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## A Proposal for Insuring the Maintenance of Academic Freedom and Tenure, 1950

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### A PROPOSAL FOR INSURING THE MAINTENANCE OF ACADEMIC FREEDOM AND TENURE

#### I

At the Berkeley campus of the University of California on the afternoon of August 25, 1950, the regents, faculty, and janitors of the University, and the A.A.U.P. were all involved, directly or indirectly, in a strange embroglio which, though local in origin and complex in nature, had yet a simple, universal symbolism dramatically pointing at two things: the present plight of the academic profession and a possible road to future security and salvation.

On that day the Board of Regents were having their monthly meeting. Ostensibly it was a routine meeting; actually there was to be a "reconsideration" of the remaining professors who had refused, finally and unequivocally, to sign the Regents' special contract into which had been incorporated the controversial statement of loyalty. Although the adamant professors had been cleared by a close vote of the Board at its July meeting, Regent John Francis Neylan, leader of the pro-Oath faction, had announced in advance that he was going to move for a "reconsideration," a harmless enough word in most contexts but ominous in this particular one. At that time also the janitors, on strike for higher wages, were picketing the campus (One regent, a labor leader, had to obtain special absolution from his union, so that he could cross the "line" and attend the meeting). While the janitors have their overt struggles and negotiations with the administration of the University, in point of fact, since the University is a corporation ruled absolutely by the Regents, they were striking against the Board itself. In any event,

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the Regents had two groups of recalcitrant employees on their hands that day, but the outcome of the two struggles was radically different in each case: by late afternoon the professors had been fired; a few days later the janitors, having won their higher wages, returned to their jobs.

#### II

If the professors could see no analogy between themselves and the janitors, some of the regents could. Regent Ehrman, for example, made it explicit: "... if we assume that they the professors have been employed, what does that mean? Do they have any vested rights to the position? It merely means that they have the right to enjoy the salary for the year... They would be entitled to their salary and that is all, if they had a vested right in the appointment, which I doubt very much because they are merely employees of the Board of Regents and they are not officers." <sup>1</sup> Later on in the discussion, in reference to the theory of tenure of position, Regent Ehrman viewed with alarm the idea that any employee of the University had a right to his position: "... it would

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1. This and the quotations that follow are taken from a direct transcript of the Regents' meeting, printed in Appendix VI of Petition for Writ of Mandate (3 Civil No. 7946) in the District Court of Appeal, State of California, Third Appellate District, p. 40.

mean that a man who was employed as a gardener, a janitor in the buildings, would have a vested right to the office. I cannot see where a man who is employed in one capacity, such as I have used for the purposes of illustration, employed as a professor or an instructor, that there is any distinction between them." <sup>2</sup>

Regent Ehrman's syntax notwithstanding, anyone can see the handwriting on this wall. A university is a corporation and its employees, from janitors to professors, are hired hands. As the issue of Communism had long since been removed from the argument, the real import of Regent Ehrman's pronouncement was simply that grounds for dismissal from the University had been

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considerably broadened, to include, in fact, any act, or thought, which the Regents deemed bad behavior. And Governor Warren, who had led the minority of the Board in their losing battle against the pro-Oath faction, tried to make Regent Neylan spell out the implication. (This particular interchange, which took place after the Board had already voted to dismiss the professors, was immediately occasioned by Regent Neylan's proposal that any of the dismissed individuals who would quietly resign should be given a year's salary):

"Governor Warren: Gentlemen, it seems to me that we are doing a rather unusual thing here. We are discharging these people not because they are Communists, not because they are suspected of being Communists, but because they are recalcitrant and won't conform to the orders of this Board of Regents, and then we say to them, 'Now we are going to give you ten days more in which to sign up and come back and work all your for your salary, but if you continue to be recalcitrant we will give you a year's pay without working?'

Gentlemen, that just doesn't make sense.

Mr. Neylan: You were a great advocate in your days at the law; and I am fearful that your intensity of feeling in this matter clouds your perspective slightly.

Governor Warren: I hope my feeling is not more intense than yours.

Mr. Neylan: Mr. Chairman, we are not discharging these people. On the Contrary, we are tendering them, the same as we tender every other member of the Faculty, a letter of appointment, and they, in their discretion, can determine whether they desire to comply with the terms which have been approved and complied with by 99 per cent of their colleagues. That is the difference.

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We are not discharging these men. On the contrary —

Governor Warren: We are just stopping their pay: that is all." <sup>3</sup>

Earlier in the meeting the question of how such action on the part of the Board — denial of tenure and arbitrary dismissal for "recalcitrance" — would affect the academic profession at large, and it was at this point that the A.A.U.P. entered the discussion. Regent Neylan, in the middle of a lengthy oration and specifically in reference to a letter from a faculty member who had prophesied that the University would be "blacklisted" by the A.A.U.P., addressed his colleagues thus:

"Now gentlemen, I don't believe that the People of the State of California expect the Trustees of this great university to how down to the American Association of University Professors, who have a policy that you shall not discriminate against a Communist. That is their policy and that is their policy today, and I read to you in June the resolutions of the Mills Chapter of the A.A.U.P. plan to put on every Board of Trustees and Board of Regents in America two representatives and then to provide for a propaganda army and then to provide, in the event of a vacancy in any presidency, that you should not accept anybody who did not have academic

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2. *Ibid.*, p. 47.

3. *Ibid.*, p. 93.

background." <sup>4</sup>

The symbolism referred to in the opening sentence of this essay should now be apparent: denial of the right of tenure locally accompanied by denunciations of the national academic organization which is devoted to upholding tenure, this in a discussion and action whose final outcome was the arbitrary dismissal of a group of professors each of whom had been recommended for reappointment by his own faculty Committee on Privilege and Tenure, all framed, literally and figuratively, by the ultimately successful strike of another group of University employees likewise members of an organization devoted to its members'

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welfare. To state it on the level of action, simply and baldly, the professors, on the defensive at all times, ultimately lost a battle that they themselves had not started while the janitors were winning a self-initiated offensive.

### III

"It's the aloneness... feeling completely out off since the last regents' meeting... the falling away," <sup>5</sup> said one member of the Berkeley faculty when asked about his most fundamental personal reaction to the year-long battle with the Regents over their proposed Loyalty Oath. And if there are archetypal images for complicated situations, the image for the portion of the Berkeley faculty which was involved in the dispute would be that of a man, quite alone, tormenting his soul and undermining his self-esteem, in the ambiguous struggle to reconcile his conscience with his family's and his own security and comfort. In the last analysis that was all one had to go on — a conscience. While that is, fortunately, a tough substance in a few men, it is a slender reed for most in the face of absolute economic reprisals. And most involved individuals felt that they were on their own, denied either the relief of retaliatory action or the comfort of group solidarity and support.

On a national level the most that could be hoped for was the ultimate "blacklisting" of the University from which one had been dismissed. But this is both a negative and a distant comfort. There was, of course, much sympathy expressed by colleagues in other universities throughout the country and there was, too, the generous offer of the University of Chicago and other universities to provide financial support for non-signers, but there was no machinery to take care of what would have been a very complicated process, nor could

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there be, in the nature of it, any guarantees for an indefinite future. In the profession as a whole there was certainly no widespread recognition that the assault of the Regents of the University of California was, in effect if not in intention, an assault on the entire profession directed at its very heart — the minimum guarantees concerning freedom and tenure upon which the life of the profession rests. The imposition of the special contract form was an abridgment of freedom; the arbitrary dismissal of tenure-holding faculty members was a wiping out of tenure.

If there was not much comfort for the non-signers on a national level, neither was there much more locally. The press, with a few exceptions, was antagonistic. The public whether hostile, indifferent, misinformed, or, in a few cases, sympathetic, was inarticulate, save for the inevitable letters to the editor. The State Legislature, if anything, would have regarded the action of the Board as mild and conciliatory. Major groups within the University itself were either indifferent or actually antagonistic to the principles and the actions of the protestants against the oath and the contract. Nor was there any genuine solidarity within the protesting group itself, except for those few who went through to the bitter end. And it is a moot point whether it was more disheartening for the interested individual to read about the latest declaration of the regents than to listen to some of the declamations (and the response to them) of his fellow comrades-in-arms. On "Truth," "Freedom,"

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4. *Ibid.*, p. 68.

5. Quoted by George R. Stewart in *The Year of the Oath*, Garden City, New York, 1950. p. 75.

"Ideals," or any of those other noble abstractions that filled the Berkeley air for month on month there was always mutual satisfaction and a common feeling of virtuousness. As soon as the discussion descended to the level of action and a common plan for action, the wrangling began. At the

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last those who did not sign on the final deadline date were quite sure (and they were right) that they were all alone. They could depend on both sympathy and financial support from some of their colleagues, but they could not depend upon organized and effective supporting action from the profession as a profession. And Regent Neylan had already taken care to give a local black eye to the only national organization which could afford them moral support and comfort.

The individuality of college professors is, in most instances, quite commendable; it is neither possible nor desirable that the academic profession be welded into a group solidarity comparable to that of labor unions. Nevertheless, if the profession is to survive, there must be agreements about certain basic danger-points, as when customary and necessary minimum conditions of freedom and tenure are threatened, at which each individual will merge with the mass and beyond which the group will not allow any of its members to go alone and unaided. As different as the academic profession is, in means and ends, from laboring groups, such as the janitorial staff that has been herein celebrated, it has this at least to learn from them: that in times of trouble there is no substitute for, there is not anything even roughly equivalent to, organized group action backed by adequate financial resources.

#### IV

In view of the above, a group of faculty members at Berkeley would like to submit to the general membership and to the officers of the A.A.U.P. the following proposition: That the A.A.U.P. hold in trust and create the machinery for distributing, when necessary, a fund — to be called "Emergency

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Aid Fund," "Academic Trust Fund," or what have you — which will be used to give financial support to individuals or to groups of individuals within the profession whose livelihood is cut off in disputes or actions which threaten either intellectual freedom or conditions of tenure. To this end, the group at Berkeley stands ready to offer a lump sum of money as the start of that fund. It also suggests, if the plan is adopted, that a nominal sum (\$1.00 per year?) be contributed by every member of the A.A.U.P., so that the fund will increase year by year. Contributions from any sympathetic non-A.A.U.P. member would, of course, always be welcomed.

The practical difficulties in the way of such a plan will naturally be considerable. There will be the problem of determining what constitutes an actual threat to freedom and tenure in any given dispute. Furthermore, the machinery for the dispersing of funds will have to be as efficient as it is responsible. A delay of two or three months in giving financial aid to a professor who had had his pay-check cut off would be, in many cases, disastrous. None of the people who propose this plan underestimate the difficulties in the way of its implementation. They all feel, however, that it or its equivalent is absolutely necessary, for the present situation at the University of California is not freakish or outlandish; it is a microcosm and a portent for the academic profession as a whole.

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