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# Loyalty Oath and Freedom to Teach

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## THE LOYALTY OATH AND FREEDOM TO TEACH

It is quite fashionable in the teaching profession to hold for an absolute freedom to teach what you believe to be the truth. The theory of relativity in truth has paradoxically spawned an absolute liberalism. The old common sense view that one man's freedom must allow for the freedom of his fellow citizens somehow has come to be questioned by this new untouchable fetish in the faith of Stalin's fellow-travelers.

On the face of it, academic freedom (as absolute) runs head-on into the freedom of the University, and both seem to collide with that of the legislature.

A case study of academic freedom and its limitations is to be found in the campus conflict and legal battle that took place in the District Court of Appeal and the Supreme Court of the State of California over the right of the Regents of the State University to require a "loyalty oath" of a sort as a condition precedent to employment for faculty members.

The main question at issue was whether the teacher or research worker has both a legal and moral right (in California) to be free from interference by the university administration, the Regents, in expounding his beliefs. Once chosen and found worthy of confidence, the teacher might well be allowed to pursue truth and teach truth as he saw it. Why should he be singled out for suspicion and made to take an oath of loyalty when men of other professions were not so held up to the public as in need of the threat of dismissal in order to prevent disloyalty?

When the professors at the University of California were first confronted with the demand that they sign an oath disclaiming membership in a Communist party organization or group sympathetic to the Communist cause, many of them suffered intense anguish and humiliation.

The story of the debates that raged between proponents of signing and those who were for refusing to sign is told in detail in the book, *The Year of the Oath* by George R. Stewart.<sup>1</sup>

In the second chapter of this book, the author defines academic freedom simply as "*the freedom, within an educational institution, to teach and to be taught the truth.*"<sup>2</sup>

Consider, at this point, that the University administration had doubtless become convinced of the untruth inherent in the Communist dogma and were determined to manifest their concern for the teaching of the truth. The method chosen was to question the advisability of allowing teaching which insinuated somehow the legitimacy of forcible overthrow of American government under present world conditions.

The Regents of the University, together with influential California University Alumni, believed that they were justified in requiring a statement of "loyalty" from the members of the faculty as a condition precedent to renewal of their contracts. The first demand in 1949 took the form of an order to sign a "loyalty oath." However, on April 21, 1950, the Regents withdrew the requirement of the special oath and modified the flat "Sign-or-get-out" edict, passing a resolution providing that after July 1, 1950, the beginning date of the new academic year, conditions precedent to employment or renewal of employment at the University would be added to the previous conditions attached to the contracts. Besides the execution of the constitutional oath required of public officials of the State of California, the University research worker and teacher was to subscribe to the following terms:<sup>3</sup>

Having taken the constitutional oath of office required of public officials of the State of California, I hereby formally acknowledge my acceptance of the position and salary named, and also state that I am not a member of the Communist Party

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<sup>1</sup> Garden City, N.Y.: Doubleday and Company, 1950. Pp. 156.

<sup>2</sup> STEWART, *THE YEAR OF THE OATH* 14 (1950).

<sup>3</sup> *Id.* at 145.

or any other organization which advocates the overthrow of the Government by force or violence, and that I have no commitments in conflict with my responsibilities with respect to impartial scholarship and free pursuit of truth. I understand that the foregoing statement is a condition of my employment and a consideration of payment of my salary.

However, the compromise embodied in the statement of non-membership in a Communistic organization remained unsatisfactory to many of the faculty. As Mr. Stewart put it, "This Is the Way It Begins"<sup>4</sup> in a totalitarian state. The first oath required from teachers is innocuous, "so gentle that one can scarcely notice anything at which to take exception. The next oath is stronger."<sup>5</sup>

In Nazi Germany, on December 2, 1933, only ten months after Hitler had seized power, the first oath was required of civil servants, including professors. "Thus started, the requirers of oaths closed in, and the second oath was demanded eight months later. . . . [In this one,] they were now required to substitute by declaring their allegiance to 'Adolf Hitler, Fuehrer.' . . ."<sup>6</sup>

The bravest of the non-signing professors, still protesting against this invasion of academic freedom as they interpreted the condition attached to their contracts, took the matter to the California courts and found protection in the state's constitutional law. A District Court of Appeal for the State of California decided in *Tolman v. Underhill*,<sup>7</sup> that the requirement of a non-Communist oath as a condition of employment was invalid in California because it violated a specific provision of the state constitution which prescribed the form of oath to be given to those in "office or public trust," and specifically provided that no other oath, declaration or test should be required as a qualification for positions of such trust.<sup>8</sup>

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<sup>4</sup> *Id.* at 90.

<sup>5</sup> *Ibid.*

<sup>6</sup> STEWART, *op. cit. supra* note 2, at 91.

<sup>7</sup> 229 P.(2d) 447 (Cal. App. 1951).

<sup>8</sup> CAL. CONST. Art. XX, § 3.

Finally, the California Supreme Court, on October 17, 1952, declared the special loyalty oath imposed by the Board of Regents unlawful as prohibited by the state constitution.<sup>9</sup> The court declared that "... the loyalty of state employees is not a matter as to which there may reasonably be different standards and different tests but is, without doubt, a subject requiring uniform treatment throughout the state."<sup>10</sup>

Eighteen professors who had refused to sign the oath and who had lost their teaching positions as a result, were ordered reinstated provided that they signed the loyalty oath required of all employees of the State of California under the Levering Act.

(The significance of the constitutional protection and the position of the professors as persons in "office or public trust" was demonstrated a short time later by a decision of the United States Supreme Court which held another "oath" constitutional when it was to be applied to state employees who did not occupy positions in "office or public trust.")<sup>11</sup>

The Federal Constitution does not grant teachers an unlimited freedom to teach whatsoever they please, nor does it grant them any unqualified right to hold positions in public schools. The cry of "thought control" does not have weight when the common sense of legislators and their constituents sees through the claims of subversive elements which have infiltrated into the public institutions. The United States Supreme Court, for example, recently upheld the constitutionality<sup>12</sup> of the New York Feinberg Law.<sup>13</sup> This statute referred to the ineligibility for employment of any person advocating the overthrow of the government by force, violence or unlawful means. In declaring the Feinberg Law constitutional, the Court made the distinction between the

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<sup>9</sup> Tolman v. Underhill, 249 P.(2d) 280 (Cal. 1952).

<sup>10</sup> *Id.*, 249 P.(2d) at 283.

<sup>11</sup> Garner v. Board of Public Works, 341 U.S. 716 (1951).

<sup>12</sup> Adler v. Board of Education, 342 U.S. 485 (1952).

<sup>13</sup> N.Y. EDUCATION LAW § 3022.

constitutional right to assemble, speak and believe, and the "right" to work for the state. It asserted that one can work for the state only if he complies with the reasonable terms laid down by the proper authorities. The majority held that this statute imposed a reasonable condition of state employment.

## II

The professors were right. The Supreme Court of California so decided. The California Constitution provided that no oath other than that required of all holders of office or public trust in the State of California may be demanded from those who teach in the state's universities.

Yet, with all of that admitted, it seems that the teachers of youth who refuse to declare themselves publicly as non-Communists when they are called upon to state their attitude are missing an opportunity to exercise their leadership.

It is as if the officer-of-the-day had queried the sentinel guarding the ramparts: "Watchman, what of the night? Have you any notice of the enemy's position?"

The teachers in our universities should be acquainted with the position of the fifth column which is the enemy in our midst. They should accept the challenge of parents and Regents by answering a legitimate question in so important a matter as the security of our country. They accept other conditions of employment.

There is no presumption that one is a Communist in the condition that requires denial of membership in the Communist Party. The Communist who swears he is not a member of the party alone has jeopardized his position and made himself liable to prosecution as a perjurer.

The oath of loyalty has been labeled an insulting limitation of academic freedom. But it is difficult to understand how it has become so discredited. An oath to think as some commis-

sar dictates would certainly be such a dishonor to those made to take it. But we can distinguish between the oath of loyalty to our constitutional law and another oath declaring fealty to a person or party. There is a vast difference between the two oaths. The intellectual leader is rightfully expected to understand and explain his insight into the nature of one and the other type of oath. He, above all, is unjustified in lumping all oaths of loyalty as of equal honor or dishonor.

As to the oath that binds me to accept control over my thoughts, I am adamant. I find it odious (as to the rest of the teachers it is odious) to be told what I must think. Only those who have lost confidence in education and democracy above the intellectual level of the three R's will wish to abandon intellectual freedom.

The professors in the university are rightfully jealous of their status as guardians of the heritage of western culture in its best traditions. They deserve to be applauded for the *esprit de corps* which they show whenever irresponsible demagogues threaten to stifle their freedom to discuss and investigate any new theory whose truth has not been demonstrated beyond reasonable doubt. But that Americans have found a practicable working philosophy of life and that it has worked in their constitutional processes is not an untested theory that needs to be debated, while chaos is accepted as a preferable state of existence for ourselves and our children.

Teachers believe in loyalty and they believe in academic freedom to teach the truth. As "loyalty" to Communistic ideology is a counterfeit imitation of loyalty, so academic freedom that does not direct its energy to truth is a fraud.

Consider, then, the meaning of academic freedom as a means to its legitimate end, the common good of the organized community. It is fairly well ordained as a means for the promotion of the general welfare in the Statement of Principles underlying Academic Freedom and Tenure as stated and endorsed by the American Association of University Profes-

sors and the Association of American Colleges in 1940. As indicated in the Association's bulletin: <sup>14</sup>

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Now, one sentence in this statement can be lifted out of the context and distorted so as to appear to stand as a credo for subversives, *viz.* "The common good *depends upon* the free search for truth and its free exposition." [Italics mine.]

The true freedom is a means *for* the attainment of end. Freedom of speech is not an ultimate end in itself as if a man might with impunity say or shout anything in any circumstances.

In one sense, the end depends upon the means instrumentally needed for the actualization of the end. In another sense, the means must be shaped so as to accomplish the good intended, which is the real good in itself. The auto is a means of transportation and money is a medium of exchange for goods of true value. It is easy to see that my reaching a destination depends upon my having the auto. If my dinner is to satisfy my appetite, the quality and quantity of the steak depends upon the number of dollars in my wallet.

Thus, in one way, the achievement of the common good depends upon freedom properly used as a *means* in the honest search for truth, its *end*. As the end, the common good is prior in moral and legal value to the academic freedom that must be ordained to it. It is not the other way round. The

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<sup>14</sup> 37 BULLETIN OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 84 (1951). This statement was also endorsed by the American Library Association, the Association of American Law Schools, the American Political Science Association, the American Association of Colleges for Teachers' Education, the Department of Higher Education, and the National Education Association.



common good does not yield priority to academic freedom, as if academic freedom were of superior value, constituting the end of educational institutions.

This is the core of the problem. We, who are in the teaching profession, should be ready to help society rid itself of the enemies within preparing to strike at the heart of our national life. Where the means of academic freedom is dislocated from its end, idealized, glorified as sacrosanct above all social goods, the overall common good of society is blacked out by its publicists. Then the real ends of education are mocked.

Freedom to teach does not belong to the perjured Communist as a natural right. Where we lack the evidence to discover the enemy in our ranks, we ought to welcome a device that helps to clean house without burning that house and us in it.

It turns out that exponents of academic freedom are often inclined to interpret their intellectual expertness as an un-touchable privilege. This is dangerous. For it is here that the Marxist sympathizer comes by his best chance to do harm. Grounding his "right" to free speech on guarantees contained in the American Bill of Rights, he tunes his trumpet to the voice of direction from those in quest of our destruction. By an abuse of academic freedom liberty is done to death unless the officials chosen by the people come to its rescue. In law is, therefore, to be found the limitations of academic freedom.

An illustration of the inaccurate interpretation of academic freedom is to be noted in the report on "Academic Freedom and Academic Responsibility" given out by the American Civil Liberties Union committee in May, 1952.<sup>15</sup> This freedom, according to their standards, implies "no limitations other than those imposed by generally accepted standards of art, scholarship and science." This sort of "freedom" is lawless, as it leaves out of its frame of reference civic standards

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<sup>15</sup> Commented on in 87 *AMERICA* 413 (1952).

contained in constitutional law as determined by the highest courts of the land.

No civic minded teacher will teach the overthrow of legitimate authorities by violence. He or she will criticise corruption. Our founding fathers were not anarchists or tyrants. Our Constitution may be amended peaceably. In self-government the people have found ways to safeguard liberty of speech. The Communist conspiracy holds no promise of improving these legal guarantees. We who teach should know the difference between liberty and license unlimited.

Pupils in public and private schools are instructed to salute the flag of the United States. That flag does not symbolize tyranny and the suppression of free speech. Quite the contrary. It is fitting that the children of the parents whom we serve show respect for the republic by their salute of the flag. "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation indivisible, with liberty and justice for all." While we instruct others unto loyalty to the national political society as against its enemies, let us not ourselves become derelict.

One does not fail in teamwork or show any failure to support the rights and privileges of his profession as a teacher when he pledges his faith in American constitutional law as the bulwark of citizenship. The children and all students who come to us for assistance in the search for truth must not have their confidence misplaced. Our lives and talents are dedicated to the search for truth.

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