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The “New Normal” for Academic Expression*

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The Nexus Between Patriotism and Censorship: The “New Normal” for Academic Expression

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Abstract

According to the ACLU (2005), “. . .at times of national stress -- real or imagined -- First Amendment rights come under enormous pressure.” So, too, academic freedom of expression for faculty, staff, and students has become a casualty in the post-9/11 world. Academics were criticized and reprimanded for not being patriotic enough. Using a conceptual framework that includes historical reanalysis, terror management theory, contradictory constructions of patriotism, and electronic discourse, this essay explores the nexus between patriotism and free expression in higher education. We examine historical trends in freedom of expression, analyze three higher education case studies (Chilling Churchill; 9/11 and Middle Eastern Studies; and Shunning Bob Jensen), and suggest why patriotism and censorship go hand and glove in times of national crisis. We end one a cautionary note, expressing concern about how easily words can be turned against academics, the very people who should have the highest level of protection for their words.

Nearly 20 years ago, Professor Pat Somers joined the faculty at the University of Texas at Austin bringing her trademark wit and her seemingly indefatigable energy to root out injustice. The paper below represents one such branch of her academic curiosity in response to a perceived injustice to a fellow member of the Academy. This paper was first presented as a draft manuscript at the American Educational Research Association and later submitted to a notable journal. Unfortunately, a second paper on academic freedom was already included in the edition, but the editors encouraged Pat and her team to pursue other publications. And then, as with many things, this paper fell to the side as Pat pursued a new branch of academic curiosity and stewarded her many doctoral students through the dissertation process. As you will note in the dedication, Pat was a deeply curious and pedagogically dynamic member of the Academy and this paper stands at the ready for updating and resubmission. We present it today unadulterated as a testimony to Pat’s prescience, her passion and her drive – a historical glimpse into the early days of a very real threat to academic freedom that persists today.

Note: The opinions expressed here are those of the authors and do not represent official or unofficial policy of the institutions with which we are affiliated.

Keywords: freedom of expression, censorship, patriotism, historical analysis, AAUP

Dedication

We knew Pat as a capacious researcher: her work spanned topics from academic capitalism to social inclusion policies to campus carry policy at The University of Texas at Austin. She was also expert at speaking and writing about these topics in a way that reflected the complexity of these topics within the field of higher education. Whether she presented as faculty to the Comparative and International



Education Society, as a Fulbright Scholar in Brazil, or as a fellow of the Humanities Institute at UT, she was able to weave together research from wide-ranging fields in a way that made sense to interdisciplinary audiences. Her choice of conceptual frameworks, which she drew from areas of law, education, sociology, history, and business, also run the gamut. However, it was her passion for the injustices of the world that drove her pedagogical practice and her inspiring, and unwavering, support of graduate student scholarship. The topic that held her gaze from her time as a student affairs administrator to her work as a senior faculty member was that of academic freedom. Pat was a long-time member of the AAUP and a staunch advocate for free expression on campuses. For her, every issue was one of academic freedom—and every threat to this freedom was a threat to her beloved Academy. We cannot help but think that Pat would be riveted by what’s happening at her home institution in the current moment: including the attacks on diversity, equity and inclusion that’s resulted in the dissolution of UT’s Division of Diversity and Community Engagement, a home to so many of her practitioner and faculty collaborators; and speech issues around the current conflict in Gaza. Recently, a letter was released by AAUP members of UT’s faculty; we are certain Pat’s imprint would have been all over that were she still with us. Pat was prescient in her thinking about academic freedom, producing much writing and thinking about the case of former college president Ward Churchill, who claimed that the terrorist acts of September 11, 2001 were the logical result of U.S. foreign policy. This unpublished paper discusses Churchill, along with a speech by a fellow UT professor at that time. Ostensibly, the final section, on Middle Eastern studies, reflects her desire to tie the present to the past. This paper is also a glimpse into Pat’s mind at work - seemingly disparate pieces of information working together to raise awareness and draw attention. Since her death, we all (former students, colleagues, and collaborators) had time to reflect on the sheer volume of the work that Pat produced. As her former graduate students, we and our CVs benefitted from inclusion on her research, papers and presentations, many unpublished or unfinished. This paper demonstrates Pat’s enduring legacy of scholarship and mentorship; we are confident that all of Pat’s students in their places will continue her legacy. - Suchitra Gururaj, Jess Geier, Curtis Brewer

Introduction

The First Amendment isn’t what it used to be.

– Toby Ziegler, *The West Wing*, October 2, 2005

The First Amendment in fact is anti-authority, and sooner or later ticks off nearly everyone who pays attention to such things.

– Levinson, 2003, p. 5

According to the ACLU (2005), “It is no accident that freedom of speech is protected in the First Amendment of the Bill of Rights. But historically, at times of national stress -- real or imagined -- First Amendment rights come under enormous pressure.” Writing about the “Fog of Patriotism” (2002), Ward concurs,

In every crisis, in every war, journalists come under pressure to be “patriotic.” Patriotism in this context, is not just a love of one’s country. Patriotism goes further and asks journalists to water-down the standards of journalism: to root for the home team, to minimize dissent, to censor the enemy, and to maintain “morale.” (p. 1)



So, too, academic freedom of expression for faculty, staff, and students has become a casualty in the post-9/11 world. Professors, staff members, and students were criticized and reprimanded for not being patriotic enough (see Somers & Somers-Willett, 2002). For example, a Manhattan College basketball player who turned her back on the flag during the national anthem was booed, threatened, and singled out for harassment by military cadets bussed in for the event (Chronicle, 2003). Individuals – both adults and students – who wore T-shirts with dissident messages have been ejected from shopping malls, expelled from schools, and denied a seat on a Southwest Airlines flight (see Somers et al., 2005). Not since the Vietnam War have academics received so much attention, criticism, and venom for their words.

This essay explores the nexus between patriotism and free expression in higher education. We examine historical trends in freedom of expression, analyze three higher education case studies, and suggest why patriotism and censorship go hand and glove in times of national crisis.

Historical Background

Rather than being an exception, war-era violations of civil liberties in the United States are the accepted norm for our government.

– Linfield, 1990, p. 2

Blanchard (2002) describes two almost parallel cycles of repression and reaction in freedom of expression in the United States during times of crisis. Her work is based on that of Frederick Seibert’s study of censorship in Britain. He said, “The area of freedom [of speech] contracts and the enforcement of restraints increases as the stresses on the stability of the government and the structure of society increase” (Seibert, 1965, p. 10, as cited in Blanchard).

According to Blanchard, the American cycles have in common two notions. First is the belief that society will be destroyed if “freedom of speech is not implemented” and the second is that “criticism of government action must be eliminated” (2002, p. 348). Blanchard points out that even as the repression of speech begins, the seeds of the counter-cycle are sown.

The very first cycle was anchored in the early experiences of the Colonists. The 1736 trial of Peter Zenger charged him with "printing and publishing several seditious libels dispersed throughout his journals or newspapers. . .tending to raise factions and tumults among the people of this Province, inflaming their minds with contempt of His Majesty's government, and greatly disturbing the peace thereof" (Bench Warrant for arrest of John Peter Zenger, November 2, 1734). While *King v. John Peter Zenger* established the right to criticize the monarch, the resulting Stamp Act of 1765 heavily taxed and limited the publication and distribution of such criticism.

The Alien and Sedition Acts of 1798 were passed to protect the country from war with France and to shield President John Adams from challenge by the pro-French Thomas Jefferson (Blanchard, p. 351). Federalist Harrison Gray Otis argued, “Every independent government has a right to preserve and defend itself against injuries and outrages which endanger its existence. It is clearly understood that to punish licentiousness and sedition is not a restraint or abridgement of freedom of speech or of the press” (*Annals of Congress*, 1798, pp. 2148-9). Blanchard notes that “all the Sedition Act did



was draw a line around freedom of expression. Federalist speech was inside the circle; Republican speech was outside” (p. 352).

The Civil War framed the next cycle. During this national crisis, President Lincoln suspended habeas corpus, closed newspapers, and jailed legislators. Three of the five Supreme Court cases challenging Lincoln’s actions were struck down after his assassination (*Ex Parte Milligan*, 1866). Blanchard argues that these cases were important because they “created. . .the beginnings of a judicial safety net to stop such repression” (p. 360).

“World War I is considered one of the most repressive periods in American history. The three branches of the federal government acted to ensure that executive policy, legislation, and judicial decisions would combine to silence disagreement with the wartime policies of Woodrow Wilson” (Blanchard, p. 360). Congressman Thomas of Colorado said, “It is only in time of war that these great Constitutional limitations upon despotism are put to the test. . .it is at such times that we must see to it that they are preserved, lest when peace does return we shall realize that some of the most important safeguards of liberty have been swept away in the torrent of conflict” (*Congressional Record*, 1917, pp. 789-90).

In *Schenk v. United States* (1919) a unanimous court ruled, “When a nation is at war many things that might be said in a time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any Constitutional right” (p. 50).

The Red Scares of 1919-1920 marked another cycle of repression. In *Abrahms [sic] v. United States*, Justices Holmes and Brandeis dissented in favor of free expression, “the best test of truth is the power of the thought to get itself accepted in the competition of the market” (*Abrahms [sic]*, p. 630). The Miltonian notion of a “marketplace of ideas” would later be used to argue for free expression in the Academy (*Healy v. James*, 1972; *Sweezy v. New Hampshire*, 1957).

With another war on the horizon, Congress established the House Committee on UnAmerican Activities (HUAC) and passed both the Foreign Agents Registration Act of 1938 and the Smith Act of 1940, to permit the prosecution of individuals who advocated the overthrow of the U.S. government. Attorney General Francis Biddle told a *New York Times* reporter, “In so far as I can, by the use of my authority and the influence of my office, I intend to see that civil liberties in this country are protected; that we do not again fall into the disgraceful hysteria of witch hunts, strike breaking, and minority persecutions which were such a dark chapter in our record of the last World War” (Phillips, 1941, p. 8).

The next repressive cycle began in 1940 when the Supreme Court ordered that a local school board in West Virginia could force children to salute the flag despite religious objections (*Minersville School District v. Gobitis*, 1940). Justice Felix Frankfurter wrote, “National unity is the basis of national security. The ultimate foundation of a free society is the binding tie of cohesive sentiment” (p. 604). Dissent, from religious groups like the Jehovah’s Witnesses or others, would not be tolerated. In another flag salute case (*West Virginia State Board of Education v. Barnette*, 1944), the Supreme Court overturned *Gobitis*. The Court said,



Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not occur to us now. (pp. 641-2)

In just two years, the Court went from enforced patriotism in the form of a flag salute to stating emphatically that no government official could mandate demonstrations of patriotism.

In two cases (*Baumgartner*, 1944; *Hartzel*, 1944) from World War II, the Court upheld the rights of dissenters, a complete turnabout from the cases of World War I. Justice Frankfurter summed up this new attitude, “Our trust in the good sense of the people on deliberate reflection goes deep. For such is the contradictoriness of the human mind that the expression of views which may collide with cherished American ideals does not necessarily prove want of devotion to the nation” (*Baumgartner*, p. 44).

The period after World War II was marked by the Cold War, loyalty oaths, communist hunts, and fear brought on by the Soviet invasion of Hungary. Yet it was President Truman who provided the first glimmer of a reactive cycle when he remarked, “In a free country, we punish men for the crimes they commit, but never for the opinions that they have,” adding, that freedom of expression protects criticism, and “criticism leads to progress” (1950, p. 649).

Even conservative Senator Margaret Chase Smith tried to muffle the McCarthy witch hunt. She said,

Those of us who shout the loudest about Americanism in making character assassinations are all too frequently those who, by our own words and acts, ignore some of the basic principles of Americanism – the right to criticize. The right to hold unpopular beliefs. The right to protest. The right of independent thought. (*Congressional Record*, 1950, p. 7894)

In 1957, the Court handed down four decisions (*Sweezy*; *Service*; *Watkins*; *Yates*) on “Red Monday” which criticized the Congressional investigations. Amid criticism, the Supreme Court restored the civil right of the Communists (see Sabin, 1999, for more information).

The Supreme Court then turned to cases involving freedom of expression in the civil rights movement, the beginning of the next cycle. In the wake of *Brown I* (1954) and *Brown II* (1955), opponents of desegregation attempted to attack the NAACP and its members rather than continuing to defend the legal doctrine of separate but equal. However, the Supreme Court ruled First Amendment protection for membership lists (*NAACP v. Alabama*, 1958), for the list of organizations to which teachers belonged (*Shelton*, 1960), and for the right of NAACP members to band together for legal redress (*NAACP v. Button*, 1963).

While the Court was upholding the rights of individuals to protest (see, for example *Tinker*, 1969), Presidents Kennedy, Johnson, and Nixon attempted to quash news stories about American involvement in Vietnam. And, with the country divided over both civil rights and the war, Congress enacted the Safe Streets Act to prevent individuals from crossing state lines to incite rioting.



These years were marked by individuals – high school and college students, civil rights workers, feminists, pacifists and other activists – who took it upon themselves to protest the status quo. Two lower court cases provided ringing endorsement of an individual’s right to free expression. In the Boston 5 case, which included defendants Rev. William Sloane Coffin and Dr. Benjamin Spock, the Court found “Inseparable from the question of the sufficiency of the evidence to convict are the rights of the defendants, and others, under the First Amendment” (*Spock*, 1969, p. 169). From the appeal of the Chicago 7 case came this statement, “Rioting, in history and by nature, almost invariably occurs as an expansion of political, social, or economic reactions, if not ideas. The rioting assembly is usually protesting the practices of a government” (*Delberg*, 1972, p. 359). The period of the peace and civil rights movements established important precedents for the individual right of free expression.

The next period of conflict was the first Gulf War (1991), which may have set the stage for the challenges to freedom of expression that we experienced post-9/11. Media censorship was easy to accomplish because American armed forces used Saudi soil to mount their attacks; the Saudi government had absolute control over which journalists were provided visas to enter the country. Further, journalists were assigned “minders” while in country. Only a few reporters like Peter Arnett and Bernard Shaw broke rank and covered the invasion from Baghdad. As John MacArthur concluded, “Count Desert Storm as a devastating and immoral victory for military censorship and a crushing defeat for the press and the First Amendment” (2004, p. 8).

Following the attacks of September 11, 2001, dissent was almost immediately isolated, criticized, and frequently, silenced. News networks received complaints of journalists who were not being patriotic enough. President Bush said, “You are either with us or with the terrorists” (quoted in Stone, 2004, p. 551). Attorney General John Ashcroft said, “To those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our unity and diminish our resolve. They give ammunition to America’s enemies” (Stone, p. 552).

Predictably, legislation to restrict civil liberties came quickly in the form of the USA Patriot Act (Stone, p. 553) a mere six weeks after the attacks. The Act authorized indefinite detention with limited civil liberties for non-citizens and citizens labeled as “enemy combatants.” The Freedom of Information Act along with the Federal Educational Rights and Privacy Act were modified to investigate terrorism (Stone, 2004). The standard of review for wiretapping cases was significantly reduced for national security cases and those individuals served with subpoenas were also given a gag order. Banking, brokerage, Internet, medical, and library records were declared fair game in the war on terror. Finally, clandestine physical searches were enabled.

Given these unprecedented wartime powers, the counter-action, the liberalizing part of the cycle, had more limited success. Librarians across the country organized to foil both searches of library records and gag orders. For example, librarians would, when appropriate, post signs such as “No search warrants were served at this library today.” They also took special care that patron records were kept on the computer system for as little time as possible.

The old maxim, “Intra arma selet legis,” or “In terms of war, the laws are silent” has been invoked in the eight wartime periods described here. With each cycle of repression, came advances in protecting free speech, particularly after World War II. However, today’s extended “war on terror”



will likely make it more difficult to regain civil rights. The mass psychology of wartime capitalizes upon citizens’ fear to allow for restricted freedoms. We talk more later about the motives for censorship and the prospects for the future.

Conceptual Framework

Other countries kill their dissidents. We frustrate ours into silence. . . turning advocates into cranks.
– Levinson, 2003, p. 2

We blend two theories to examine the nexus between patriotism and censorship: terror management theory (Pyszczynski, Solomon, & Greenberg, 2003), the commodification of higher education and the contradictory constructions of patriotism (Kahne & Middaugh, 2005; Primoratz, 2004; Westheimer, 2004). Finally, we use electronic discourse to examine the use of e-mailstrom (Selingo, 2005) as a tactic to bring economic and political pressure to bear on those individuals who speak out and are affiliated with colleges or universities.

In the book *In the Wake of 9/11: The Psychology of Terror*, the authors use their “Terror Management Theory” (TMT) to explore the national response to 9/11 (Pyszczynski, Solomon, & Greenberg, 2003). Faced with mortality, humans tend to act in predictable ways, called distal and proximal reactions. Direct (proximal) responses include increased drinking, gaming, shopping, movie-going, and isolation. The distal effects are increased patriotism, censorship, and bigotry. So too it was after 9/11, Americans purchased flags and displayed them on their homes, their cars, and their clothing. Criticism was immediate, as Bill Maher, host of *Politically Incorrect*, can confirm. He made controversial statements on his September 17, 2001 show that were considered unpatriotic by some viewers. He was not just censored, but excoriated and fired.

Patriotism is contested terrain in America (Kahne & Middaugh, 2005; Primoratz, 2004; Westheimer, 2004). Four visions, with different values and attitudes, are recognized. First, committed patriotism is love of country. Second, nationalistic patriotism supports one country’s interests regardless of the impact on others. The individuals “. . . fail to appreciate the role of critique in democracies as engines of improvement – instead they say, ‘America, love it or leave it’” (Kahne & Middaugh, p. 2). Moreover, nationalists tend to use conventional, “obedience to authority” moral reasoning (Kohlberg, 1981). Third, symbolic patriotism is a grand but less detailed vision which evokes the symbols of a nation: the flag, pledge, anthem, or uniform. Finally, democratic patriotism is equated with “high ideals” and invokes a more global sense of moral reasoning. According to Kahne and Middaugh, democratic visions of patriotism, “[open] up the potential to work to improve and support the society, while avoiding the problems with nationalism” (p. 2).

In the post-9/11 era, there are serious conflicts between the committed and democratic patriots, who are equally as activist and as strongly committed to their own point of view. However, democratic patriotism encourages critical thinking and dissent. As Constitutional lawyer Erwin Cherminsky notes, “History shows us that in terms of crisis, the suppression of dissension occurs” (quoted in Hudson, 2002).

Finally, we explore the use of technology in chilling academic expression. Shortly before the advent and widespread distribution of the personal computer in 1984, researchers suggested that new



technologies such as computers could have an influence on the distribution of political power (Haight & Rubinyi, 1983). This could be accomplished by increasing the dissemination potential of information, not only through enhanced word processing and printing, but most notably through electronic distribution lists (Rice & Case, 1983). In this way, activists could connect to like-minded people across the globe. Rheingold (1991) would later term the Internet “The Great Equalizer,” referring to the potential that ordinary citizens could affect power structures through direct communication. In an era when all citizens are potential customers, committed and democratic patriotic activists, fueled by the fear of terrorism, can cause massive disruptions to academic institutions through e-maelstrom. “Ten years ago. . .an incident might have received a mention in the student newspaper and that would be that. . .news about even minor campus dust-ups is disseminated much more quickly” (Selingo, 2005, p. A29).

While fear of terrorism, conflicting visions of patriotism, and commodification of education create “the perfect storm,” e-maelstrom has the potential of blowing that storm to every college campus in the country. As Zemsky notes, “Campuses are no longer places for civilized public discourse. They’ve become places for political campaigns that are getting sourer and sourer. People are no longer willing to fight their battles without trying to muster allies outside of campus” (Selingo, 2005, p. A29).

For the purposes of this article, we use the terms freedom of expression, free speech, and academic speech. We recognize that “freedom of expression” provides a broader view of the topic and includes the speech of students, faculty, and staff at both public and private institutions and in classroom and extramural settings. However, we recognize that academic freedom has a much different history than freedom of expression and is to be lumped together with academic speech, free speech, and freedom of expression. Most of what we cite in the three cases falls outside of the classroom and faculty research venues and is classified as extramural speech.

The Cases

It has long been a cornerstone of First Amendment law that the state must remain neutral on the content of speech, even when this ends up sheltering what is abhorrent to the minority or majority – the latter being the real test since what is acceptable to most people doesn’t need as much protecting.

– Levinson, 2003, p. 4

In this section, we discuss three cases related to academic freedom of expression following September 11. The first, Ward Churchill, involves a faculty member who made statements about 9/11, and was subsequently charged with various infractions of university policy. Robert Jensen, professor of journalism at the University of Texas and an anti-war activist, wrote an op-ed piece for the *Houston Chronicle* directly after 9/11 that ignited a storm of controversy and raised issues about extramural speech. While supported in his right to speak, Jensen was nonetheless attacked and shunned. The third case outlines the attack on federally funded Middle Eastern Studies programs.

Chilling Churchill

One of the prerogatives of American citizenship is the right to criticize public men and measures – and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation.



– *Baumgartner v. United States*, 1994, pp. 673-4

Ward Churchill, a professor of ethnic studies at the University of Colorado at Boulder, drafted the now infamous essay *Some People Push Back: On the Justice of Roosting Chickens* (Churchill, 2001, 2003), just a few hours after the 9/11 attacks. The essay and his comparison of those killed in the World Trade Center to “Little Eichmanns,” sat relatively untouched until discovered by a government professor a few months before Churchill’s 2005 scheduled campus appearance at Hamilton College. According to *The Chronicle of Higher Education* (Smallwood, 2005, February 10), that professor was joined by three others who sent the essay along with two opinion pieces to the campus newspaper, directing the campus community to some of Churchill’s other more controversial writings. That story was later picked up by a newspaper in Syracuse, New York, and a link to the article was subsequently posted on a conservative weblog on January 26, 2005 (www.littlegreenfootballs.com). Less than two hours later, online activists had called the governor of Colorado, and contacted media outlets in Denver (Smallwood, 2005, February 10). A few hours after that, the original weblog had already received over 500 comments (www.littlegreenfootballs.com, 2005). Bill O’Reilly did a feature piece on Churchill on January 28.

As for campus fallout at Hamilton, the institution received over 8,000 email messages regarding Churchill in a matter of days. Subsequently, claiming threats of violence, Hamilton College cancelled the speaking engagement.

At the University of Colorado -- Boulder, Churchill was forced to resign his (untenured) post as department chairman, but not his tenured faculty position. The president of the University resigned later, citing her defense of Churchill as being the final blow to a term that had been filled with other controversies (Fain, 2005).

The System Chancellor asked two deans to review the charges against Churchill in February, 2005. The questions raised were, “First, did certain statements by Professor Churchill exceed the boundaries of protected speech? Second, is there evidence that Professor Churchill engaged in other conduct that warrants further action by the University – such as research misconduct, teaching misconduct, or fraudulent misrepresentation in performing his duties?” (Statement of Chancellor Phil DiStefano, March 24, 2005). DiStefano reported that, “in our review, we have found that the content and rhetoric of Professor Churchill’s essay on 9/11 are protected by the First Amendment. While there are limits to the protections afforded by the Constitution, our review has determined that those limits have not been exceeded in Professor Churchill’s case” (DiStefano, 2005). However, the investigation did determine that the “allegations regarding research misconduct warrant referral to the Standing Committee” and “in regard to the allegation of misrepresentation of ethnicity to gain credibility and an audience for scholarship, we believe such misrepresentation may constitute research misconduct and failure to meet standards of professional integrity” (DiStefano, 2005). While the findings for Churchill’s right to free speech were entirely consistent with the First Amendment and university policy on academic freedom, it’s clear that Churchill’s legion of critics had combed his record electronically to uncover any possible indication of wrongdoing.

DiStefano referred the charges to the Standing Committee on Research Misconduct at the Boulder campus. A subcommittee of the Standing Committee reviewed the allegations against Churchill and recommended that seven of the nine charges warranted full investigation. There were “alleged



instances of plagiarism, misuse of others' work, falsification and fabrication of authority" (Hale, 2005). The other two allegations, on copyright infringement and "misrepresentation [*sic*] of ethnicity" were not regarded as appropriate for the research misconduct process. Further, "Three other allegations brought in recent weeks by the family of Professor Churchill's deceased wife, Leah Kelly, were not considered by the committee because they did not fall within the definition of research misconduct" (Hale, 2005).

In May of 2006, the investigation committee of the Standing Committee found that Churchill, "had engaged in a pattern of misconduct, shown a recurrent refusal to take responsibility for the errors, and repeatedly demonstrated a willingness to blame others for his troubles" (Smallwood, 2006, p. A1). The committee split on the punishment with two voting for a two-year suspension without pay, two voting for a five-year suspension without pay, and one member recommending outright dismissal. The administration at the University of Colorado is currently reviewing the options.

The most chilling part of the Churchill case is the tenacity with which his opponents have brought charges against him. When it was clear that Churchill's First Amendment rights would prevail, critics dug up sordid details of his past and converted them into a charge of academic fraud. Who among us can pass a litmus test on every detail of our lives? The message is clear. As the creator of the website Little Green Footballs has written, "It's much harder to get away with dirty little secrets like Ward Churchill - who apparently gamed the CU system for years - in the era of the blogosphere, when facts (not rumors) can be instantly reported. If I had simply published rumors, the story would never have caught on like it did" (2005, <http://littlegreenfootballs.com/weblog/?entry=16979&only>).

9/11, Academic Speech, and Middle Eastern Studies

There are many ways to shut people up: bans on words, images, or discussion... conditions placed on employment funding or publication.

– Levinson, p. 3

Given the mass hysteria that gripped Americans post-9/11 that equated fundamental Muslims with evil and the battle against them a "crusade" as characterized by the president of the United States (George W. Bush, Second Inaugural Address, 20 January 2005), it should come as no surprise that scholars of Middle Eastern Studies have felt themselves particularly under attack and vulnerable to rollbacks in traditional forms of academic speech. Currently, the federal Department of Education funds 17 Middle Eastern Studies National Resource Centers (NRCs). Says Beshara Doumani of this attack,

It is no accident that the issue of academic freedom was thrust into the limelight after 11 September 2001. The two authoritative statements on academic freedom in the United States were both articulated by the AAUP one year after the outbreak of major wars. The first was the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*. The second was the 1940 *Statement of Principles on Academic Freedom and Tenure*. In the aftermath of 11 September the Bush administration declared a "war against terror." Unlike previous wars, however, this one is not against specific countries or regimes, but against an ill defined enemy to be pursued everywhere with no end in sight. It is also the first global war in the information



age, and a deeply unpopular one everywhere except in the United States and Israel. (2005, p. 23)

The first salvo against Middle Eastern Studies scholars came with the publication of a critical book by Kramer (2001) where he held responsible the scholars working for National Resources Centers (NRCs) in the United States for their failure to *predict* the events of 9/11, rather than relying on traditional intelligence agencies for this information.

Dr. Daniel Pipes established the Campus Watch organization and website in September 2002 whose stated purpose is "to expose the analytical failures and political bias of the field of Middle Eastern Studies." The site has listed over 100 professors Pipes considered biased (<http://www.campus-watch.org/>). Pipes says that he posts the actual work of professors to allow the reader to make informed judgments, but many observers feel his tactics border on a new McCarthyism, with anti-terrorism replacing fears of communism. Campus Watch has been involved in a complaint at Columbia University that began with individual students accusing a professor of "anti-Semitism." The complaint was finally sent to the office of President Lee Bollinger for adjudication. Amal Hageb of the Independent Press Association (IPA) reported:

The current media circus surrounding Columbia University was triggered by a highly controversial video featuring a few students from Columbia University with grievances against the Middle East and Asian Languages and Cultures department (MEALAC). "Columbia Unbecoming" was financed by The David Project, a post-9/11 group based in Boston created to minimize the increasing criticism against Israel's policies. (2004, p. 124)

Five professors have been identified: Joseph Massad, professor of Modern Arab Politics and Intellectual History at Columbia University; George Saliba, professor of Arab and Islamic Science; Hamid Dabashi, chairman of the Middle East and Asian Languages and Cultures; Rashid Khalidi, Edward Said Chair of Arab Studies; and Gil Anidjar, professor of Comparative Literature. All have been publicly critical of both U.S. and Israeli policies in the Middle East. Massad, a junior, untenured professor, is perhaps most vulnerable in this group, and in a personal statement he called the actions to censure this group a "witch-hunt [that] aims to stifle pluralism, academic freedom, and the freedom of expression on university campuses in order to ensure that only one opinion is permitted..." (2004, p. 116).

The situation at Columbia was intensified by New York City Councilman Michael Nelson who has threatened to call for an independent investigation if Columbia's own internal investigation fails to turn up any wrongdoing (New York City Civil Liberties Union website, 2004) as well as New York Congressman Anthony Weiner calling for Massad's resignation (IndyMedia.com, 2005). This sort of action evinces a new willingness on the part of public servants to call academicians to account.

On June 19, 2003, Stanley Kurtz, a research fellow at the Hoover Institution of Stanford University and a contributing editor to the Internet magazine, *National Review Online*, testified to the House Subcommittee on Select Education about Title VI funding and area-studies programs. He states in his testimony that "Title VI-funded programs in Middle Eastern studies (and other area studies) tend to purvey extreme and one-sided criticisms of American foreign policy" and feels that the paradigm of "post-colonial" rhetoric is largely at fault. His testimony calls for the establishment of a



“supervisory board ... able to hold annual hearings on Title VI activities, including the outreach activities of Title VI National Resource Centers (such as the teacher-training workshop[s])” and “would remove Title VI funding from any center that engages in or abets a boycott of national-security-related scholarships” (2003, June 23, *The National Review Online*, 2003).

The U.S. House of Representatives unanimously passed House Resolution 3077 (HR 3077) that pulled the funding for NRCs out of the Higher Education Act, moving it into a stand-alone bill. HR 3077 established an “Advisory Board” to monitor area studies centers in order to ensure that they advance the “national interest.” Doumani writes:

While the law would apply to all centers funded under the federal Title VI program, the target is clearly the nation’s seventeen centers for Middle East Studies. The Association of American University Professors (AAUP), the American Civil Liberties Union (ACLU), the Middle East Studies Association (MESA), and most professional organizations have raised alarms about this unprecedented government invasion of the classroom. Among their concerns are the Board’s sweeping investigative powers, lack of accountability, and makeup, as its members would be comprised, in part, from two agencies with national security responsibilities. (2005, p. 3)

The Shunning of Robert Jensen

We do not lose our right to condemn either measure or men because the country is at war.
– Phillips, 1941, p. 9

On September 14, 2001, just three days after the attack on the World Trade Center and the Pentagon, Dr. Robert Jensen, then-Associate Professor (now a full professor) of Journalism at The University of Texas at Austin (UT), wrote an Op/Ed piece for the *Houston Chronicle* (Jensen, 2001a). He opened the editorial by describing his deep sadness as a result of the September 11th attacks, and he indicates that defending those acts of terrorism would “be to abandon one’s humanity.” He added:

This act of terrorism was no more despicable than the massive acts of terrorism – the deliberate killing of civilians for political purposes – that the U.S. government has committed during my lifetime... So, my anger on this day is directed not only at the individuals who engineered the Sept. 11 tragedy, but at those who have held power in the United States and have engineered attacks on civilians every bit as tragic. (p. A-33)

He explains that as he watched the media coverage of the September 11 attacks, the question on everyone’s lips was, “When will the United States...retaliate?” Instead, he wishes the question were more basic: “Will the United States retaliate?” He observes that any type of massive retaliation “...will kill innocents. Innocent people, just like the ones in the towers in New York and the ones on the airplanes that were hijacked.” He ends with a plea to let “the insanity stop here.” Indeed, as a person who did not fully identify with mainstream American culture, Bob Jensen reacted exactly as Tom Pyszczynski’s Theory of Terror Management (TMT) would predict: those who fully identified with mainstream culture demanded immediate vengeance; those estranged from the mainstream were more controlled and restrained in their responses.



The response to Jensen's commentary was immediate. By September 21, Jensen had received over 1,300 e-mails on the topic. Four months later, Jensen wrote he had received "over 4,000 messages and phone calls ...many from folks who thought I should be fired and/or run out of the country for my critique of U.S. policy" (Jenson, 2001b). Larry R. Faulkner, then-President of The University of Texas at Austin, indicated he was under considerable pressure to respond ("Undiluted attack," 2001) because he had received "a large volume of outside inquiry by e-mail, phone, and letter after Jensen's column was published, asking if Jensen's view was also the University's official position..." Faulkner stated, "I, as president of large public university, simply have to respond to a large public inquiry of this type" ("Faulkner disassociates," 2001, p. 2).

So, on September 19, 2001, five days after Jensen's opinion piece appeared and eight days after the attacks, with the nation still in shock and mourning, Faulkner's response appeared in the Viewpoints section of the *Houston Chronicle*. The first paragraph of Faulkner's letter pointed out that Jensen was speaking as a private individual, not as a university representative, and therefore acknowledged Jensen's First Amendment right to speak. Unfortunately, the remainder of the letter was an *ad hominem* attack on Jensen, implicitly questioning his patriotism and professionalism:

Using the same liberty [the First Amendment], I convey my personal judgment that Jensen is not only misguided, but has become a fountain of undiluted foolishness on issues of public policy.... practically no one here takes [Jensen's] outbursts seriously. Students must learn that there is a good deal of foolish opinion in the popular media, and they must become skilled at recognizing and discounting it...I, too, was disgusted by Jensen's article, but I also must defend his freedom to state his opinion. The First Amendment is the bedrock of American liberty. (Faulkner, 2001, p. 39)

Faulkner was later quoted as saying that Jensen was "rubbing salt on national wounds" and that he did what he needed to do in the circumstances ("Faulkner disassociates," 2001, p. 1).

Richard Graham, F. H. Nalle Professor of History Emeritus, wrote in the editorial section of the student newspaper *The Daily Texan* that, "Dr. Faulkner was quite right to state that Dr. Jensen's statements did not reflect the opinion of the university, and he could even have said that many members of the community would disagree with Jensen. But personally to attack a member of his own faculty from behind the ramparts of a president's power is simply a cowardly act." On the other side, Matt Haegerty, a UT philosophy/government sophomore wrote the same day, "Have any of you people fully thought out why you are so mad at Faulkner? You criticize Faulkner for attacking freedom of expression, but how can this be? Faulkner largely supported Jensen's right to have a foolish opinion. If these people wish to preach about freedom of expression, then they cannot start crying the second someone freely expresses their opinion on a ridiculous argument" (2001, September 27, p. 2).

UT Communications Associate Professor Dana Cloud responded in an open letter to Faulkner published in the *Houston Chronicle* on September 22, 2001:

It is your privilege, of course, to disagree with Professor Jensen. However, in publishing such a strident denunciation of his ideas and denying his belonging to our university



community, you shut down that kind of environment. . .While you frame your response in terms of his and your individual rights to free speech, I believe that you also have a responsibility to recognize that, coming from someone in your position, this kind of response can have a chilling effect on the intellectual climate of the university.

Cloud, who regularly teaches a course entitled Communication and Social Change, continued to detail the facts supporting Jensen's claims about American foreign policy throughout the fall and into the next year on her own web site. She ends her open letter:

Public name-calling is no substitute for true democratic dialogue. If Professor Jensen's thoughts represent "undiluted foolishness," then I prefer the undiluted company of fools to that of cowards. I would have hoped that you would stand up to public criticism and legal pressure (which I assume prompted your defensive response) on behalf of one of your own and in defense of an open, diverse University community. I am extremely disappointed in you. As I grieve and reflect upon the loss of life in New York and Washington last week, and as I fear what steps may come in retaliation and further bloodshed, I also fear and grieve the fact that neither I nor my other progressive, critical, and outspoken colleagues seem to be welcome at our University... I'm disappointed and grieve the fact that, as someone critical of U.S. foreign policy, I may not be safe at UT, either (Cloud, 2001, p. O-1).

To which Alan MacKendree responded via *The Daily Texan's* Firing Line column, "Don't be chilled...Dr. Faulkner was, first, making it clear that Jensen did not speak for UT in his editorial in response to multiple queries. Second, he gave his personal opinion of the editorial, clearly labeled as such...Negative as the letter was, if Jensen or Cloud allow themselves to be 'chilled' and frightened by it, I'd say they need a bit more confidence in their own positions" (2001, p. Opinion-1). But this belies the reality of the situation: presidential opinions about particular professors can carry enormous weight in terms of professional advancement at a university. Jensen followed up in January 2002 writing:

It is likely that not only my tenured status -- I can't be fired without cause, protection that few people in this economy have -- but my white skin helped protect me [from being fired]. What I did find disturbing about the public dialogue after Sept. 11 was not the way in which members of the public sometimes attacked me, but the way in which members of my intellectual community mostly refused to engage these crucial issues about terrorism, the war and U.S. foreign policy.

Jensen adds that Faulkner has yet to explain in a public forum "what substantive disagreements he had with my position." Jensen is clearly engaged in a political dialogue about national policy issues, but at the time of his first foray into the topic of 9-11, he was voicing a minority opinion. He wrote "In a democracy, we do not surrender to leaders the right to make policy undisturbed by the people" and adds:

It is of course dangerous to label any idea "anti-American," because the term suggests that there can be political positions that are fixed forever But the foundation of the U.S. system is (or should be) an active citizenry; being a citizen should mean more than just voting every few years. We have the right -- maybe even the obligation -- to involve ourselves in the



formation of public policy, and in that process no one can claim that some proposals cannot be voiced. (Jensen, 2002)

Just as it seemed the tempest in a teapot was about to die down, Jensen’s story was picked up in the national media:

In early October a producer at National Public Radio’s “Talk of the Nation” show called to book me on a program about antiwar dissent. When she called back to ask if I would be willing to go on at the same time as Faulkner, I quickly agreed. She called back a third time to report that the UT president was going to appear on the show but had declined to go on the air with me live. It turns out that Faulkner’s reticence was not idiosyncratic. Later in the fall a student organizing a debate on civil liberties issues related to the war enlisted me to be a speaker. About a week before the scheduled event, the student told me she was going to cancel the forum, explaining that she couldn’t find a professor to speak in favor of the Bush administration’s civil liberties policies or the anti-terrorism legislation. I was incredulous, saying I could think of several professors on campus whom I was fairly certain were supportive. She told me that, indeed, she had identified such professors and talked to them, but none would participate in a public debate on the issues. Another person planning a community forum told me that a well-known professor who was invited to speak at the event had said that he would not sit on a platform with me, or anyone who held positions like mine. A producer who booked me for a Canadian Broadcasting Company radio program reported that several American professors she approached to debate the history of the United States’ use of violence against civilians turned her down; she was ready to cancel the segment when at the last minute she found a “scholar” from a right-wing think tank to appear. The producer’s difficulty was not due to a shortage of conservative or pro-administration professors in the United States. The idea that campuses are dominated by left-wing radicals is laughable; the country’s major universities are predominantly centrist to right-leaning institutions, and UT is no different. Given that many professors routinely speak in public and on mass media — indeed, many actively seek the exposure for their views, myself included — why in these situations would so many turn down the opportunity? (Jensen, 2002, pp. C-1, 4)

Meanwhile, at UT, Barbara Harlow’s pleas were answered: Dr. Faulkner convened a Task Force on Assembly and Expression in January 2002 that published its report in nine months later, including a recommendation that an “appropriate” committee review “procedures for enforcing rules that apply to faculty and staff, with a view to creating, at least in the context of the limits on free speech, equally effective enforcement mechanisms for students, faculty and staff” and that to the extent feasible these rules should be consolidated in one place (2002, October 31). The report narrative further clarifies the task force position:

The Task Force decided that elaborating a disciplinary system for faculty and staff was beyond the scope of its charge and beyond its abilities in the time available. But some appropriate body needs to clarify the rules and procedures for enforcing rules as they apply to faculty and staff. Due process requires clear rules and procedures, academic freedom requires that procedures for faculty be based on traditional principles of peer review, and the vision of equal rights to free speech for students, faculty, and staff requires some effective



enforcement mechanism for each group. In the meantime, we adopt the Justice Committee's recommendation that alleged faculty violations be referred to the Executive Vice President and Provost, and that staff violations be referred to Human Resources Services. (2002, October 23, p. 15)

In December 2004, relying on the work of the Task Force, the Board of Regents for the University of Texas System adopted a new policy under the Rights and Responsibilities of Faculty Members, entitled "Freedom in the Classroom." The statement reads, "Faculty members are entitled to freedom in the classroom in discussing his or her subject, but are expected not to introduce into their teaching controversial matter that has no relation to his or her subject" (2004, Sec. 2). The following section entitled "Clarification of Role" states, "Faculty members are citizens, members of learned professions, and officers of an educational system supported by the State of Texas. When the faculty member speaks or writes as a citizen, he or she should be free from institutional censorship or discipline, but should make it plain that the faculty member is not an institutional spokesperson" (2004, Sec. 3).

As Dana Cloud writes on her web-posted political writings site, "What is not clear is what counts as appropriate, who gets to decide, and what happens to those whose decisions are inappropriate" ("Bring Home Now," 2005).

Recently, Bob Jensen has stepped into the electronic maelstrom surrounding the Churchill case. While he does not agree with all of Churchill's ideas or analysis, he fundamentally agrees with the major premise that the attacks of 9/11 were "the chickens coming home to roost." He continues, "So, I don't hesitate to defend Churchill, his work, and the larger political movement of which he is a part. But I also want to articulate where I disagree with his analysis -- not to distance myself from him but instead to demonstrate solidarity. Real colleagues do not ignore differences; they engage them" (2005). Jensen acknowledges that he expects his comments to be taken out of context by both the left and the right to prove their points, but he feels compelled to defend an appropriately civil discourse in the scholarly community.

Finally, no charges of misconduct under the regulations of the faculty handbook have ever been filed against Jensen. Rather, he was charged and tried in the press for the "offense" of being an "undiluted fountain of foolishness" and "anti-American."

Discussion

The Constitution has never greatly bothered any wartime president.

– Former Attorney General Francis Biddle (cited in Cole, 2011, August 31, para 3)

This paper has addressed historical cycles of repression of free expression and discussed three cases of attempted academic censorship after September 11, 2001. But this has left unanswered questions such as, What motivates censorship in times of crisis? What has been different post-9/11? And, does the electronic age pose new challenges to academic expression?

As Doumani indicates, "it is no accident that two of the AAUP statements on academic freedom were released within one year of the outbreak of a war" (2005, p. 23).



What is it about war that lessens our tolerance for diverse opinions and dissent? For an explanation, we turn to Terror Management Theory (TMT).

What motivates censorship in a time of crisis? TMT suggests that the threat of attack from nameless, faceless terrorists strikes fear in our hearts. As a matter of survival, we react in certain ways to these threats. We can take individual measures to protect ourselves, such as avoiding crowds, stockpiling staples, and buying gas masks. We can also become hyper-aware of our surroundings, to watch for people or things that “don’t fit.” In a more general sense, TMT suggests that we may also strengthen our culture by casting aside “foreign” or unfamiliar elements through uber-patriotism and censorship. Thus, to reduce our fear (and, hopefully, increase our chances of survival) we surround ourselves with those we think we can trust: people who look, think, act, and most especially, speak like us.

As Blanchard (2002) suggests, a period of censorship during times of crisis is part of a larger cycle of repression followed by restoration of free expression. But, according to Dennis Laycock, dean of the University of Texas Law School and a Constitutional Scholar, “The right to say things in public spaces emerges. . .in the 1930’s with the labor union cases, but the Supreme Court has been cutting back and cutting back since the ‘70s. Now, the right to speak in public places is much more up to the government than it is to you” (quoted in Lindell & Lisher, 2005, p. H4).

And, what of the endless war on terror? Does this war require indefinite restrictions on free expression? Will there be a proactive part of the cycle which restores free speech? Perhaps two recent cases have marked the beginning of the restorative phase. The first is the challenge to student free speech zones at Texas A&M University (*Roberts v. Harragan*, 2004). The federal district court ruled that these restrictions at the university, which are also common at political events held at any venue, are impermissibly narrow and chill freedom of expression. Second, very slowly, portions of the Patriot Act, which expanded federal intelligence gathering authority in terrorism cases, have been challenged. The real test of a restorative upswing in the cycle, however, is if Congress lets provisions of the Act “sunset” at the end of 2005 (Stone, 2004, p. 553).

When the issue of academic speech is considered, additional factors come into play. Increased accountability standards combined with the need to seek outside funds to make up for state budget shortfalls, have made college administrators much more sensitive to criticism. As “Columbia-gate” indicates, private institutions are now under the same scrutiny that public universities have long endured.

While these complaints often come in public forums – news conferences, from the floor of the legislature, attacks on live television – critics turn as well to electronic means to complain and disrupt university operations. The first phone call to the Colorado governor’s office was received within two hours of the posting of anti-Churchill material on one blog. The e-maelstrom caused by comments from Ward Churchill can easily crash servers, put public relations offices in a panic, and force a siege mentality on a university. The individual faculty member faces an onslaught of criticism and phone calls, death threats, and questions from media. Electronic resources, so vital to the post-modern university, can also cripple the institution.



Finally, a very few people will use a crisis for political gain. What's the cost of criticizing a Churchill or a Middle Eastern Studies Program? The return on such criticism is potentially very high. While political talk can be cheap and yield high dividends, free speech is not free; the psychic and other costs are very dear.

A direct result of fear, patriotism, accountability, and politics is self censorship (Ackerman, 2001; Cloud, S., 2002; Levy & Bugingo, 2001). After 9/11, many television reporters were criticized for not being patriotic enough, for not laying blame before the identity of the perpetrators was documented. As a result, the media began to censor itself – to pay proper respect to the victims and the government – and to allay the fears of the public. So too, academics and other professionals began to self censor. It is no accident that few people wanted to appear with Bob Jensen on radio or TV. His public humiliation was a powerful lesson for faculty members: be patriotic and shut up!

Yet what constitutes patriotism is contested terrain (Kahne & Middaugh, 2005; Primoratz, 2004; Westheimer, 2004). The varying definitions of patriotism include committed patriotism, nationalistic patriotism, symbolic patriotism, and democratic patriotism. In the post-9/11 era, the edict is not just to be patriotic, but to choose the “correct” definition of patriotism.

What of academic freedom of expression in the future? With new federal efforts to regulate higher education, a politically divided country, and the long-term war on terror, faculty speech and actions will continue to be scrutinized and measured against a patriotic litmus test. Further, e-maelstrom will increasingly be used to muffle those with unpopular viewpoints or intemperate remarks.

According to the First Amendment Center's (2000) survey, 63% of Americans oppose a flag-burning amendment, 58% support a tape delay for live television programs, and 38% believe that newspapers should not be allowed to criticize the military. In this contradictory, politically charged time, free expression will continue under attack. The proactive and reactive portions of the free cycle may occur simultaneously and with equal vigor, effectively stifling academic free speech.

We end with the cautions of Nan Levinson (2003),

In many ways, the First Amendment's embrace is more expansive now than ever before. . .the easing of legal sanctions has run parallel with mounting social sanctions. . .We, as individuals and a nation, have to come to fear language, not just for what it can do, but for how it will be used against us. (p. 4)

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