

The Post-9/11 University: It Could Have Been Much Worse

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Conventional wisdom would have caused the academic community to expect the very worst in the perilous days after the September 11 terrorist attacks. Indeed, many of us feared that outspoken professors would suffer even harsher reprisals than had their predecessors during the McCarthy era. After all, a direct attack on U.S. continental soil, resulting in three thousand deaths (or five thousand as it seemed initially) had no counterpart during the Cold War period. For myriad reasons, both real and imagined, even a sanguine observer might well have feared a perilous prospect for the academic community in the aftermath of the 9/11 trauma.

Clearly, however, such a prognosis was mercifully exaggerated. The very first case to surface—that of Richard Berthold, the New Mexico historian who joked to his freshman class on the afternoon of September 11, “[a]nyone who can bomb the Pentagon gets my vote”—set a pattern of surprisingly rational response that has substantially prevailed ever since (Wilson and Smallwood n. pag.). Despite high-level demands for the immediate firing of the intemperate historian (and death threats addressed to him), university officials launched a careful inquiry while suspending him with pay for the balance of the semester. The investigation concluded that his remark had indeed been irresponsible—as Berthold himself admitted—but that no sanction beyond a reprimand was warranted.

So it would soon be with Kenneth W. Hearlson, a California political science instructor who accused his Muslim students of having “[driven] two planes into the World Trade Center,” a Texas journalism professor, Robert Jensen, who opined in an op-ed that the terrorist attacks were partly self-imposed, or Nicholas DeGenova, the Columbia anthropologist who expressed his wish for “a million Mogadishus” (Wilson and Smallwood n. pag.; Jensen C1-4; O’Neil, “Colleges” n. pag.). In each case, the immediate response to news of such an outburst was hostile and ominous; yet in every case, cooler heads and wiser counsel prevailed with the result that the actual threat to academic freedom has proved far less grave than even an optimist would have expected on hearing the news of the terrorist attacks.

While there have been a few experiences to the contrary—the dismissal by a Florida public university of Sami Al-Arian, a Palestinian-

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born computer scientist, the denial of a visa to Tariq Ramadan, a noted Middle East expert already appointed to the Notre Dame faculty, and the suspension of Brigham Young physicist Steven Jones after his expression of “revisionist” views of the September 11 attacks that implied U.S. complicity—such attacks upon academic freedom are remarkable for their relative rarity. Each such incident merits closer scrutiny than is possible here, although their collective impact does not gainsay the generally benign conclusion suggested in this essay.

Surprisingly little has been written about this striking contrast asking why contemporary academics, whose counterparts in the ‘50s had been so badly treated by Senator McCarthy and his minions, have fared so much better in this recent era. A few theories deserve at least cursory attention in the quest for better understanding of the stark difference between the two periods. For one, the post-9/11 transgressions have consisted largely of momentary outbursts, for which the intemperate speaker often later apologized and seldom repeated. In contrast, the sins of errant academics in McCarthy days consisted largely of actual or supposed adherence to suspect political groups—although there were several notable dismissals of tenured professors whose worst sin was a single principled refusal to confirm for a legislative committee the political activities and affiliations of suspect colleagues, friends, or neighbors. Although the contrast is mainly between singular outbursts in recent days and sustained activity or adherence a half-century ago, that distinction is blurred slightly at both ends.

Second, quite simply, there has been no Joseph McCarthy in the post-9/11 era. The occasional leaders of the attack upon the academy—for example, Congressman J.D. Hayworth (R-AZ) who got one hundred of his colleagues to sign a petition demanding Columbia’s firing of the “million Mogadishus” anthropologist DeGenova—appear to have been one-shot critics, from whom no further indictment of academic freedom or expression seems to have followed. Unlike the McCarthy-era attacks on the long-term political affiliations or persistently expressed views of controversial professors, the focus of the post-9/11 hostility has been almost entirely isolated outbursts or single contentious statements in oral or written form. While it would be tempting to infer a change of heart from such lack of persistence, there have undoubtedly been other forces at work (such as crowded legislative agendas). Even in the one case where champion campus-baiter Gibson C. Armstrong (R-PA)—the sponsor of Pennsylvania’s inquiry into alleged “bias” and “imbalance” on public campuses—lost his reelection bid, the initial academic euphoria was soon tempered by more reliable reports that the defeated lawmaker had simply “lost touch with his district” (Jacobson n. pag.). At the very least, though, the lack of persistent or continuous attacks on academia from a few outspoken critics suggests that—again in contrast to the 1950s—such forays have not been widely perceived as promising vote-getters.

Third, the pattern of suspect academic views has been far from uniform, quite unlike the claim that all post-World War II subversive college teachers were either communists or at least “fellow travelers.” The very first two incidents confirm this variety and complexity; while the New Mexico historian Berthold was obviously expressing

an anti-administration view with his “anyone who can bomb the Pentagon” quip, his California counterpart, Hearlson, drew from the far end of the spectrum in blaming his Muslim students for “driving two planes into the World Trade Center.” Although most of the incidents that have created tension between the academic community and the political establishment involve critiques from the left, the absence of clarity and consistency comparable to the McCarthy era marks an important contrast.

One major difference between the '50s and the new millennium has been the readiness of the academic community to speak out in its own defense. Even the strongest apologists for the earlier generation recognize that civil liberties groups and institutional faculty defenders responded too late and too modestly. Indeed, Senator McCarthy's power had been seriously curbed in Congress and in the media before the AAUP, ACLU, and other champions of academic freedom were ready or able to take him on. The post-9/11 response has been dramatically different. The AAUP created a Special Committee on Academic Freedom and National Security in a Time of Crisis within months of the attacks; that group's major report, issued on September 11, 2003, contained vigorous denunciations of myriad government policies that would have been unimaginable two years after the start of McCarthyism.

After issuing its report, this committee has continued to serve as a watchdog, protesting various policies adopted or contemplated for national security reasons. And when such protests have received media coverage (as they invariably do), the government response has been starkly different from that of the Cold War. When confronted directly, a chastened federal prosecutor in Iowa, Stephen Patrick O'Meara, promptly withdrew subpoenas that had been issued to the Drake University Lawyers Guild chapter seeking information about a recent conference (Davey n. pag.; Walsh n. pag.). And after Army Intelligence agents were taken to task for improperly questioning participants at a University of Texas conference on Women in Islam, the Pentagon promptly issued an unprecedented apology.

Several security-based proposals from the Bush administration that drew the academic community's ire were withdrawn or substantially modified—addressing such varied matters as “deemed export” status for visiting foreign scholars, collaborative authorship of journal articles with colleagues from “suspect” countries, and consultation with an attorney upon receipt of a PATRIOT Act-driven demand for “business records.” Again, the point is not that such sensitive areas have fared better than they did before September 11 or how they would have fared without such an attack, but only that they could have been worse with the anticipated recurrence of McCarthyism.

Several other factors merit passing attention. The role of the mass media seems to have been far more complex in recent days. There has been, to be sure, no shortage of harsh contemporary critics such as Rush Limbaugh and Neal Boortz, as ready to fault liberal academics as were predecessors like Westbrook Pegler, Walter Winchell, and Dorothy Kilgallen a half-century ago. Yet Bill O'Reilly of FOX News turns out to have been a curiously benign observer on several occasions, actually championing academic freedom when attacked by others on the right. Indeed, O'Reilly's staunch defense of the

interests of several outspoken professors in the post-9/11 period had no media analogue during the Cold War; quite arresting was O'Reilly's insistence, for example, that Colorado's outspoken professor Ward Churchill (to whom we shall return shortly) "should [not] be fired [since] America's a strong enough country to put up with the likes of [him] and punishing him further would just make him a martyr" (n. pag.). Thus the role of the mass media, quite apart from the rising influence of blogs and other electronic communications sources, represents a quite different force in the current era.

Finally, among the catalytic differences seems to be generally a lesser willingness to expect government to assume the rule that emerged only too readily after McCarthy's February 1950 attack on alleged or suspected communists in the State Department. When the successor subcommittee to the one he headed during those dreadful years opened files of potential (but never summoned) witnesses a half-century later, Senator Carl Levin observed that a recurrence of McCarthyism in the twenty-first century was inconceivable. "There's a greater awareness," he explained, "of McCarthyism and how the tactics can be used by people who are trying to quiet dissenters" (Welna n. pag.). And, he added, "there's greater resistance against those who would try to still voices that they disagree with" (Welna n. pag.). Senator Levin knows whereof he speaks; he was an undergraduate at Ann Arbor during the early to mid-1950s when the University of Michigan dismissed three tenured professors who refused to accuse colleagues of suspected political affiliations and paid the heaviest possible price for their principles of recalcitrance.

Of course, the Levin view is not uniformly accepted even among his liberal Senate colleagues; Wisconsin's Russ Feingold, at the same unveiling session, cautioned that "what I'm hearing from constituents [. . .] suggests a climate of fear toward our government that is unprecedented, at least in my memory" (Welna n. pag.). Then, to enhance his credibility by invoking a curious lineage, he urged his listeners, "don't forget that I am today the Junior Senator from Wisconsin" (Welna n. pag.). The jury is still out on the ultimate choice between these two contrasting views. And in the unimaginable event of another terrorist attack even remotely comparable to September 11, all bets are surely off.

The one specific case that may best illustrate both the positive and the negative features of the current climate is that of Ward Churchill, the former University of Colorado (UCB) professor. When in the winter of 2005 a long-dormant online essay of his surfaced on the eve of a scheduled appearance at Hamilton College, he became overnight the target of intense controversy. Embedded deep in the essay were several highly volatile statements—that some of the tenants of the Twin Towers were "little Eichmanns" who shared some guilt for their horrible fate, and that the hijackers should not be seen as "'cowards' since they had 'manifested the courage of their convictions'" (O'Neil, "Limits" n. pag.).

Moments after word of these statements reached Colorado, the governor and other public officials demanded Churchill's immediate removal. But the two most recently elected regents from the University of Colorado insisted there would be no such vendetta—that since "the law requires a process to fire a professor," summary action was out of

the question (O'Neil, "Limits" n. pag.). Instead, the Boulder campus administration launched an investigation which proceeded apace, but free of the frantic aura that had tainted the opening days of the process. The outcome of that inquiry favored Churchill's claim; applying general free speech standards, the Investigative Committee concluded that the "little Eichmanns" and other statements—deeply hurtful and irresponsible though they were—could not support sanctions against a professor since they would have fallen within the free speech of a nonacademic state employee. The committee noted with a sense of evident relief that they need not probe the far harder question whether such statements might jeopardize Churchill's administrative post as chairman of ethnic studies since he had voluntarily relinquished that role at the start of the inquiry.

Having won the battle, Professor Churchill would eventually lose the war, albeit on very different turf. An early suggestion that he had committed serious research misconduct was deferred during the inquiry about his Internet postings, but was reopened after the initial vindication. A prolonged and careful review of his publications and papers eventually concluded that Churchill had indeed departed substantially from academic norms in regard to research methods and standards. This conclusion led eventually to dismissal charges filed by former President Hank Brown with the UCB Board of Regents and ultimately to Professor Churchill's termination from his once-tenured faculty position.

This second phase of the Churchill case poses several additional questions, partially but not wholly tied to the post-9/11 context. First, there should be no doubt whatever that demonstrated serious research misconduct may constitute the requisite (if undefined) "cause" on which the termination of a tenured teaching appointment may rest. Even the unattributed use of another's scholarly work that falls far short of copyright infringement may justify a tenure dismissal—so high a priority does the academic community place upon integrity and accuracy in scholarship.

Second, however, a rigorous process is indispensable and seems to have been followed in the Churchill case, despite a passing claim that one member of the review panel or committee could be said to have brought a predisposition to the task. The administration bore the burden of proof, the accused professor was afforded full due process, and an ultimate appeal to the regents concluded the cycle.

The third and remaining issue was far more difficult; Churchill's case has not been resolved to the satisfaction not only of Professor Churchill and his partisans, but also of other observers concerned about the condition of academic freedom. Specifically, there have been suggestions that the quality of Churchill's scholarship would never have been targeted but for the inquiry into his posted writings. Since that inquiry concluded the statements about "little Eichmanns" and "courage of their convictions" enjoyed First Amendment protection and could not support any sanction, Churchill himself claimed that the research inquiry was thus "a pretext to penalize constitutionally protected speech" (Gravois 1).¹ Thus runs the argument that the research misconduct charges were effectively a classic case of "fruit of the poisonous tree" and for that reason could not be used fairly as the basis of an alleged nonspeech dismissal charge.

This argument surely has a more than superficial appeal. There are, however, several countervailing considerations. For one, Churchill's research had been a matter of separate concern to the Boulder campus administration for some time, well before "little Eichmanns" appeared on the radar. Indeed, scholars from other institutions had apparently written years earlier to express precisely this concern to Colorado officials, but such accusations apparently languished in the chancellor's office files. The reasons for prior inaction have never been clarified, though we know the academic process has never been a model of efficiency. Second, the research inquiry process was wholly separate from the probe of Churchill's extramural speech—a completely distinct faculty committee (in fact two sequential faculty inquiries), examining an entirely different body of material under quite distinct standards.

Finally, and perhaps most compelling, the nexus between two facets of such a case need not be entirely blank; while "fruit of the poisonous tree" may not be used for collateral purposes in certain criminal proceedings, such constraints need not apply to inquiries into academic fitness. Indeed, had the Boulder administration declined to probe Churchill's scholarship solely because the contentious postings made him a visible campus figure, such abstention would rightly have been viewed as abdication of a responsibility to students, faculty, and the larger academic community. Consequently, despite the superficial appeal of this claim derived from the link between the two charges, it does not follow that vindication on one ground ensures total immunity with regard to other possible academic transgressions.

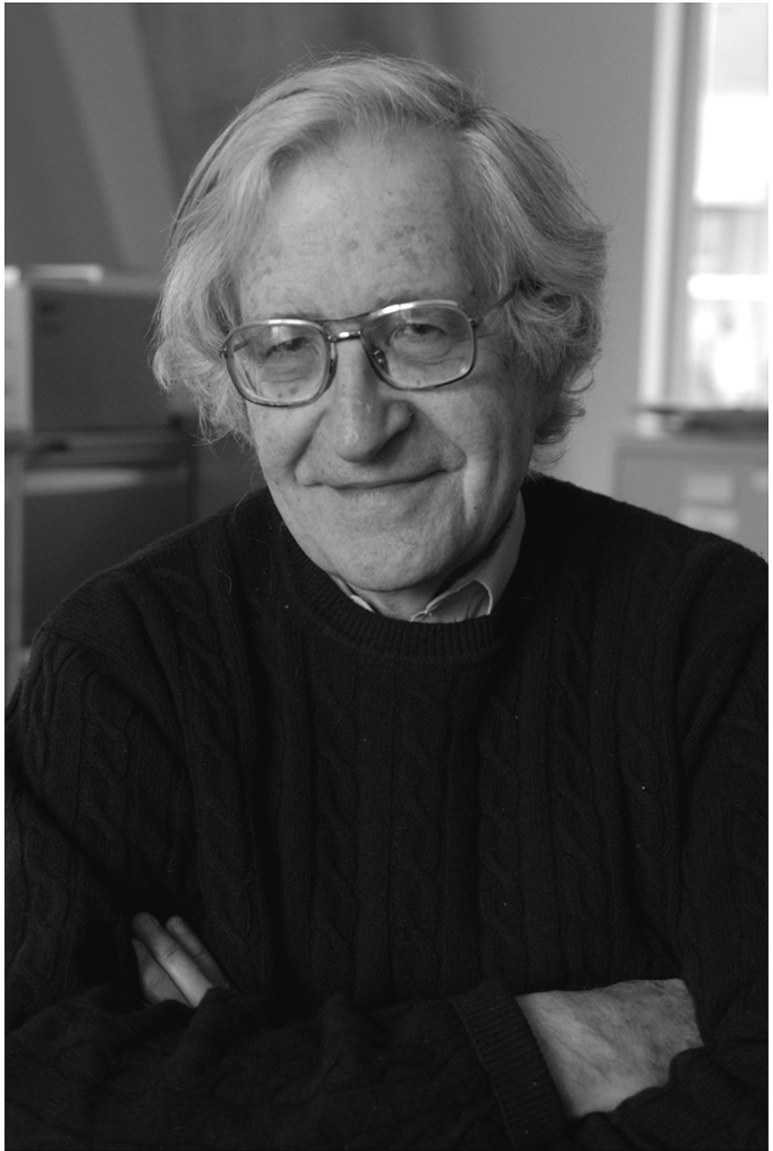
To conclude, we might place the Churchill case in the larger context of post-9/11 threats to academic freedom. By most accounts, calling people who worked in lower Manhattan "little Eichmanns" would hardly have made headlines a year or two earlier. Yet the response of Colorado's governor and other officials was hardly surprising, given the intensity of feeling and the still vivid images of the Twin Towers in flames. Indeed, what seems remarkable in the turbulent days after the essay surfaced was the restraint of the University of Colorado at Boulder Board of Regents, willing to defy the governor and heed the advice of two of their colleagues who were attorneys and well-versed in the guarantees of due process. Equally remarkable was the judgment of the internal campus committee, finding the accused statements to be protected expression for which a custodian could not be fired. The one unresolved issue is whether Churchill's scholarship would have remained entirely immune from administrative scrutiny or collegial concern had the contentious essay never come to light or had national concerns not given it an exceptional degree of prominence. On that intriguing issue one can only speculate.

Note

¹ For further reference, see Professor Eric Cheyfitz's essay in this volume of *Works and Days* entitled "Framing Ward Churchill: The Political Construction of Research Misconduct."

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