLA showed the film "Nicaragua September 1978," accompanied by a talk by Cynthia Aronson of the Institute for Policy Studies. There was a demonstration and

march from the U-M Diag to the Federal Building on June 14, followed by a mass meeting. Then, on September 24, 1979, U-M's Mick Taussig presented an update on Nicaragua, which launched new solidarity work focusing on gathering food, medicine, and money to rebuild the country.[11]

At the beginning of 1981, a new student-led organization was announced to address these concerns—the Latin American Solidarity Committee (LASC). In its February 1, 1981 statement of purpose, LASC explained that its aim was to organize in solidarity with the oppressed people of Latin America by supporting their democratic revolutionary and national liberation struggles and pressuring the US government to change policy.[12] The first meeting (March 1981) had twenty in attendance, but 150 had signed up to receive the newsletter. An office was set up at Guild House. There were bucket drives, film showings, candlelight protests, salsa dance benefits, literature tables, book sales, a "Disorientation" for incoming students, and much more. That April, a teach-in was held in Detroit, including films, rallies, and special sessions on Nicaragua and Cuba.

Several faculty members were regulars at LASC, but within a few months, we decided to launch a separate organization called Faculty for Human Rights in El Salvador (FACHRES), which in 1982 became Faculty for Human Rights in El Salvador and Central America (FACHRES-CA).[13] The idea was to get the backing of prominent academics to support political cases and participate in fact-finding missions. A steering committee was established that consisted of Campus Minister Bob Hauert, James McIntosh, Locke Anderson, graduate student Cindy Palmer, and myself. The new organization quickly came to campus attention when John Vandermeer placed a sign reading "US Out of El Salvador" in the window of his office, which was directly taken down by custodians with the support of the LSA Dean. A battle raged back and forth over this sign, and eventually, a group of twenty-five faculty collectively put up similar signs in their windows. Then, the administration decided to drop the matter.[14] Some FACHRES-CA and LASC activities overlapped with and were co-sponsored by the Michigan Alliance for Disarmament (MAD), founded on March 25, 1982 with twenty-five members.[15]

By 1986–87, FACHRES-CA and LASC were strong, and many significant actions occurred.[16] In March 1986, a series of protests were organized at the Ann Arbor office of Republican Congressman Carl Pursell to oppose his support of $100 million in US funds to aid the Contra counterrevolutionaries in Nicaragua. More than a hundred individuals, including several faculty members, were arrested for sitting in on different days. These included John

Vandermeer (whose charges were inexplicably dropped), myself (convicted and sentenced to community service), and Locke Anderson (convicted and sentenced to jail).[17] Several months later, despite the civil war, a delegation was sent to Ann Arbor's Sister City in Nicaragua with medical and other supplies.[18]

One year later, FACHRES-CA and LASC began a drive inspired by the effort to get an honorary degree for Nelson Mandela. Ernesto Cardenal was an internationally recognized poet, the Minister of Culture in the Nicaraguan government, and a Catholic priest. We launched the effort with a nomination letter in September 1987, as well as a public event at the Unitarian Universalist Church, which included a lecture on the "Social Aesthetics" of Cardenal by myself, a musical performance of Cardenal's work by graduate student David Vayo, and a reading of Cardenal's verse by exiled Guatemalan poet Rene Franco. Unfortunately, we were unsuccessful and the honorary degree was given to Jeane Kirkpatrick, known for her support of the Chilean dictatorship, and three years later another one went to Rep. Carl Pursell, a vehement backer of aid to the counterrevolutionaries in Nicaragua.

IV

In these years, there was an increasing overlap and collaboration between and among various faculty and student initiatives. Then, in 1987, the political climate on the campus became more intense after several racist incidents inspired a group of students, mainly women of color, to form the United Coalition Against Racism (UCAR). Their project concentrated on efforts to increase minority enrollment and strengthen resources for students of color, along with support for a U-M holiday in honor of Martin Luther King, Jr. Soon after, faculty announced an organization called "Concerned Faculty" that focused on racism, sexism, opposition to US intervention in Central America, assistance to the anti-apartheid movement, support for academic freedom, activism for a university environment free of ethnocentrism, opposition to military research on campus, and backing of unions on campus. Over the following years, position papers and public statements were issued.[19]

Concerned Faculty was a U-M affiliate of FACHRES-CA. On October 7, 1988, it co-sponsored a discussion and potluck dinner for Mercedes Selgado, the International Representative of the El Salvador Guerrilla FMLN, at the

home of Vandermeer and Ivette Perfecto. The subject was "The Political Strategy of the Farabundo Marti Liberation Front." Concerned Faculty also hosted brown bag lunches every Wednesday at Guild House on topics such as "The Administration's New Rules Governing University Life," "The Proposal for a Required Course on Racism," "Support to New Mexico Land Struggles," and "Support to Palestinian Writers in Israeli Prisons." Members endorsed union efforts and spoke at rallies.[20] On February 20, 1989, we met at the home of Weisskopf to prepare a motion in support of a graduation requirement on "Racism and Ethnicity," to be presented at the LSA faculty meeting by Peter Railton. This brought us even closer in contact with UCAR, and on June 1, 1989, there was a joint meeting of UCAR and Concerned Faculty to discuss longer-term unity and collaboration.[21]

Campaigns for more democratically developing the culture and academic life at U-M and opposition to racism continued at full speed into the next decade. Then, as now, large protests and the implementation of reforms have produced a backlash. Following a surfeit of controversial national news about the alleged danger of "Political Correctness" on college campuses, Concerned Faculty and some new allies began to devote much time and effort to designing a major conference for November 15–17, 1991. It was called "The 'PC' Frame-Up: What's Behind the Attack? A Public Discussion of Controversies in University Life Today." A range of diverse and well-known speakers was brought to U-M, starting with African American scholar Houston Baker and National Association of Scholars President Stephen Balch. Other speakers included UCAR's Barbara Ransby, the *New York Times* writer Richard Bernstein, former SDS leader Todd Gitlin, and conservative David Horowitz. At a session addressing university speech codes, the audience peaked at 800.[22] In this period, many of us debated similar issues in print.[23]

Immediately following this conference, we decided to double down on curricular reform and affirmative action, and a new organization was formed called "The U-M Network for Cultural Democracy." The aim was to study the U-M curriculum and the composition of faculty and students. The goal was to remove barriers for people of color, women, lesbians, gays, bisexuals, people with disabilities, and all others who have been targets of bigotry and discrimination. To that end, the Network organized forums, debates, and study groups and held public protests. At the start of winter term 1992, the Network held a community meeting on "Perspectives on the Future of Lesbian-Gay Studies

at the U-M" that featured Anne Hermann and Marlon Ross. A connection was established with national organizations such as Teachers for a Democratic Culture and the Union of Democratic Intellectuals.[24]

Activists in the Network were also central to organizing a fall 1993 Theme Semester. Sociology professor Howard Kimeldorf played a critical role on the planning committee. After eight months of deliberation, with semi-monthly meetings, it was announced under the title, "Working in a Multicultural Society: The Changing Face of Labor in the United States." Seeded with a $20,000 budget from LSA, the semester included a mini-course, visiting guests, dozens of affiliated courses throughout the university, and a major conference that brought in academic speakers and labor activists.[25] Of course, many additional political issues, often of an international character, drew faculty participation during these decades.[26] Over the years, faculty continuously intervened in events such as inauguration day protests and the endeavor to exonerate the faculty purged in 1954.[27]

Yet, in the late twentieth century, as it is today, one particular political issue was considered a hot potato; for the most part, it was never fully integrated into the efforts described so far. This was the grueling endeavor to achieve recognition for Palestinian human rights at U-M, met by the familiar hostility expressed in harassment and disinvitation. For decades, only a few faculty, graduate students, and staff were willing to stick their necks out regarding what has always been a "third rail" issue at U-M, with its massive, one-sided pro-Israel sentiment. Nevertheless, from the late 1970s into the 1980s, a tiny chapter of the Palestine Human Rights Campaign functioned on the campus, bringing speakers such as James Zogby and Israel Shahak, showing films, and holding discussions. The audience was small, and *Michigan Daily* coverage was sparse. Only two events broke through to broader notice.

One was the 1984 invitation to Noam Chomsky to give an address upon publishing his book *Fateful Triangle: The United States, Israel and the Palestinians* (1983). The Center for Near Eastern and North African Studies originally agreed to sponsor the event, and arrangements were made, but suddenly, the invitation was withdrawn. Efforts to get support from History, Political Science, and Linguistics were rebuffed with various excuses. Finally, the Office of Ethics and Religion, the Center for Research on Social Organization, and the Progressive Student Network came to our aid, and the event drew a massive audience in Rackham Auditorium.[28]

The second notable event was the campaign against eminent U-M African faculty member Ali Mazrui after he criticized Israel's support of South Africa in his classes. This outraged members of the Union of Students for Israel and others, who then charged him with antisemitism, about which they published newspaper articles, distributed flyers, and made statements in his class. Mazrui, who would leave U-M for SUNY Binghamton, was hardly the only one subject to these attacks.[29] This history, an ugly aspect of life at U-M, remains a sore spot.[30]

Coda

I have written this narrative to begin to transmit a heritage. A close examination of the activities I have tried to reanimate confirms that collective organization has a more significant, long-lasting impact, even if individual undertakings may sometimes get more media attention. Groups such as the Wednesday Lunch Group, AACHRLA, FACHRES-CA, Concerned Faculty, and the Network for Cultural Democracy fostered a culture that allowed for internal discussion, debate, and dissent, and the formulation of decisions and goals for precise interventions—publications, leaflets, conferences, teach-ins, targeted demonstrations, sit-ins. Elected steering committees were necessary, a far more democratic arrangement than "leaderless" protests. (In the end, these are never truly leaderless because the media selects specific figures—often the loudest—as spokespersons and representatives.) Collective and organized movements also permit political skills to be learned and passed on. Affiliated study groups help educate members and supporters about the underlying structures of power—on the campus and in society—and the appropriateness of different forms of resistance and movement-building. They also afford a place for self-criticism of the always imperfect Left.

Were our activities a success? We all found the participatory activism of these years to be an indispensable learning experience that enhanced our academic and personal lives. Although we really can't point to any significant breakthroughs at a particular moment, the university's culture progressively improved in certain areas; proposals for change ignored back then are now fully acceptable. Of course, we all must make tough choices about balancing our lives, and many may have had good reasons for abstaining from various activities or dropping out after a period. Still, as Chandler Davis taught me and others, there is no dishonor in a long period of trench warfare, although

mutual support remains indispensable because we are often faced with a wall of collective indifference.

Even when our efforts came to naught—as in the Ernesto Cardenal episode—it is essential to recognize the right of political movements to fail *en route* to what we hope will be a more emancipatory sequence. In the end, though, recounting one's past doesn't do as much toward this end as what one does now.

CHAPTER 4

No More Chandler Davises! Academic Freedom Needs Collective Action, Not Heroes

ELLEN SCHRECKER

CHANDLER DAVIS IS MY hero. I've been writing about McCarthyism and academic freedom for more than forty years. And no other individual has displayed as much personal integrity, lucid intelligence, and plain old courage in resisting the political repression of that grim period as Chan. But we don't need his heroism today. The current attack on higher education and the autonomy that it requires is worse, much worse than it was when Chan faced down the House Un-American Activities Committee and several University of Michigan faculty investigations seventy years ago. That is because today's inquisition not only goes after individual academics and their careers, but also, and much more dangerously, targets all of American higher education—a sector that has already been seriously weakened by the past fifty years of neoliberal austerity and a well-funded right-wing campaign to destroy its public image. Whether our universities can survive the current onslaught is by no means assured—that is, unless the academic community as a whole engages in collective action to reform and protect it.

The problems it faces are both political and structural, interlinked in ways that must be addressed if any kind of coherent defense of the, admittedly flawed, academy and its contribution to a democratic society can be developed. The central problems are twofold. First, reactionary billionaires, pundits, and politicians have mobilized *faux*-populist, racist, and anti-LGBTQ scenarios to attack mainstream higher education and the knowledge it produces to divert the public from its real problems. At the same time, colleges and universities, buffeted by decades of neoliberal austerity, have disempowered their essential employees—the faculty—turning about 75% of the instructional staff into

contingent workers and undermining the quality of the education they provide. In the process, academic freedom, at least in the traditional sense of the term, no longer exists, if it ever did. In what follows, I am trying to give an—admittedly sketchy—overview from the faculty's perspective of how the present crisis evolved and how it must be resisted.

The concept of academic freedom emerged around the turn of the twentieth century, at a moment when the robber barons of the gilded age were both suppressing their workers' demands for living wages and founding some of the nation's top universities. When a few professors questioned the plutocrats' labor policies, they were forced out of their jobs. In response, a group of eminent scholars formed the American Association of University Professors (AAUP) in 1915 to establish their autonomy from external pressures and protect the integrity of higher education. Elitist from the start, they distanced themselves from the trade union movement, relying on tenure and institutional procedures under faculty control to keep such outsiders as trustees and politicians from tampering with professional activities. Although hundreds of academic institutions had officially adopted this model of faculty governance and tenure by the middle of the twentieth century, it did not protect individual faculty members during moments of political repression, like World War I and McCarthyism, when demands for the suppression of dissent reached the nation's campuses. At those moments, most administrations and their faculties, like those who forced Chandler Davis out of the University of Michigan in 1954 for defying the House Un-American Activities Committee, caved in. Tenure was no protection. Apologies for some came later, but the official guardians of academic freedom did not change their emphasis on tenure and due process.

As higher education expanded and began to democratize after World War II, new cohorts of students and faculty members energized by the Civil Rights and anti-Vietnam War movements revived political activism on the nation's campuses while challenging the academy's traditional mores and demanding more democracy on campus. By the end of the 1960s, universities had become centers of dissent as well as targets of a backlash encouraged by right-wing pundits and politicians like Ronald Reagan. State legislatures passed laws against campus activists and cut back on funding their public universities. Meanwhile, higher education continued to expand and become more open to students and professors from formerly under-represented minority groups as well as women and the new fields of knowledge these previously ignored scholars produced. But the backlash caused by the campus disruptions cost the university the loss

of the universal respect it had formerly enjoyed from the American public. Academia became increasingly vulnerable to external political and financial pressures.

Higher education had been buffeted by the economic crises of the 1970s and the ensuing advent of neoliberalism within the American elite that sought to shrink the public sector. State and federal officials reduced their financial support for public higher education, while networks of right-wing pundits and wealthy business leaders attacked the universities' traditional influence in policymaking and began to subsidize alternative sources of expertise. Driven by financial considerations, top administrators bought into the corporate mindset of the business community, emphasizing growth, efficiency, and a hierarchical managerial style that focused on the short-term bottom line and pushed the faculty out of educational decision-making. As state funding declined, universities turned to other sources of income—their students' tuitions and the largesse of millionaires. In the process, they diverted resources from instruction to student amenities, big-time athletics, flashy buildings, and other marketing strategies designed to attract donors and warm tuition-paying bodies.

Like the corporate leaders they were courting, academic administrators cut costs, especially within their labor force. They turned faculty members into gig workers, essentially depriving their institutions of the services of their strongest constituency, the full-time tenured and tenure-track teachers and scholars who had made a lifetime commitment to higher education and the institutions where they worked. Today, at least 75% of the academy's instruction is provided by faculty members who are as skilled and credentialed as their predecessors. But they now hold poorly paid part-time and temporary positions, with no job security, few if any benefits, no voice in departmental and university governance, and, of course, miserable salaries and no academic freedom.[1]

The adjunctification of the academic labor force took place gradually. Retiring professors would be "temporarily" replaced by short-term instructors until their departments could mount a search for their successors, but all too often the tenure-line positions that were supposed to be filled would disappear. As they signed off on increasing numbers of non-tenure-track appointees, even the administrators who were officially in charge were unaware of how the faculty was being hollowed out. It occurred first in the liberal arts—in English departments that hired their own graduate students to teach required first-year composition courses and in other departments where senior professors who didn't want to be burdened by large introductory courses turned them over

to non-tenure-track faculty on one-year contracts, post-docs, and graduate students.[2]

Because of this transformation, impoverishment and insecurity characterize much of the professoriate. The average compensation from teaching for contingent faculty members is slightly above $20,000, with single courses paying an average of $3903 in the academic year 2022–23. One quarter of all adjuncts rely on some kind of public assistance. Many are also "freeway flyers," part-timers who cobble together courses on several different campuses. And all too often they do not know until just before the semester begins whether and which classes they will be offering. Nor are they on campus long enough to know their colleagues or students very well. And, of course, they can be let go at any time, for any reason, or no reason at all. Attempting to maintain intellectual standards by grading rigorously at a time when student evaluations determine retention can be lethal.[3]

Adjunctification takes a psychic and educational toll on the entire campus. Contingent instructors, if they are not ignored, are treated as second-class citizens. Disrespected with no prospect of advancement, they are often deprived of the institutional support needed for their teaching and research. Many lack private offices or access to libraries and parking lots and can rarely participate in faculty meetings or control what or how they teach. Obviously, such conditions undermine morale and militate against developing the sense of community necessary for an effective defense of the academic community. Even the full-time tenured and tenure-track professors suffer. As their percentage of the faculty shrank, they were increasingly burdened with administrative duties, much of it busy-work occasioned by the central authorities' demands for assessment and accountability.

As for the students—a common slogan within the ranks of the precariat said it all: "Teachers' working conditions are students' learning conditions." Stressed-out instructors without offices or the time to hang out on campus cannot give their students the personal attention that recent research shows they need if they are to flourish in higher education. To make matters worse, because contingent faculty members handle a disproportionate load of the lower-level courses that incoming undergraduates have to take, they deal with the most vulnerable students on campus—mainly the inadequately prepared Black and Latinx students with financial problems of their own and the prospect of years of student debt.

The red-state antagonism to the supposed elitism of the university that threatens the university today is not unmerited. American higher education is a highly stratified system that reinforces the status quo within an increasingly inegalitarian society. While selective top-tier institutions offer their already privileged students a liberal education that helps them think critically and broadens their perspectives on the world, second- and third-tier public colleges and universities operate under conditions of constant austerity and must meet the demands of their less advantaged students with credentials that may or may not improve their lives. COVID and the outbreak of the Israeli–Hamas war have only exacerbated these inequities. The former, by encouraging the powers that be to intensify their investment in a technological fix that will only undermine their institution's educational quality, and the latter, by imposing repressive measures on their campuses that threaten to squelch whatever freedom of expression their students and faculties still retain.

Yet, within this dystopian vista, there are signs of hope. True, administrations, when confronted with demands from donors and other powerful outsiders to repress dissent, capitulate—as they have almost always done. However, faculties, unlike during the years of McCarthyism, are beginning to resist. The Chandler Davises of today are taking collective action.

The academic labor movement is central to this struggle. Collective bargaining is spreading throughout the academy as faculty unions now pay serious attention to the needs of their contingent majorities and, especially in more progressive states like New York and California, win better pay and more job security. Solidarity across the campus is crucial, as the recent strike at Rutgers revealed. By bridging the tenure divide to bring all the campus unions together, the AAUP/AFT won important victories, including a 40% raise for adjuncts. Meanwhile, a new group, Higher Education Labor United, is creating an umbrella organization of social justice locals and national unions to press for transforming American higher education into a more democratic and egalitarian system.

Even if they can't form unions, faculty members nationwide have finally begun to recognize the interconnections between academic freedom, quality low-cost higher education, and their working conditions. The current attack on higher education has induced them to organize on a national scale unseen since the 1960s—forming ad hoc groups, re-energizing dormant AAUP chapters, and creating coalitions both on and off their campuses not only to protect

the freedom to teach and to learn, but also to protect the quality of higher education as well as to fight for making it more accessible and affordable.

It will not be easy—especially after the wave of repression that is currently rolling over the nation's campuses. As we might have expected, academic administrators responded to the pro-Palestinian demonstrations after October 7, 2023, by taking repressive actions like suspending and firing or otherwise disciplining students and faculty members and/or calling the cops. Over the summer, they beefed up their security forces and created stringent new regulations to avert dissent. Many faculties at institutions where those crackdowns occurred have voted no confidence in their schools' presidents. Whether they can transform that outrage into some effective long-term organizing—given the considerable obstacles they face—remains unclear.

So, what would Chandler do? I'm sure he wouldn't give up his math, but he would also stand up against the looming chill. He would speak out, of course… fluently. But he would also organize within every network he had access to. And, unlike during his fight against McCarthyism, he would not do this alone. If we are to roll back today's encroaching authoritarianism (which the current Trump administration has now enhanced beyond our most dystopian nightmares), the academic community must build on the solidarity that it has so recently achieved. It will take constant vigilance and years of educating, organizing, and protesting for faculties and their allies to build the power they need to ensure that universities fulfill their democratic mission and serve the public rather than the powers that be. But there is no other option.

CHAPTER 5

Gender Studies, Academic Freedom, and the Autumn of 2024

CATHARINE R. STIMPSON

THE CONTEMPORARY ACADEMIC STUDY of women, gender, and sexuality (WGS) is over fifty years old.[1] With twenty-three doctoral programs, it is well-established in colleges, universities, and some seminaries. It has generated a historic body of work.[2] Not surprisingly, given how innovative WGS is, it has never been free from principled opposition as well as less principled overt and covert resistance, mockery, and sneers.[3] Violations of the academic freedom of some practitioners, especially precarious for those without tenure, have occurred.[4] However, the threats to the academic freedom of WGS, globally and nationally in the United States, are particularly acute now—a few days before the presidential election in the United States. Obviously, the threats to WGS are part of a disturbing landscape of broader attacks on academic freedom, but they have a special salience. As a result, a profound sense of urgency underscores my words.[5]

At least six dangers are alive and often reinforcing each other. First, authoritarians and authoritarian governments have power globally. To gain and hold power, they have deliberately pumped up a frightening bogey: "gender" or "gender ideology." They assert that "gender ideology" is an affront to God, man, families, and common sense. It will also harm children. Second, and consequently, authoritarians and their allies fervently promise to eradicate the bogey of "gender ideology" from public life in general and education in particular. Higher education has enemies of its own, but the attacks on "gender" in Pre-K through 12 also affect higher education as a polluting trickle-up or gush-up force. Third, the boundaries between feminisms and WGS have been and are porous. Political identities and program identities may seem like

siblings, even twins. Attacks on one can become attacks on the other. Fourth, and similarly, because of a network of connections between WGS and diversity, equity, and inclusion (DEI) programs, WGS can be cast with them in the contempt-infused denunciations of "wokeness."

The last two dangers have to do with the resistance, often deeply emotional, to ideas that WGS explores. The rigorous cross-disciplinary inquiries of WGS—into history, power, society and social institutions, culture, the family, sex and gender—have intellectual force. Many of them are now accepted and acceptable, but others still seem to some controversial, disruptive, and even nasty. Finally, and significantly, WGS studies race in conjunction with gender. However, its opponents clump Critical Race Theory (CRT) with WGS. Together, they call up demonic visions of monstrous regiments of women, some of them born male, and of rebellious blacks.

My paper is a brief guide to this perilous terrain in higher education. My own language, which will be "bogeyish," roughly associates "sex" with biology, and further associates both the assignment of male or female to infants at birth *and* "gender" with "sociocultural forms of becoming."[6] The meanings of sex and gender are co-constructed. As for sexuality, I turn, non-poetically, to the Fifth Edition of the *Shorter Oxford English Dictionary*, "the… capacity for… sexual feelings, desires, etc.… the expression of these."

Academic freedom is a staunch necessity if we are to continue to explore definitions such as these vigorously. Like others, I distinguish academic freedom from freedom of expression, though they are interdependent. As Amia Srinivisan writes tartly, the former is "… the freedom to exercise academic expertise in order to discriminate between good and bad ideas, valid and invalid arguments, sound and hare-brained methods."[7] Like others, I fear any diminishment in a commitment to academic freedom and any diminution of its theory and practice. Current efforts to erode the contemporary academy stoke and justify these fears.

As I write, the classical Greek tragedy *Antigone*, first produced in Athens around 442, haunts me. Its setting is Thebes, a city-state, in the immediate aftermath of a civil war. Two brothers have led the opposing armies. Dead bodies litter and pollute the ground—among them the fraternal corpses. A new king, Kreon, asserts his power. Like many rulers anxious about their power, but unable to admit to any anxiety, he orders that one of the brothers, Eteokles, be buried with full dignity and honors. However, the other, Polyneices, who has led the assault on Thebes, is to be left "unwept, unburied, treasure sweet/

for watching birds to feed on at their pleasure."[8] Antigone, a princess, Kreon's niece and ward, rebels against his edict. She insists on burying Polyneices. He is her brother. Kreon vows that if she does not obey him, he will execute her. She follows her conscience, and dies. Significant figures warn Kreon against his rashness, but he refuses to listen and ultimately pays a terrible price.

Among these figures is the prophet Teiresias. Though physically blind, he is clairvoyant. The lack of physical sight is no barrier to deep insights. According to myth, though born a man, he was changed into a woman and then, after a period of years, changed back into a man. A quaint name for him is "hermaphrodite." As a result, he is a symbol of the experience of living in both a man's and a woman's body and of questioning gender binaries. Not everyone marches squarely to a drummer who beats out, "M/F, M/F, M/F." Because of the millennial-old complexities of *Genesis* 7, I will not reduce it to a crude pageant in which we are created either male or female in the Garden of Eden, or in which we are the survivors of God's later wrath who stumble onto Noah's Ark, two by two, male and female. I do ask that adults read a rich variety of differing myths as well as Biblical texts—and encourage children to read widely as well. Teiresias is not alone.

Creation and Evolution of WGS (Toward LGBTQIA+)

An account of the development of women's studies since the late 1960s is useful in outlining the concepts and processes that the opponents of WGS have cherry-picked, reduced, and traduced. In part modelled on the emerging Black Studies in the United States in the 1960s, women's studies was and remains an internally contested field.[9] Internally contested should characterize all lively fields of inquiry. One tension was over the relationship of the academy to feminism. "Women's studies is the academic arm of the women's movement," an early mantra went. In contrast, another, my own, announced the arrival of "The new scholarship about women." If the first mantra helped to lead to still-present external charges of "indoctrination," the second led to more internal charges of footnoted retreats from feminism and activism. Yet the desire, even the passion, to do the work was unifying. The work seriously took up pedagogy and relations with communities outside of the academy as well as research and scholarship. There was so much to do.

We early practitioners in the United States could at least summon up traditions of academic freedom, no matter how unevenly applied, to undergird

our reforming/revolutionary passions. Women's studies grew internationally as fields of inquiry did before the Internet—through correspondence, friendships and collaborations, travel, academic study outside of one's home country, conferences, publications, and translations. I have argued that much of this earlier work centered on two concepts of difference as well as the inquiry into what "difference" itself might mean. The first was the differences between men and women that were harmful to women, the punishments and suffocations of patriarchies, the consequences for women of the rule of Kreons. The second was the differences that women have made, in spite of the Kreons. Antigone's words, in many translations, are still spoken, acted, and read.

Such questions were not only historical, social, and cultural, but also epistemological. "What," women's studies practitioners asked of earlier and contemporary intellectuals and academics, "*were* you thinking. Why? And how? What were you refusing to think? How distorted were your frameworks of knowing? Your paradigms?" For example, the first Genes and Gender conference was held in New York in 1977 as part of the explorations of the effects of gendered thinking on science.

Inevitably and inexorably, a focus on women reveals the myriad of differences among women—those of race, ethnicity, class, nationality and region, able-bodiedness, religion,[10] sexuality. Jewish women's studies, Black women's studies, lesbian studies emerged. In the 1980s, Kimberlé Crenshaw's concept of intersectionality gave form to the analysis of relations among race, gender, and class—among other elements of identity. How did these relations systemically allocate privilege to some and discrimination to others? For systems were and are at work.

As inevitably and inexorably, as the work on genes and gender shows, a focus on women would next entail the use of gender as a "category of analysis," Joan W. Scott's invaluable formulation, first published in 1986, and inquiries into the structures and processes of gender. Could one understand the Antigones of all classes without understanding their relations with the Kreons, Eteokles, and Polyneices of all classes? A year later, the Summer 1987 issue of *Signs: Journal of Women in Culture and Society* was on the theme "Within and Without: Women, Gender, and Theory." Should women's studies "yield" to gender studies? The editors argue that gender is of "primary concern to feminist scholars," but we must think about and question what that might mean.

Though without any overarching planned agenda, forces and feelings began to coalesce into two more fields that also overlapped. Each brought

new elements of provocation to WGS, explicitly or implicitly assuming that academic freedom protects the provocative as well as the unpopular. The first is Queer studies. The word "queer" in English has a long lineage, signifying the strange, the peculiar, the perverse, and serving as a non-affirmative code word for homosexuality. Politically, the group Queer Nation was formed in 1990 with roots in ACT UP!. Its protest chant is "We're here! We're queer! Get used to it." In the academy, Judith Butler's *Gender Trouble* and Eve Kosofsky Sedgwick's *The Epistemology of the Closet* were deeply influential. Teresa deLauretis, the author of the 1987 *Technologies of Gender*, organized in California the first conference on queer theory. She writes that lesbian and gay sexualities are different, but both "can be understood and imagined as forms of resistance to cultural homogenization." We must investigate or "problematize" these "homo-sexualities in relation to gender and to race," both of which have "attendant differences" of class, ethnic culture, generations, geography, and socio-political location.[11]

In 1993, Carolyn Dinshaw and David Halperin began their founding editorship of *GLQ: A Journal of Lesbian and Gay Studies.* "We seek," they write, "to publish work that will bring a queer perspective to bear on any and all topics touching on sex and sexuality. We understand sex not simply as a physical or psychological event but also as a mode of transacting cultural business."[12] Later, Dinshaw was to reflect that the history of their editorship was "… a tale of intellectual exuberance in an explosively creative, new endeavor, a new generation of scholars was extending the freedoms and liberties won… in the United States after Stonewall." They could question "homonorms" as well as "heteronorms." They could be witty, punkish, prankish.[13]

The second of the newer fields is Transgender studies, which evolved during the 1990s. The relations between "Q" and "T" were to be worked out. In a wonderful "Introduction" to a 1998 edition of *GLQ*, Susan Stryker traces this development.[14] Though transgender was an "umbrella term," the field drew on a theory of contemporary life, called the "postmodern condition," that explored a crisis in representation, a destabilizing rift between a word and what it was to represent, between signifier and signified. Transgender studies would also figure out the breaks in the heteronormative linkages between "an individual's anatomy at birth" and "the performance of specifically gendered social, sexual, or kinship functions." Helping to create an open community, on the Internet and in certain settings, it was harder and harder to avoid people "who lay claim to some form of transgender identity."

Grievously, outside of the precincts of higher education and its diverse studies, the more overt presence of trans people was becoming a flashpoint in everyday life, education, law, medicine, and religion, to be met with bullying, intimidation, repression, and physical cruelties. This has been evident in Republican messaging and advertising during the 2024 presidential election. Yet both Queer and Transgender studies gained some traction—as did media representation of trans people.

Reflecting the establishment, growth, and shifting boundaries of WGS were and are the names given to individual programs. The University of Nebraska Women's and Gender Studies Program recently surveyed 1400 colleges and universities. The venerable "Women's Studies" is still there, the name of perhaps sixty programs.[15] Yet "Gender" dominates, with nearly 120 Gender Studies programs. However, Women and Gender are also combined. The newer Sex, Sexual, and Sexualities Studies appear more frequently. Some Gender and Sexuality Studies exist, but more and more programs, perhaps 150 of them, shuffle in various ways three markers: Women, Gender, Sexual/Sexualities/Sex. Some are simply abbreviated as WGS. A few other markers: Queer, LGBTQ, race, ethnicity, intersectionality, and Feminist. Several institutions, as if to accommodate internal discussions, offer double programs. For example, Montclair State in New Jersey listed one program in "Gender, Sexuality, and Women's Studies," and a second in "Gay, Lesbian, Bisexual, Transgender, Queer Studies."

2018

2018 is a date in which the construction of and opposition to a dangerous "gender ideology" became globally legible. In that year, the government of Viktor Orbán in Hungary eliminated gender studies programs there, an act to which I will return. Across the waters, Donald Trump was in the middle of his presidency, and the State of Florida elected Ron DeSantis to his first term as governor. He would be re-elected to a second and final term in 2022. In the globalization of modern autocratic movements, Orbán and "illiberal democracy" had become admired among some United States conservatives. After 2018, WGS became enmeshed in a bolus of negation that sought to devour feminism as a movement, feminism as an element of a multicultural WGS, WGS, Critical Race Theory, and the contemporary "liberal" or "woke" world.

A common rallying cry, reversing that of Queer Nation, might well have been, "Don't get used to it," or "Cheer up, you don't have to get used to it."

Milestone (and millstone) though 2018 is, it evolved from earlier developments. Let me offer three examples, chosen among many possibilities for their contrast. The first: in the 1990s, *GLQ* pushed up against the common transnational limits on freedom of expression and academic freedom.[16] Its original publisher had contractually promised the American editors, Dinshaw and Halperin, their freedom. Then, a 1995 article by Lawrence Cohen about the "Secret Literature" in Hindi in the Northern Indian City of Benares during the spring festival of Holi offended customs officers in Malaysia. The publisher had production offices in that country as well as an economically valuable presence throughout Southeast Asia, Australia, and New Zealand. The officials objected to some cartoons about Muslims. Then, *GLQ* wanted to publish an essay about lesbian sado-masochistic practices, "Bodies on the Line," by K. Daymond. Again, state officials objected, but now the publisher censored the piece. Dinshaw and Halperin broke with them.[17] Daymond appeared later under the aegis of *GLQ*'s new, American publisher.

The second example: a consistent question for WGS is the nature of sexual difference itself, who has the authority to determine what that difference might be and what the sociocultural and psychological consequences are of any determination. Scholars in WGS across the disciplines have sought complex understandings of dimorphism. For "… [it] is neither a simple fact nor an innocent hypothesis…"[18] For many, Teiresias and his global counterparts are cultural ancestors of a complex vocabulary of intersex, non-binary, queer, gender-nonconforming, gender fluidities, gender queer. Yet Catharine MacKinnon, a pioneer in in feminist theory and WGS, warns about the continuing power of "naturalism." "Naturalism, that gender flows from sex in the sense of chromosome and genitals and reproductive biology and so on, still exercises dominion over the world we all live in."[19]

In 2008, an Australian journalist and blogger, Viv Smythe, either coined or popularized the term "Trans Exclusionary Radical Feminist" or TERF. Manifesting a variety of "naturalism," TERFS sought to exclude trans women from feminist/female spaces. They were not women.[20] Radical feminists might argue correctly that their movement is far more than the activity of TERFS. The TERFS might prefer to be called "gender-critical." They might reject being called "transphobic" and support the rights and dignity of transgender people.

Nevertheless, their belief that one is "male" or "female," a birth-right identity, aligns closely with religious and political forces that are transphobic and that do believe that being one sex or the other is a fundamental category of being.[21]

The third example: in 2016, Agnieszka Graff, the Polish writer and activist, published a succinct but vital article, "'Gender Ideology': Weak Concepts, Powerful Politics."[22] The war on gender, she writes, is not a "polemic against gender studies, or indeed a misunderstanding." It is larger, a "new strategy on the right." Part of the cunning of this strategy is that it "transcend(s) many divisions" and, as a result, "contribute(s) to the rise of illiberal populism." She adds sardonically, "It is simply a great name for all that conservative Catholics despise." Graff also wisely urges the contextualization of the deployment of "gender." It has different meanings in different places, though many are yucky (my word). Graff notes that in Poland "gender is almost synonymous with perversion."[23]

As these examples show, in 2018, academic freedom was far from being a global practice; quarrels over sexual dimorphism were feverish, inside and outside of feminism; and "gender" had become a shorthand label for a very bad thing. Viktor Orbán's Hungary illustrated all three of these. It was the setting for a two-pronged action: an effective propaganda campaign and a state action that propaganda justified. The campaign named an enemy: gender ideology and its academic manifestation, gender studies. The government withdrew its accreditation from gender studies programs. Gender studies was not only anti-scientific rubbish but also useless in the job market. The university was to do "science" and provide quantifiable economic mobility. Surely, that would prove to be more educationally and nationally wholesome than academic and gender freedoms. Orbán's deputy, Zsolt Sernjen, cracked, "No one wants to employ a genderologist."[24]

When the president of the National Women's Studies Association, Premilla Nadasen, was asked about the attacks by the Hungarian government and others on "gender ideology" she responded, though less crisply than she might have done, "… women and gender studies scholars are not rooted in a 'gender ideology.' They think about gender as a frame of analysis for understanding the way the world works. I think if there's any ideology that has been manifest in this debate, it's the right-wing ideology that is attempting to return to a heteronormative patriarchal society."[25]

Dismaying though Orbán's actions were, they were not surprising. His government had been bullying Central Europe University, which George Soros had founded, for several years.[26] CEU would soon move to Vienna. The ban

on gender studies preceded greater repression of both sexual freedoms and university autonomy. 2020 saw the end of "legal recognition of transgender and intersex people." In 2021, the Orbán government outlawed "any depiction or discussion of LGBTQ identities and sexual orientation." In the same year, some universities came under the authority of "public trusts" that Orbán and his circles controlled. The Ministry of the Interior was given "jurisdiction" over educational policy. If the state could mindfully stimulate self-censorship, blatant censorship might be unnecessary.[27]

In 2018, in Florida, the new governor, Ron DeSantis, was explicit about his political, cultural, and educational goals. In brief, look to Hungary and send "wokeness" to the morgue.[28] He would begin with elementary and secondary education and then go to higher education. Other states would soon follow his lead. *The Chronicle of Higher Education* has a grimly useful "Tracker" section that shows the "dismantling" of diversity, equity, and inclusion efforts.

Federal and state powers would and could work in concert. The Senate hearings about the nomination of Judge Ketanji Brown Jackson to the Supreme Court on March 23, 2022 both illustrate federal positions and serve as a case study of the national post-2018 political scrum and swarm that WGS had now to navigate. This hearing was almost exactly three months before the Supreme Court on June 24, 2022 ruled in *Dobbs* that no constitutional right to an abortion existed.

To be sure, a Democratic president nominated Judge Jackson. A Democratic Senate would confirm her. However, a conservative Republican senator from Tennessee, Marsha Blackburn, used her televised time in the hearings to suggest that no-one is safe from support of transgender issues, especially in sports; from "progressive education," which seemed to be about sex, gender, and "indoctrination"; from crime and criminals; and from the *1619 Project* and CRT (Critical Race Theory). Did Judge Jackson not approve of all this?

Later, Senator Blackburn would ask Judge Jackson to define "the word 'woman'." The trap was set. In effect, did the judge believe there were only two immutable sexes, male and female, or, gender ideolog that she might be, did she not? Wisely, the judge stepped around the trap and answered that she was not a "biologist." The senator huffed that if the judge could not give a "straight answer about something as fundamental as what a woman is," she is a symptom of the "dangers of the kind of progressive education that we are hearing about." For example, teaching kindergartners that they can choose their gender.[29] Beware, a polluting and subverting agent is approaching SCOTUS.

Governor DeSantis was eager to prove himself as an exceptionally ripped, conservative political force. Not surprisingly, then, as I was scrolling through the University of Nebraska list of programs in WGS, I found the lettering on the tombstone of a gender studies program: "August 10, 2023, New College of Florida Board of Trustees voted to direct the administration to take the 'necessary and proper steps to terminate the Gender Studies program, beginning with the 2024 enrollees.' " The New College, established in 1960 as an honors college, was academically a good place. Its gender studies program had flair and openness.[30] To the governor and his educational enforcers, gender studies at New College was intolerable "gender ideology."

In 2024, Judith Butler's *Who Afraid of Gender?* places 2018 and beyond in a global context—though it is admittedly incomplete. Butler is an advocate of academic freedom as a necessary condition of critical thinking. Now, she seeks to understand the rage for "anti-gender ideologies" in religions; nations; civil society and non-profit organizations; and political movements. Why is Senator Blackburn the politician she is?

Like Agnieszka Graff, Butler balances the local conditions of a "gender ideology" with a "transnational" circuitry that connects these varying localities. Local conditions insure that "no one approach to defining, or understanding, gender reigns." Yet the transnational movement "treats gender as a monolith, frightening in its power and reach."[31] That frightfulness is present in gender studies programs. Significantly, we are living in a "world whose future is radically uncertain."[32] One way of managing uncertainties is to believe that comforting older orders can be restored. In them Kreons rule, Antigones obey and marry and bear children, a blind Teiresias does not wander about—dragging with her/him/their history of gender non-conformity, and WGS programs, like DEI programs, do not exist.

WGS and Academic Freedom

So far, I have argued that academic freedom, where it exists, has enabled the growth of WGS. Moreover, where academic freedom does not exist, or where it is violated, WGS is imperiled. Yet there are now sober, sobering assertions about a chilling orthodoxy on campuses.[33] Some of the error-conditioning agents of campus orthodoxy were once the rebels of feminism and WGS. Crucially, these assertions are being conducted in the age of social media—with their capacities for information, disinformation, and the cultivation and culling of herds of opinion.

In Great Britain, two academics, one a philosopher, one a sociologist, write about the dangerous attacks on academic freedom by "gender identity campaigners."[34] Their targets are people who argue for a different position on "the material reality and political salience of sex as a category." The authors "fully support" trans rights. However, they list examples of "gender identity campaigners" who glibly and harmfully use the insult of "transphobic"; prevent research and suppress evidence; no-platform and de-platform; sabotage events; blacklist; harass, including physical threats; attempt to fire people; misrepresent ideas; and attack defenders of academic freedom. In response, administrators worry about risk and reputational damage, not about principle.

In the United States, the recent history of the career of the scientist Dr. Carole K. Hooven[35] has become a prominent example of the claim that individuals are being stripped of the academic freedom that could sustain controversial ideas on sex and gender.[36] Dr. Hooven had long worked, in non-tenured positions, in the Department of Human Evolutionary Biology (HEB) at Harvard. In July 2021, on TV, she discussed misguided challenges to the binary terms "male" and "female" and questioned wokeness in medical education. Two days later, a doctoral student in HEB, Laura Simone Lewis, active in the department and her discipline, went on X (Twitter) to accuse Hooven of being transphobic, a charge Hooven denied. Months of conflict on social media, in the media, and at Harvard followed. In spring 2022, Lewis earned her doctorate and left Cambridge for a post-doctoral fellowship at Berkeley. Hooven retired from HEB and Harvard on January 23, 2023, to be welcomed elsewhere.

Obviously, WGS students, scholars, and programs cannot, and must not, contribute to the creation of chilling orthodoxies on the campus. It would be a bitter irony if WGS both failed to defend academic freedom for others and lost academic freedom for itself. In 2022, the Wyoming State Legislature did try to defund the WGS program at the state university. The legislature failed, but its attempt might prove to be one pothole in an ultimately smooth road.

One national survey, done by the National Women's Studies Association (NWSA), seeks to measure the freedom and health of current WGS programs.[37] These are the places where WGS is a daily presence—in institutions large and small. NWSA considers itself both an academic and social justice organization, proud of its ties to communities and feminism. The report overview that precedes the survey writes that NWSA is at the center of "discourses" about "critical discussions on race and ethnicity… settler colonialism… life-saving medical care to trans youth." Not surprisingly, NWSA feels under attack by conservative leaders and "reactionary organizations." In such a hot climate,

the urgency to protect "academic freedom, [Women, Gender, and Sexuality Studies] WGSS, and other social justice aligned disciplines" is palpable.

A total of 244 programs completed the survey—all from colleges and universities, none unfortunately from community colleges, and 14% were in states with active anti-DEI legislation. Among the problem states were Florida, Tennessee, and North Dakota. "Activism" seems to be "the code word for Women's and Gender Studies." Outright abolition or forced mergers is never gone as a possibility. In the meantime, faculty fear being reported for taking up "controversial topics" in class. Support is often "benign neglect" rather than "open hostility," but that passive benevolence may be rooted in an old-fashioned "women's studies model," one that rarely considers intersectionality, especially concerning people of color and LGBTQ+.

The report shows that WGSS attracts students. Enrollments have grown. However, resources have not. Many WSG departments still operate on shared lines without tenure lines of their own. Moreover, schools may count only majors in a program, not enrollments in all of their courses, including contributions to general education. As a result, much of the teaching that is done is invisible in the ledger books.

Over the years, I have seen most WGS programs carry a heavy, even excessive, burden of teaching, research, and service. Reluctantly, then, I suggest that some might connect even more strongly with their local communities to discuss their work and academic freedom. Graduate programs have another obligation: to convey to all students what the hard-won traditions of academic freedom are and why they matter.[38] Because academic freedom is at risk, nationally and globally, surely organizations and groups across the political spectrum can join together in its defense. Surely conservative intellectual organizations and NWSA can find some common cause.

At this moment, in the United States, Antigone and Teiresias are the allies and beneficiaries of academic freedom. Many Kreons are its opponents. If only they were wise enough to be allies, they and their dominions would be the beneficiaries. No matter what 2024 brings to the United States politically and culturally, I stubbornly believe that WGS has the nerve and verve to continue to develop its truths and nurture its Antigone and Teiresias figures. For WGS is only about fifty years old, at once youthful and mature in its inquiries, ambitions, and braveries.

CHAPTER 6

On Further Investigation: The AAUP Affiliation with the AFT

MICHAEL BÉRUBÉ

IN 2022, THE AMERICAN Association of University Professors (AAUP) voted to affiliate with the American Federation of Teachers (AFT). As I'll explain in the second half of this essay, there are many reasons to be happy about this arrangement. But it raises significant questions about how future AAUP investigations of individual colleges and universities will be conducted, and whether the findings of those investigations will be challenged or ignored by administrations because of the AAUP's affiliation with the AFT.

I will explain by telling a story about the first investigation (of two) in which I was involved. It was May 2012. I was chairing an AAUP investigation at the University of Northern Iowa (UNI), whose administration had recently announced its decision to terminate seventy-eight programs and close its teacher-training laboratory school—a decision made with no faculty consultation whatsoever. Untold numbers of faculty were threatened with layoffs, and many of them had already signed early separation agreements guaranteeing them one year's salary rather than take the chance of being terminated altogether at the end of the academic year. Together with investigation committee members Hans-Joerg Tiede, Sharon Wood, and Ernst Benjamin, I interviewed dozens of faculty members and reviewed thousands of pages of documents; this is standard fare for AAUP investigations. But there was a wrinkle at UNI. The UNI faculty are unionized; their union, United Faculty, is a collective bargaining chapter of the AAUP. Unfortunately, their collective bargaining agreement contained a layoff provision so broad that you could drive a truck through it, which is precisely what UNI administrators had done. Article 5 of that contract, titled "Staff Reduction," required no consultation with faculty,

and Article 10, titled "Grievance Procedure," explicitly excluded layoffs from its remit, so administrators quite properly argued that they followed the letter of the law. Indeed, they also argued—again, quite properly—that their offer of early separation agreements with one year's salary and eighteen months of health insurance went above and beyond the contract letter with United Faculty.[1]

Jorge, Ernie, Sharon, and I met with those administrators—President Benjamin Allen, Provost Gloria J. Gibson, and Associate Provost Virginia Arthur—and the Iowa Board of Regents Executive Director, Robert Donley. We were in President Allen's office. It was a bright Wednesday morning, our first meeting of the day. After about half an hour of ineffectual discussion, in which the three top administrators told us things they'd already said in the press, in internal UNI communications, and to AAUP staff in the Department of Academic Freedom, Governance, and Tenure, Donley turned to me with some emphasis. *What's our worst-case scenario here? Bottom line*.

"Worst-case scenario? Bottom line?" I replied. "Censure." And what, Donley asked, would be the consequences of censure? "It's impossible to say, honestly," I replied. "But it wouldn't be good. Here's how it would happen: we write a report and submit it to the AAUP's Committee A on Academic Freedom and Tenure. If Committee A approves it, it goes to the membership at the annual meeting for a vote. And if the membership votes to censure, you would wind up on a list of censured institutions that includes some of the worst actors in American higher education. That may not affect your student enrollment or your accreditation. Still, it would certainly involve serious reputational harm; it would get coverage in the higher ed press and perhaps make recruiting faculty more difficult. Censure is a black mark, and faculty pay attention to that. But let me make it clear that the purpose of these investigations is not to add institutions to the censure list. The purpose of these investigations is to try to persuade institutions to do the right thing and follow AAUP principles of academic freedom and shared governance."

My invocation of shared governance hit a nerve. Donley told me heatedly that the university had done everything required under the collective bargaining agreement and then some—and then he challenged the investigation's legitimacy altogether. He demanded to know how the AAUP can investigate an institution whose faculty are unionized by the AAUP. How, he asked, can we plausibly claim to be an objective, impartial investigating committee, and on what grounds do we insist that the university follow the national AAUP

principles of shared governance instead of the procedures laid out in a contract negotiated by a local AAUP union?

Those were good questions. I had anticipated them, and to this day, I think I had a pretty good answer. "I'm not from the collective bargaining wing of the association," I said, "and this committee reports to Committee A, which is independent of the collective bargaining wing as well. We work on what's known as the 'advocacy' side of the association. Think of the AAUP as being part SEIU [Service Employees International Union] and part ACLU [American Civil Liberties Union], with a firewall between them; the ACLU is conducting this investigation. This also means that we don't owe anything to this chapter and are not beholden to its collective bargaining agreement. On the contrary, we think the CBA is pretty awful concerning layoffs and program closures, falling far short of national AAUP standards, and we will say as much in our report." (Ernie Benjamin was especially insistent on this point, as he should have been.)

I don't know if this exchange was decisive in getting UNI to walk back its plans for layoffs and program closures; all I know is that is precisely what UNI did, which is why no one in the wider higher education community has ever heard about them. As I told Donley, that is the purpose of AAUP investigations: not to punish or chastise, but to persuade university administrations to adhere to academic freedom and shared governance principles. It is critical, therefore, that AAUP investigations be conducted differently from collective bargaining negotiations; administrators must understand that investigations are impartial and not, by definition, adversarial. The question going forward is whether administrators can be persuaded of the impartiality of investigations conducted by an affiliate of a union. But as we will see in the following section, that question has been raised before, in the 1970s, when the AAUP first embraced collective bargaining. Now that the AAUP is affiliated with the AFT, the question has become only more urgent.

The terms of the affiliation between the AAUP and AFT are complex. As the AAUP's FAQ page on the affiliation explains,

> Through this affiliation, the national AAUP becomes a "national regional council" of the AFT. As an affiliate, the AAUP maintains its independence and autonomy—as do our chapters. AAUP members will continue as full members of the AAUP with all the rights and privileges that go with membership. The AAUP will continue to have its own national

> governing Council, officers, constitution, and Biennial Association Meeting and AAUP chapters will continue to be governed by chapter constitutions. The AAUP maintains sole authority over its budget, programs, and staff. The AAUP also maintains sole authority over the Redbook, the promulgation of professional standards, investigation and censure/sanction and over its committees. All AAUP members will also become members of the AFT/AFL-CIO, with all the rights and privileges that go with membership in the AFT.

The national AAUP is not a labor union under 501(c)(5) of the Internal Revenue Code but a 501(c)(6) professional organization; AAUP investigations, censures (for violations of academic freedom), and sanctions (for violations of principles of shared governance) remain independent of the AFT. Nevertheless, as I write these words, I write as a member of the AFT. I have been a member of the AAUP since 1993, and as of 2022, I am a member of the AFT/AFL-CIO as well. Penn State has an advocacy chapter, and its members are now part of a large AAUP national AFT local, AAUP Local 6741. If I were chairing an investigation of a university today, and if I were faced with a challenge to its impartiality like that offered by Robert Donley, I would find this state of affairs very difficult to explain.

That is not to say that the AAUP cannot continue to authorize and conduct investigations, of course. And it is not to deny the many organizational advantages of the association's affiliation with the far larger and more powerful AFT. In political terms, the affiliation with the AFT makes the AAUP significantly more powerful, particularly with regard to lobbying: as the AAUP's FAQ page notes, "our collective bargaining chapters will have affiliations with AFT state federations—organizations with clout in state capitals and in Washington, DC." But as I noted above, the question of the relationship between the collective bargaining wing of the AAUP and its investigating committees goes back well before 2022. It was discussed in a 1978 *AAUP Bulletin* article by Ralph Brown, Jr., and Matthew Finkin, "The Usefulness of AAUP Policy Statements."[2]

I will explain the context in which that article appeared. Brown and Finkin were writing in response to an article written by W. Todd Furniss of the American Council on Education (ACE), entitled "The Status of 'AAUP Policy.'" As the Editor's Note of Brown and Finkin's article explains, "Dr. Furniss's article was prompted by the increasing reference in the courts to one or another AAUP policy statement, notably in the citation by Judge

Wright in *Browzin v. Catholic University of America* (a financial exigency case) of three documents—the 1925 *Conference Statement on Academic Freedom and Tenure*, the 1940 *Statement of Principles on Academic Freedom and Tenure*, and the *Recommended Institutional Regulations on Academic Freedom and Tenure*."[3] The exchange overlaps considerably with discussions between the ACE and the AAUP in the mid-1970s concerning the phenomenon of colleges and universities downsizing or closing altogether under financial pressures, discussions that eventually led to the AAUP's formulation of procedural guidelines for institutions experiencing conditions of financial exigency; another precipitant of Furniss's article was the issuance by the AAUP, in 1970, of the Interpretive Comments on the 1940 *Statement of Principles*.

I will not analyze Furniss's essay in detail, but I will summarize it as follows. Furniss was asking whether organizations that endorsed the 1940 *Statement of Principles* are, therefore, bound by the 1970 Interpretive Comments, about the extent to which colleges and universities that have incorporated AAUP statements and policies in their handbooks or governance documents are therefore bound by them, and about the status of AAUP statements and policies when cited in litigation. Lurking in those questions is a concern about the AAUP's relationship to collective bargaining, which is unsurprising; as Brown and Finkin noted, "the AAUP's role in collective bargaining has been an issue of national concern since about 1970."[4] Particularly at issue is the AAUP's Recommended Institutional Regulation 4 addressing conditions of financial exigency, which is also unsurprising. Brown and Finkin write, "[t]his regulation (which is not simply procedural), [Furniss] suggests, exemplifies his observation that a 'union bargaining position must initially demand far more than the union really holds to be essential.' This surmise is unsupported by reference to the text. On the other hand, it is a certainty, as Furniss correctly observes, that the 'considerable elaboration and refinement' of the regulation that went on through the early 1970s before its Annual Meeting adoption in 1976 'was a response to increasing financial hardship in higher education and the resulting retrenchment.' "[5] In other words, Brown and Finkin were writing to rebut Furniss's claim that AAUP investigations of colleges and universities would be conducted in the manner of collective bargaining negotiations. Furniss's concern was basically a version of the question Robert Donley asked me at UNI in 2012.

As to the question of whether AAUP principles are binding on colleges and universities that incorporate them into their handbooks (and this was

undoubtedly at issue at UNI, as it is for any investigation), Brown and Finkin write:

> Two years ago, the head of a university facing investigation initially declined to cooperate with the investigation because, as he wrote,
>
> > [I]t seems to me that an organization which has as one of its purposes the representation of institutional faculty in a collective bargaining relationship but which holds in its other hand the threat of censure of institutions which stray from policies and procedures which it has determined to be the proper standards of the profession has an opportunity to attempt to punish institutions whose bargaining representatives are some other organization or who have no collective bargaining agent. One might examine in this regard how many of those institutions censured in the past five years have as their collective bargaining agent the AAUP, how many have different representation and how many have none. This potential form of institutional blackmail does not strike me as an insignificant consideration.
>
> In a reply too long to quote in full, the General Secretary pointed to the independence of ad hoc investigating committees, the considerable autonomy of Committee A, and the exposure to criticism of published reports as ample safeguards.[6]

For Brown and Finkin, then, the answer was clear: AAUP investigations are thoroughly impartial for all three reasons enumerated above.

Can the AAUP make the same claim today after affiliation with the AFT? Certainly, it will; indeed, it has already assured readers in the FAQ answer I cited above that investigations and censures/sanctions remain independent of the AFT. But will that claim persuade administrations that the firewall I invoked at UNI in 2012 still exists? Most importantly, will it be a credible claim at universities whose faculties are in collective bargaining units organized by the AAUP-AFT?

Bad actors in American higher education routinely dismiss the AAUP because its statements and policies—to answer Furniss's question from almost fifty years ago—have no binding force on them. I was told as much during the only other investigation I have chaired, at the University of Southern Maine in 2015, when then-President David Flanagan informed me that he had no intention of taking direction from an outside organization of people "from away."[7]

But even not-bad actors in American higher education might legitimately raise the question of whether an investigating committee of the AAUP-AFT can impartially conduct a review of a campus whose faculty is organized by the AAUP-AFT. Perhaps it is time, therefore, for the AAUP to issue a decisive statement addressing that question. I hope that if and when it is issued, it will withstand even the most skeptical investigation.

CHAPTER 7

Academic Freedom and Moral Courage: North Carolina's Speaker Ban

GENE NICHOL

I WAS DEEPLY HONORED TO be invited to give the Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom in the fall of 2018.[1] I knew something about the history of the Davis, Markert, Nickerson Lecture—not only of its list of distinguished commentators, but, more importantly, its famed and lonely history. Michigan's tribute, even if late, to its free speech heroes from the 1950s, Chandler Davis, Clement Markert, and Mark Nickerson. Beacons of courage—the essential component of an actual system of free expression. Courage beyond my contemplation.

Before I arrived in Ann Arbor, the Michigan Faculty Senate Office informed me that the remarkable Chandler Davis would introduce me. On the day of the lecture, Dr. Davis was the only still-living namesake of the lecture series. We enjoyed a long breakfast before the talk's appointed hour. I could not help trying to explore Davis's bravery. He chose to speak uncomfortable truths as a panic, a mean and dangerous panic, spread across the United States in the form of McCarthyism. He didn't know the costs that would come—to his name, his family, his safety, his work, his liberty, his confidence in his country, even his ability to live in his homeland—but he knew much of it. After all, in 1952, only two years before he would be called to testify in front of the House Committee on Un-American Activities, the United States Supreme Court had failed miserably in its central duty to uphold First Amendment rights. Justice Sherman Minton had written in the majority opinion in *Adler v. New York* that the government had the authority to protect "young minds" from the disease of alien ideologies such as communism.[2] The life-tenured justices themselves yielded before the contagion. But rather than surrender what Davis knew to

be the defining human characteristic of intellectual freedom, he would let the costs come. He would accept the challenges of freedom. Even the deepest ones.

I spoke with Dr. Davis, as well, about my own state's famed, defining, academic-freedom-crushing, historic, unconstitutional censorship episode—its 1963 North Carolina Speaker Ban law, which I explore in this essay. It, too, wounded a state's people and its best university not because of the complex mysteries of free expression but because of the knowing, intended terrors of the use of state power and the complicity of leaders and citizens who would willingly succumb to its transgressions. Courage was, for us, the missing measure, not the rigors of intellect. I remembered that when Dr. Davis spoke to the University of Michigan's then-president, Harlan Hatcher, before being called to testify by the congressional committee, the president advised Davis to simply "name names." I can't imagine that was because President Hatcher was incapable of thinking through the sometimes difficult intersection of liberty and government power in the American system. Hatcher just couldn't match Davis's fearlessness. Heroism is sometimes tough-earned. Too tough-earned.

Later, I learned of a second connection between the events leading to the Davis, Markert, and Nickerson Lecture and the North Carolina Speaker Ban. Clement Markert, another of the lecturer's namesakes, was among the first set of victims of Carolina's censoring statute. By the mid-1960s, Dr. Markert had become Yale's biology department chair—after being suspended and reinstated at Michigan. The medical school at the University of North Carolina took steps to invite him to speak about his research on the Chapel Hill campus. However, the invitation was scuttled when sponsors learned of Dr. Markert's background at the University of Michigan—having pled the Fifth Amendment at the Michigan hearings a decade earlier.[3] I am happy to report that Dr. Markert would become a distinguished professor of animal science and genetics twenty-five miles from Chapel Hill at North Carolina State University.[4] So, not all of Markert's Tar Heel connections were unpleasant.

I'm a constitutional lawyer by trade. In my field, we study the great figures of Supreme Court jurisprudence—Marshall, Brandeis, Holmes, Harlan, Warren, Brennan, Marshall again, Ginsburg. But we've also had proven to us over and again that the constitution is not self-triggering. It often requires blood and sacrifice and deep courage for its implementation, its initiation. Davis and his colleagues joined the company of our greatest constitutionalists—Clarence Earl Gideon, Fannie Lou Hamer, Martin Luther King, Edith Windsor, Rev. Joseph De Laine of Clarendon County, South Carolina, Barbara Johns of

Farmville, Virginia. The list astonishes. The company is the highest, the best. Robert Kennedy said, not long before he died, that "the future belongs to those who can blend reason, passion and courage in a personal commitment to the ideals and enterprises" of the American democracy.[5] "Reason," "passion," "courage." Chandler Davis.

North Carolina's Bill Aycock and the Speaker Ban

On June 25, 1963—without notice to the University of North Carolina, with no committee hearings, four minutes of debate in the House and fifteen minutes in the state Senate, the North Carolina legislature ended a session by passing the infamous North Carolina Speaker Ban.[6] It provided: "no college or university, which receives any state funds, shall permit any person to use the facilities for speaking purposes, who:

A) Is a known member of the Communist Party
B) Is known to advocate the overthrow of the Constitution of the US.
C) Has pleaded the Fifth Amendment of the Constitution… in refusing to answer any question, with respect to Communist or subversive connections."[7]

University of North Carolina-Chapel Hill Chancellor William Brantley Aycock learned of the Speaker Ban Law through radio reports on the afternoon of its passage. For the next two years, as chancellor and then as professor, Aycock waged a combative, risky, pointed, immensely articulate, boldly courageous, and sometimes lonely campaign against the corrosive Speaker Ban. I was lucky to learn of much of it firsthand as, late in his life, Chancellor Aycock and I became dear friends—friends in the mentor–student, in the grateful protegee, in the hero–apprentice sense. It was never conceivable for me to think of Bill Aycock as colleague or equal. Like Chandler Davis, he occupied a different, more elevated terrain. He shared his papers from the battles with me generously. And we spoke of them for hours on end. Most of all, though, Aycock was a committed, inspiring, and brilliant teacher. To my great fortune, he let me learn in his presence.

Aycock's crusade, like that of Chandler Davis, teaches much about the actual protection of free speech and academic inquiry. These best of our traditions don't just spring from the aphorisms of philosophers. They are, too frequently, forged and tested by fire and steel. And they are made possible only through

foundations of courage. Aycock's story is, as well, a marker of true university leadership—something which is almost non-existent six decades later. There is little mincing of words in Aycock's brand of leadership. No bureaucratic this and that. An earlier Carolina university president, Frank Porter Graham, had, in his own words, "run the risks of taking sides."[8] Aycock did the same—inside and outside university walls; in the face of angry legislators and boards of governors who controlled both his budget and his fate. He thought it was his job to change their minds, whether they wanted to hear his pleadings or not. And he would do his job, even if it meant that, by doing it, he would lose it. I'm not sure we'll see that again in North Carolina. We certainly don't have it now. We're the worse off for it.

The North Carolina Speaker Ban Law, like much in the state's history, was more about race than communism. Its sentiment emerged in the 1960 segregationist gubernatorial campaign of I. Beverly Lake. Lake's campaign manager, Robert Morgan, wailed to a Democratic Convention that, if elected, "Lake would not sit idly by and let the NAACP and other outside influences make a mockery of our way of life."[9] He complained most specifically of "outrageous events" occurring in Chapel Hill. UNC-TV had broadcast a program "glorifying" the Greensboro sit-ins. A student group had invited Martin Luther King to speak on campus to "declare war on our way of life."[10] Even worse, amazingly, "Negro poet Langston Hughes" had actually spoken at "our" university.[11]

Since the would-be governor would become ex-officio chairman of the UNC Board of Trustees, Chancellor Aycock spoke out preemptively in response to Morgan. In a speech to alumni, he argued:

> A true university must seek out, examine, assemble and interpret facts. It must seek new ideas, new forms of knowledge, new values and new artistic standards in order that mankind may continue to grow in understanding and wisdom. A part of this creative mission is the duty to examine the bases, the foundations, and the assumptions on which present knowledge rests… An institution engaged in higher education cannot be a university if it undertakes to fix or freeze knowledge or doctrine merely because it is suitable to some individual or group, however highly placed. By what authority, may I ask, can a person say that he has found the final truth for the youth of our land?… Those of us entrusted, for the time being, with the leadership of the University of the people have a duty to express forthright concern when the freedom of the University is threatened… If

> a governor should attempt to dilute freedom in the University, it would be tantamount to an attempt to destroy it.[12]

Lake lost the gubernatorial race to Terry Sanford. But the racialized/anti-communist hysteria didn't disappear. The *Charlotte Observer* reported that the specific "impetus for the gag law began during anti-discrimination demonstrations in the Capitol" in 1963. Politicians, the *Observer* wrote, linked support for the civil rights movement with communism.[13] Lawmakers joined with the American Legion in expressing angered outrage that UNC students had engaged in sit-in protests in Raleigh—even invading the sacred confines of the Sir Walter Hotel, where legislators traditionally holed up.[14] Unbelievably, in their view, a faculty member had joined the demonstrations. One representative proposed, "in a fit of pique," to "cut off all university appropriations."[15] Many others demanded that UNC discipline the protesters. When administrators balked, the Speaker Ban bill was put forward.

Commentators described the goal of the ban as "embarrassing the University for harboring liberals and integrationists."[16] One state representative added, the ban was meant to be "a slap at [university leaders] not as a tool to fight communism."[17] Chancellor Aycock himself would later add that "a lot of people in the legislature were mighty, mighty agitated about the [racial] demonstrations on campus."[18] Former Chancellor Carlyle Sitterson agreed: "I believe it was a reaction to the fundamental change that was going on in the South, it was tied to social changes, especially race relations."[19]

Noted UNC civil rights professor Dan Pollitt argued publicly that "the law would be used to target faculty with progressive approaches to race and labor under the guise of communist affiliation."[20] Pollitt explained that allegations of subversion had been made in the past, but they "were always undergirded by the politics of race." The communist focus was rooted in the unembarrassed assumption that anyone who wanted civil rights must have been a communist.[21]

Upon the ban's passage, Chancellor Aycock immediately launched an "education campaign" demanding its repeal.[22] He began with the university's Board of Trustees. Working with a noted school of government professor, Aycock presented a formal critique of the statute to the trustees. He added that "it is our duty to express our deep concern clearly and forthrightly."[23] Doing so, he concluded:

> Political tampering with the educational process can drastically lower the quality of higher education. Legislative censorship, once begun, carries

> an invidious threat of future proscriptions, and inevitably stirs fears in the minds of both faculty and students that expression of unpopular sentiments may produce reprisals against them.[24]

The Board, in response, dropped its initial reticence and passed a resolution condemning the ban. Papers across the state saluted the chancellor's courage and candor.[25]

The campus struggled under the statute's shadow. An invitation to playwright Arthur Miller was canceled. Tom Wicker, an alumnus and *New York Times* bureau chief, withdrew from a planned campus lecture. Learned societies boycotted appearances and accreditation agencies threatened loss of good standing to one of the nation's leading universities. A local legislator explained that would be better than "subjecting our young minds to the influence of communist speakers."[26]

Aycock decided to take his case statewide. He spoke to a large gathering in November, calling the Speaker Ban an "insult and stigma to the university," comparing it to the Tennessee monkey law. He noted that prohibited speakers could talk on the steps of the post office or at Chapel Hill High School, but not on campus. He mocked its draftsman's exceedingly poor craftsmanship. And in a stunning statement, at least to modern-day ears, he told alumni: "If there is a choice between giving your money and giving us your time in getting the law repealed, keep your money and give us your time."[27] Legislative leaders responded they were "sick of hearing big talk from the chancellor."[28] A Duke University officer said Aycock was "a mere university employee and should be fired on the spot."[29] But Aycock didn't let up.

Next, he raised the stakes in a speech to the Greensboro Bar Association. Aycock told the legal community it was their professional obligation to enroll in the fight.[30] He claimed North Carolina had taken "the first step toward emulating the narrow dogmas of the [communist] enemy we all abhor."[31] He quoted Pericles, saying "We should die resisting rather than live submitting." Infuriated, the Democratic Party of Johnston County, Aycock's home county, passed a resolution condemning him.[32]

Aycock next challenged the state Attorney General's support of the Speaker Ban. He also publicly rejected the multiple threats cast his direction:

> Even more surprising is the constant admonition directed to those few of us who speak out that we should be quiet. This brings a new dimension to our form of government. There is nothing in the history of this State or Nation to support the notion that the merits of legislation

> cannot be discussed in full measure. Neither the decisions of Presidents, Governors, the Congress, the General Assembly, or the courts, have ever enjoyed the immunity suggested for this legislation.[33]

Aycock went to Atlanta to address the Southern Regional Education Board; he pressed into the eye of the storm by testifying against the ban (on statewide television) before the legislature's Britt commission; and, to cap, back in Raleigh, he told the Watauga Club, "it would be far better to close the doors of the university than to let a cancer eat away at the spirit of inquiry." He issued a defiant call:

> Generation after generation of [students] have gone forth from the campus to provide sound leadership throughout the length and breadth of this land. It is a pity so many have left us for other places. We need them now… We may be short on cash, but we're long on freedom.[34]

There were other chapters, other dissidents, other challengers, other challenges in North Carolina's fight to defeat the Speaker Ban—student protests, legislative hearings, lawsuits drawing on Aycock's legal claims, a partial repeal, and, finally, a complete one.[35] Lots of folks worked against the unconstitutional ban. But none so visibly, so articulately, so relentlessly, none with so much to lose. And none, it's fair to say, so courageously. So demonstrably and instructively bravely. Bill Aycock was North Carolina's Chandler Davis. And he was the chancellor at the University of North Carolina at the time.

In one of our longest discussions, I asked Aycock where he found the bravery. By then, I'd been a university administrator for years and I had a small inkling of the pressures he faced. I knew something else as well. Bill Aycock, I had learned from hundreds of University of North Carolina alumni, was the most beloved and highly respected law teacher in the school's long history. Bill Friday, Aycock's friend and law school (and study group) classmate, was the president of UNC during Aycock's tenure. Friday's opposition to the Speaker Ban was consistent and formidable, but it was quiet, measured, behind the scenes, like Bill Friday could be.

When I asked about courage, Aycock told me that when President Friday asked him to become chancellor he'd answered:

> Okay, I'll do my part, I'll take my turn. But I don't know if it will last for a week or for a decade. I'm just going to do what I think is right and if people don't like it or if things don't work out, I'll happily go back and teach my classes.

That theory of academic leadership, Aycock's theory, is from another era. I haven't seen it in my lifetime. University leaders are too risk averse, too bureaucratic, too money driven, too anxious to please lawmakers and donors and trustees. They are feel-good salesmen. They seek to sidestep problems, to pretend they don't exist, to keep their heads down, to hope the challenges go away, at least on their watch. They move from university to university, hopefully ahead of any lingering disasters or scandals. The thought of losing their gigantic (and misplaced) salaries and being forced to return to the classroom sounds more like a death sentence than a delight. So they put up with any humiliation that comes their way, or worse, their institution's way. Courage has no place in such an abandoned and vacant mission. It is a stranger in these halls. No one would even consider turning to today's university leaders for moral suasion and testament. They are in another line of work. Like car salesmen. And, often, it is even worse. In systems like mine (and the late Aycock's, UNC), presidents and chancellors are chosen explicitly for their political subservience, their defining submissiveness, not in spite of it. Anyone with an independent backbone need not, in fact should not, apply. Here at Carolina, they try not to think of William Brantley Aycock. You can understand why.

Coda

1954, 1963, 2024.

American higher education again totters under political pressure. Red states, blue states. Privates, publics. The presidents of Harvard, MIT, and the University of Pennsylvania are grilled famously, humiliatingly, before a committee of Congress about free speech and antisemitism on their campuses.[36] They seem, at the least, not up to the task. Donald Trump and his advisors reportedly prepare for a wholesale assault on higher education in a new, hoped-for term. Closing disfavored departments, ending diversity programs, monitoring hiring and admissions, and turning the Department of Justice loose on non-ideologically compliant universities.[37] Dark times once more.

In early 2024, the American Association of University Professors released a report entitled *Political Interference and Academic Freedom in Florida's Public Higher Education System*.[38] The attacks Governor Ron DeSantis and his crew have leveled at state universities are beyond alarming, perhaps even historic. The investigating committee reported as well that it "heard repeated

complaints not only about the silence of their campus and system administrators but also about administrators' direct complicity in implementing policies that would severely restrict academic freedom and faculty and student rights more generally."[39] The broad belief expressed by Florida faculty members was that university leaders "appeared more cowardly than cautious."[40] *Inside Higher Ed* reported that it had asked "forty Florida college and university presidents for comment on the state's higher education legislation, [but] none was willing to speak, even when offered anonymity." One faculty member concluded that on his campus, "we've become a machine of complicity."[41] Academic freedom scholar Hank Reichman has repeatedly argued "university leaders need to grow a spine."[42] Where are Chandler Davis and William Brantley Aycock when we need them?

CHAPTER 8

Campus Activism in Images: Past and Present

The university of michigan has a long and storied history of student and faculty activism, spanning decades of social and political movements. From the anti-Vietnam War protests of the 1960s and the Port Huron Statement to recent demonstrations against genocide in Gaza, the campus community has been consistent in its political engagement and social justice advocacy. Engagement has taken many forms, from protests and open letters to teach-ins and scholarship. This tradition of activism has been celebrated retrospectively and paradoxically by the University of Michigan administration, which has recently silenced protests, undermined due process, and even solicited violence against peaceful protesters it did not agree with. Still, there has been an ongoing commitment of university staff, students, and faculty, not always in unison, to address critical issues, whether they be war, racial equality, environmental concerns, sex crimes, labor issues, or international conflicts.

The visual history of protest at the University of Michigan is preserved in university archives, local press, and private collections. Protest and visuality are deeply intertwined—not only do images document activism, but their circulation, especially via social media, becomes a form of resistance itself. Notably, images of past protests have been used to construct a myth of a progressive university, portraying it as a leader in anti-apartheid and anti-racist efforts. Yet, as Alan Wald's essay in this volume reveals, past administrations were often less tolerant of dissent than such narratives suggest. The violent response to pro-Palestinian protests after October 7, 2023—widely witnessed and visually documented—further exposes this hypocrisy.

FIGURE 11. Antiwar march outside Crisler Arena on the University of Michigan campus, September 20, 1969. Photograph reproduced courtesy of *The Detroit News* Collection, Walter P. Reuther Library, Archives of Labor and Urban Affairs, Wayne State University.

FIGURE 12. Protestors demonstrate against corporate recruiters with known war research affiliations. *The Michigan Daily* Photograph Collection, Box 12, Bentley Historical Library, University of Michigan. Photograph reproduced with permission of *The Michigan Daily.*

FIGURE 13. Campus demonstrations against the Vietnam War and napalm producer Dow Chemical, University of Michigan Diag, March 1970. "March against Dow; Item MD_70028_012." *The Michigan Daily* Alumni Photographers Collection. University of Michigan Library Digital Collections. Accessed July 01, 2025. Photograph reproduced with permission of *The Michigan Daily*.

FIGURE 14. Crisler Arena crowd at Enact teach-in, March 1970, Item HS13513, University of Michigan News and Information Services, Bentley Image Bank. Photograph reproduced with permission of the Bentley Historical Library, University of Michigan.

FIGURE 15. Protests against apartheid regime in South Africa: University of Michigan students demanding the university to divest from stocks that financed South Africa's apartheid regime, April 19, 1979. Published by *The Detroit News*, Courtesy of the Walter P. Reuther Library, Wayne State University. Permission: Courtesy of *The Detroit News* Collection, Walter P. Reuther Library, Archives of Labor and Urban Affairs, Wayne State University.

FIGURE 16. Protest on U-M Diag, commemorating the death of South African anti-apartheid activist Steve Biko and other political prisoners on September 23, 1977. Biko Protest Photograph by Knox, September 23, 1977, *The Michigan Daily* Photo Archive, Bentley Historical Library, University of Michigan. Photograph reproduced with permission from *The Michigan Daily.*

FIGURE 17. Black Action Movement: Raised fists at convocation, March 1970. Item HS9773, Bentley Image Bank. Photograph reproduced with permission of the Bentley Historical Library, University of Michigan.

FIGURE 18. Black Action Movement protest in front of Hill Auditorium. Item HS772, Safety Department Photograph Collection, Bentley Historical Library, University of Michigan. Photograph reproduced with permission of the Bentley Historical Library.

FIGURE 19. Black Lives Matter protest on campus demanding the renaming of C. C. Little Building, named after former University President and well-known eugenicist C. C. Little, who endorsed White Supremacist policies of immigration bans, spatial segregation, and reproductive control. September 27, 2017. Photograph by Hayley McLaughlin. Reproduced with permission of *The Michigan Daily*.

FIGURE 20. Black Lives Matter protest on campus demanding the renaming of C. C. Little Building, named after former University President and well-known eugenicist C. C. Little, who endorsed White Supremacist policies of immigration bans, spatial segregation, and reproductive control. September 27, 2017. Photograph by Aaron Baker. Reproduced with permission of *The Michigan Daily*.

FIGURE 21. For one hundred days, survivor Jon Vaughn camped in front of the University of Michigan president's house to protest the systemic silencing of three decades of sexual abuse of Michigan athletes by university physician Robert Anderson. Pictured here are survivors Tad DeLuca, Jon Vaughn, and Chuck Christian. Photograph by, and reproduced with permission of, Trinea Gonczar.

FIGURE 22. Former Michigan football player Jon Vaughn speaks to approximately one hundred fellow activists comprising survivors of sexual violence, advocates, allies, and students outside the residence of University of Michigan President Mark Schlissel, demanding accountability from the university for the harm and trauma committed over several decades (1966–2003) by former University of Michigan athletic doctor Robert Anderson. 2021. Photograph by, and reproduced with permission of, Adam J. Dewey.

FIGURE 23. On April 30, 2022, as University of Michigan Interim President Mary Sue Coleman and the U-M Regents took their seats for the 2022 Spring Commencement ceremony, a plane—hired by survivors of alleged sexual misconduct by former U-M lecturer Bruce Conforth and athletic doctor Robert Anderson, and faculty allies—flew the banner HAIL TO THE VICTIMS over the stadium in recognition of survivors. Image by, and reproduced with permission of, Rebekah Modrak.

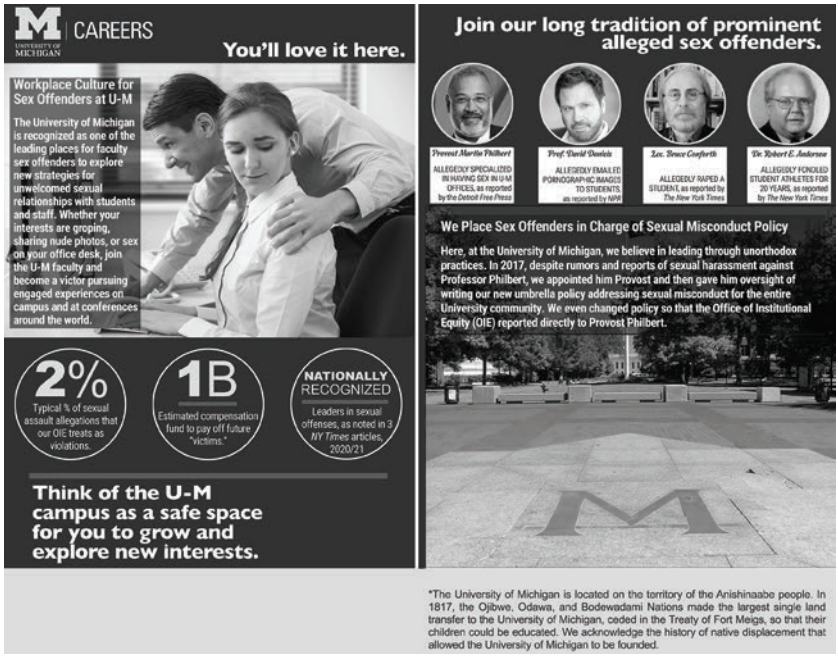


FIGURE 24. *UM Careers for Sex Offenders* is a series of artworks in the guise of "career brochures," which artist Rebekah Modrak sent from the email address "careersforsexoffenders@umich.edu" to satirically promote the University of Michigan campus as a safe space for sexual predators. Image by, and reproduced with permission of, Rebekah Modrak.

FIGURE 25. After Michigan GOP chair and U-M Regent Ron Weiser referred to three female elected Democratic politicians as "those three witches" and called for them to be "ready for the burning at the stake," casually joked about assassinating them, and served as the majority funder for a voter suppression legislative effort, Rebekah Modrak and Silke Weineck invited the U-M community to attend a renaming ceremony for the building, unfortunately still officially known as Weiser Hall. Photograph by, and reproduced with permission of, Rebekah Modrak and Silke-Maria Weineck.

FIGURE 26. University of Michigan student encampment protesting Israel's genocide in Gaza, spring 2024. Photograph by, and reproduced with permission of, Rebekah Modrak.

FIGURE 27. Liberation Library in the University of Michigan student encampment, spring 2024. Photograph by, and reproduced with permission of, Rebekah Modrak.

FIGURE 28. Arrests during the anti-genocide Die-In protest at the University of Michigan, August 2024. Photograph by, and reproduced with permission of, Rebekah Modrak.

FIGURE 29. A pro-Israel protestor gloats while a pro-Palestinian protestor is arrested. Photograph by, and reproduced with permission of, Silke-Maria Weineck.

CHAPTER 9

Into the Gray Future, or: The University Is Dead

SILKE-MARIA WEINECK

THERE IS A BRIEF text by Kafka, "Up in the Gallery,"[1] and I have been thinking about it every day for months now. It is two sentences long, and it describes the world with devastating accuracy. The first sentence is a hypothetical: "If some frail, consumptive circus rider were to be driven around the arena on a faltering horse in front of an untiring audience by a whip-swinging boss for months, without interruption," it begins. It adds detail after detail, swelling the sentence almost past what a sentence can bear: she throws kisses, the music roars without end, the ventilators blow, incessantly, "into the gray future." The applause swells and subsides, swells and subsides; the hands clapping, we learn, are steam hammers. Under such appalling circumstances, the sentence concludes, "perhaps a young visitor to the gallery would rush down the long staircase, past all the tiers of seats, would hurl himself into the arena and would call 'Stop!'," as the orchestra, "always adapting itself," breaks into fanfare.

By contrast, the second sentence goes to excessive lengths to persuade us that the first sentence has it all wrong. It is just as dizzyingly complex syntactically as the first one. But now, the rider is beautiful and in fine health, the ringmaster reveres, cherishes, and protects her like a most beloved granddaughter, he can barely fathom the depth of her skill, he angrily exhorts the grooms to the greatest caution, he does not consider any level of applause sufficient to honor her performance. At the end of her act, she stands on tiptoe, head thrown back, arms wide open, ready to share her happiness with the entire circus. And therefore, Kafka concludes, "the visitor to the gallery rests his face

on the railing and as if sinking into a heavy dream during the final march, he weeps, without knowing it."

"Up in the Gallery" describes a mechanized modernity that has emptied the agora, which is now a circus tent, of all meaningful participation. It lays bare the function of ideology telling you that all is fine with such insidious insistence that you forget the equally insistent sight of the world before your eyes, its suffering, its tawdriness, its violence. Only in the *irrealis* is there any agency for us spectators, and even so, there is, of course, no guarantee that any of it would stop just because a young man screams for it to stop. In the indicative, we are immobilized, and we weep and no longer know why.

When I recently started writing about this text,[2] it struck me as an allegory of Gaza, a war most of us consume as a spectacle. While many of us may quietly weep, there are also the steam hammer hands, frenziedly applauding the tens of thousands of Palestinian bodies torn apart, burnt, mutilated, and emaciated (just as there were steam hammer hands applauding the appalling massacre on October 7, 2023). The students who marched on our campus, erected tents in the central commons, disrupted an honors convocation speech by our university president, showed up at the Regents' houses in the middle of the night to leave a list of demands—they struck me as the ones hurtling down the steps screaming "stop" at the top of their voices.

As the war goes on and every day brings more horrific news, images, videos—I started writing this the day after Israel bombed a tent camp in Rafah, killing dozens, many of whom were children—Donald Trump is rising in the polls, an ascent his conviction on thirty-four felony counts might well not impede. Congress, rather than doing everything in its power to halt funding the brutality in Palestine, is holding endless hearings allegedly devoted to "antisemitism on campus," but instead designed to weaken the status of highly ranked universities, at least in theory a bulwark against rising authoritarianism that could once lay some claim to legitimacy. Testifying before Congress, university presidents, rather than defending their students and faculty and staff from ludicrous bad-faith attacks, by and large, have surrendered their dignity in distasteful displays of submission, appeasing some of the worst people in the country, nervously agreeing that they have not responded to the campus protests with sufficient brutality and vowing to step up punitive measures. A notable exception was Michael H. Schill, the president of Northwestern, who insisted that principles of due process were not compatible

with promising to fire pro-Palestinian faculty and expel pro-Palestinian students, as he was asked to do. And even he was badgered to agree that Israel was not a "genocidal state," contradicting many of the scholars who make such determinations. Politics over knowledge, reason, argument, nuance. The rest of the university presidents inspired little more than what German calls *Fremdscham*, an acute embarrassment that grips you on behalf of others as you watch them act shamefully.

Chandler Davis always struck me as the man who would run down the steps screaming, as he did his entire life. I even treated myself to a fantasy of Chandler being called before Congress to denounce students who protest the murder of thousands of children, students who may say and do a lot of daft things (and even, rarely, bad things), but whose message, in the end, could not be simpler and could not be more self-evidently correct: stop. He would have set the House ablaze. But people like Chandler Davis no longer get called to testify before Congress, certainly not on behalf of those dead and dying in Palestine. His breed is more likely to be invoked by men like J. D. Vance, who recently declared that "professors are the enemy."

Instead of principled and decent men and women who remember what universities can and should be, we get the likes of Minouche Shafik, the president of Columbia University, who giggled along with the maliciously ignorant likes of Elise Stefanik or Jim Banks as they pretended to be even more stupid than they are. We know that at least some of the universities hired WilmerHale, a law firm "[h]elping educational institutions solve their most complex, high-stakes problems," proving once again that outside consultants make everything about higher education in the United States worse than it already is.

There is no reason to be nostalgic for the university of old. I'm rather glad that faculty have been forced to think twice before they casually fondle a student's breasts, as some freely did during my time in grad school. I'm glad that explicit racism is largely frowned upon, that women, at least, have made considerable strides in the academy even though tenure-track employment for non-white faculty remains shockingly low in 2024. I am glad we now ask our graduate students which seminars they'd like to see offered; I am glad many of them are unionized.

But whatever progress has been made—and it should not be pooh-poohed—is currently eclipsed in the United States by an assault on higher education of a ferocity and recklessness that has no precedent. It is an entirely different beast from the McCarthyism that, decades ago, Chandler Davis chose to fight with

all his courage and conviction, and at great personal cost. To be sure, we see the same language of "infiltration," the same invocations of "indoctrination," we are once again corrupting the youth, in short, though nobody is pouring the hemlock cocktails.

The new McCarthyism, or perhaps we should call it Stefanikism, does not merely seek to purge higher education of one particular strand of thought, which was certainly a violation of academic freedom and free thought in general. Stefanikism seeks to lay waste to the entire enterprise that took over a thousand years to build, a network of institutions that may well be America's greatest achievement—precisely because it is teeming with foreigners. In the current onslaught of legislation that outlaws entire fields of study and blatantly seeks to roll back and reverse whatever slight gains in diversity we have made, Republicans, in particular, seek to declare the university itself foreign, un-American, dangerous. The Gaza protests are merely a pretext for a new barbarianism whose end goal is to turn US universities into trade schools to serve American industry and American industry alone. Exceptions will be made for the children of the rich; a few brick-and-mortar universities with a full humanities and social sciences curriculum will survive, predominantly private ones, and the general decay will take longer to reach public universities in blue states. The end game, however, has begun. We are losing.

Toward the end of Nietzsche's famous "God is dead" passage, aphorism 125 of *The Gay Science*, the maniac on the marketplace throws down his lantern and declares:

> I have come too early, I am not yet of the time. This monstrous event is still on its way and traveling—it has not yet reached human ears. Lightning and thunder take time, the light of the stars takes time, deeds take time to be seen and heard even after they have been completed.[3]

I suspect it is much the same with the university, that quite grand and quite flawed ancient institution. The university is dead, even though the news has not yet arrived, and while the corpse has begun to smell, it has always been a bit rank, so who's to tell. And, of course, it is perfectly possible to keep doing rigorous research, to write eloquent papers, to fly to conferences in lovely cities across the world, to teach students hungry to learn. But the students themselves have caught on: these days, I find that first-year students are the only ones who still believe in the full promise of education, who get genuinely

excited, in whose faces you can see, in those magical moments, that you just changed their mind about something important. With every year that follows, they tend to become more transactional: will this be on the test, how do I get a straight A, how many classes can I miss, what is the bare minimum you expect from me, do I have to really read all twenty-three pages? I do not blame them: no matter what individual faculty try to teach them, what they truly learn from every email the president sends is that universities are machines designed to reproduce existing power relations, that a degree is just another exit from the circus.

The fight we are in could be honorable, even invigorating—as the Germans say, *viel Feind, viel Ehr*, many enemies, much honor. But most of the tenured professoriate seems apathetic, engaged in *Besitzstandswahrung*, often translated as "protection of vested rights," more generally the preservation of your property, your status, whatever you deem to be yours by right. And most of my colleagues now do not have the job security of tenure. We let adjunctification happen because we weren't adjuncts, and now we find ourselves in a workplace that increasingly reflects the American hell of at-will employment, structures that affect even those who could in theory rebel with little cost to themselves (do you really want to be associate dean?).

It can't be a good sign that so many words that come to me as I think of all this are German?

Gleichschaltung pops into my mind more and more often as well, "synchronization." Under the Nazis, the word more specifically named the process of aligning institutions with a particular ideology. The American higher ed landscape is a little bit too heterogeneous, and some of the flagships retain too much cultural capital, for that to happen quickly or completely. But the fate of West Virginia University has been and increasingly will be relived by institution after institution. When the university faced a budget deficit of $45 million, its president, E. Gordon Gee, whose grandiosely incompetent leadership was to blame for the empty coffers, decided not to cut his own exorbitant salary or to un-bloat the administration more generally but to fire 143 faculty members and to recommend 32 programs for elimination, 12 of them undergraduate majors and 20 at the graduate level.[4] That included the entire department of world languages, literatures, and linguistics—in other words, WVU, the state's flagship, was no longer a university worth the name. Gee had been appointed after he had to leave three previous posts, one at Brown, one at Vanderbilt,

and one at Ohio State. But men like Gee never fail, they just move on—he has announced that he will step down at WVU after his current term ends, but we do not yet know which institution he will ruin next.

Similar stories have been too numerous to count. Men like Gee—feckless, incompetent, supremely uninterested in the life of the mind—implement the programs of right-wing think tanks. The AAUP reports that "[m]ore than 150 bills have been introduced targeting DEI efforts, tenure and the teaching of 'divisive concepts,'" written and pushed by a number of right-wing think tanks seeking to tank thinking. They include the Center for Renewing America, the Manhattan Institute for Policy Research (where the influential, malicious nincompoop Chris Rufo rules the roost), the American Legislative Exchange Council, and the Heritage Foundation (which recently posted on its X account an image of the US flag upside down, in solidarity with Samuel Alito and Donald Trump). Behind them are very rich men (and a very few rich women) who must see actual universities and the citizens they mold as a threat to their fortunes—billionaires rarely spend money on anything but the prospect of even more money.

And still, we would have a fighting chance here if our own leaders were actually up for a fight. Instead, they keep telling us that all is well at the circus. At my own institution—which was once Chandler Davis's institution, and whose research library is inexplicably still named after Harlan Hatcher, the man who fired him—we just destroyed a Gaza solidarity encampment, a process that would not have been complete without streams of pepper spray hitting our students' faces at close range. In classic ringmaster manner, my institution tells me that "DPSS deployed a mild form of pepper spray—with a lower concentration than what is sold through public retail outlets—in a targeted manner to restore order, avoid further escalation and to minimize the risk of serious injury to the officers and to the protestors."[5] Images from the raid, by contrast, show campus police holding cans of "Deep Freeze," marketed by its manufacturer Aerko as "creating the most intense, incapacitating agent available today."[6]

In the end, though, it is not blatant lies that offend me the most but rather the endless stream of what philosopher Harry G. Frankfurt (and everybody else not working in PR) calls bullshit, "a greater enemy of the truth than lies,"[7] precisely because bullshit is simply not concerned with the truth. The most grimly comical example may well be an email from U-M president Santa J. Ono titled "Ending the encampment" which culminates in praise of our impending "Year of Democracy and Civic Engagement" and asks the community "to

find productive ways to engage with one another."[8] It is hard to fathom where "the most intense, incapacitating agent available today" falls on the spectrum of productivity in democracy and civic engagement.

But to repeat: the bullshit is worse than the pepper spray. There is something almost clean about police brutality: you know where you stand. The lies are over. The tents, the books, the tea urns, the sleeping bags go in the trash. Arrests are made, campus bans imposed, the ER takes care of the chemical burns, the county prosecutor takes care of the law-and-order part, the commons is cleared of all students, the Regents gloat, only the cops and the squirrels remain. The grass where the tents were is a bit yellow, but the lovely and heart-rending chalk drawing of Hind Rajab has been hosed away: Hind is the six-year-old girl killed by the Israeli Defense Forces as she waited in a car for help, surrounded by the corpses of seven of her family members.

"For the past year, we have engaged in a strategic visioning process to determine what we will dare to achieve as a great public university," we read in yet another of these gruesome emails. People say these emails are all written by ChatGPT, but I think it's the opposite: ChatGPT is the distillation of this kind of prose, unconcerned with truth or knowledge or, indeed, decency. They have been the epitome of artificial sentiment long before artificial intelligence took over.

I said I would guard against nostalgia. But I *am* nostalgic for the days of graduate school or my time as an assistant professor, the times when I barely knew what a dean was and certainly had no idea what a provost does. Before I served as department chair, faculty ombuds, faculty grievance monitor, Faculty Senate chair. Those were the roles that exposed me to the university's underbelly as well as to life inside an endless PowerPoint presentation which has eaten most of the time I once thought I would use for reading, reflection, slow thought. But at times I am also, and more problematically, nostalgic for a time where protest must have seemed less futile, where it appeared not just necessary but meaningful to go to prison for the things you believed.

Instead, the horse falters, the ventilators blow, the applause swells, the future is gray, the orchestra ever adapts itself, and the emails keep coming.

CHAPTER 10

Schoolbook Censorship: Untangling the *Pico* Paradox

MARJORIE HEINS

Campaigns to restrict students' access to books in public school libraries and curricula are a longstanding feature of American politics, but in the last few years, they have reached epic proportions. Challenges to books on local school library shelves and class reading lists, already numbering in the thousands nationwide, rose dramatically in the 2021–22 school year and then increased by 33% more in 2022–23.[1] Florida was the leader, with 1406, more than 40% of all book bans by local school districts; Texas came in second, with 625 bans; Missouri was third.[2] Meanwhile, new laws in Florida and elsewhere imposed statewide bans on certain subjects or viewpoints, primarily information or ideas about sexuality or gay and lesbian life, and race-related subjects such as slavery, Jim Crow segregation, or other instances of systemic racism. The censorship campaigns have impacted not only K-12 education but public universities and public libraries.[3] And although local challenges usually target books already on school library shelves or class reading lists, state censorship laws affect book selection choices as well.

Free speech groups such as the American Library Association, PEN America, the American Civil Liberties Union (ACLU), and the National Coalition Against Censorship (NCAC) have responded to the onslaught with letters, policy statements, reports, and lawsuits. Their statements draw on traditional principles of intellectual freedom, thereby assuming that these principles apply to K-12 education much as they do to criminal laws, public forums, and (one hopes) public libraries. They rarely acknowledge that in our decentralized American public education system, substantial discretion has always resided with state and local governments to set guidelines and make decisions

about curriculum and book choices at the K-12 level, including decisions that constitute "viewpoint discrimination," to use the constitutional law term for government actions that are in most other circumstances prohibited by the First Amendment. Even more rarely, if ever, does the free-speech advocacy community grapple with the difficult problem of drawing lines between illegitimate censorship and legitimate decision-making by the government in K-12 education.

This essay attempts to grapple with that problem and suggests that in resolving it, the real battle will not be in the courts, no matter how many cases are filed and won, but in the court of public opinion.

The *Pico* Paradox

In the context of public education, it has long been recognized that school boards and administrators can legitimately advance certain viewpoints—the value of democracy, the importance of religious freedom, or the meaning of racial equality, to give a few examples. Likewise, they can disfavor (or censor) other viewpoints—for instance, racism, misogyny, and fascism. As the Supreme Court put it in a 1979 case, public schools are vehicles for "inculcating fundamental values necessary to the maintenance of a democratic political system."[4]

So, where does this sort of legitimate inculcation of values end and inappropriate (maybe even unconstitutional) indoctrination begin? Should schools promote "abstinence only until marriage," for example, as the Clinton era welfare reform law demanded, by conditioning funding for sex education on a requirement that it have, "as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity" and that it teach "that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity"?[5] Or should schools more sensibly acknowledge adolescent curiosity and teach about safe sex? Should there be sex education in public schools at all? These are questions primarily left to local school boards and state boards of education, and even though state and local guidelines are almost always viewpoint-based (promoting abstinence, for example, while disapproving of teen sexual relationships),[6] it would be an uphill battle to challenge them in court or the arena of state and local politics.

Yet when a local school board or a state legislature, driven by culture-war politics, bans any discussion of homosexuality in schools—such as Florida's "Don't Say Gay" law, which has been replicated, with variations, in several other states[7]—or imposes a "Stop WOKE"[8] agenda on the public education system—with Florida again leading the way[9]—it does seem that a line has been crossed, both constitutionally and in terms of sane educational policy. The problem is how to decide where that line is, and why.

This is what I call the "*Pico* paradox,"[10] in reference to the 1982 Supreme Court case in which a group of students challenged a local New York school board's decision to remove ten books from school libraries on the grounds that they were "anti-American, anti-Christian, anti-Semitic, and just plain filthy."[11] A federal district court judge dismissed the students' complaint without allowing the case to go to trial, reasoning that the students had no First Amendment right of access to particular school library books. The question on appeal was whether there was indeed a viable First Amendment claim—that is, if the school board members intended to suppress ideas they disfavored, would the board be guilty of violating the students' First Amendment right of access to information and ideas?

The Supreme Court split on this issue in *Pico*, but five justices at least agreed that dismissing the case was wrong—that the students had a right to go to trial. Four justices addressed the merits of the viewpoint discrimination claim. Writing for that four-justice plurality, William Brennan acknowledged the "broad discretion" of school boards "in the management of school affairs," including choice of curriculum, but he said administrators may not exercise that discretion "in a narrowly partisan or political manner" because "[o]ur Constitution does not permit the official suppression of ideas." As he put it, school boards have the largely discretionary authority to mold curriculum to "inculcat[e] fundamental values," yet students "may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." Thus, if the school board members intended to deny the students access to ideas with which they disagreed, then they "exercised their discretion in violation of the Constitution."[12]

Justice Brennan's balancing act—acknowledging broad school board discretion but condemning "the official suppression of ideas"—became the standard for schoolbook censorship law since the *Pico* case, even though his opinion represented only a plurality, not a majority, of justices. But Justice Brennan

didn't go into detail about how to perform the balancing act: where does legitimate curricular decision-making in favor of certain viewpoints and values end and "official suppression of ideas" begin?

More importantly, given the acknowledged power of school authorities to "inculcate values," what arguments are viable for those opposing public school censorship? My thesis here is that much of our fine rhetoric about the First Amendment and intellectual freedom, unfortunately, has limited relevance when it comes to public school curriculum and book choices and that despite occasional victories in court, battles over public education guidelines, standards, and viewpoints must ultimately be fought at the political level, in a contest, town by town and state by state, over fundamental cultural and social values.[13]

Governmental and Professional Organization Standards

American public education has the anomalous characteristic of being so highly decentralized that literally thousands of local school districts have the power to set differing curriculum and book selection standards, subject to different guidelines promulgated by fifty separate states. The guidelines are often explicitly viewpoint-based, especially in the realm of social studies and civics. For example, the New York State Education Department publishes an extensive set of standards for all subjects and instructs local school districts to "develop curricula based on these established standards."[14] The social studies standards include a "Civic Readiness Initiative" designed to teach students "how to demonstrate respect for the rights of others," to become "members of a culturally diverse, democratic society," and to develop "a commitment to democratic interpersonal and intrapersonal values." "Key civic mindsets" in this part of the curriculum include "valuing equity, inclusivity, diversity, and fairness," "committing to balancing the common good with individual liberties," and "respecting fundamental democratic principles, such as freedom of speech, freedom of the press and the rule of law."[15] These viewpoint-based, value-laden guidelines plainly promote a "DEI" (diversity, equity, and inclusion) agenda, to the probable displeasure of those who consider DEI requirements to be a form of left-wing indoctrination.

At the other end of the political spectrum, in 2022, the Florida State Board of Education launched a "Civic Literacy Excellence Initiative" whose goals are

to "fully elevate civic literacy and education for Florida's students and teachers" and to "foster the values we hope to see in our society." Resources for the Initiative "will highlight patriotism based on the personal stories of diverse individuals who demonstrate civic-minded qualities, including first-person accounts of victims of other nations' governing philosophies who can compare those philosophies with those of the United States."[16] In other words, teachers in Florida must promote the virtues of the American system of government and denigrate systems with other "governing philosophies." Likewise, Florida law directs school districts to require "programs of a patriotic nature to encourage greater respect for the government of the United States and its national anthem and flag."[17]

Florida's 2022 Stop WOKE law is even more specifically ideological, prohibiting "training or instruction that espouses, promotes, advances, inculcates, or compels" students and teachers to believe eight disapproved concepts relating to racism, affirmative action, and past racial discrimination; included on the list of prohibited viewpoints is that "a person, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex."[18] In November 2022, in a suit brought by a group of university professors and students, a federal district judge granted a preliminary injunction prohibiting enforcement of these provisions at the university level;[19] the court's decision rested on longstanding principles of academic freedom,[20] and although it discussed the general evils of viewpoint discrimination, cited two Supreme Court cases relating to public schools, and even opined at one point that high school teachers' "classroom discussion is protected activity" under the First Amendment,[21] its injunction did not apply to K-12 education. At this writing, the state's appeal to the US Court of Appeals for the Eleventh Circuit is pending.[22]

Florida's Stop WOKE law is about as blatant an example of partisan political orthodoxy infecting public education as one is likely to encounter and seems exactly the type of viewpoint discrimination condemned by Justice Brennan's opinion in *Pico*. Given that more generalized viewpoint-based standards such as patriotism or civic values are widely accepted, the question remains where the line is to be drawn, in terms of both constitutional law and public policy. This is not a question that professional organizations

seem eager to address with any specificity. For the most part, they recognize the power of state and local governments to set curriculum guidelines but do not directly articulate how ideologically far governments can or should go. Instead, they advocate trusting the professional judgments of teachers and librarians. The American Association of School Librarians, for example, describes the school library as "a professionally curated collection of resources selected based on their authority, currency, relevance, scope, and relationship to other items in the collection" and encourages "users of the school library… to examine the authority and bias of authors or producers of information when curating resources for personal and academic use."[23] Untangling this prose, one may conclude that teachers should make viewpoint-discriminatory decisions in selecting books to assign in class—that is, they should not include books whose authors are both biased and unreliable (for example, books of Holocaust denial or anti-vax propaganda).

Similarly, the National Council of Teachers of English acknowledges that local governments will have distinct viewpoints to promote: "Instructional materials in the English language arts program should align with the general philosophy of the school or district… For instance, some materials may be included because they reflect the school's philosophy of encouraging critical thinking in relation to controversial situations and points of view. Or materials may be included because they meet the curriculum objective of presenting articulate voices from different eras or diverse cultures." Presumably, school boards may also choose to *discourage* critical thinking or *prohibit* presenting voices from "diverse cultures"—the NCTE doesn't specify. It assigns teachers the job of "promot[ing] the free flow of a wide range of perspectives while creating an environment that is safe for a diverse group of students" by "examin[ing] all instructional materials for biases and propaganda, including those that are sponsored, free, and inexpensive, remembering that the function of English language arts teachers is to educate, not indoctrinate, students." As for book selection decisions, "although administrators and school boards are often legally charged with the responsibility of selecting instructional materials, this responsibility should be delegated to English language arts professionals."[24] These are worthy policy goals, but they don't tell us what should happen when—as is so often the case—these issues are politicized, and school boards ignore the professional wisdom of teachers and librarians.

The Role of Litigation

According to one PEN America report, by November 2023, twenty-two state legislatures or executive branches had passed forty separate laws or executive orders similar to Florida's Stop WOKE or "Don't Say Gay" law; litigation was pending against thirteen of them.[25] PEN's tally did not include several other recent lawsuits that have challenged K-12 public school library and curriculum censorship schemes; among them is an Iowa law that (1) requires the removal of all books from public school libraries that contain a description or depiction of a "sex act," and (2) forbids school districts and teachers from providing programs or instruction in grade six or below relating to "gender identity" and "sexual orientation." In December 2023, a federal court entered a preliminary injunction against the enforcement of this wildly vague and overbroad law (imagine the task of parsing every library book for a description of a sex act),[26] but within less than a year, an appeals court vacated the preliminary injunction, ruling that the lower court had used the wrong legal standard for a "facial" challenge to the law.[27] (Two of the three judges on the appeals court panel are Trump appointees.) The court of appeals allowed the case to go forward as a challenge to the law not "on its face" but "as applied" to particular plaintiffs. The court of appeals rejected the state's arguments that none of the plaintiffs had standing to challenge the law, and that book selection decisions are a form of "government speech."

A similar example of state legislative creativity, from Texas, requires booksellers to categorize titles as "sexually explicit," "sexually relevant," or "no rating," and bans books that the stores have labeled "sexually explicit" from school libraries, with a review of the ratings by the state educational authority. In this case too, a federal judge entered a preliminary injunction, which was affirmed on appeal.[28] In another case, from Arkansas, a federal judge entered a preliminary injunction against a law that subjects librarians and booksellers to criminal prosecution for "furnishing a harmful item to a minor";[29] like the other cases, this one will probably continue through the lengthy litigation process and appeals.

These are a few of the lawsuits targeting the recent proliferation of state laws, but with hundreds if not thousands of local school districts banning individual library books, the volume of litigation would be overwhelming even if enough advocacy organizations and *pro bono* lawyers were on hand to

bring all the possible cases. In one well-publicized case at the local level, PEN America, Penguin Random House, five authors, and two local parents challenged the school board's removal of ten library books, along with its practice of restricting access to challenged books pending resolution of an individual's or advocacy group's complaint; when the suit was filed in May 2023, 154 such books had been restricted out of 197 that were challenged.[30] In August 2023, the school district filed a motion to dismiss the case, but discovery had already begun; in January 2024, the court granted the motion to dismiss in part, but allowed the primary First Amendment claims to go forward.[31]

All these cases are being intensively litigated, they will likely go on for years, and it remains to be seen how they will all fare in the appellate courts. *Pico*, after all, was only a plurality opinion, and it goes without saying that the Supreme Court has become less liberal about public school students' and teachers' First Amendment rights in the decades since *Pico* was decided. Some state legislative schemes are so blithely oblivious to basic tenets of constitutional law that even conservative courts are likely to invalidate them. But the fundamental problem is that lawsuits cannot keep up with the political pressures to enact censorship schemes and the enthusiasm of many politicians to accommodate the demands of some of their vocal constituents. Lawsuits depend on plaintiffs willing to brave political antagonism in their communities; they are cumbersome, expensive, unpredictable, and fraught with delays, roadblocks, and other perils. Litigation remains an important weapon when it proves impossible to defeat book removals or Stop WOKE laws politically, but it doesn't solve the underlying political problems, and it can never keep up with the multitude of censorship decisions, rules, and laws that are enacted if there is not enough political opposition to stop them.

Resolving the *Pico* Paradox

The "narrowly partisan or political" standard of Justice Brennan in *Pico* raises several problems for both courts and policymakers. For one thing, it permits school boards (and presumably state legislatures) to censor books and curricula based on sexual content or "vulgarity,"[32] even though such broad terms can cover a multitude of ideological motives. Thus, challenges to book bans targeted at vulgar words or sexual content are an uphill battle and must generally be fought in the political, not the legal, arena.

Pico also was a book removal case and did not address selection decisions or curriculum mandates. Removals and bans are easier to adjudicate than library selection standards or affirmative state-mandated guidelines. In a federal court of appeals case decided just after *Pico*, the plaintiffs, perhaps wisely, chose not to challenge a state curriculum guideline requiring that texts "stress the services of those who achieved our national independence"; instead, they focused on a portion of the state education law banning any text that "speaks slightingly of the founders of the republic or of those who preserved the union or which belittles or undervalues their work." Although the Ninth Circuit Court of Appeals decision concerned only the plaintiffs' standing to sue, it implicitly assumed that the student plaintiffs had a viable claim of partisan decision-making under *Pico*.[33] Florida's Stop WOKE law is similar. Although it is part of a statewide curriculum mandate, it's essentially a ban on certain political viewpoints and, in this sense, is analogous to book removal decisions. Other state educational guidelines will be trickier to challenge in court; the administrative and political struggles over what exactly they should say will necessarily continue to happen outside the realm of judicial supervision.

Another point of distinction evident in *Pico* is between school curricula and school libraries. It can be argued that school boards and state legislatures have broad authority to inculcate whatever values they choose in the curriculum, even banning other viewpoints. But a more tolerant and open-ended rule should be recognized for school libraries, in terms of both librarians' selection choices and ideologically driven demands that particular books or subjects be removed from the shelves. Justice Brennan in *Pico* waxed eloquent on the importance of the school library as uniquely a place where " 'a student can literally explore the unknown, and discover areas of interest and thought not covered by the prescribed curriculum.' "[34] Whatever water this may still hold as a matter of constitutional law, it can be a useful argument in state and local school politics.

Still, school libraries are not the same as public libraries, and intellectual freedom arguments against standards or guidelines for both book selection and book removal have their limits—"vulgarity" and "age appropriateness" being probably the most difficult to challenge, no matter how many sins of bigotry may lurk beneath their seemingly anodyne exteriors. In the school library context, the *Pico* principle that partisan or blatantly political book removals ought to be off-limits is a useful standard, but beyond that, a rule of viewpoint neutrality is probably not workable. Do we really need books

that deny the Holocaust, for example, in an elementary school library or that advance ideas of white supremacy? Some viewpoint discrimination is inevitable as librarians make value judgments about what to buy, even if politicians are not breathing down their necks. If misguided challenges are targeted at classics like *Huckleberry Finn* because they contain an offensive word, the response needs to be a defense of the novel by educators, parents, and activists, not an argument about free speech and the freedom to read in the school library.

The difficult line-drawing demanded by what I call the *Pico* paradox is essentially a political, not a legal, question. We elect governors and legislatures, and school boards which decide where the authority to inculcate values ends and education based on critical thinking and exposure to differing ideas begins. Battles over schoolbooks and curricula are essentially about political and social values, and they must be fought on the level of those competing values. Arguments for the freedom to read in the context of public schools inevitably run up against the reality that state and local school authorities have substantial power to shape curriculum according to their social and political views: some will favor unquestioning patriotism of the "America can do no wrong" variety, while others will encourage a more critical view of US history. In our highly decentralized education system where elected state officials and local school boards play such a big role, these variations are inevitable, and advocacy in "red" states for more liberal curriculum guidelines—including more respect for education professionals and less attention to political pressure groups—needs to address the value of critical thinking directly rather than relying on broad First Amendment principles, or on the courts.

As it happens, those opposing politically driven book bans and curriculum mandates almost always are addressing basic social and cultural values. Pressures to remove gay and lesbian-themed books are met with arguments about the literary and social value of those books and the needs of gay or lesbian youth. Statewide "don't say gay" bans need to be, and are, fought with similar arguments against homophobia. The same is true of battles over so-called WOKEism or "critical race theory": they are necessarily fought on the merits of giving children an accurate grasp of US history, including its many blemishes.

PEN America noted the obvious when it reported that the recent wave of school censorship was driven by political activism: "a book banning movement initiated in 2021 by local citizens and advocacy groups."[35] Eighty-seven percent of all book bans in 2021–23 "were in school districts with a nearby

chapter or local affiliate of a national advocacy group known to advocate for book censorship."[36] In response, PEN reported that political resistance was also increasing: "2023 has also been a year of mounting resistance to educational censorship laws. Across the country, teachers, professors, students, parents, and community members have pushed back. Some bills that were close to passage were abruptly dropped or watered down in the face of public outrage… Faculty unions and teachers' groups are partnering with parents to defend students' right to learn."[37]

The results of this organizing could be seen after election day in November 2023. Pro-censorship activists lost in several high-profile state and school board races. According to the Campaign for Our Shared Future, "a progressive group founded in 2021 to push back on conservative education activism," nineteen of its twenty-three endorsed school board candidates in Pennsylvania, Ohio, and Virginia had won, while the American Federation of Teachers reported that "in 250 races it had tracked—a mix of state, local and school board elections—80 percent of its preferred candidates won."[38] *The New York Times* commented: "The results suggest limits to what Republicans have hoped would be a potent issue for them leading into the 2024 presidential race—how public schools address gender, sexuality, and race."[39]

Political organizing on highly fraught and emotional culture-war issues is always a dicey proposition, and Moms for Liberty, the best-known of the pro-censorship groups, isn't going away any time soon.[40] But coalitions of teachers, students, and parents, bolstered by their local librarians and bookstores, can organize successfully around the notion that education involves critical thinking rather than political indoctrination. As for libraries, in a recent example of "right to read" political advocacy at work, Illinois in 2023 passed a law requiring, as a condition of government funding, that public libraries either adopt the American Library Association's Library Bill of Rights[41] or "develop a written statement prohibiting the practice of banning books or other materials within the library or library system."[42]

Conclusion

In America's vastly decentralized education system, public school book and library censorship will always be primarily an issue of politics and public policy. Even assuming that *Pico* remains the governing constitutional law standard, it is a narrow decision that acknowledges the broad discretion of government

authorities to set curriculum standards and make book choices. Moreover, even if courts are hospitable to free-speech and right-to-read claims within the narrow limits set by *Pico*—which will not always be the case—litigation cannot keep up with the flood of censorship initiatives. And no matter how many pro-free-speech court decisions are handed down, politically driven pressure groups will continue to push for laws and restrictions. The battle will ultimately be state by state, city by city, and town by town, in the court of public opinion.

CHAPTER 11

Choice, Responsibility, and Neutrality[1]

HENRY REICHMAN

WHEN CHANDLER DAVIS TESTIFIED before the House Un-American Activities Committee in 1953, he appealed to the First Amendment's protection of freedom of speech rather than the Fifth Amendment's protection against self-incrimination, knowing full well that he risked imprisonment. He would tell a faculty hearing committee that "[i]n the final analysis, I reserve the right to follow my own thinking as to what is important to me and how much I care about it." Of course, Davis was not granted the choice simply to keep his thinking to himself and thereby keep his job, which should have been his right.

Davis's experience—indeed, his entire life—should remind us that academic freedom is about the right and ability to choose freely what we research, write, and think about. It protects the right and ability of faculty members to teach their subjects in accordance with the precepts and principles of their disciplines, free of external constraint. In courses for which they are individually responsible, academic freedom protects instructors' choice of approach to a subject, the pedagogical methods to be used, and the design of assignments. When they speak as citizens, academic freedom protects professors' right to speak, or not to speak, on subjects and in places of their choosing without being subject to institutional sanction, including in cases where the free speech protections of the First Amendment might not apply.[2]

Academic freedom is about the ability to choose freely; however, it is also about the responsibility to choose wisely and ethically. Chandler Davis might have chosen, as others did, to cooperate with his tormentors. Still, in doing so, he would have violated his responsibilities to his profession and its principles,

to democracy, and, of course, to his conscience. The University of Michigan also made a choice at that time. Its administration, shamefully supported by faculty committees, chose to dismiss Davis from his position in violation of his academic freedom. Decades later, when the university's academic Senate chose to apologize for the faculty's role in the dismissal of Davis and two colleagues, Clement Markert and Mark Nickerson, the administration chose once again to deny its responsibility.

It is the responsibility to choose that I want to address in this essay. It is often said that with freedom comes responsibility, although too often, that cliché is twisted to limit freedom to people and viewpoints deemed "responsible" by those in power. As the Academic Freedom Council at Columbia University puts it, "The exercise of academic freedom demands the integrity and courage to face free, robust, and uninhibited debate, and to engage with views we think are wrong-headed or even offensive."[3] The chief responsibility that comes with freedom, however, is defending and fostering that freedom. With respect to academic freedom, currently facing an assault unprecedented in our country's history, those of us in higher education—faculty, administrators, trustees, and students—have been compelled to choose. Will we accept our responsibility to defend our profession, our academic freedom, indeed, knowledge itself, or will we choose to capitulate to the assault?

In this context, it is worth considering the rising tide of calls for universities to embrace "institutional neutrality." These are frequently justified by reference to the University of Chicago's 1967 *Kalven Report*, issued in the context of student demonstrations against the Vietnam War and calls for colleges and universities to end cooperation with the military.[4] That report recommended that to protect both academic freedom and the "full freedom of dissent," universities must avoid advancing institutional positions on matters of public controversy. When institutional leaders speak on such issues, the report argued, they do so "at the price of censuring any minority who do not agree with the view adopted." Moreover, as Keith Whittington recently adds, "Institutional speech will necessarily be held against the institution. If the institution engages in controversial political activities, other political actors can and will push back."[5]

There is considerable wisdom to this position. Because colleges and universities are devoted to the unfettered search for truth, as institutions, there are very few controversial topics on which they should take "official" institutional positions. Indeed, when scholars exercise their academic freedom, it is not the institution's role to weigh in on their choices but to defend their right to

choose. Hence, Michigan's failure to defend Chandler Davis was not a "neutral" stance but, in fact, a failure to maintain institutional neutrality.

Even the *Kalven Report* acknowledged important exceptions, however: "From time to time instances will arise in which the society, or segments of it, threaten the very mission of the university and its values of free inquiry. In such a crisis, it becomes the obligation of the university as an institution to oppose such measures and actively to defend its interests and its value."[6]

If there ever was such a time, it is surely now. "Protecting a broad array of views does not always mean institutional neutrality," writes Sigal Ben-Porath; "sometimes it means representing its values, including the expansion of the boundaries of knowledge and a commitment to inclusion."[7] Calls for institutional neutrality may also, in some circumstances, disguise censorious efforts to silence expression. While there is undoubtedly a danger in allowing institutional leadership to opine on every current conflict, forced imposition of neutrality may pose an even greater threat. Some legislators who have sought to control curriculum have done so in the name of institutional neutrality, perhaps intending to weaken resistance to their own political interference.

In 2023, North Carolina enacted a law declaring that all University of North Carolina campuses "shall remain neutral, as an institution, on the political controversies of the day."[8] In Indiana, a 2024 law requires that public colleges "must limit the circumstances in which an employee or group of employees from the institution may establish an official institution, school, college, or department position on political, moral, or ideological issues to only those circumstances that affect the core mission of the institution and its values of free inquiry, free expression, and intellectual diversity."[9] Such laws could render the academic community defenseless in the face of external assault when political actors embrace positions that undermine faculty expertise and knowledge.

Academic freedom has always been contested and vulnerable, even aspirational, but in recent years, it has faced a series of escalating challenges. State after state legislative initiatives improperly and aggressively intervene in curriculum and faculty status. Politicized governing boards regularly transgress the limits of their authority. A renowned Black journalist in North Carolina was denied tenure because the board and a wealthy donor objected.[10] In Florida, an entire public college has been seized and transformed by right-wing activists, backed by the governor, who ride roughshod over faculty and students to impose a cramped and partisan vision of education.[11] In the wake of the Gaza war, conflicts over speech have exploded on campuses across the country, and

charges of antisemitism have prompted dangerously intrusive federal interference and heightened "activism" by billionaire donors disdainful of faculty expertise. Once largely secure, at least for a privileged elite, tenure is now aggressively challenged by those who claim it protects activist professors seeking to impose a radical agenda, even as its protections have been steadily eroding in the face of a massive shift to contingent employment.

Such assaults go well beyond the individual violations of academic freedom rights with which we are all too familiar. Indeed, they challenge the very principle of institutional neutrality. To defend academic freedom today is less a matter of standing up for the freedom of individual faculty members, or even of individual faculties, to make their own choices—although we must continue to do that—than it is a matter of exercising our responsibility to mobilize and push back collectively against systemic repression that compels the abandonment of both freedom of choice and true neutrality. The central choice we face today is whether to act in accordance with our principles—accepting, as Chandler Davis did, whatever consequences this may entail—or whether, in the name of "neutrality," to abdicate our responsibility as the University of Michigan did decades ago, thereby putting at risk our freedom to choose.

Unfortunately, too many institutional leaders appear to be choosing to abdicate. On December 6, 2023, the AAUP released a special investigative report, *Political Interference and Academic Freedom in Florida's Public Higher Education System*. In interview after interview with faculty members in Florida, the investigating committee, which I co-chaired, "heard repeated complaints not only about the silence of their campus and system administrators but also about administrators' direct complicity in implementing policies that would severely restrict academic freedom and faculty and student rights more generally." The report acknowledged that "institutions might suffer devastating retaliatory budget cuts" if university leaders more openly resisted policies promoted by the legislature and governor that provide their funding. Still, we concluded, "the approach of many of the administrators appears more cowardly than cautious."[12]

To gain credibility with Governor Ron DeSantis, University of Florida administrators barred faculty members from testifying as experts in a lawsuit aimed at overturning a measure designed to restrict voting rights that DeSantis had signed and was defending. Following the passage of Florida's "anti-WOKE" law—an educational gag order that bars any class discussion "alert to racial or social discrimination or injustice," and concerned with civil rights, "privilege,"

and "oppression," and even more broadly, "systemic racism"—several universities voluntarily removed public statements that espoused anti-racist principles and canceled anti-racist trainings. Instructors were also urged to scrub syllabi and course materials of references to racial inequity and terms like "critical race theory." Defending the act against a lawsuit filed by faculty members, the state went so far as to declare that professors' speech in the classroom is not their own, not protected by principles of free speech or academic freedom. Because professors in class speak as state employees in the course of their employment, the state proclaims that their speech counts as the Florida government's own speech, which it may regulate and restrict however it wishes.[13]

On the same day that the AAUP released its Florida report, a congressional committee interrogated three university presidents, Claudine Gay of Harvard, Sally Kornbluth of MIT, and Elizabeth Magill of the University of Pennsylvania, demanding not only that they condemn antisemitism on their campuses but that they punish students and faculty members who, in the eyes of politicians, may be overly critical of the Israeli government, and that they enact more stringent limits on expressive rights. As Len Gutkin noted in *The Chronicle of Higher Education*, the hearing "represented the appearance on the national stage of the political interference state legislatures have been bringing to bear on colleges for the last several years." The presidents' attempts at nuanced response were evasive and ineffective if not downright disastrous, and Gay and Magill were forced to resign soon after. A few months later, Columbia's president, Manouche Shafik, was similarly questioned. Although she willingly "threw academic freedom under the bus," Shafik, too, eventually resigned.[14]

Overly concerned with fundraising, public image, and relations with influential politicians and business executives, university leaders have too often failed to defend (or only weakly defended) faculty members against the proliferation of threats directed against them and too frequently have acceded to pressures and ultimatums directed at the institution and its values, most importantly academic freedom. It turns out, as I wrote at the time, that "decades of acceding to the demands not only of legislators but of major donors, of running campuses 'like a business,' and of treating students as 'customers' to be coddled rather than learners to be challenged have, it seems, created an academic leadership class predisposed to striving for conformity from those below them while making comfortable those to whom they report, especially when they hold the power of the purse."[15]

According to one recent survey, 80% of US college and university presidents acknowledged that they would self-censor their comments on national political issues "to avoid creating a controversy for themselves or their colleges."[16] One reason is that such leaders are accountable to increasingly politicized trustees and beholden to donors, who aggressively promote agendas hostile to faculty expertise and academic freedom. The 1966 joint *Statement on Government of Colleges and Universities*, formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Colleges and Universities, declared, "When ignorance or ill will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion." Yet few boards have risen to that role, and a frightening number have proven to be themselves a source of the threat, failing, as the 1966 Statement recommended, to "undertake appropriate self-limitation."[17]

There have been exceptions, to be sure, not least of whom is Patricia McGuire, president of Trinity Washington University, a Catholic institution in Washington, DC. (The alma mater of former Speaker of the House Nancy Pelosi.) McGuire has called on her fellow presidents and the trustees who appoint them to "have the courage to confront the corruption of truth that spreads through politically expedient lies—whether the manipulation of language about slavery or the rejection of scientific truth about climate change, or the undermining of public-health protocols by mocking masks and vaccines or the persistent denials of verified election results or the daily toxic stew of 'fake news' that makes it difficult for citizens to understand the real threats to our democracy." She concluded, "Let's not concede the public forum to the voices that disparage and denounce our very existence."[18]

If institutional neutrality means that a university cannot, as an institution, both defend and promote those educational values essential to a free and democratic society, especially academic freedom, but also institutional commitments to equitably serving and including a diverse community, at a time when these values have themselves become topics of intense political controversy, then such neutrality is itself a choice to evade the responsibilities of academic freedom. But what of other specific controversies, say, those surrounding the theory of evolution, climate change, the nature of gender, or the history of race relations? A college professor is responsible for mastering and teaching a subject as that subject is understood by those who are literate in the relevant academic discipline. Professors are not responsible for instructing students about how that subject is debated in the court of public opinion. That a third

of Americans believe that humans were created in their present form by God does not mean that those teaching biology must remain "neutral" in their view of human evolution. The function of academic freedom is precisely to shield professors from the tyranny of public opinion in such matters.

In the past, I have argued that if asked whether a university endorses the theory of evolution, an appropriate response from a university president might be that the institution takes no official position but that its scientists all embrace the theory.[19] Still, those scientists must themselves be free to espouse that position—indeed, any position around which a disciplinary consensus has emerged—both as individuals and collectively.

This brings us to the issue of whether academic units may take positions on matters of public controversy. When and under what conditions might collective statements on public matters be appropriate, and when might they be improper? That question has troubled educators in recent years, and advocates for academic freedom have yet to agree on how best to address it. In the wake of the murder of George Floyd and the political movement that tragedy spawned, many departments issued condemnations of racism posted prominently on department home pages. The issue has gained added salience during the recent Gaza war. At Barnard College, the administration peremptorily removed a statement on the conflict from a department website—while permitting similar statements elsewhere on issues apparently deemed less inflammatory.[20] The Board of Regents of the University of California considered banning such statements, despite resistance to that move by the faculty. It should be obvious that department statements no more represent the entire institution than do those made by individual professors. But if institutional statements on controversial topics may create an environment in which faculty members who disagree with institutional sentiments may feel pressured to conform or self-censor, might not departmental statements exert similar pressures?

That is a real danger, but surely departments should have the authority to issue pronouncements based on the disciplinary consensus in their field, where such consensus exists, even when—perhaps, especially when—what scholars find indisputable remains subject to heated debate in the public sphere. A statement by a department of epidemiology that vaccines work and do not cause autism would be one example. But so too might statements by gender or ethnic studies departments in response to political attacks on their very disciplines or statements by history departments about the sordid past of American race relations.

And what about when conflicts in the wider world engulf the campus and sides are taken? Must an institution, a department, or a leader always remain "neutral?" Defending his decision to speak out in favor of a ceasefire in Gaza in March 2024, Wesleyan University president Michael Roth argued, "The fact that leaders of these institutions cannot possibly comment on everything does not mean they should comment on nothing. Silence at a time of humanitarian catastrophe isn't neutrality; it's either cowardice or collaboration. We don't need institution-speak, but we do need leaders of academic and cultural institutions to call on our government and our fellow citizens to address this crisis."[21]

The trumpeters of institutional neutrality get one big thing right: as institutions colleges and universities must remain neutral in the scholarly disputes with which their faculty and students inevitably engage. However, such neutrality cannot be used as an excuse to avoid the responsibility of university administrators to defend the right and ability of faculty members and students to freely engage in discourse and debate. Indeed, sometimes, as Roth suggests, it is impossible to defend neutrality without taking a stand (in support of academic freedom). At those times, neutrality itself can only be maintained through the responsibility to choose to speak out in support of those who, like Chandler Davis, exercise their rights even at high personal cost and who leave us an inspired legacy in these difficult times.

CHAPTER 12

The New McCarthyism: Academic Freedom and Palestine

DIMA KHALIDI

When I gave the Davis, Markert, and Nickerson Academic and Intellectual Freedom Lecture in March of 2022, an annual lecture dedicated to remembering and preventing a repeat of the indignities inflicted on members of the University of Michigan's faculty during the McCarthy-era purges, an ironic attempt at censorship took place in the days leading up to the talk. As the organizers publicized the lecture, they learned that the university's social media office engaged in what Silke-Maria Weineck called "the soft tyranny of branding."[1] The office's post about the lecture excluded not only the lecture's poster designed by U-M faculty Rebekah Modrak but also the subtitle of my talk and my name and organization—both of which include the word "Palestine." As Weineck noted in relaying the organizers' battle over the post, "UM's brand managers made it their mission to erase the word Palestine from a lecture about the erasure of Palestinian voices." In the end, she recounts, "We made them say 'Palestine,'" even though the aesthetic battle was lost.[2]

It was perfect fodder for a talk about "The New McCarthyism?: Academic Freedom and Palestine." Even in 2022, which seems worlds away from the post-October 2023 world for Palestinians and their allies, a "new McCarthyism" was alive and well. Today, we are facing a new level of ideological and intellectual strangulation on Palestine specifically, but in a way that clearly converges with a right-wing agenda to enforce the parameters of acceptable discourse, scholarship, and teaching on race, gender, climate, and other critical issues. Hence the removal of the question mark from this chapter's title.

I wasn't alive in the 1950s, and perhaps the term "McCarthyism" doesn't mean much to the even younger generation currently gracing college campuses. But I certainly grew up understanding the horror of an ideological purge that turned neighbor against neighbor, that pushed an orthodoxy on academia that is fundamentally contrary to the notion of academic freedom—which, according to the AAUP, is "the absolute freedom of thought, of inquiry, of discussion, and of teaching, of the academic profession."[3]

The familiar story is that we overcame this sordid period because McCarthy was eventually disgraced, the First Amendment prevailed, and academic freedom was bolstered. Today, "McCarthyism" is defined as "the practice of publicizing accusations of political disloyalty or subversion with insufficient regard to evidence" and "the use of unfair investigatory or accusatory methods to suppress opposition."[4]

It's pretty easy to illustrate the ways that discussion, scholarship, teaching, and advocating for Palestinian rights have been subjected to such practices over the last decade and even more so today, in the wake of Israel's US-backed genocide in Gaza and the ferocious backlash against those who dare to oppose it. Stories of censorship depict the way that Palestinian and allied voices and perspectives are silenced and smeared, as well as the critical reality that censorship is often in response to the increasing influence of social justice movements that are challenging the status quo.

The reason Palestine is such a third rail in the United States is multilayered and reveals divergences from the history of redbaiting and McCarthyism in and leading up to the 1950s. For one, the anti-communist sentiment of the 1950s was directly related to the politics of the World Wars and Cold War, an era when the United States's capitalist-imperialist ambitions were cloaked in terms of the fight between freedom and democracy on the one hand and communism on the other. By contrast, the attack on the Palestine movement in the United States has primarily been driven by Israel and its allies' interests in shielding Israel from scrutiny and preserving unconditional US support for Israel. The anti-communist narrative of the McCarthy era also differs from the pro-Israel narrative. While the former was ideological—communism versus capitalist democracy—Israel's narrative relies on a fundamentally racist colonialist argument that manifests as anti-Palestinian racism. Israel, to create a settler colonial "Jewish state," has had to justify the ethnic cleansing of Palestinians from their homeland and has done so not only by criminalizing

Palestinian resistance to their dispossession and oppression but by literally and figuratively erasing, silencing, and dehumanizing Palestinians.

This has never been more clear than since October 2023, as Israel commits what the International Court of Justice and legal scholars agree is likely a genocide,[5] including via epistemicide and scholasticide in Gaza,[6] unabashedly calling Palestinians "human animals"[7] and then obliterating hundreds of years of Palestinian history and tens of thousands of Palestinian lives and making Gaza a wasteland. Attendant to this genocide, Israel and its allies—increasingly including US state actors—use false and racist rhetoric to justify the suppression of an increasingly influential movement of students, academics, and grassroots activists to prevent them from speaking about what's happening and the historical context.

The current purge nevertheless also manifests in ideological terms. If you don't support the political ideology of Zionism[8] that seeks to achieve Jewish self-determination via the creation of a Jewish state in Palestine at the expense of the Palestinians, then you're not only antisemitic but also un-American. The attacks described below evince this underlying accusation of disloyalty and subversiveness, not only concerning Zionism but American national security interests as well, between which the dominant political class sees no daylight.[9]

Crucially, as this chapter argues, the McCarthyist attacks on the Palestine movement are mirrored in reactionary attacks on burgeoning movements demanding systemic change to reverse severe injustices in *this* settler colonial state fueled by racial capitalism[10]—including Indigenous rights, Black Lives Matter, or climate justice movements. Indeed, the right has exploited the current moment to "opportunistically fuse backlash against Palestine solidarity with its preexisting campaigns against anti-racist and anti-colonial movements."[11] The right has thereby escalated its war against liberal educational institutions and so-called "woke" politics by using bipartisan support for Israel to recruit these institutions as champions in efforts that will inevitably ensure the demise of academic freedom and freedom of speech on their campuses.[12]

Education has been a focal point of all reactionary periods because it is both the locus of youthful uprisings and where truth and knowledge are most likely to prevail over authoritarian and neoliberal forces. While McCarthyism was defeated, attacks on educational institutions and intellectualism have persisted as new movements have challenged the status quo—including the push for ethnic and decolonial studies during the student uprisings of the 1960s and

1970s. Right-wing forces are challenging those very gains today, along with other civil rights era advances.[13]

In this decisive moment, it is heartening that the strength of our movements for real systemic change is triggering this backlash. Plans to dismantle the constitutional and civil rights measures that provide a modicum of protection against discrimination and for dissent—and ultimately, academic freedom—are already in motion.[14] To withstand them requires resisting—without exception—all the modes of repression against all parts of our movements in a united front that defies divisive efforts that have succeeded against many movements before.

The New McCarthyism Illustrated

Since Hamas's attack on October 7, 2023, and the ensuing relentless genocidal war on Gaza that Israel has waged, we have, as of this writing, witnessed Israel's brutal murder of tens of thousands, if not hundreds of thousands of Palestinians.[15] Israel's vengeful campaign has also encompassed the total destruction of Gaza's infrastructure and housing, the capture and torture of thousands, the ongoing starvation of over 2 million people, and unprecedented attacks on life and land in the West Bank, where Israeli forces have killed over 900 Palestinians.[16] At the same time that Israel is waging this horrific crusade, it is also waging a propaganda and legal war against opponents of this savagery around the world, with the help of its political allies in the West.

While the tactics being used against advocates for Palestinian rights are not new, the scale of the attack is unprecedented. In the last three months of 2023, Palestine Legal received over 1000 requests for legal support, over four times the number received in all of 2022.[17] No sector has been untouched by this veritable purge—from the medical field and tech industry,[18] to students and teachers at colleges, universities,[19] and K-12 schools around the country, to the arts and media,[20] to a mall Santa,[21] a poker-playing grandmother, and even a porn star.[22] The huge volume continued in 2024, during which Palestine Legal received over 2000 requests for legal support.[23] Over 120 people reported to Palestine Legal between October and December 2023 that they were terminated from their employment for expressing sympathy with Palestinians or for criticism of Israel, and over 380 reported other threats to their jobs, while, in 2024, 162 reported being terminated, among over 300 facing adverse employment

decisions.[24] This is not to mention the violent assaults, severe doxing, and law enforcement repression that have skyrocketed since October. Among the most egregious incidents, a six-year-old Palestinian boy was stabbed to death by his bigoted landlord, and three Palestinian college students were shot, one left paralyzed.

College campuses have been at the center of the maelstrom. Nearly 500 of the over 1000 reports Palestine Legal received at the end of 2023 related to students and academics at colleges and universities nationwide, while over 1000 related to campuses in 2024. Students have been severely doxed, harassed, dragged through student conduct hearings, slapped with punitive sanctions including eviction, suspension, and expulsion, and faced violent assaults with no recourse, as well as discrimination from their universities. Universities have responded to sustained student protests against the genocide by calling in law enforcement, who violently broke up a wave of peaceful student encampments that started in April 2024 at Columbia University as a way to pressure universities to engage student demands to divest from complicity in Israel's crimes. Between April and July 2024, over 3100 arrests were made on campuses.[25] Arrests were often conducted brutally by militarized law enforcement, who arrested, tased, tear gassed, and beat students, professors, and protesters.[26] Faculty on many campuses intervened to protect their students, some forming human barriers around their students, only themselves to be brutalized and arrested.[27] Meanwhile, police and administrators stood by and allowed a violent pro-Israel mob to attack the encampment at UCLA at night. Rather than investigating the perpetrators, police were sent in to tear down the encampment and arrest over 200 students.[28]

Faculty and academics have also faced a wave of other attacks. Many have been suspended; lectures have been canceled; a number have been dragged through disciplinary processes based on false accusations of antisemitism for public statements or in-class discussions, and have received hate mail, threats, and even suspicious white substances in the mail. Just a few examples reveal much about the extremely repressive atmosphere.[29]

In the fall of 2023, Smith College summarily fired and banned Olive Demar, an adjunct lecturer in dance, from campus because her syllabus included a reading on the relationship between concert dance and settler colonial violence and displacement.[30] The University of Arizona suspended two professors, Rebecca Zapien and Rebecca Lopez, who had been secretly recorded in class speaking about the situation in Gaza. After an outcry from students,

community members, and their union, the university issued a statement apologizing and reinstating the professors.[31] Indiana University suspended tenured Professor Abdulkader Sinno for two semesters after he booked a room on behalf of a student group for which he was the faculty advisor for an event featuring Israeli-American author Miko Peled. The decision to suspend Sinno prompted outrage among his colleagues, who petitioned the school to reverse its decision on the grounds that it violated academic freedom and bypassed faculty governance processes.[32]

In 2024, tenured Columbia Law professor Katherine Franke underwent a lengthy investigation for statements to the media regarding an incident in which Israeli students who served in the Israeli military allegedly sprayed Palestinian and allied students protesting Israel's genocide with a chemical spray that hospitalized and severely sickened several students.[33] Columbia's then-President Shafik publicly pre-judged the investigation during a McCarthyite congressional hearing led by House Republicans.[34]

These examples involve institutions and private actors conducting investigations and purges, but state actors have set the inquisitorial tone. Congressional fishing expeditions are increasing against advocacy groups and foundations.[35] Meanwhile, the spate of congressional hearings of university presidents has provided the closest parallel with the McCarthy era. These media-hyped events have been a public display of outrageous and often manifestly false accusations by right-wing elected officials against students and faculty and shaming of university presidents for not being harsh enough in their crackdowns on protests of Israel's US-backed genocide, all under the guise that such protests are antisemitic and un-American.[36] University presidents kowtowed, throwing their students and professors under the bus,[37] befitting Chandler Davis's description of universities as "an appendage of HUAC" during the McCarthy era.[38]

The pressure on schools and universities has had the effect of enlisting them as the censors. Together with donor pressure on university administrators, this has significantly impacted university responses to student protests.[39] Israel-aligned groups, along with politicians and the right-wing media, have been pressing schools to investigate their students for supposed "material support for terrorism" because they're protesting Israel's genocide.[40] Donors are denying funding to universities if they don't shut down campus activism or say the right thing about Israel.[41] Reports that wealthy pro-Israel businessmen may have influenced New York City Mayor Eric Adams's draconian response to

student protests reveal the level of political and donor intervention in university actions.

State actors have also initiated a new wave of legislative measures, building on years of anti-Palestinian legislation.[42] Evoking the McCarthy-era purges of purported communists in government, a House Resolution was introduced in November 2023 that would require the heads of certain federal agencies to report to Congress any employee with "ties to Hamas" or who "display[s] support for Hamas." Another draconian bill would require institutions of higher education to report "actual or perceived incidents of anti-Semitism," with a distorted definition of antisemitism that includes most criticism of the Israeli government's policies and actions as the guide. It would require institutions that receive federal funds to "identify applicants for faculty and staff positions, and student applicants" who have engaged in vaguely and broadly defined "terrorist activity."[43] These measures, while not yet enacted, evince the severely repressive, draconian, anti-democratic, and anti-intellectual tenor of the attack on the Palestine movement.

These are only a few of the countless recent examples of the immense pressure on professors and academics at institutions of higher education for their principled positions against Israel's genocide of Palestinians and in support of their students protesting it—all before Trump even took office. With his administration, we are seeing an unprecedented attack on universities, including the pulling of billions in federal funding from institutions in the crosshairs, and imposing conditions on schools that severely curtail academic freedom and student speech.[44]

The targeting of academics who take a stand on Palestine is only an amplification of trends of repression that Palestine Legal has documented over the last decade, warning against the McCarthyite treatment of dissent on the Palestine issue.[45] Many past examples illustrate how Israeli interests, advanced by US-based Israel advocacy groups, Israeli government officials, and domestic politicians, have influenced the draconian actions of universities that have undermined academic freedom, free speech, and faculty governance principles.

In a well-known episode in 2014, as Israel's (then most massive) offensive against Gaza happened, Steven Salaita tweeted angrily about the brutality of Israel's assault, which, after 22 days, killed about 1400 Palestinians in Gaza and destroyed critical infrastructure.

Almost immediately, Salaita faced a campaign by non-campus groups to terminate him from his new tenured position at the University of Illinois-Urbana

Champaign. Records obtained indicate that big donors, along with influential Israel advocacy groups, heavily lobbied the chancellor. The chancellor and other university officials claimed they needed to protect students from Salaita's "incivility." The board of trustees refused to approve his appointment in an unprecedented move that defied the vigorous academic hiring process.[46]

Other examples illustrate the significant involvement of US and Israeli officials in attacks on US academia. In 2016, an Israeli government official joined Israel advocacy groups in complaining about a student-led course called "Palestine: A Settler Colonial Inquiry" at the University of California Berkeley. A pressure campaign on the chancellor claimed that the class violated policies by allowing a classroom to be used for "political indoctrination." An international media storm accused the Palestinian student of trying to indoctrinate his peers with antisemitic thinking.[47] Part of a larger attack on Middle East studies programs,[48] elected officials led the 2019 targeting of the Duke–University of North Carolina-Chapel Hill (UNC) Consortium for Middle East Studies for hosting a conference called "Conflict Over Gaza: People, Politics, and Possibilities."[49] Trump's Department of Education responded by threatening to withdraw funding from the Consortium, criticizing it for a lack of balance, placing too much emphasis on "understanding the positive aspects of Islam," and decisions by its graduates to "pursue academic careers rather than in government or business."[50] The letter required Duke–UNC to "[demonstrate] how each activity promotes foreign language learning and advances the national security interests and economic stability of the United States."[51]

Alongside these attacks on professors and academic programs, hundreds of professors and students have been put on "blacklists," targeting them because they support Palestinian rights. Canary Mission is an anonymous website that has profiled thousands of academics and students, scouring their social media profiles and accusing them of antisemitism and support for terrorism based on public statements about Palestine. It purports to "ensure that today's radicals are not tomorrow's employees." It calls on the FBI, universities, employers, and others to investigate and terminate individuals for their political views.[52] This and other sites publish personal information, encouraging what has become the routine harassment of people on social media. Such listing and doxing of individuals has been encouraged, if not funded and carried out, by the Israeli government itself, along with numerous allied pro-Israel groups.[53] Groups like these are now taking credit for getting Palestinian and allied non-citizen students detained and threatened with deportation by ICE.[54] Palestine Legal

receives dozens of reports from doxing victims about the vile, racist, anti-Palestinian, misogynistic, and violent messages directed at them.

The months since October 2023 have elevated this threat to academic and other freedoms to profound new levels, especially given the right's promises of an authoritarian dismantling of constitutional and civil rights protections. The current crackdown has found willing allies in elected officials who don't seem to see the contradictions between their professed opposition to impending fascism from the MAGA right and their encouragement of the brutal crackdown on dissent in support of Palestine. As during the McCarthy era, when anti-communist purges were part of a larger right-wing agenda against liberalism, the dog whistle of antisemitism has been weaponized in service of a much broader agenda to dismantle the liberal state—and bolster unconditional support for Israel to boot.

Palestine Is Not the Only Exception

In light of this context of severe repression of speech, scholarship, activism, and dissent by mainstream support for Israel, there is a clear "Palestine exception to free speech," as Palestine Legal argued together with the Center for Constitutional Rights in a 2015 report.[55]

Repressive tactics are fundamentally grounded in anti-Palestinian racism and rhetoric.[56] They deny the veracity of Israel's well-documented violations of Palestinian rights including its current genocide in Gaza, falsely labeling facts as "antisemitic" or "pro-terrorist," and they propagate racist tropes of Palestinians as bigoted, dangerous, and threatening to justify repression and censorship.[57]

While the targets of attacks by pro-Israel groups are overwhelmingly Palestinian, as well as Arab and Muslim activists often perceived as Palestinian, other people of color and anti-Zionist Jewish allies are also prime targets. This is both because the solidarity movement is increasingly diverse and built on cross-movement understandings of injustice and because Israel and its allies perceive the diversity and grassroots nature of the movement as a primary threat. An Israeli official has bluntly stated as much,[58] and attacks on the Movement for Black Lives, which has taken an unequivocal position in support of Palestinian freedom, bear that out.[59]

This reveals the mutually reinforcing nature of right-wing attacks on the Palestine movement and other social justice movements. Despite the special

circumstances of a highly policed discourse on Palestine, Israel and its allies are in fact aligned with other right-wing forces that are quickly eroding constitutional and human rights. Historically and presently, anti-democratic forces have targeted social justice movements and their proponents with campaigns to delegitimize, criminalize, and neutralize them, often aiming at what should be First Amendment-protected speech, assembly, and associational activities.

Such attacks come from both the state and private actors. Many women, LGBTQ+, and scholars of color have experienced severe targeting and harassment that aims to chill racial and gender justice scholarship. White supremacist forces often use doxing and harassment tactics. Princeton professor Keeyanga Yamahatta Taylor famously faced a torrent of horrendous violent, racist, and misogynistic hate mail and death threats after she was condemned on Fox News for a speech mentioning the dangers of Trump.[60] Other academics have documented how they are recorded in their classrooms, and have their words twisted and publicized, unleashing armies of right-wing trolls.[61] "Campus Watch," one of the first groups to create blacklists of professors who criticize Israel, along with groups like Canary Mission, may well have inspired right-wing initiatives like "Professor Watchlist," a project of Turning Point USA, which aims to "expose and document college professors who discriminate against conservative students, promote anti-American values, and advance leftist propaganda in the classroom."[62]

On the state level, right-wing elected officials and courts are dismantling long-term civil rights policies—including affirmative action—and more recent gains by the Black Lives Matter movement.[63]

Legislation targeting one movement has been quickly adapted to target others. Over the last ten years, nearly forty states have enacted laws that punish entities that advocate boycotts for Palestinian rights.[64] Some laws require entities that contract with the state to certify that they do not and will not boycott Israel—a chilling echo of the "loyalty oaths" of the McCarthy era. Now, states use those laws as templates to thwart other collective action.[65] If you boycott the prison industrial complex, the fossil fuel industry or the gun industry, you can't contract with the state. The possibilities are endless.

Other legislation has targeted protest rights in response to recent social justice movements like Standing Rock and the Movement for Black Lives. Critical infrastructure legislation criminalizes defending land against pipelines; anti-protest laws are proliferating to criminalize certain kinds of protest actions and protect those who might run over protesters. All of this legislation, from

anti-boycott laws to antisemitism redefinition laws to anti-protest and critical infrastructure laws, are promoted by right-wing groups like the American Legislative Exchange Commission (ALEC), which feeds lawmakers model legislation to introduce in their legislatures.

Even before the second Trump administration's targeting of institutions for their diversity, equity, and inclusion (DEI) initiatives, right-wing legislation had proliferated attacking such initiatives and so-called "critical race theory" (CRT), dictating what teachers can and can't teach about the roles of race, gender, and systemic racism in the United States. Forty-four states have introduced and seventeen have enacted measures to curtail teaching on race and gender issues in schools based on concerns that it makes white people "uncomfortable."[66] Anti-racist teaching is *against the law* in some places.

For example, a 2022 Florida law makes teaching anything that would make "an individual feel like they '[bear] personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions committed in the past by other members of the same race, color, sex, or national origin' " an "unlawful employment practice."[67] A 2022 Georgia law "prohibit[s] schools from teaching 'divisive concepts,' including that… 'the United States of America is fundamentally racist.' "[68] A 2024 Alabama law bans DEI initiatives and "the promotion and endorsement of certain divisive concepts" in public schools and universities.

Parallel to such laws curbing anti-racist teaching, states have introduced, and some adopted, laws that require the consideration of a distorted definition of antisemitism in adjudicating discrimination claims in educational environments. Florida's law includes as examples of antisemitism related to Israel: "demonizing Israel"; "applying a double standard to Israel," including by "focusing peace or human rights investigations only on Israel," or "delegitimizing Israel by denying Israel the right to exist."[69]

The American Association of University Professors (AAUP) has aptly compared these two legislative projects. With the antisemitism redefinition law, "Political critiques of Israeli state actions—including discrimination and violence against Palestinians—become subject to the charge of antisemitism, skewing the social and legal meaning of equality and obscuring other prohibited forms of discrimination."[70] Similarly, anti-CRT laws "depict teaching about systemic racism… as discriminating against white people."[71]

The AAUP has detailed how these legislative efforts undermine First Amendment rights and academic freedom principles and create a chilling

effect on teachers and students.[72] They also promote both the "misuse and abuse of antidiscrimination law" by "deploy[ing] laws originally designed to protect groups from discrimination to block attempts to remedy the compounded effects of past discrimination on these groups and to impede further progress."[73] It is no coincidence that all of these measures are geared toward protecting the founding mythologies of two settler colonial states and that the targets of these efforts are schools and universities, where young minds are shaped. The focus on universities has been on steroids since October 2023 in response to unrelenting student activism for Palestinian rights.

This is undoubtedly the McCarthyism of the twenty-first century.

The Antidote

This is not the 1950s. There is not yet a HUAC to ask individuals—are you or were you ever [fill in the blank]? But we are dangerously close. There is a massive chilling effect, compounded every time celebrities get slammed for their solidarity with Palestinians, a student is blacklisted for protesting a genocide, a professor is dragged into an investigation for teaching Palestine, and now when teachers teach ethnic studies, or about racism in grade schools.

These moves toward censorship and the imposition of political orthodoxy in politics and academia are partly a result of the fact that groups once powerful are seeing their hold slip away. Where Israel and its domestic lobbies could once count on near-universal, unquestioning support from US elected officials, Israel's ultra-right bent and the current genocide have precipitated significant rifts. Even the staunchest supporters of Israel among US lawmakers are being forced to confront the widening gap between public opinion[74] and the unconditional support for Israel that has been one of the few bipartisan positions among elected officials.

This is all because grassroots movements have spent decades changing the terms of the debate. It is the growing grassroots movement that has evolved our language to the point that Amnesty International and Human Rights Watch can call Israel's system of racial hierarchy and segregation "apartheid"[75] or that we can talk about settler colonialism, ethnic cleansing, and genocide.

Israel's narrative is being shattered in the same way that the US narrative is being shattered by grassroots movements calling for systemic change, talking about the foundations of this country on stolen Indigenous land and slavery, demanding a reckoning with that history and its current manifestations in

mass incarceration, impoverished reservations, and disinvestment from Black and brown communities.

There is no question that Israel's advocates, Christian fundamentalists, and white supremacists (blue, red, and purple) still control the halls of power. But there is a sense that the sands are shifting and that their hold—cemented by decades of lobbying with almost zero accountability to the electorate—is slipping, which has precipitated a harsh backlash.

As always, this backlash will impact the most marginalized and vulnerable to attack. The intent is to chill the ability to organize, speak, assemble, and act collectively to challenge the systemic injustices that many have experienced firsthand or at least had the chance to learn about in college.

How do we overcome these forces that want to impose political orthodoxies on our schools, that use personal attacks and censorship and donor and corporate pressure to get people fired?

It's apt to quote Chandler Davis in his response to the targeting of another University of Michigan professor for his Palestine solidarity. He said in 2019 (see Chapter 14):

> I'm pleading with you to deal with the problem as a community… One thing I learned over the years is that the purge feels very different if it manages only to ALMOST exclude someone… That means that most of the force of Canary Mission's onslaught is overcome if just one employer finds the courage to step up and brave the wall of exclusion for each targeted job seeker. And that means, in turn, that the blacklist presents its ominous solid wall only by the collaboration of all employers in a field. The blacklist is everybody rejecting you.

While the purges since October have raised the stakes, and many have faced significant consequences, there are also many examples of successful resistance to efforts to censor. That's because organizing works on campuses and with communities.

In some of the cases mentioned above, we saw the power of resistance. While Salaita lost his position at the University of Illinois, sixteen departments voted no confidence in the chancellor as a result of his termination; 5000 academics pledged to boycott the university; academic associations and others decried the violation of academic freedom. Students protested, Salaita sued, and UIUC ultimately paid up in a settlement. Universities got the message that they could not operate this way unaccountable and unscathed. At

UC Berkeley, the "Palestine: A Settler Colonial Analysis" class was reinstated, and the university admitted its error after an outcry from students, alums, academic associations, the Berkeley Faculty Senate, and legal intervention.

These are the stories we must tell and the kind of mass mobilization that is required. We must use our collective power to stop the purge and insist that our institutions have the courage to withstand the pressure from donors, politicians, lobbyists, and now government agencies, who want to dictate what is ok to teach, who is worthy of our solidarity, what academics can and cannot stand for. Our job is to ensure that the voices of the most marginalized are protected and uplifted, courageously face the censorship machines, and refuse to accept the chill. We must connect all the dots and speak collectively against these threats because once the government can ban one kind of boycott, one protest chant, or one kind of curriculum, they can ban them all.

This moment is no doubt different. The all-out assault on the Palestine movement, together with the authoritarian wrecking ball of the Trump administration, has cast a serious chill over the discourse on Israel and Palestine—in and beyond the academy—in ways that are hard to measure. Though the courts won't be our savior, we must litigate against what we've called the "Palestine exception to free speech" and against the authoritarian overreach. Eventually, if democratic instincts prevail, it will become clear that Israel and its domestic allies are trying to undermine, if not destroy, the First Amendment, along with academic freedom and free speech principles in general, solely to shield Israel from scrutiny and accountability. But it will take years and maybe longer to reverse those efforts in courts that right-wing agendas have already hijacked.[76] Courts, too, are responsive to political winds, though at a slower pace. When the public finally turned against McCarthy in the mid-1950s, it took the Supreme Court another decade to decisively defeat loyalty oaths as unconstitutional.[77]

In the meantime, the court of public opinion is where the primary battle lies. That is the misjudgment of Israel and its right-wing allies' censorship-on-steroids strategy. The more people are attacked merely for speaking out for Palestinian life and freedom in the face of Israel's unabashed genocide, and the more we speak out collectively against the undermining of all of our fundamental rights, the harder it will be to silence us all.

CHAPTER 13

The Other Israel–Gaza Conflict: On Campus[1]

JUAN COLE

ISRAEL'S TOTAL WAR ON Gaza, following Hamas's horrific terrorist attack on October 7, 2023, has roiled higher education in the United States. The atrocities committed by Hamas in southern Israel reverberated on many US campuses, deeply traumatizing many Jewish students. But so too did Israel's massive military response in Gaza, which has been equally shocking to Palestinian-American, Arab American, and Muslim American students, among many others. Here I take up the initial controversies in the first months of the war, controversies that mushroomed as time went on.

In the heated atmosphere that subsequently prevailed, questions arose about the limits to free speech in the classroom, among student and faculty organizations, and on the social media accounts of university members, from professors to administrators. Often, these charged debates reflected the advent of significant numbers of minority students on university campuses, some from the post-1965 immigration wave, who view the Israel–Palestine conflict very differently than the white majority on many campuses, as a fall 2023 Gallup poll demonstrated.[2] These controversies also reflected the efforts of special interest groups and outside organizations, such as the Anti-Defamation League, to discipline campus speech and brand some of it as support for terrorism.

Some of these campaigns have attempted to silence Palestinian-Americans and their perspectives outright. In October, Florida governor and Republican presidential candidate Ron DeSantis ordered all public universities in the state to derecognize Students for Justice in Palestine (SJP) chapters on their campus.[3] The move came after the organization issued a "toolkit" for understanding the context of the October 7 attacks, in which they characterized Hamas

as a resistance organization. The SJP insisted that its student members are part of the resistance, not merely in solidarity with it. DeSantis's order immediately provoked threats of civil lawsuits that would personally name university officials participating in the shutdown.

Emma Camp at *Reason* magazine reported that as a result, the Chancellor of the University of Florida system, Ray Rodrigues, announced that he was backing off any action against SJP, though he did hold out the possibility that the university would require the group to pledge non-violence and disassociate itself from Hamas. The Foundation for Individual Rights and Expression, a civil liberties group, immediately pointed out that that requirement would also be unconstitutional.[4]

But that development did not stop the Anti-Defamation League and the Louis D. Brandeis Center for Human Rights Under Law from taking up DeSantis's program, writing a letter to university presidents pressuring them to close down SJP chapters on the grounds that the group gave material support to terrorism (a charge the letter did not substantiate).[5] Under US law, "material support" involves training, expert advice or assistance, service and personnel.[6] Given that the SJP was not hosting training camps for Hamas fighters or actively advising the organization on tactics, the letter was nonsensical and, in a just world, would be found libelous.

Ironically, critics such as Emmaia Gelman, a scholar and longtime Jewish left activist, have argued that the ADL, despite representing itself as a force against bigotry, "has a long history of wielding its moral authority to attack Arabs, blacks, and queers."[7] The actual charge against the SJP is apparently that it makes an effective case for the liberation of Palestinians from Israeli occupation, a case the ADL brands a form of hate speech against Jews. Some of this controversy derives from a desire by Israeli nationalists and those who support their nationalist narrative to avoid granting to the Palestinians any legitimacy and to avoid any talk of Israeli occupation of Palestinian territory—even though the term "occupation" is routinely used by the United Nations Security Council for what Israel is doing to the Palestinians.[8]

The SJP has run into trouble from other university administrations. It and the campus chapter of Jewish Voice for Peace were suspended in October 2023 until the end of fall semester at Columbia University on the vague basis of "threatening rhetoric and intimidation," in a an arbitrary decision-making process that did not appear to follow the university's own guidelines, as the indispensable Committee on Academic Freedom of the Middle East Studies

Association (CAFNA) reported.[9] Brandeis University, predictably, also banned SJP.[10] One of its grounds was that SJP members chanted slogans such as "From the river to the sea, Palestine will be free," which Brandeis administrators called antisemitic—even though it says nothing about Jews at all. As Yousef Munayyer has written, the phrase instead "encompasses the entire space in which Palestinian rights are denied" and "is a rejoinder to the fragmentation of Palestinian land and people by Israeli occupation and discrimination."[11] Why, anyway, would Israel want millions of Palestinians to be permanently unfree?

At the College of Education at the University of Arizona, two professors, Rebecca Zapien and Rebecca Lopez, were suspended with pay for several weeks in the autumn of 2023 after a student provided audio recordings of their class to a pro-Israel organization, which posted them to social media.[12] Snippets claimed to show them comparing Hamas to the Black Panthers as a "resistance group," though the two professors said that the recordings had been selectively edited and misrepresented the full class discussion. Permission for the recording had not been sought from the professors, despite University of Arizona policy, nor were the perpetrators ever reprimanded. The professors' suspension provoked demonstrations and protests, including by the United Campus Workers of Arizona union. Maha Nassar, an associate professor of modern Middle East history at the university, criticized their suspensions for sending "a chilling message to UA students, staff and faculty who believe in Palestinian freedom, dignity and human rights."[13] Zapien told Reuters that the keynote in such socio-political topics in her class was "oppression." She said, "We're focusing on Palestinian life because those are the ones that are not being talked about or privileged. They're the group of people being oppressed at a higher level."[14]

Although the two professors were reinstated on December 1, 2023, the college did not permit them to finish teaching their courses that semester. CAFNA noted in a letter of protest, "Moreover, in order to remain in good standing, they have been required to complete a set of additional training activities not required of other instructional staff."[15] A chastened dean of the College of Education, Robert Berry, admitted the difficulties of teaching controversial contemporary issues and pledged a series of workshops, including some by Middle East and Judaic Studies faculty (who surely should have been consulted in the first place).[16] Activist groups attempting to get professors and other instructors punished or even fired play on the ignorance of most university administrators about the complex and contested history of the Middle

East and of the Israel–Palestine conflict in particular, disingenuously claiming that certain legitimate assertions about this history make some students "feel unsafe."

Sadly, the suspensions of Zapien and Lopez were hardly the last during the Israeli total war on Gaza. Indeed, there was a virtual pandemic of such incidents, often urged on by off-campus single issue groups. In a particularly egregious such case, in early March 2024, Jairo Fúnez-Flores, a professor of education and decolonial studies at Texas Tech University, was put on paid leave and investigated over his posts to the "X" social media platform protesting Israeli policies. The university characterized these postings as "hateful, antisemitic, and unacceptable," and said that they were "antithetical" to the university's values. As Jonathan Friedman at PEN pointed out, the university's officials declined to specify the postings to which they objected. These were made off campus and so did not pertain to his teaching. Friedman points out that they did not target a student or campus member or create a hostile environment on campus, contrary to what the university alleged, invoking the federal Title VI provision.[17] Indeed, a dispassionate review of Fúnez-Flores's comments reveals that they critiqued Israeli war tactics but said nothing that could be construed as antisemitic.[18]

Given the long hangover in American culture from the George W. Bush-era War on Terror, characterizing a group that engages in terrorist tactics—that is, targeting civilian noncombatants for political purposes—as a resistance movement can clearly provoke quick condemnation and even sanctions. Yet no historian would dispute that the militant National Liberation Front in Algeria was a resistance movement fighting French colonialism from 1954 until Algeria won its independence in 1962, and that it carried out terrorist attacks as one of its tactics. The Bush administration's success in making the word "terror" refer to individuals, organizations, and states themselves—rather than to a tactic—has hopelessly muddied the waters.

The Revisionist Zionists who resisted British rule in Mandate Palestine—and promoted the idea of a Greater Israel across all of historic Palestine, as well as both sides of the Jordan River—engaged in terrorism. The Irgun, its paramilitary group, notoriously blew up the King David Hotel in Jerusalem in 1946, killing over ninety civilians, and mowed down Palestinian villagers in the massacre at Deir Yassin in 1948 during the Jewish insurgency that preceded Israel's independence.[19] Most Revisionist Zionists gave up terrorism as a tactic in independent Israel, coalescing into civil political parties such as the

right-wing Likud of Prime Minister Benjamin Netanyahu. Members of the Likud see the terrorism of their forebears as a form of political resistance, a view that has outraged the British government.[20]

Hamas, for its part, evolved out of *al-Majma` al-Islami* of the 1970s and 1980s, an Islamic charity that had mainly provided public services in Gaza, such as soup kitchens for the poor.[21] Hamas, founded in 1987, could have resisted the ruinous Israeli occupation and economic blockade on the Gaza Strip in ways other than slaughtering grandmothers and concertgoers in Israel. But it is also possible to categorize Hamas as a longstanding resistance movement while admitting that, on October 7, its leadership conducted a brutal and horrific terrorist attack that put it beyond the pale.

Even well-meaning gestures by university administrators backfired. The president of the University of California system, Michael V. Drake, reacted to this crisis on campus by pledging $7 million in funding for staff training and resources, putting $2 million toward an initiative to "develop educational programs at each UC campus… focused on better understanding anti-Semitism and Islamophobia, how to recognize and combat extremism, and a viewpoint-neutral history of the Middle East."[22] It was that last point, on "viewpoint-neutral history," that led some 150 professors across the UC system to respond with an open letter condemning the plan as a violation of their academic freedom. Drake, who has degrees in medicine and management, couldn't have been more naïve about scholarly debates over historiography and pedagogy in the modern discipline of history and the social sciences.

"We find your use of the term 'viewpoint-neutral history' to be wrong in this context and call upon you to rescind it," the professors wrote in protest. "We are aware that the concept of viewpoint neutrality is a legal term of art rooted in the First Amendment of the U.S. Constitution that prevents the government from either supporting or discriminating against certain viewpoints. There is a clear, structural difference between government agencies avoiding the endorsement of a particular political position and university-based professionals presenting conflicting viewpoints as a normal part of our curriculum."[23]

The modern American university was envisaged by its founders as an arena of democratic inquiry and debate. "Since freedom of mind and freedom of expression are the root of all freedom, to deny freedom in education is a crime against democracy," said the philosopher and scholar John Dewey, perhaps America's most influential thinker on education.[24] Dewey famously made a distinction between those who saw education as an instrument for

the transmission of fixed ideas and those for whom it was a means to provoke constant inquiry and critical judgment.[25] Drake appears to fall into the former category, assuming it is possible to teach Middle Eastern history in California as a transmission of value-free and uncontested truths. Dewey's naïve universalism, however, focused on speech about abstract principles and disregarded the dimensions of speech that are grounded in distinctive cultural values and that instigate to action.

Likewise, Stanly Fish naïvely argued that that it is easy to separate objective teaching in the classroom from moral advocacy when it comes to Israeli actions in Gaza.[26] It is hard to imagine that he feels the same way about teaching the Nazi holocaust. Would it be unprofessional of the historian to express severe disapproval of it in the course of an academic lecture? Would the historian be a full human being if she did not? Should a white nationalist complaint that the lecturer was biased against white people be entertained? In my own classes, I have described the experiments Nazi scientists carried out on Jews, as a way of contextualizing the mass emigration of refugees to British Mandate Palestine.[27] I doubt I ever kept disgust at these experiments out of my voice and I hope I did not. I once saw a colleague of mine, giving a lecture on slavery in the United States, weep when recounting the separation of a child from his mother because of the white slavers' practice of selling human beings "down the river." Would Fish support sanctions for those tears? Apparently, the Florida legislature might.[28] That is, Fish's attempt to separate the political from the professional, dismissing strong ethical commitments as taking sides and "revolutionary," only seems logical in light of his quest to protect Zionists from hearing disagreeable things. Good history teaching does depend on showing students how to carefully document past events and how to understand varying viewpoints on those events. It does not depend on the professor having all the ethical passion of a dead tortoise.

In any case, as a practical matter in the United States, where freedom of speech has extremely strong protections from the state in the First Amendment, courts have usually felt comfortable limiting speech only where its consequences are not long term or merely emotional but where it forms a clear and immediate danger to the public—where the speech consists of "fighting words" meant to incite violence on the spot, as with racial slurs or targeting an individual in the audience for attack. One could imagine academic uses of words in class that might have this consequence. One could not imagine many such cases and comparing Israel's 2023–24 campaign against Gaza to the

repression of the Warsaw Ghetto uprising, as Masha Gessen did, is not one of them.[29] Making academic speech less protected by the First Amendment than other public speech is pernicious and would spell the end of academic integrity.

In the past eighty years, attempts have been made to outlaw dissident speech that, its critics feared, might lead to the overthrow of the government, as with communism in the Red Scare of the 1950s. Ultimately, however, the Supreme Court struck these efforts down, deeming the mere holding of Marxist beliefs to be an advocacy of abstract principles rather than a call to immediate action.[30] Although the court's ruling protected communists from being jailed, it did not protect professors from being fired. At the University of Michigan, as this volume commemorates, Chandler Davis, Clement Markert, and Mark Nickerson were all forced out as faculty from the University of Michigan in the 1950s, with two of them fired. It has been argued that economist Robert Klein should count as a fourth.[31] In this century, these issues have, worryingly, recurred in relationship to pro-Palestinian activism, construed by the right wing as support for terrorism or for antisemitism. Clearly, some pro-Israel and avowedly Zionist organizations would like to substitute pro-Palestinian sentiments today for the communism of the 1940s and 1950s, and to tag any advocate of Palestinian rights as a terrorist.

University administrators, however, have the duty to care for their Palestinian, Arab, and Muslim students as much as their Jewish ones, and to recognize that many other students of color, as well, were deeply traumatized by an Israeli war against an entire population of 2.2 million Palestinians in the besieged Gaza Strip. As always, the best antidote to poor analysis or hurtful rhetoric—that is, to bad speech—is not censorship but more and better speech. The University of California professors were exactly right in their recent letter: "As historians we maintain that among our contributions to a democratic society and a more peaceful world is to teach students the skills to evaluate different points of view based on evidence, rigorous inquiry, best pedagogical practices, and peer-reviewed scholarship free from external interference and political pressure," they wrote. "Indeed, this is the very foundation of our collective craft and a core principle of academic freedom."

CHAPTER 14

No Premature Burial for Academic Freedom

H. Chandler Davis

EDITORS' NOTE: THIS CHAPTER is a communication sent to members of the University of Michigan community on November 3, 2019, following Chandler's visit to the Davis-Markert-Nickerson Lecture on Academic and Intellectual Freedom. Published with permission of the Davis family.

SPEAKING UP IN ANN Arbor, November 2019: Let me make a case for urgency of defense of academic freedom.

I'm not addressing the whole University community. Surely, there are some who don't have any concern for academic freedom as the AAUP understands it. Some think, for example, that it was honorable and right in 1954 that the President of the University at that time fired Mark Nickerson and myself for perceived disloyalty. Certainly, I want to engage those people in debate, but that is not what I'm about here. I'm addressing friends, the majority of which values the protection and encouragement of a variety of opinions within the scholarly community: President Mark Schlissel, most of the faculty, and most students.

Also, my plea is not directed at those who insist that the policies of the government of Israel be immune to criticism. I do engage those rigid Zionists in debate quite a lot; it's important to do so, but that's not what I'm doing now. I'm assuming here that the free exchange of ideas we value in academe includes candor on Palestine. Let's take for granted that it is legitimate on campus to call a crime a crime, even if the victims are Palestinians. One can say in the halls of the United Nations that it is unethical to hold under military control

all the lands Israel occupied in 1967; to introduce large numbers of new settlers in the territories and enfranchise them but not the original population; to hold two million people, mostly already refugees, in the Gaza Strip in conditions essentially of imprisonment. To condemn these Israeli practices is not only tolerated in the international forum, it is the prevailing opinion. It is a debatable opinion; indeed, Benny Morris, who is a leader among the historians who have uncovered the facts of the ethnic cleansing of Palestine 1947–49, supports the practice! The present article is directed to those—again, I think I'm addressing the majority—who see how wrong Israeli state policy is. Some of you may be uncomfortable with terms like "Israeli apartheid," but let's not get hung up on a few such words: Israel gives one ethnic group favored status, and enforces its overlordship with overwhelming weaponry, and if you don't want to call that apartheid, call it what you will.

I hope we can agree also that recognizing the atrocity leads legitimately to looking for ways to combat it. Most of us look for non-violent ways. This is not cowering before armed might, even the nuclear weapon (which Israel has never promised not to use); nor is it necessarily committing to any philosophy of passive resistance. Most Palestinians resist non-violently too, as in demonstrations in villages like Nabi Salih—or even the Great March of Return, where hundreds of Gazans week after week expose themselves to merciless wounding: though a few may use slingshots against the heavily armed IDF, they do not inflict serious casualties and do not aspire to. Accepting the policy of nonviolence limits one to tactics like boycotts, and this is what many Palestinians and their supporters call for. Since 2005 or even longer, the world has been urged by leaders like Omar Barghouti to subject Israel to Boycott, Divestment, Sanctions until justice is won.

This is not a recipe for action. Supporters differ on what actions are called for. I support the BDS campaign, but I wish I could avoid giving the impression that we are boycotting Israelis like Amira Hass and Gideon Levy, not to mention valued friends like Professors Emmanuel Farjoun and Gadi Algazi, people whose contribution to justice in Palestine I can only admire and can't emulate. Some of those Israelis (Jewish and Arab), under the name Boycott from Within, collaborate with the international BDS movement in efforts to end support for Israeli policies and institutions. But some do not: some Israeli academics active in the difficult resistance I'm talking about dislike the call to boycott.

You understand that I am not engaging those who disagree with the *objectives* of BDS. As I have said, just now I am talking to friends. Let us assume agreement that, for example, we should try to restrain the settlers from destroying hundreds of Palestinians' olive trees. Those of us who don't go in person with the International Solidarity Movement to conduct civil disobedience, in the tradition of Rachel Corrie, cast about for actions we can meaningfully take from this distance. We do disagree and regularly explore tactics among ourselves.

For example, years ago I happily accepted invitations to visiting positions at Israeli universities; yet today I urge young colleagues to consider declining such offers on principle. Some of us would refuse to recommend a student to a study program at an Israeli university; yet all of us protested when the Palestinian-American student Lara Alqasem was (for a time) denied permission to enter the country to study at Hebrew University. Cultural contacts across borders can be precious peace-makers; yet most of us urged (for example) the Toronto Raptors to decline an invitation to celebrate in Israel their NBA championship. Such questions of choice of tactics must be assayed seriously, as Omar Barghouti and all our allies must appreciate. Weighing alternative methods of action does not mean resigning ourselves to inaction.

It's very different when some among us are attacked for standing up for Palestinian rights. John Cheney-Lippold and Lucy Peterson were denounced not for their choice of means—refusing to recommend students for study in Israel—but for their objectives. Steven Salaita was victimized at the University of Illinois Champaign-Urbana not for bad choice of words in email against the IDF's shelling of Gaza, but for objecting to the shelling of Gaza at all. Actually, I never saw his messages, just as I never heard what programs the students of Cheney-Lippold and Peterson had applied to in Israel. It is not required that we endorse every action and every utterance of colleagues in order for us to defend their freedom. Let us clear the air by insisting on this distinction. Taking away Steven Salaita's tenured appointment was unjust; denying Norman Finkelstein tenure at DePaul as punishment for his views on Palestine was unjust; any penalties on Cheney-Lippold and Peterson for their adherence to the BDS campaign are unjust.

We can debate calmly among ourselves what tools to use in defending Palestinian rights; but we must unite to defeat the powers that would silence the defense.

Now am I saying that the attempts today to purge the universities of supporters of Palestinian rights are like the purge of the 1950s? Be patient while I compare them, having seen both.

The number of firings from American universities for perceived communism in the great Red Hunt of 1947–60 was in the hundreds, and the firings for perceived adherence to BDS or the like today are much fewer. There is one effect that looks very similar. In the 1950s any untenured academic might be leery of signing a petition critical of the United States fighting a war in Korea (to take one example), knowing it would be vulnerable to public attack. The same went for critical examination of the capitalist system. In the present period, criticism of the Israeli treatment of the Palestinians is subject to the same chill. We all know perfectly well that if you want to criticize the occupation of the West Bank you had better reflect on your job security, because Canary Mission is watching you.

So what? We go right ahead, only we watch our step: what's wrong with that? Let me try to shoot down this complacency.

In the first place, constantly guarded speech is not free speech. It doesn't do the job free speech is needed for, the exploration of ideas and values. Capitalism was due for more re-evaluation, and after the silence of the Red Hunt descended it took a long slow struggle to get it back on the agenda. Likewise, if we agree that the ethnic cleansing of Palestine needs exposure and condemnation, then we must fight for the right to discuss it freely.

In the second place, let me caution the beginning academic. If you have a few years to go to tenure, and you're treading carefully all that while, there's a risk you may end up imitating the uncritical conformists so successfully that there's no difference. Especially since even tenure doesn't really give you security if Alan Dershowitz and Cary Nelson come hunting your scalp. Pussyfooting is not free-wheeling; defend your freedom.

In the third place, and this is too often overlooked, firing is not the main punishment held over your head. If you speak up for Gaza's access to clean drinking water, or if you quarrel with the IHRA's so-called "working definition of antisemitism," you will quite likely not be fired forthwith; but even if you are not, you will be put on the list, and when you go up for your next job, you will have opposition from the start. Powerful opposition, open or covert.

This is called the blacklist. It really hurts. Here I am, wanting the coming generation to take heart and speak up, but I have to tell you that it may really cost you.

All right, this purge is less thorough than the one I fell to; many jobs have been saved. Joseph Massad kept his position at Columbia after a fight, and David Klein at Cal State Northridge, and Rabab Abdulhadi at San Francisco State. No firings so far at University of Michigan, either. Some of the targets suffered penalties and threats of further penalties, however, but I'm drawing attention to something else: when you go looking for your *next* position, you'll be up against the same barrier that has kept Steven Salaita and Norman Finkelstein out of academe in the United States since they lost their jobs.

Young university teacher, if the consequences of letting yourself be known as pro-Palestinian give you pause, you are not being paranoid. Face it. And everyone, face it. Don't accept it. Recognize that there's a blacklist in operation, that it is stifling free speech in an important area of policy. There must be something we can do about it, right?

Not talking about the victims. I moved to a job I really liked in another country; most blacklistees did not fare that well; but I'm not talking about individual safe havens, I'm pleading with you to deal with the problem as a community.

One thing I learned over the years is that the purge feels very different if it manages only to *almost* exclude someone. When I job-hunted after 1954, I got zero university offers in my field; later when my friend Ed Dubinsky job-hunted, he got just one. Now one is very close to zero, it's as close as nine is to eight, yet having one good offer allowed Ed to return to a satisfying life of teaching and scientific work. The purge had almost worked in his case, yet the sting was pulled.

But look what that means. That means that most of the force of Canary Mission's onslaught is overcome if just one employer finds the courage to step up and break the wall of exclusion for each targeted job-seeker. And that means, in turn, that the blacklist presents its ominous solid wall only by the collaboration of all employers in a field. The blacklist is everybody rejecting you.

As a consequence, the guilt is every employer's. Every university which won't hire a dissenter is an accomplice in the crime of deterring the next generation's free dissent. It is fair—and this is the moment to do it—to demand of every American university: don't be an accomplice. Break the unanimity. Offer a professorship to Steven Salaita. Offer a professorship to Norman Finkelstein.

NOTES

Introduction

1. Steve Batterson, *The Prosecution of Professor Chandler Davis: McCarthyism, Communism, and the Myth of Academic Freedom* (Monthly Review Press, 2023).
2. Batterson, *The Prosecution*, 106–7.
3. James Iseler, "Schlissel Calls on Graduates to Heed Lesson of U-M's Mistakes," *The University Record*, December 20, 2015, https://record.umich.edu/articles/schlissel-calls-graduates-heed-lesson-u-ms-mistake.
4. Chandler H. Davis, "The Purge," in *A Century of Mathematics in America*, ed. Peter Duren (American Mathematical Society, 1988), 413–28.
5. Chandler H. Davis, *It Walks in Beauty: Selected Prose of Chandler Davis* (Aqueduct Press, 2010).
6. *Operation Mind: A Brief Documentary Account of the House Committee on Un-American Activities. And Why It Matters Now* (Disobedience Press, 2024).

Chapter 1: A Professor's Fight Against McCarthyism Resonates Today [Joan Scott]

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Chapter 2: Experiencing Exclusion [Natalie Zemon Davis and Stefan Hanß]

1. Please note that stylistic changes have been made to this article, which is available online at https://doi.org/10.1017/S0018246X24000311.
2. Adam E. Kulakow, "Keeping in Mind: The McCarthy Era at the University of Michigan," *YouTube* video, 1:24:01, October 1, 2015, https://www.youtube.com/watch?v=LdJHUqoAvdI. See also Natalie Zemon Davis, "How the FBI Turned Me on to Rare Books," *New York Review of Books*, July 30, 2013, https://www.nybooks.com/online/2013/07/30/fbi-turned-me-on-to-rare-books and Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* (Oxford University Press, 1986).

3. Marc Bloch, *The Historians's Craft* (Manchester University Press, 1992); Lucien Febvre, *Combats pour L'Histoire* (Librairie Armand Colin, 1953), 3–17.
4. Personal correspondence, May 24, 2022.
5. Natalie Zemon Davis, "Narrative as Knowing," *Yale Journal of Criticism* 5 (1992): 163.
6. Chandler H. Davis, "The Purge," in *A Century of Mathematics in America*, ed. Peter Duren (American Mathematical Society, 1988), 413–28; Steve Batterson, *The Prosecution of Professor Chandler Davis: McCarthyism, Communism, and the Myth of Academic Freedom* (Monthly Review Press, 2023); Alan Wald, "H. Chandler Davis Was a Lifelong Radical and a Moral Touchstone for the Left," *Jacobin*, June 10, 2022, https://jacobin.com/2022/10/h-chandler-davis-lifelong-radical-communism-academia-obituary.
7. Note the acknowledgments in Chandler Davis, "An Extremum Problem for Plane Convex Curves," in *Convexity: Proceedings of Symposia in Pure Mathematics. Vol VII*, ed. Victor L. Klee (American Mathematical Society, 1963), 181: "Research supported in part by the Federal Prison System. Opinions expressed in this paper are the author's and are not necessarily those of the Bureau of Prisons."
8. Natalie Zemon Davis, "Holbein's Pictures of Death and the Reformation at Lyons," *Studies in the Renaissance* 3 (1956): 97–130; Hans Holbien, *Les Simulachres et Historiées Faces de la Mort, Autant Élégamment Pourtraictes, Que Artificiellement Imaginées* (Lyon, 1538). See also the new edition Hans Holbein, *The Dance of Death* (Penguin Books Ltd, 2016).
9. *Jean Frellon, Les Images de la Mort, Auxquelles Sont Adioustées Douze Figures* (1547).
10. Davis, "Holbein's Pictures of Death and the Reformation at Lyons."
11. Febvre, *Combats pour L'Histoire*; Lucien Febvre and Henri-Jean Martin, *L'Apparition du livre* (Albin Miche, 1958).
12. I am here indebted to the splendid paper by Paula Findlen and Hannah Marcus, "The Breakdown of Galileo's Roman Network: Crisis and Community, ca 1633," *Social Studies of Science* 47 (2017): 326–52. I am also grateful to Paula Findlen for her suggestions here.
13. Galileo Galilei, *Dialogus de Systemate Mundi* (1635).
14. Galileo Galilei, *Discorsi e Dimostrazioni Matematiche Intorno a Due Nuove Scienze* (1638).
15. Galileo Galilei, *Dialogues Concerning Two New Sciences* (Dover Publications Inc., 1954), xx.
16. Charles E. Trinkaus, "On Ernest Nagel's Review of Lovejoy's 'The Great Chain of Being,'" *Science and Society* 1 (1936): 410–12; Charles E. Trinkaus, *Adversity's Noblemen: The Italian Humanists on Happiness* (Octogan Books, 1940); Charles E. Trinkaus, "Toynbee Against History," *Science and Society* 12 (1948): 218–39.
17. Here and in the following, I have used the published report of the testimony of Charles Trinkaus before the United States Senate Subcommittee to Investigate the Administration of the Internal Security Act, Subversive Influence in the Educational Process, public hearing of June 4, 1953 and the Stenographic Transcript of the testimony of Charles Trinkaus before the Executive Session of the same sub-committee, June 4, 1953. In both cases, Charles Trinkaus was accompanied by his counsel R. Lawrence Siegel. These two reports are included in the Harold Taylor papers in the Sarah Lawrence College Archives, Series II, box 2, 38, Academic Freedom—Jenner Committee Hearing Excerpts, 1953. Further in the Harold Taylor papers, I have used two reports from President Harold

Taylor: his report of June 20, 1953 of his meeting with Charles Trinkaus to discuss his work as a faculty member of Sarah Lawrence College, and his report to the Committee on Academic Freedom of the Board of Trustees, October 20, 1953, which includes as Appendix A the report of Dean Esther Raushenbush on Charles Trinkaus as a teacher. I am grateful to Professor Daniel P. Tompkins for giving me the links to this material. The Sarah Lawrence Archives has prepared an exhibit on *Sarah Lawrence Under Fire: The Attacks on Academic Freedom During the McCarthy Era*, https://www.sarahlawrence.edu/archives/exhibits/mccarthyism/ (accessed July 8, 2025).

18. For example, see Pauline Moffitt Watts, *Nicolaus Cusanus: A Fifteenth-Century Vision of Man* (Leiden, 1982) and Pauline Moffitt Watts, "Prophecy and Discovery: On the Spiritual Origins of Christopher Columbus's 'Enterprise of the Indies,'" *American Historical Review* 90 (1985): 73–102.
19. Natalie Zemon Davis, "Some Tasks and Themes in the Study of Popular Religion," in *The Pursuit of Holiness in Late Medieval and Renaissance Religion*, ed. Charles E. Trinkaus and Heiko A. Oberman (Leiden, 1974), 307–36.
20. Charles E. Trinkaus, *In Our Image and Likeness: Humanity and Divinity in Italian Humanist Thought* (University of Notre Dame Press, 1970).
21. The unpublished manuscript is included in the Charles Trinkaus papers in the Sarah Lawrence College Archives, Series V, box 4. An additional chapter draft survives in box 5. Dr. Christina Kasman (College Archivist, Esther Raushenbush Library) deserves special thanks for helping to verify this reference.
22. Perez Zagorin, "Liberties and Communities in Medieval England, by Helen W. Cam," *Science and Society* 9 (1945): 275–277; Perez Zagorin, "Studies in the Development of Capitalism, by Maurice Dobb," *Science and Society* 12 (1948): 278–281; Perez Zagorin, "'Thomas More and His Utopia' and 'Communism in Central Europe in the Time of the Reformation,' by Karl Kautsky," *Science and Society* 25 (1961): 187–191.
23. This quotation and other details from the life of Perez Zagorin are found in the extended interview he gave in 2007 in connection with a retrospective exhibition of the work of his wife: Perez Zagorin, "Oral history interview with Perez Zagorin, 2007, January 17–18," interview with Laura MacCarthy, *Smithsonian Institution*, January 17–18, 2007, audio. https://www.aaa.si.edu/collections/interviews/oral-history-interview-perez-zagorin-13600.
24. Perez Zagorin, *A History of Political Thought in the English Revolution* (Routledge, 1954).
25. For example, in the HUAC hearings on "Communist infiltration of labor union" on December 5–6, 1949, Julius Emspack, general secretary of the United Electrical, Radio and Machine Workers of America, was asked whether Perez Zagorin was one of his organizers (Emspack refused to answer all questions).
26. Oral history interview with Perez Zagorin.
27. Perez Zagorin, *Ways of Lying: Dissimulation, Persecution, and Conformity in Early Modern Europe* (Harvard University Press, 1990).
28. Zagorin, *Ways of Lying*, v.
29. Zagorin, *Ways of Lying*, vi.
30. Benedictus de Spinoza, *The Political Works: The Tractatus Theologico-Politicus in Part, and the Tractatus Politicus in Full* (Oxford University Press, 1958).
31. Benedictus de Spinoza, *The Political Work*s, 235.
32. Zagorin, *Ways of Lying*, 237; Zagorin, *Ways of Lying*, 329–30.

33. Natalie Zemon Davis, *The Return of Martin Guerre* (Harvard University Press, 1983).
34. Kulakow, "Keeping in Mind."

Chapter 3: U-M Faculty Political Activism in the Late Twentieth Century [Alan Wald]

1. *The Wednesday Lunch Group* flyer; the contact person is listed as Tom Weisskopf.
2. *Marx at Michigan* flyer. This was also advertised in the *Michigan Daily*, October 31, 1978.
3. "An Open Letter to the Regents of the University of Michigan," April 1970, a copy of which appeared in the *Michigan Daily* and elsewhere.
4. Newspaper coverage of the South African divestment movement was extensive. A few of the articles I have used in this summary include: "Text of Regents' Resolution," *University Record*, March 20, 1978; William Thompson, "South African Divestiture Still Hot Issue at 'U,'" *Michigan Daily*, August 5, 1979; Mike Taylor, "Apartheid Comes Home: Students Taste the Tyranny," *Michigan Daily*, March 21, 1979; "Day of Confrontation: Students vs. Regents," *Michigan Daily*, March 18, 1979; "A Fierce Display of Student Activism," *Michigan Daily*, March 18, 1979; Max Gates, "U Africa Debate Peaceful," *Ann Arbor News*, April 28, 1979; Mitch Cantor and Mark Parrent, "Group to Challenge Closed Regents Meeting in Court," *Michigan Daily*, March 20, 1979; Julie Engelbrecht, "Student Groups Gaining Strength," *Michigan Daily*, March 17, 1979.
5. Martha Sevetson, "Fusfeld, Regent, Come to Terms," *Michigan Daily*, May 29, 1987.
6. Richard Berke, "Faculty Letter Supports Samoff," *Michigan Daily*, October 12, 1979; Committee of Concerned Faculty, "Denial of Tenure: The Larger Issues," *Michigan Daily*, November 1, 1978; Alan Wald, "The Story Behind the Story," *Michigan Daily*, January 17, 1979.
7. *Financial Report* 1978–79.
8. Thomas O'Connell, "Hugo Blanco, Radical Survivor," *Michigan Daily*, October 23, 1977; Poster: *Hugo Blanco on Carter and Human Rights in Latin America*, October 13, 1977; Michael Yellin, "Blanco Hits Human Rights Stand," *Michigan Daily*, October 14, 1977.
9. Leaflet: *Political Repression in Argentina: What You Should Know*; Howard Brick, "How Scholars Play with the Poor," *Science for the People* 10, no. 4 (1978): 18–22. Printed also in *Michigan Daily*, February 24, 1978.
10. Thomas O'Connell, "Speakers Attack Repression in Teach-In on Mexican Affairs," *Michigan Daily*, November 9, 1978, 1, 5; Thomas O'Connell, "Forum Hits Mexican Government," *Michigan Daily*, November 8, 1978, 10.
11. Many other activities continued at the same time, with talks about malnutrition in Columbia, anti-semitism in Argentina, and on the US media treatment of Latin American events, as well as pickets for human rights in Chile joined by the adoption campaigns for disappeared individuals. Frequently the AACHRLA worked with the Ann Arbor Interfaith Council for Peace, as in an October 7, 1979 March Against Hunger to raise money for an agrarian reform project in Peru.
12. Three kinds of members were described: those working directly on committees (such as the Education and Women's committees); those affiliated with these committees; and friends of the organization. Only the first two paid dues ($5 a year) and had voting rights, but all received the monthly newsletter, *La Palabra*, for which faculty wrote articles. Many of these were not signed, and authors included John Vandermeer, Ivette Perfecto, and myself. See, for example, Alan Wald, "The Lessons of Grenada," *La Palabra* 9, no. 3 (1988): 1, 8.

13. Pina Sbrocca, "'U' Faculty Members Form Group to Oppose US Salvador Policy," *Michigan Daily*, April 2, 1982. The article states that the group was initiated by thirty-five faculty and teaching assistants.
14. The following February 5–6, a teach-in was announced, called "Central America: The Next Vietnam," featuring Daniel Levine and Jeff Paige. During an "El Salvador Alert Week," hundreds marched through the streets of Ann Arbor against military intervention. On October 22–23, 1982, there was a teach-in on "The Widening War in Central America," with sessions focusing on women and on the church. In October 1984, LASC and FACHRES-CA held a Central America Day calling for a walk-out from classes to attend political events. For the event we published *The Crisis in Central America: Handbook for Central America Day, October 24*. It contained a cover letter from Martha Vicinus and myself asking faculty to release students from their classes. There were films and poetry, with speakers including Andrew Zweiffler, Jeffrey Paige, Bunyan Bryant, and Daniel Axelrod.
15. Much of the early effort of MAD was to urge a "yes" vote on a proposal for a nuclear freeze on November 2, 1982. However, the main object was to build a state-wide coalition of peace groups, somewhat modeled on the British Campaign for Nuclear Disarmament. The South-East Chapter held monthly general meetings, with discussions on matters such as the USSR and the Arms Race. Speakers at conferences included peace activist Sidney Lens, Dan Axelrod, Vandermeer, and graduate student Justin Schwartz.
16. See Buzz Alexander and Alan Wald, "Two Profs Call for Faculty Activism," *Michigan Daily*, March 2, 1987.
17. See Janet Cohen, "39 Arrested in Vigil at Pursell's Office," *Ann Arbor News*, March 15, 1986 and Eve Becker, "Police Arrest 39 at Vigil Outside Pursell's Office," *Michigan Daily*, March 17, 1986.
18. Although I was the only U-M faculty on the delegation, other faculty made trips to Nicaragua including Vandermeer and Perfecto (who ran research projects and trained graduate students there) and Buzz Alexander. For the Nicaragua delegation, see: Alan Wald, "Juigalpa Trip Not an Adventure in 'Wonderland,'" *Ann Arbor News*, November 23, 1986. A large number of articles and photographs related to the delegation can be found at: https://aadl.org/aa_news_19861124.
19. See "U-M Must Stop Playing Word Games on Minority Hiring," *Ann Arbor News*, November 25, 1987, A9, signed by five members of Concerned Faculty; "Position Paper #1. Perspectives on Racism at the U of M," March 1988; Concerned Faculty, "Perspective: Responding to Provost James Duderstadt," *University Record*, March 21, 1988, 4; Concerned Faculty, "Provost Analysis Flawed," *Michigan Daily*, March 25, 1988, 4; Concerned Faculty, "Faculty Responds to Fleming," *Michigan Daily*, April 12, 1987, 4; Concerned Faculty "Faculty Condemns Racism," *Michigan Daily*, November 30, 1987, 6; Concerned Faculty, "Professors Support UCAR," *Michigan Daily*, December 1, 1987, 6.
20. "UM Professor Alan Wald Speaks at NDA [National Day of Action] Rally," *The Graduate Worker* no. 82 (1997): 3, 4.
21. Rob Patton, "Looking Back, Looking Forward: The Fight Against Racism," *Michigan Daily*, September 27, 1991, 5. We also participated in student-organized teach-ins, such as the one against deputization and for student rights sponsored by the Michigan Student Assembly: Annabel Vered, "Prof. Talks on History of Student Activism," *Michigan Daily*, November 20, 1990, 3.
22. Scott Heller, "Frame-Up of Multicultural Movement Dissected by Scholars and Journalists," *The Chronicle of High Education*, November 27, 1991, https://www.chronicle.com/article/frame-up-of-multicultural-movement-dissected-by-scholars-and-journalists.

23. Alan Wald, "McCarthyism Then and Now," *University Record*, December 9, 1991, 6; "Expand University Culture (a debate with Leo McNamara)," *Consider: The Weekly Non-Partisan Issues Forum*, November 25, 1991, 2.
24. This is not to neglect the many other political activities occurring in this period that drew in faculty: an "Inauguration Day Teach-In" on January 20, 1991, called "Toward 1984: The Challenge for Human Rights" featured Russell Means of the American Indian Movement (AIM); "Faculty and Staff Women at U-M Against the Gulf War" issued a statement on January 17, 1991; and a dozen U-M faculty signed the January 13, 1991 *New York Times* ad on E5, "Is This War Really in the National Interest?," sponsored by the Ad Hoc Universities Committee. A few faculty participated in the student-led U-M Anti-Gulf War Coalition.
25. Julia Brown, "Conference Unites 'U,' Labor Leaders," *Michigan Daily*, November 15, 1993, 1–2.
26. In June 1992, I and U-M faculty member Cecilia Green traveled to Cuba to speak at the University of Havana as part of the anti-blockade movement. In 1993, a Haiti Solidarity Committee was formed after the Haitian president was driven out of the country and a military junta declared martial law. A delegation including several U-M faculty traveled to the island from July 15 to 22 as a "Civilian Observer Delegation" to investigate human rights violations in Port-au-Prince and Cap-Haitian. See Alan Wald, "Haiti: Return to Democracy or Dream Deferred?," *Agenda*, August 1993, 8. On September 14, members of the delegation gave a public presentation at the First Baptist Church in Ann Arbor.
27. When the "Davis, Markert and Nickerson Academic Freedom Lecture" was launched on February 18, 1991, Concerned Faculty issued a leaflet, *What Was Lost in the McCarthyite Purge?*
28. See Alan Wald, "Censorship, Liberal Style," *Michigan Voice*, October 1984, 8; Julie Wiernik, "Controversial Foreign Policy Critic to Speak at U-M Despite Opposition," *Ann Arbor News*, October 14, 1984, A3; Julie Wiernik, "World Drifting Toward Disaster, Asserts Controversial Scholar," *Ann Arbor News*, October 20, 1984, 1. Leaflets smearing Chomsky were distributed to those attending the event, as I reported in this article: Alan Wald, "A Transatlantic Smear Campaign Against Noam Chomsky," *Guardian*, April 3, 1985, 19. Chomsky's honorarium was never the issue as his policy was to donate all such money to local activist groups.
29. Alan Wald, "The Real Antisemitism," *Michigan Daily*, November 9, 1988, 20.
30. At the beginning of winter semester 2024, it was the Ali Mazrui Professor of History and African Studies, Derek Peterson, who made the motion at the U-M Faculty Senate Assembly to divest from companies with financial ties to Israel. See Michel Liao, "Senate Assembly Passes U-M Divestment Resolution," *Michigan Daily*, January 30, 2024, 1.

Chapter 4: No More Chandler Davises! [Ellen Schrecker]

1. Michael Fabrikant and Stephen Brier, *Austerity Blues: Fighting for the Soul of Public Higher Education* (Johns Hopkins University Press, 2016) is a useful discussion of this transition. See also Christopher Newfield, *Unmaking the Public University: The Forty Year Assault on the Middle Class* (Harvard University Press, 2008).
2. John G. Cross and Edie N. Goldenberg, *Off-Track Profs: Nontenured Teachers in Higher Education* (The MIT Press, 2009).

3. For an authoritative survey of academic contingent labor, Adrianna Kezar, Tom DePaola, and Daniel T. Scott, *The Gig Academy: Mapping Labor in the Neoliberal University* (Johns Hopkins University Press, 2019). A recent compendium is Eric Fure-Slocum and Claire Goldstene, *Contingent Faculty and the Remaking of Higher Education: A Labor History* (University of Illinois Press, 2024). See also American Association of University Professors, *The Annual Report on the Economic Status of the Profession, 2023–24* (June 2024), https://www.aaup.org/file/ARES_2023-24.pdf.

Chapter 5: Gender Studies, Academic Freedom, ... [Catharine R. Stimpson]

1. The dating depends on who might be telling the origin story, but general agreement exists that the first program, as distinct from individual courses, was at San Diego State in 1970.
2. See The National Women Studies Association's "Resource Library," https://www.nwsa.org/member-resources/resource-library.
3. However, I find Christina Hoff Sommers bracing. See Christina Hoff Sommers, "Feminism and the College Curriculum," *Imprimis* 19, no. 6 (1990), https://imprimis.hillsdale.edu/feminism-and-the-college-curriculum.
4. For example, the case of Cecilia Conchar Farr at Brigham Young University in 1992–93.
5. Since 2021, PEN America has been issuing indispensable annual reports about the state of intellectual and academic freedom in the United States.
6. Judith Butler, *Who's Afraid of Gender?* (Straus and Giroux, 2024), 3.
7. Amia Srinivasan, "Cancelled," *London Review of Books*, June 29, 2023, https://www.lrb.co.uk/the-paper/v45/n13/amia-srinivasan/cancelled. The essay, though it compares academic freedom in the United States and the United Kingdom, focuses on the UK after the May 2023 passage of the Higher Education (Freedom of Speech) Act, and its follies and dangers.
8. Ruby Blondell, "Introduction, Translation, and Essay," in *Sophocles' Antigone* (Focus, 1998), 21. I take my spelling of Teiresias from Blondell.
9. Boxer is a standard history of the first decades of women's studies. My remarks now derive from Catharine R. Stimpson and Gilbert Herdt, "Introduction," in *Critical Terms for the Study of Gender*, ed. Catharine R. Stimpson and Gilbert Herdt (University of Chicago Press, 2014), 1–19.
10. Important studies of women, spirituality, and religions/religion exist, but the subject has arguably receded too far in importance.
11. Teresa deLauretis, "Queer Theory: Lesbian and Gay Sexualities. An Introduction," *differences: A Journal of Feminist Cultural Studies* 3, no. 2 (1991): iii–xviii. See, too, the important Summer–Fall 1994 issue of *differences: A Journal of Feminist Cultural Studies*, "More Gender Trouble: Feminism Meets Queer Theory" 6, no. 2 and 3. In this turn of the millennium decade the humanities, where much of Queer Theory was developed, were less on the defensive than they are today.
12. Carolyn Dinshaw and David M. Halperin, "From the Editors," *GLQ: A Journal of Lesbian and Gay Studies* 1, no. 1 (1993): iv.
13. Carolyn Dinshaw, "The History of *GLQ*, Vol. 1: LGBTQ Studies, Censorship, and Other Transnational Problems," *GLQ: A Journal of Lesbian and Gay Studies* 12, no. 1 (2006): 5–26. The Stonewall uprising was June 28, 1969.
14. Susan Stryker, "The Transgender Issue. An Introduction," *GLQ: A Journal of Gay and Lesbian Studies* 4, no. 2 (1998): 145–58.

15. If my numbers seem imprecise, it is because I fear I lost count from time to time, despite my best efforts.
16. Dinshaw, "The History of GLQ" describes the break with the journal's first publisher, Gordon and Breach, and the move to its second, Duke University Press.
17. In my reading, the visuals in both articles no doubt produce a more visceral reading response than text alone. Lawrence Cohen, "Holi in Banaras and the Mahalaṇḍ," *GLQ: A Journal of Gay and Lesbian Studies* 2, no. 4 (1995): 399–424 is a careful, scholarly article about male desire and politics in the "Secret Literature." The sexual activity is largely male with male, but when the Muslim is the political Other, a mosque is feminized in one cartoon, a male sodomized with a miniaturized mosque in a second cartoon. K. Daymond's "Bodies on the Line," which made me queasier, is not only about some lesbian sexual practices, but about being photographed, about being an object of the camera as well as the sexual object of another woman, and about overcoming fears of both. Together, both articles demonstrate some of the various meanings of "performance" and "the performative" in WGS.
18. Butler, *Who's Afraid of Gender?*, 194.
19. Catharine A. MacKinnon, Finn Mackay, Mischa Shuman, Sandra Fredman, and Ruth Chang, "Exploring Transgender Law and Politics," *Signs: Journal of Women in Culture and Society* 50, no. 1 (2024): 31.
20. In 2018, Smythe, who did not support the TERF position, wrote "I'm Credited with Having Coined the Word 'Terf'. Here's How It Happened," *The Guardian*, November 28, https://www.theguardian.com/commentisfree/2018/nov/29/im-credited-with-having-coined-the-acronym-terf-heres-how-it-happened.
21. The chapter in Butler, *Who's Afraid of Gender?*, "TERFS and British Matters of Sex: How Critical Is Gender-Critical Feminism," 134–69, is a powerful analysis of gender-critical feminism. The most influential voice by far of a soft version of gender-critical feminism is J. K. Rowling.
22. Agnieszka Graff, "'Gender Ideology': Weak Concepts, Powerful Politics," *Religion and Gender* 6, no. 2 (2016): 268–72; Emil Edenborg, "Anti-Gender Politics as Discourse Coalitions: Russia's Domestic and International Promotion of 'Traditional Values,'" *Problems of Post-Communism* 70, no. 2 (2023): 175–84 has an equally suggestive article about Russia.
23. Graff, "'Gender Ideology,'" 269.
24. Elizabeth Redden, "Global Attack on Gender Studies: Scholars Say Their Field Is Coming Under Increasing Pressures from Forces Outside the Academy Who Want to Delegitimize It," *Inside Higher Ed*, December 5, 2018, https://www.insidehighered.com/news/2018/12/05/gender-studies-scholars-say-field-coming-under-attack-many-countries-around-globe.
25. Redden, "Global Attack on Gender Studies."
26. Attacks on Soros had antisemitic overtones and undertones.
27. Ruth Ben-Ghiat, "From Fascism to Hungary and the U.S., Authoritarians Target Universities," July 11, 2023, *Lucid* (blog), *Substack*, https://lucid.substack.com/p/from-fascism-to-hungary-and-the-us.
28. For an account of what DeSantis has done to kill "woke" that reads like a prosecutor's summation, see Srinivasan, "Cancelled."
29. Presumably, "straight" was not meant to be a pun.
30. The magisterial AAUP report from December 2023, *Report of a Special Committee: Political Interference and Academic Freedom in Florida's Public Higher Education System*, is an indispensable account of the destruction and reconstruction of New College. In August 2024, New College dumped

hundreds of books from Gender Studies into a dumpster without notification and when caught, piously murmured about the common practice of "weeding" of library collections.

31. Butler, *Who's Afraid of Gender?*, 3–4.
32. Butler, *Who's Afraid of Gender?*, 256.
33. Note, for example, Jennifer Schuessler, "The Fight over Academic Freedom," *New York Times*, February 16, 2024, https://www.nytimes.com/2024/02/16/arts/academic-freedom-harvard-universities.html and Jeannie Suk Gersen, "The Future of Academic Freedom," *The New Yorker*, January 27, 2024, https://www.newyorker.com/news/the-weekend-essay/the-future-of-academic-freedom. My own 2022 essay on Title IX, "Dereliction, Due Process, and Decorum: The Crises of Title IX," *Signs* 47, no. 2 (2022): 261–93 mentions a spectrum of criticisms of Title IX administration on campuses.
34. Judith Suissa and Alice Sullivan, "The Gender Wars, Academic Freedom and Education," *Journal of Philosophy of Education* 55, no. 1 (2021): 55–82.
35. A longer version of this paper far more extensively describes this history.
36. Jesse Singal, "This Is What a Modern-Day Witch Hunt Looks Like," *NY Mag*, May 2, 2017, https://nymag.com/intelligencer/2017/05/transracialism-article-controversy.html is an account of the earlier travails of Rebecca Tuvel, then an Assistant Professor of Philosophy at Rhodes College in Memphis. According to a recent website, she is now Associate Professor of Philosophy and Chair of the Department.
37. See Angela Clark-Taylor, Hanna Regan, and Ariella Rortramel, "Protecting Our Futures: Challenges & Strategies for Women's, Gender, and Sexuality Studies," *Mather Center Research Briefs* 5 (2024), https://commons.case.edu/mathercenter-briefs/5 and Johanna Alonso, "Florida Bans Students for Justice in Palestine on Some Campuses," *Inside Higher Ed*, October 26, 2023, https://www.insidehighered.com/news/students/free-speech/2023/10/26/florida-bans-some-students-justice-palestine-chapters.
38. A recent Foundation for Individual Rights and Expression report, *The Academic Mind in 2022*, is unsettling if younger cohorts, which have their explicit differences, show less support for academic freedom. Once again, community colleges are not surveyed.

Chapter 6: On Further Investigation: The AAUP Affiliation with the AFT [Michael Bérubé]

1. The full report of our investigation, American Association of University Professors, *Academic Freedom and Tenure: University of Northern Iowa* (December 2012), can be found at https://www.aaup.org/file/AcademicFreedomAndTenureUNI_0.pdf.
2. I thank Greg Scholtz of the Department of Academic Freedom, Tenure and Governance for calling this article to my attention.
3. Ralph S. Brown, Jr. and Matthew W. Finkin, "The Usefulness of AAUP Policy Statements," *AAUP Bulletin*, March 1978, 5.
4. Brown and Finkin, "The Usefulness of AAUP Policy Statements," 7.
5. Brown and Finkin, "The Usefulness of AAUP Policy Statements," 7.
6. Brown and Finkin, "The Usefulness of AAUP Policy Statements," 8.
7. The phrase, common in Maine parlance, insinuates that the members of the investigating committee were akin to summer tourists. In one of the few moments in which my surname has had any meaning

for my professional life, I replied to President Flanagan that I was not in fact "from away," that my father grew up in Lewiston, and that the Francophone population of Maine, of which my father was once a member, had every reason to be concerned that USM was planning to eliminate its French department. That argument got nowhere, alas, but I had to make it.

Chapter 7: Academic Freedom and Moral Courage [Gene Nichol]

1. Part of the reason for that is my longstanding high regard for the University of Michigan. Some of that attachment, I should say, is grudging. I was a law school dean at two state flagship universities for many years. One of the frustrations of law deans, and there are many, is that law alumni so often tend, annoyingly, to maintain their most intense affection (and generosity) for their undergraduate institutions. And I can report, from experience, that no graduates are more boringly loyal to their home campuses than those of the University of Michigan. Trying to peel them away from a principal dedication to Ann Arbor is an exceedingly tough duty. I may not have historically been happy about that, but one does have to admire it. See Safia Merchant, "UNC Professor Lectures on Government Interference in Higher Ed," *University Record*, November 28, 2018, https://record.umich.edu/articles/unc-professor-lectures-government-interference-higher-ed.
2. *Adler v. New York*, 42 U.S. 485 (1952)—a case that upheld the Feinberg law regulating communism.
3. Maximilian Longley, "Speaker Ban Law," *North Carolina History Project*, https://northcarolinahistory.org/commentary/speaker-ban-law/#:~:text=Another%20casualty%20of%20the%20Speaker,the%20Biology%20Department%20at%20Yale.
4. Longley, "Speaker Ban Law."
5. Robert F. Kennedy, *Speech at the University of California, Berkeley* (October 22, 1966), https://rfkhumanrights.org/speech/speech-at-the-university-of-california-at-berkeley.
6. Gene R. Nichol, "Bill Aycock and the North Carolina Speaker Ban," *North Carolina Law Review* 79, no. 6 (2001): 1725–42.
7. Act of June 26, 1963, ch. 1207, §§ 1-2, 1963 N.C. Sess. Laws 1688, amended by Act of Nov. 17,1965, ch. 1, § 1, 1965 N.C. Ex. Sess. Laws 5, repealed by Act of July 6, 1995, Ch. 379, § 17, 1995 N.C. Sess. Laws 933, 942 (codified at N.C. GEN. STAT. § 116-199 (1999)).
8. Warren Ashby, *Frank Porter Graham: A Southern Liberal* (J. F. Blair, 1980), 272.
9. "Aycock Makes Blistering Attack on Speaker Ban," *The News & Observer*, November 11, 1963, 115.
10. "Aycock Makes Blistering Attack on Speaker Ban."
11. "Aycock Makes Blistering Attack on Speaker Ban."
12. William Brantley Aycock, *Speeches and Statement of William Brantley Aycock (1957–64)* (Colonial Press, 1964), 94–95.
13. "Editorial, Race Behind Speaker Ban Bill?" *Charlotte Observer*, July 4, 1963, 2B. See also William Billingsley, *Communists on Campus: Race, Politics, and the Public University in the Sixties in North Carolina* (University of Georgia Press, 1999).
14. "Editorial, Race Behind Speaker Ban Bill?"
15. "Editorial, Race Behind Speaker Ban Bill?"
16. See Billingsley, *Communists on Campus*.
17. "Rep Hamlin Speaks on Gag Law," May 13, 1964 (on file with North Carolina Law Review, campaign flier ("The Speaker Ban Law was prompted by legislators angry at the appearance of a

university faculty member in a civil rights picket line at the Sir Walter Hotel. It was intended as a slap at the University.")

18. See Jim Clodfelter, 'Aycock Hits Out Anew over Speaker Ban," *Durham Morning Herald*, February 26, 1964, 2A.
19. See Bob Joyce, "Reds on Campus: The Speaker Ban Controversy," *Carolina Alumni Review* (1984): 4–6.
20. See Charlotte Fryar, "A Narrative History of the Speaker Ban Action," https://scalar.usc.edu/works/speakingback/a-narrative-history-of-the-speaker-ban-action.
21. Jim Clotfelter, "Aycock Hits Out Anew at Speaker Ban Law," *Durham Morning Herald*, February 26, 1964, 2A.
22. "Aycock Makes Blistering Attack on Speaker Ban."
23. Aycock, *Speeches and Statement of William Brantley Aycock (1957–64)*.
24. Aycock, *Speeches and Statement of William Brantley Aycock (1957–64)*, 160.
25. "Editorial, In Defense of University Freedom," *Greensboro Daily News*, October 30, 1963.
26. See Billingsley, *Communists on Campus*, 8–10.
27. See "Aycock Makes Blistering Attack on Speaker Ban."
28. "Whitley Hits Critics of Speaker Ban Law," *Durham Herald*, November 12, 1963, 1A.
29. "Legislators Opposing Speaker Ban Should Be Defeated," *Durham Morning Herald*, February 9, 1974, 6A.
30. Aycock, *Speeches and Statement of William Brantley Aycock (1957–64)*, 167–69.
31. Aycock, *Speeches and Statement of William Brantley Aycock (1957–64)*, 167–69.
32. "Editorial, Democrats Showed Misunderstanding of Our Heritage," *Smithfield Herald*, May 15, 1964, 4.
33. "Editorial, Democrats Showed Misunderstanding of Our Heritage," 177.
34. "Editorial, Democrats Showed Misunderstanding of Our Heritage," 116.
35. Nichol, "Bill Aycock and the North Carolina Speaker Ban".
36. Stephanie Saul and Anemona Hartcollis, "College Presidents Under Fire After Dodging Questions About Antisemitism," *The New York Times*, December 6, 2023, https://www.nytimes.com/2023/12/06/us/harvard-mit-penn-presidents-antisemitism.html.
37. Steven Brint, "Trump and His Allies Are Preparing to Overhaul Higher Education," *The Chronicle of Higher Education*, March 6, 2024, https://www.chronicle.com/article/if-trump-wins.
38. American Association of University Professors, *AAUP Report of Special Committee About Political Interference*, December 2023, https://www.aaup.org/report/report-special-committee-political-interference-and-academic-freedom-florida's-public-higher.
39. Hank Reichman, "What Is a University President to Do?" *Academe* (blog), December 13, 2023, https://academeblog.org/2023/12/13/what-is-a-university-president-to-do.
40. Reichman, "What Is a University President to Do?"
41. Association of American University Professors, *AAUP Report of Special Committee About Political Interference with Higher Education in Florida*, 17–18.
42. Reichman, "What Is a University President to Do?"

Chapter 9: Into the Gray Future, or: The University Is Dead [Silke-Maria Weineck]

1. Franz Kafka, *Ein Landarzt: Kleine Erzählungen* (Kurt Wolff, 1919), 34.

2. Silke-Maria Weineck, "Michigan's New Protest Policy Is a Scandal," *The Chronicle of Higher Education*, April 2, 2024, https://www.chronicle.com/article/michigans-new-protest-policy-is-a-scandal.
3. Friedrich Nietzsche, *Die fröhliche Wissenschaft* (C. G. Naumann, 1897), aphorism 125.
4. Dan Bauman, "Why Is West Virginia U. Making Sweeping Cuts? Hobbled by the Great Recession, the Flagship Bet on Growth That Never Came," *The Chronicle of Higher Education*, August 11, 2023, https://www.chronicle.com/article/why-is-west-virginia-u-making-sweeping-cuts.
5. University of Michigan Public Affairs, "Facts About the Removal of the Encampment," University of Michigan, May 31, 2024, https://publicaffairs.vpcomm.umich.edu/key-issues/facts-about-the-removal-of-the-encampment.
6. Andrea Cristina (@AndreaCr1stina), "@UMich pr machine claims they used a milder form of pepper spray. Other photos show cops actually spraying the deep freeze onto students, and the labeled bottles are visible," Twitter (now X), June 1, 2024, https://twitter.com/AndreaValedon/status/1796944036344783029.
7. Harry G. Frankfurt, *On Bullshit* (Princeton University Press, 2009), 61.
8. Santa J. Ono, "Ending the Encampment," email message, May 21, 2024, https://president.umich.edu/news-communications/messages-to-the-community/ending-the-encampment.

Chapter 10: Schoolbook Censorship: Untangling the Pico Paradox [Marjorie Heins]

1. PEN America, *School Book Bans: The Mounting Pressure to Censor* (September 1, 2023), https://pen.org/report/book-bans-pressure-to-censor. PEN recorded 3,362 instances of book censorship in 2022–23. In addition to outright removals from classrooms and libraries, PEN's report included instances of restricted student access to a book, and books that were removed or restricted pending review of a challenge. Every ban was separately counted, so that, for example, Toni Morrison's *The Bluest Eye*, which was banned in twelve separate Florida counties, counted as twelve separate bans. Alex DeLuca and Tom Finkel, "Updated List: Every Known Florida School District Book Ban, July 2021 Through June 2023," *Miami New Times*, October 17, 2023. https://www.miaminewtimes.com/news/more-than-350-books-banned-in-florida-schools-since-last-july-16817328.
2. PEN America, *School Book Bans*.
3. Almost half of the book challenges tracked by the American Library Association (ALA) between January and August 2023 involved public—as opposed to school—libraries, up from 16% during the same period in 2022. The ALA reported on 695 challenges of which it was aware; there undoubtedly were many more: as the ALA notes: "Because many book challenges are not reported to the ALA or covered by the press, the data compiled by ALA represents a snapshot of book censorship." American Library Association, "Book Ban Data," 2024, https://www.ala.org/advocacy/bbooks/book-ban-data. More than 1900 books were targeted, most of them by or about LGBTQ or people of color. Elizabeth Harris and Alexandra Alter, "Book Bans Are Rising Sharply in Public Libraries," *New York Times*, September 21, 2023, https://www.nytimes.com/2023/09/21/books/book-ban-rise-libraries.html.
4. *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979). This case rejected a constitutional challenge to a New York State law that required public school teachers to be US citizens.
5. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, § 912. The law also requires teaching "that abstinence from sexual activity is the only certain way to avoid

out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems," "that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects," and "that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society."

6. Perhaps because of the political volatility of the issue, many states leave sex education up to local schools, requiring only HIV/AIDS instruction. In New York, if sex education is taught, it "must stress abstinence." Sex Education Collaborative, "Sex Education Policies and Requirements at a Glance [New York]," https://sexeducationcollaborative.org/states/new-york. California, by contrast, does require sex education, but parents can opt out. Sex Education Collaborative, "Sex Education Policies and Requirements at a Glance [California]," https://sexeducationcollaborative.org/states/california.
7. Officially the "Parental Rights in Education Act," Fla. Stat. § 1001.42(8)(c)3 (2022). For other examples, see PEN America, *School Book Bans*; PEN America, *Banned in the USA: State Laws Supercharge Book Suppression in Schools*, https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools.
8. Initially, "Woke" meant politically aware, conscious of social injustice and racial inequality. In the Florida Stop WOKE law, it stands for the acronym "Wrongs to Our Kids and Employees."
9. Florida's "Anti-WOKE" law (officially the "Florida Educational Equity Act"), Fla. Stat. §1000.05(4)(a) (2022).
10. I first used the term in a 1996 article: Marjorie Heins, "Viewpoint Discrimination," 24 *Hastings Constitutional Law Quarterly* 99 (1996), 159–67.
11. *Board of Education, Island Trees School District v. Pico*, 457 U.S. 853, 857 (1982).
12. *Board of Education, Island Trees School District v. Pico*, 457 U.S. at 864 (quoting *Ambach v. Norwick*, *supra*, 441 U.S. at 76–77); 870–71. Brennan's "narrowly partisan or political" standard was even embraced by Justice William Rehnquist, dissenting in *Pico* but "cheerfully conced[ing]" that "[i]f a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students," and "[t]he same conclusion would surely apply if an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration." Rehnquist's dissent was based on his perception that "[i]n this case… nothing of this sort happened": he thought the books were removed for profanity and vulgarity, not because of their political ideas. *Board of Education, Island Trees School District v. Pico*, 457 U.S. at 907 (Rehnquist, Powell, and Burger dissenting).
13. I don't address here the wholly different regime of intellectual freedom that's essential at the university level, and the corresponding importance of keeping the sticky fingers of state and federal legislators out of academic research, writing, and teaching. I also don't address the separate issue of public library censorship, where traditional values of intellectual freedom are very much in play. Admittedly, Justice Brennan in *Pico* also ascribed free-speech and freedom-to-read principles to school libraries (457 U.S. at 869); see my discussion of this proposition in section III, *infra*.
14. New York State Education Department, "Standards and Instruction," https://www.nysed.gov/curriculum-instruction.
15. New York State Education Department, "Social Studies," https://www.nysed.gov/curriculum-instruction/social-studies; https://www.nysed.gov/standards-instruction/civic-readiness-initiative. Also required is

specific instruction about the Holocaust, the Nuremberg Trials, and the UN Universal Declaration of Human Rights. New York State Grades 9–12 Social Studies Framework, §10.10, https://www.nysed.gov/sites/default/files/programs/standards-instruction/framework-9-12-with-2017-updates.pdf.

16. Florida Board of Education, "Civic Literacy Excellence Initiative," https://www.fldoe.org/academics/standards/subject-areas/social-studies/civics-lei.stml.
17. Fla. Stat. §1003.44. In July 2022, Americans United for Separation of Church and State launched an investigation into the role of Christian nationalist philosophy in developing the Florida curriculum. "American United Launches Investigation of White Christian Nationalism in Florida Education Curriculum," July 1, 2022, https://www.au.org/the-latest/press/christian-nationalism-florida-curriculum.
18. Fla. Stat. §1000.05(4)(a) (2022).
19. *Pernell v. Florida Board of Governors*, 641 F. Supp. 3d 1218, No. 4:22cv304-MW/MAF (N.D. Fla. Nov. 17, 2022).
20. In his concluding peroration, Judge Mark Walker wrote: "both robust intellectual inquiry and democracy require light to thrive. Our professors are critical to a healthy democracy, and the State of Florida's decision to choose which viewpoints are worthy of illumination and which must remain in the shadows has implications for us all… [T]he First Amendment does not permit the State of Florida to muzzle its university professors, impose its own orthodoxy of viewpoints, and cast us all into the dark." 641 F. Supp. at 1290-91.
21. 641 F. Supp. at 1237, citing *Tinker v. Des Moines Ind. School District*, 393 U.S. 503 (1969) and *Shelton v. Tucker*, 364 U.S. 479 (1960); at 1242-43, citing *Kingsville Ind. Sch. Dist. v. Cooper*, 611 F. 2d 1109, 1114 (5th Cir. 1980).
22. A separate challenge to the law's application to K-12 education was dismissed in 2023 "without prejudice," for lack of "standing." *Falls v. DeSantis*, No. 4:22-cv-00166 (N.D. Fla. May 19, 2023).
23. American Association of School Librarians, "Role of the School Library," June 2019, https://www.ala.org/aasl/sites/ala.org.aasl/files/content/advocacy/statements/docs/AASL_Role_of_the_School_Library.pdf.
24. National Council of Teachers of English, "Guidelines for Dealing with Censorship of Instructional Materials," July 31, 2018, https://ncte.org/statement/censorshipofnonprint/; "Guidelines for Selection of Materials in English Language Arts Programs," April 30, 2014, https://ncte.org/statement/material-selection-ela.
25. PEN America, *America's Censored Classrooms 2023*, https://pen.org/report/americas-censored-classrooms-2023. In addition, two federal judges dismissed challenges to Florida's "Don't Say Gay" law on the ground that the plaintiffs hadn't shown any real harm. *M.A. v. Florida State Board of Education*, No. 4:22-cv-134-AW-MJF (N.D. Fla. 2022); *Equality Florida v. DeSantis*, No. 4:22-cv-00134 (N.D. Fla. 2023) (granting motion to dismiss amended complaint); Bob Hazen, "Judge Throws Out Challenge to Florida's Parental Rights Law," https://www.wesh.com/article/florida-don-t-say-gay/44849900; PBS, "Judge Again Tosses Challenge to Florida's 'Don't Say Gay' Bill," *PBS News*, October 21, 2022, https://www.pbs.org/newshour/politics/judge-again-tosses-challenge-to-floridas-dont-say-gay-bill. In March 2024, a settlement was reached in the *Equality Florida* case. https://eqfl.org/historic-settlement-achieved-challenge-floridas-dont-say-gay-or-trans-law. Six of the thirteen court challenges involved colleges and universities, not K-12 education.

26. *GLBT Youth in Iowa Schools Task Force v. Reynolds*, No. 4:23-cv-00474 (S.D. Iowa 2023), preliminary injunction granted, December 29, 2023.
27. *GLBT Youth in Iowa Schools Task Force v. Reynolds*, No. 24-1075 (8th Cir. August 9, 2024).
28. *Book People, Inc. v. Wong*, No. 1:23-cv-00858-ADA (W.D. Tex. 2023), preliminary injunction granted, September 18, 2023, affirmed, No. 23-50668 (5th Cir. 2024).
29. *Fayetteville Public Library v. Crawford County, Arkansas*, No. 5:23-cv-05086 (W.D. Ark. 2023).
30. *PEN American Center v. Escambia County School District*, No. 3:23-cv-10385 (N.D. Fla. 2023).
31. Civil Rights Litigation Clearinghouse, https://clearinghouse.net/case/45144.
32. *Pico*, 457 U.S. at 871 (plaintiffs "implicitly concede[d] that an unconstitutional motivation would not be demonstrated if it were shown that [defendants] had decided to remove the books at issue because [they] were pervasively vulgar").
33. *Johnson v. Stuart*, 702 F.2d 193 (9th Cir. 1983). Similarly, Judge Jon Newman at the court of appeals stage of the *Pico* case drew a distinction between affirmatively inculcating values and suppressing alternative points of view: "It is one thing to teach, to urge the correctness of a point of view. But it is quite another to take any action that condemns an idea, that places it beyond the pale of free discussion and scrutiny… School boards and administrators in this scenario thus have the authority to choose texts and syllabi that generally reflect their political and social values, but they cannot seek to purge the classroom, or *a fortiori* the library, of all opposing ideas or conversations." *Pico v. Board of Education*, 638 F.2d 404, 432-33 (2nd Cir. 1980) (Newman concurring).
34. *Pico*, 457 U.S. at 868 (quoting *Right to Read Defense Comm. v. Chelsea School Committee*, 454 F. Supp. 703, 715 (D. Mass. 1978)).
35. *Banned in the USA: State Laws Supercharge Book Suppression in Schools*, https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools.
36. *Banned in the USA: The Mounting Pressure to Censor*, https://pen.org/report/book-bans-pressure-to-censor.
37. *America's Censored Classrooms*, https://pen.org/report/americas-censored-classrooms-2023.
38. Dana Goldstein, "In School Board Elections, Parental Rights Movement Is Dealt Setbacks," *New York Times*, November 8, 2023, https://www.nytimes.com/2023/11/08/us/parental-rights-school-board-elections.html.
39. Goldstein, "In School Board Elections, Parental Rights Movement Is Dealt Setbacks."
40. According to *The New York Times*, Moms for Liberty reported that 44% of its candidates were elected in November 2023 races. Goldstein, "In School Board Elections, Parental Rights Movement Is Dealt Setbacks."
41. ALA, Library Bill of Rights, https://www.ala.org/advocacy/intfreedom/librarybill.
42. Illinois Public Act 103-0100, effective date January 1, 2024, https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0100.

Chapter 11: Choice, Responsibility, and Neutrality [Henry Reichman]

1. I am grateful to Professor Joan W. Scott for her comments on an earlier draft of this essay.
2. Both the AAUP's 1915 Declaration of Principles on Academic Freedom and Academic Tenure and the 1940 joint Statement of Principles on Academic Freedom and Tenure by the AAUP and the Association

of American Colleges include protections for faculty expression as citizens. For an account of the relationship between academic freedom and freedom of speech, see Henry Reichman, *Understanding Academic Freedom* (Johns Hopkins University Press, 2021), 83–94.

3. Columbia Academic Freedom Council, "Statement of Responsibilities," January 17, 2024, https://www.columbia-academic-freedom.org/statement-of-responsibilities.
4. Kalven Committee, *Report on the University's Role in Political and Social Action*, https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf.
5. Keith E. Whittington, "Political Solidarity Statements Threaten Academic Freedom," *The Chronicle of Higher Education*, January 26, 2024, https://www.chronicle.com/article/political-solidarity-statements-threaten-academic-freedom. For a recent endorsement of the *Kalven Report* see Foundation for Individual Rights and Expression (FIRE), "The Wisdom of the University of Chicago's 'Kalven Report'," https://www.thefire.org/news/wisdom-university-chicagos-kalven-report. For critical perspectives on the report's stance see Robert Post, "The Kalven Report, Institutional Neutrality, and Academic Freedom," in *Revisiting the Kalven Report: The University's Role in Social and Political Action*, ed. Keith Whittington and John Tomasi (Johns Hopkins University Press, forthcoming); Jennifer Ruth, "The Uses and Abuses of the Kalven Report," *The Chronicle of Higher Education*, October 24, 2023, https://www.chronicle.com/article/the-uses-and-abuses-of-the-kalven-report; Michael Nietzel, "The Kalven Report and The Limits of University Neutrality," *Forbes*, December 26, 2023; and John K. Wilson, "What the Champions of Neutrality Get Wrong: The Kalven Report's New Popularity Rests on a Misunderstanding," *The Chronicle of Higher Education*, March 18, 2024, https://www.chronicle.com/article/what-the-champions-of-neutrality-get-wrong.
6. Kalven Committee, *Report on the University's Role in Political and Social Action* (Chicago: University of Chicago, 1967), https://provost.uchicago.edu/reports/report-universitys-role-political-and-social-action.
7. Sigal Ben-Porath, *Cancel Wars: How Universities Can Foster Free Speech, Promote Inclusion, and Renew Democracy* (University of Chicago Press, 2023), 132.
8. https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S195v4.pdf.
9. https://iga.in.gov/pdf-documents/123/2024/senate/bills/SB0202/SB0202.03.ENGS.pdf.
10. "Report of a Special Committee: Governance, Academic Freedom, and Institutional Racism in the University of North Carolina System," *Academe* (Summer 2022: Bulletin Issue): 57–61.
11. "Report of a Special Committee: Political Interference and Academic Freedom in Florida's Public Higher Education System," *Academe* (Summer 2024: Bulletin Issue): 17–26.
12. "Report of a Special Committee: Political Interference and Academic Freedom."
13. *Pernell v. Lamb*, Brief of Defendants Appellants, US Court of Appeals for the Eleventh Circuit, Case No. 22-13992.
14. Len Gutkin, "The Campus Antisemitism Hearing Was Pure Theater. It Was Also a Disaster for Colleges," *The Chronicle of Higher Education*, December 11, 2023, https://www.chronicle.com/newsletter/the-review/2023-12-11. For a response that the presidents might have made, see Marjorie Heins, "What Those College Presidents Should Have Said," *Academe* (blog), January 10, 2024, https://academeblog.org/2024/01/10/what-those-college-presidents-should-have-said. On Shafik's testimony see Hank

Reichman, "On Events at Columbia University," *Academe* (blog), April 19, 2024, https://academeblog.org/2024/04/19/on-events-at-columbia-university.

15. Hank Reichman, "What Is a University President to Do?" *Academe* (blog), December 13, 2023, https://academeblog.org/2023/12/13/what-is-a-university-president-to-do.
16. Eric Kelderman, "The Silent Treatment: Why College Presidents Don't Speak Out," *The Chronicle of Higher Education,* July 26, 2022, https://www.chronicle.com/article/the-silent-treatment.
17. American Association of University Professors, *AAUP Policy Documents and Reports*, 11th ed. (AAUP/Johns Hopkins University Press, 2015).
18. Patricia McGuire, "The Dumbing Down of the Purpose of Higher Ed: The University's Core Values Are Under Attack. We Must Speak Up," *The Chronicle of Higher Education*, September 22, 2022, https://www.chronicle.com/article/the-dumbing-down-of-the-purpose-of-higher-ed.
19. Henry Reichman, *Understanding Academic Freedom* (Johns Hopkins University Press, 2021), 104.
20. The plethora of statements about racism following Floyd's murder attracted little if any controversy, as was also the case, interestingly, with statements about the Ukraine war.
21. Michael S. Roth, "Cease-Fire Now," *Inside Higher Ed*, March 25, 2024, https://www.insidehighered.com/opinion/views/2024/03/25/cease-fire-now-neutrality-complicity-opinion.

Chapter 12: The New McCarthyism: Academic Freedom and Palestine [Dima Khalidi]

1. Silke-Maria Weineck, "When University Marketing Suppresses Academic Freedom: At Michigan, Is the Word 'Palestine' Taboo?" *The Chronicle of Higher Education*, March 4, 2022, https://www.chronicle.com/article/when-university-marketing-suppresses-academic-freedom.
2. Weineck, "When University Marketing Suppresses Academic Freedom."
3. American Association of University Professors, "1915 Declaration of Principles on Academic Freedom and Academic Tenure," https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf.
4. "McCarthyism," *American Heritage Dictionary of the English Language*, accessed February 2, 2024, https://ahdictionary.com/word/search.html?q=McCarthyism.
5. Atlantic Council Experts, "Experts React: What the International Court of Justice Said—and Didn't Say—in the Genocide Case Against Israel," *Atlantic Council*, January 26, 2024, https://www.atlanticcouncil.org/blogs/new-atlanticist/experts-react/experts-react-what-the-international-court-of-justice-said-and-didnt-say-in-the-genocide-case-against-israel.
6. Abdulla Moaswes, "The Epistemicide of the Palestinians: Israel Destroys Pillars of Knowledge," *Institute for Palestine Studies*, February 2, 2024, https://www.palestine-studies.org/en/node/1655161; Shree Paradkar, "How Israel's 'Scholasticide' Denies Palestinians Their Past, Present and Future," *Toronto Star*, January 21, 2024, https://www.thestar.com/news/world/how-israels-scholasticide-denies-palestinians-their-past-present-and-future/article_8f52d77a-b648-11ee-863d-f3411121907b.html.
7. Al Jazeera, "Israeli Defence Minister Orders 'Complete Siege' on Gaza," Al Jazeera, October 9, 2023, https://www.aljazeera.com/program/newsfeed/2023/10/9/israeli-defence-minister-orders-complete-siege-on-gaza.

8. For an explanation of the meaning of Zionism both historically and in its present political manifestation, see https://www.jewishvoiceforpeace.org/resource/zionism.
9. Another dimension playing out is that, like the McCarthy era, when mainstream Jewish institutions undertook purges of purported communists in their own ranks to demonstrate their allegiance and patriotism, there is a growing split within the Jewish community itself, with mainstream organizations enforcing the dominant orthodoxy of Zionism and claiming American patriotism, while purging those who question Zionism and US support for it. See Emily Takmin, "Are We Sliding Toward McCarthyism?" *The New Republic*, January 29, 2024, https://newrepublic.com/article/178406/pro-palestinian-speech-sliding-mccarthyism.
10. Robin D. G. Kelley, "What Did Cedric Robinson Mean by Racial Capitalism?" *Boston Review*, January 12, 2017, https://www.bostonreview.net/articles/robin-d-g-kelley-introduction-race-capitalism-justice.
11. Alberto Toscano, "The War on Education—in Gaza and at Home," *In These Times*, February 15, 2024, https://inthesetimes.com/article/campus-wars-gaza-higher-ed-christopher-rufo.
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Chapter 13: The Other Israel–Gaza Conflict: On Campus [Juan Cole]

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APPENDIX

Davis–Markert–Nickerson Lecture Series on Academic and Intellectual Freedom—List of Speakers

1991
Robert M. O'Neil
Professor of Law
University of Virginia
Founding Director
Thomas Jefferson Center for the Protection of Free Expression
"Inaugural Lecture"

1992
Lee C. Bollinger
Dean and Professor of Law
University of Michigan Law School
"The Open-Minded Soldier and the University"

1993
Catharine R. Stimpson
University Professor and Dean of the Graduate School
Rutgers, The State University of New Jersey
"Dirty Minds, Dirty Bodies, Clean Speech"

1994
Walter P. Metzger
Emeritus Professor of History
Columbia University
"A Walk Along the New Frontiers of Academic Freedom"

1995
Linda Ray Pratt
Professor of English
University of Nebraska-Lincoln
Past President
AAUP
"Academic Freedom and the Merits of Uncertainty"

1996
Avern Cohn
United States District Judge
Eastern District of Michigan
"Academic Freedom: A Trial Judge's View"

1997
Roger Wood Wilkins
Clarence J. Robinson Professor of History and American Culture
George Mason University
"Opportunity and Academic Integrity"

1998
Eugene L. Roberts, Jr.
Professor of Journalism
University of Maryland-College Park
"Free Speech, Free Press: Free Society"

1999
David A. Hollinger
Chancellor's Professor of History
University of California at Berkeley
"Universities and Cosmopolitanism"

2000
Anthony Lewis
Journalist
The New York Times
James Madison Visiting Professor
Columbia University
"Freedom: The Seamless Web"

2001
Vartan Gregorian
President
Carnegie Corporation of New York
"Universities in the 21st Century: Perils, Challenges, and Prospects"

2002
Catharine A. MacKinnon
Elizabeth A. Long Professor of Law
University of Michigan
Law School
"From Powerlessness to Power: The Uses of Academic Freedom"

2003
David D. Cole
Professor of Law
Georgetown University Law Center
"Freedom and Terror: September 11th and the 21st Century Challenge"

2004
Noam Chomsky
Professor of Linguistics and Philosophy
Massachusetts Institute of Technology
"Illegal but Legitimate: A Dubious Doctrine for the Times"

2005
Floyd Abrams
Walter J. Brennan, Jr. Visiting Professor of First Amendment Law
Columbia University
Graduate School of Journalism
Partner, Cahill Gordon & Reindel
"Whose Academic Freedom?"

2006
Bill Keller
Executive Editor
The New York Times
"Editors in Chains: Secrets, Security and the Press"

2007
Nadine Strossen
Professor of Law
New York Law School
President of the American Civil Liberties Union
"Defending Freedom: Even for the Thoughts We Hate!"

2008
Cass R. Sunstein
Felix Frankfurter Professor of Law
Harvard Law School
"My University.com, My Government.com: Is the Internet Really a Blessing for Democracy?"

2009
Philip Hamburger
Maurice & Hilda Friedman Professor of Law
Columbia University School of Law
"Galileo's Ghost: Seventeenth-Century Censorship in Twenty- First-Century America"

2010
Michael A. Olivas
William B. Bates Distinguished Chair in Law
University of Houston Law Center
"God, Grades, and Sex: The Developing Law of the College Classroom"

2011
Ellen W. Schrecker
Professor of History
Yeshiva University
"The Lost Soul of Higher Education"

2012
Robert C. Post
Dean and Sol & Lillian Goldman Professor of Law
Yale Law School
"The Constitutional Meaning of Academic Freedom"

2013

Marjorie Heins
Founding Director
Free Expression Policy Project
"Priests of Our Democracy: The Supreme Court, Academic Freedom and the Anti-Communist Purge"

2014

Douglas Laycock
Robert E. Scott Distinguished Professor of Law and Professor of Religious Studies
University of Virginia School of Law
"Religious Liberty and the Culture Wars"

2015

Natalie Zemon Davis
Henry & Charles Lea Professor of History Emerita
Princeton University
Adjunct Professor of History and Medieval Studies
Senior Fellow in the Centre for Comparative Literature
University of Toronto
"Experiencing Exclusion: Scholarship in the Wake of Inquisition"

Joan Wallach Scott
Professor Emerita
School of Social Science
Institute for Advanced Study
Adjunct Professor of History
Graduate Center
City University of New York
"Civility and Academic Freedom"

2016

Marc Rotenberg
President and CEO
Electronic Privacy Information Center
Professor of Law
Georgetown Law
"The Misunderstood Right to Be Forgotten: The Future of Free Expression and Privacy in the Online World"

2017
Michael Mann
Distinguished Professor of Atmospheric Science
Pennsylvania State University
"The Madhouse Effect: Climate Change Denial in the Age of Trump"

2018
Gene Nichol
Boyd Tinsley Distinguished Professor
University of North Carolina
"Academic Freedom: New Politics, Old School Censorship and Meaningful Constitutional Review"

2019
Henry Reichman
Chair of AAUP Committee on Academic Freedom and Tenure
Professor Emeritus of History
California State University, East Bay
"Do Adjuncts Have Academic Freedom? Why Tenure Matters"

2020 (deferred to early 2021)
Nadje S. Al-Ali
Robert Family Professor of International Studies
Professor of Anthropology and Middle East Studies
Brown University

Susan Benesch
Faculty Associate
Harvard University
Adjunct Professor
American University
Director, Dangerous Speech Project

Michael Bérubé
Edwin Erle Sparks Professor of Literature
Pennsylvania State University

Melanie S. Tanielian, moderator
Associate Professor of History
University of Michigan
Panel Discussion:
"Challenges to Academic Freedom in a Changing Landscape, at Home and Abroad"

2021
Dima Khalidi
Director
Palestine Legal
"A New McCarthyism? Academic Freedom and Palestine"

2022
Jamelle Bouie
Columnist
New York Times
Political Analyst
CBS News
"Revisiting Du Bois and 'The Propaganda of History' "

2023
Jonathan Friedman
Sy Syms Managing Director, U.S. Free Expression Programs
PEN America
"Academic Freedom 2024: Educational Gag Orders, State Censorship and the Fight for Higher Education"

2024
Judith Butler
Distinguished Professor in the Graduate School
University of California, Berkeley
"Academic Freedom in a Time of Destruction: Reconsidering Extra-Mural Speech"

2025
Ruth Ben-Ghiat
Professor of History and Italian Studies
New York University
"Academic and Intellectual Freedom in an Authoritarian Age"