



Issues Raised by the Special Oath and Proposals for their Solution

[Letter, December 29, 1949]

December 29, 1949
Mr. John Francis Neylan
One Montgomery Street
San Francisco 4, California
Dear Mr. Neylan:

In the absence of Professor Davisson, who is in the East until January 3, I am sending you here-with a memorandum prepared by the Combined Conference Committee of the Northern and Southern Sections of the Academic Senate. This memorandum sets forth the Committee's views regarding the issues involved in the discussions regarding the Loyalty Oath, and makes certain suggestions for a solution.

I hope that you will have an opportunity to read the enclosure before the meeting of the Regents' and Senate Committees on January 4. Copies are being sent to all members of the Regents' Committee. At his request, I am also sending Mr. Underhill a copy for his records.

Sincerely yours
R. A. Gordon, Acting Chairman
Conference Committee, Northern Section
RAG: arp
Enclosure

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I General Principles

A.
The University of California has long enjoyed a national reputation as an institution in which the academic community is protected against any attempt, however well intentioned, to hinder it in its scholarly and teaching activities. This academic environment, fostered by the joint efforts of the Regents, the President, and the faculty, created a morale which has enabled the University of California to become a leader among institutions of higher learning. During the last few months, however, serious differences of opinion have arisen which have weakened the morale of the University. The results of the present situation reach far beyond the confines of the University and threaten as well its reputation. It is imperative, therefore, that the Regents, the President, and the faculty - all of whom have the welfare of the University equally at heart - lay aside all personal considerations and, with their eyes to the future rather than the past, direct themselves to an immediate resolution of the differences of opinion which have created the present situation. What is at stake is the present and future welfare of the University.

So far as any question of the loyalty of members of the faculty to state and nation is concerned, the Committee is impressed with the following facts. The Regents' policy prohibiting the employment of Communists has been in effect for nearly a decade; nevertheless, until last Spring the Regents had not considered it necessary, even during the war years, to impose any special test beyond the standard oath to support the federal and state constitutions. It may be presumed, therefore, that the Regents had confidence in the loyalty of the faculty.

There would be general agreement that, apart from material resources and past accomplishments, the greatness of a university rests upon the following foundations:

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1. The faculty's determination to devote itself to extending the boundaries of human knowledge and to the training of youth for citizenship.
2. Pride of the faculty in the university as an institution, which leads eminent men to resist competing attractions and attracts a steady flow of able young scholars who can meet the high standards which the faculty, by virtue of pride in the university, insists upon maintaining.

This pride in the university requires that the following conditions, among others, exist:

- a. An environment in which the faculty has "freedom from domination by parties, sects, or selfish interests" in the conduct of its teaching and research. Not only must this condition exist in fact; the faculty must be convinced that it does and will continue to exist.
 - b. Demonstrated confidence of the Administration in the scholarly achievements and in the integrity and loyalty of the faculty.
 - c. Full faculty participation in the making of decisions affecting the conditions crucial to teaching and research and a high degree of deference to faculty judgment in matters, such as qualifications for membership, which are peculiarly within the competence of the faculty.
 - d. Existence not only of the fact but also of the belief that security of position depends solely upon the meeting of the standards of accomplishment and behavior jointly determined by the faculty and Administration.
3. The reputation of the university in the world of scholars. We have stressed above the importance of the beliefs of the faculty as to the conditions under which it works. Similarly, the greatness of an institution and its ability to attract and maintain a distinguished faculty depend in part upon the beliefs held by the academic world concerning freedom of inquiry in that institution.

B.

This Committee believes that the great distinction of this University has been impaired by the recent imposition of a special oath on the faculty because the

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above foundations upon which this distinction rests have been damaged. Most members of the faculty, including those who have signed with varying degrees of willingness, agree on this point.

1. The requirement of a special oath beyond that taken by other public servants has been interpreted both inside and especially outside the University as indicating that the faculty is suspect as a class. The blanket test adopted by the Regents has encouraged public questioning of the loyalty of the faculty as a whole. A great university cannot flourish in such a climate of distrust.
2. This Committee believes that the freedom of the individual member of the faculty to pursue his research and teaching is as unimpaired as ever. But, as we emphasized earlier, not only must this condition in fact

exist but the faculty must be convinced that it does and will continue to exist unimpaired. This confidence can be damaged or destroyed not only by overt acts involving restraint but also by the imposition of special requirements which create uncertainty as to present intent and as to what other restraints may be imposed in the future.

3. The faculty regrets that it was not consulted before the special oath was originally imposed. But now that the faculty's position has been stated and reiterated, continued insistence on a special oath will not represent that degree of regard for faculty judgment which has been an essential ingredient of the exemplary morale hitherto existent on the campuses of the University. The Regents' willingness to discuss the matter further is an important factor in maintaining this morale.

4. The confidence of this Committee in the Regents and the President permits it to believe that security of tenure in this University has not been impaired by the imposition of the oath. But this belief is based only on long experience and faith, since the Regents have not announced to the faculty what policy will be followed with respect to non-signers. This faith, moreover, is not felt equally throughout the faculty, particularly among younger men who do not have many years of happy relations with the Administration to strengthen their confidence. A feeling of personal insecurity, again particularly among the younger men, has been the unfortunate result.

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5. The reputation of the University in the world of scholars rests upon the quality of its faculty and the conditions under which they are enabled to do their work. Deans, department chairmen, and other officers engaged in recruiting candidates for appointment to the faculty can testify to the frequency with which questions are raised by prospective candidates as to the government of the University. The ultimate decision to accept or reject an offer often turns on the answer as to the conditions under which scholars are enabled to carry on their teaching and research. While the University has long been in a particularly favorable position in this respect, if these conditions deteriorate, so too do the faculty and the reputation of the University. Ultimately this deterioration means inability to attract men of distinction and loss of some members of the faculty to other institutions. Even before the quality of the faculty is noticeably impaired through this process, the deterioration of morale becomes evident to the outside world, with consequent damage to the reputation of the University. Nor can the University's reputation be maintained if it imposes on its faculty conditions which the highest representative organizations of the academic profession have publicly condemned. The American Association of University Professors, the American Association for the Advancement of Science, the National Education Association, and Phi Beta Kappa have taken strong positions against special oaths for teachers and scholars.

C.

So many members of the faculty have signed the special oath as to suggest the superficial conclusion that the majority approves its imposition and sees in that action no peril to the University's welfare. The inference is that the non-signers are either sincerely but unreasonably apprehensive or else intent for ulterior motives on thwarting the Regents' purposes. We do not try to assess the motives of signers or of non-signers, for in each group there must be a great range of motives. However, refusal to sign does not mean disloyalty to state or nation, and, more specifically, does not mean that non-signers are Communists. Their sincere concern with personal freedom is virtually conclusive evidence that they are not

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Communists. Moreover, many of those who signed the oath have freely stated that they did so with reluctance and distaste. Against the number who have signed must be put the virtually unanimous vote of both sections of the Senate that the present oath be withdrawn.

There are bases for judging a faculty member's loyalty which are far more trustworthy than his signing or not signing an oath. From his entrance into the teaching community of the University, his professional qualifications have been repeatedly tested by his colleagues (see appendix). To be sure, his political beliefs are not investigated; but this University community explicitly takes account of his relations with the public when he is considered for retention or promotion. We submit that such a screening (which is more rigorous than that applied in most professions or in most universities) furnishes a better means of knowing the man in question than does the test offered by the oath.

One argument advanced in favor of a notarized oath is that anyone who falsely swears is subject to criminal prosecution. Even if this argument be valid, it must be recognized that the establishment of proof with respect to perjury is extremely difficult, even where there exist the most extensive powers of investigation. The collection of sufficient evidence to constitute proof in a court of law would involve both difficulties and dangers, in the form of public and faculty reactions and possible countersuits by the accused, that no university administration would willingly assume. It appears to this Committee that the provisions for evaluation which now exist, and which permit keeping disciplinary matters within the University, are preferable to steps which to be at all effective must contemplate the intervention of the state's attorney.

The framework for maintaining a faculty loyal to state and nation existed before the present oath was imposed, and the oath has added nothing but controversy to what existed before. We believe that the evidence against continuing the oath is conclusive. We recognize, however, that withdrawal of the oath may leave the Regents with the need to reassure certain segments of the public of the faculty's

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loyalty. The solution is, first, to call attention to the fully adequate existing procedures for dealing with any actual cases of disloyalty which may arise, and, second, for the Regents and the Administration to defend vigorously the reputation of the faculty against irresponsible attacks. We believe that the Regents should invite the attention of the public to the virtually unanimous action of both sections of the Senate wholeheartedly concurring in the University policy "which prohibits the employment of persons whose commitments or obligations to any organization, Communist or other, prejudice impartial scholarship and the free pursuit of truth."

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II Implementation

The Regents, the Administration, and the faculty are in agreement that the University must be "dedicated to the search for truth and its full exposition," that the University must "rely on truth to combat error," and that the faculty must consist of scholars free and determined to seek out the truth, open-minded in their research, and objective in their teaching. See Regents' order, June 24, 1949, paragraphs 1, 2 and 3; University Regulation Number 5; and Senate resolutions of September 19 and 22, 1949.

There is no disagreement about the objectives. What is in dispute is the best means of attaining them. This Committee is convinced that the exclusion of members of the Communist Party per se from employment is not the best means. On the contrary it may make their attainment more rather than less difficult. So far as the requirement of a special oath is concerned, this is inadequate to implement the policy aimed at Communists, and it actually conflicts with the objectives on which all are agreed. So far as we can see, attainment of these objectives must rest on (1) the ethical standards of the faculty and (2) an improved use of existing procedures. These we analyze below.

(1) The ethical standards of the faculty

The most important determinant of character among the individuals of any social group is the standard set by its members. Where the standard is high, as it is in the learned professions, it is always one which has been set from within the group; it can never be effectively imposed from without. Among all professional groups, none has maintained standards higher than those of the academic profession, whether judged by faithful services to state and nation, or by the fact that instances of illegal or antisocial behavior are so rare as to be regarded as news. No profession screens its members more frequently or carefully. The scrutinizing by departments, deans, and

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faculty committees has been constant and searching. The fact that those who do not meet the standards are handled without fanfare and with a minimum of injury to their reputations should lead no one to conclude that the screening is not constantly going on.

The faculty expressed itself pertinently to the present issue in 1933 and 1934 (long before the action taken by the Regents in 1940) in "University Regulations" Nos. 3 and 5, issued under the general caption, "Orders of the President", later changed to "University Regulations." These regulations were actually drawn up in substantially their final form by the Committee on Educational Policy. We request careful attention to No. 5, hereto appended. It has gained force from the virtually unanimous vote of both sections of the Academic Senate in September 1949 adopting the following resolutions:

Northern Section

1. The Faculties assembled in the Senate, Northern Section, wholeheartedly concur in the University policy as set forth in University Regulation Number 5 which prohibits the employment of persons whose commitments or obligations to any organization, Communist or other, prejudice impartial scholarship and the free pursuit of truth.
2. The members of the Senate request the privilege of affirming their loyalty to the principles of free constitutional government, by subscribing voluntarily to the oath of loyalty sworn by officers of public trust in the State of California."

Southern Section

1. The Faculties assembled in the Senate, Southern Section, concur in the policy set forth in University Regulation No. 5. They also believe that the University should prohibit employment of any person whose commitments or obligations, Communist or other, demonstrably prevent objective teaching and the free pursuit of truth.
2. The members of the Senate request the privilege of affirming their loyalty to the principles of free constitutional government, by subscribing voluntarily to the oath of loyalty sworn by officers of public trust in the State of California.

University Regulation No. 5 and the above resolutions were carefully worded, and we trust that they will be read with the attention they deserve. This Committee is convinced that they provide a broader, more valid, and more practical means of

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attaining the desired objectives than does the Regents' resolution of 1940, which based the issue merely on membership in the Communist Party. We support this opinion by the following reasons:

(1) They represent the self-imposed standard of the persons who must be depended upon to implement the policy. They form a basis which commands the general assent of the faculty, whereas the sole basis of

Communist party membership does not. Faculty opinion is sharply divided on the latter point. A considerable number agrees in general with the following argument stated by Arthur O. Lovejoy in the American Scholar (page 332 in the Summer number, 1949):

1. Freedom of inquiry, of opinion, and of teaching in universities is a prerequisite, if the academic scholar is to perform the function proper to his profession.
2. The Communist Party in the United States is an organization whose aim is to bring about the establishment in this country of a political as well as an economic system essentially similar to that which now exists in the Soviet Union.
3. That system does not permit freedom of inquiry, of opinion, and of teaching, either in or outside of universities; in it the political government claims and exercises the right to dictate to scholars what conclusions they must accept, or at least profess to accept, even on questions lying within their own specialties - for example, in philosophy, in history, in aesthetics and literary criticism, in economics, in biology.
4. A member of the Communist Party is therefore engaged in a movement which has already extinguished academic freedom in many countries and would - if it were successful here - result in the abolition of such freedom in American universities.
5. No one, therefore, who desires to maintain academic freedom in America can consistently favor that movement, or give indirect assistance to it by accepting as fit members of the faculties of universities, persons who have voluntarily adhered to an organization one of whose aims is to abolish academic freedom.

But a larger number, on the other hand, agrees with the position expressed by Committee A of the American Association of University Professors as follows:

To each of these contentions this Association should apply the touchstone of individual culpability. The principle that guilt is personal, that it does not arise from association, that it cannot be attributed to the holding of an opinion or even to intent in the absence of an overt act is fundamental in Anglo-American jurisprudence. If a teacher

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as an individual should advocate the forcible overthrow of the government or should incite others to do so; if he should use his classes as a forum for communism or otherwise abuse his relationship with his students for that purpose; if his thinking should show more than normal bias or be so uncritical as to evidence professional unfitness, these are the charges that should be brought against him. If these charges should be established by evidence adduced at a hearing, the teacher should be dismissed because of his acts of disloyalty or because of professional unfitness, and not because he is a Communist. So long as the Communist Party in the United States is a legal political party, affiliation with that party in and of itself should not be regarded as a justifiable reason for exclusion from the academic profession.

The two groups differ mainly in that the former would regard membership in the Communist Party as sufficient ground for dismissal, while the other group holds that evidence must be produced to show that the individual in question himself shares the faults which have brought the Party into disrepute. However, even those members of the faculty who take the former position are disposed to agree that it is far better to have a standard which the vast majority will support and which appears likely to lead in practice to much the same result. Because of these circumstances, we urge that the ultimate objectives be sought through the broader, more fundamental and more realistic policy adopted by the faculty.

The requirement of the special oath has raised a positive obstacle to implementation of the anti-Communist policy: it has added an artificially created offense, that of not obeying Regents' orders, to the first, that of membership in the Communist Party. The special oath would thus permit a Communist to hide behind members of the faculty who are guilty of nothing but an artificially created offense. This is not a desirable way to implement the policy.

(2) An improved use of existing procedures

Present procedures, properly used, furnish an adequate means for better implementation of the policy set forth in University Regulation No. 5. If a member of the faculty does not keep himself "free from domination by parties, sects, or selfish interests", or if he uses the university as "a platform for propaganda",¹ it is his colleagues and his students who are in the best position to discover that fact, and

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it is the academic and administrative officers, the department chairmen and the deans, who are in the best position to deal with the situation. The fact that the Regents have felt impelled during ten years to intervene in only two cases, and these involving only teaching assistants, is evidence that existing procedures have on the whole been operating effectively.

The case of teaching assistants calls for special comment here. Teaching assistants, like research assistants, are not members of the faculty. They are graduate students working for an advanced degree who are permitted to do part-time, apprentice teaching under the detailed supervision of a faculty member. In many institutions, they are called "teaching fellows" or "graduate assistants." Teaching and research assistants are selected by the Department Chairman on the basis of scholastic record, probable teaching or research ability, and evidence of good character. All appointments must be approved by the Dean of the appropriate College and by the Dean of the Graduate Division. The latter maintains continuous supervision over the assistant's scholastic record and may terminate his appointment if his grade average falls below a specified minimum. Ordinarily, a graduate student does not hold an assistantship for more than three years, and the tenure is frequently only one year. Hundreds of applications from all parts of the country and from some foreign countries are screened every year as part of the process of maintaining a rapid turnover of teaching assistants. Virtually all University regulations applying to teaching assistants emphasize their status as graduate students. It must be emphasized that the University must rely on teaching and research assistantships to take the place of fellowships and scholarships, with which this University is not well endowed. They are frequently awarded to students directly upon the receipt of the bachelor's degree, with only their undergraduate record and recommendations from their teachers as evidence. This is an inevitable part of the process of maintaining a large and distinguished graduate school and of manning the laboratories and discussion sections in which undergraduates put into practice what they have learned in

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the lecture hall. It is obvious that the screening of these assistants, with their rapid turnover, can never be as thorough as it is for the faculty, but the suggestions made below should help to strengthen existing procedures.

The responsibilities of department chairmen should be formulated more explicitly. It should be made clear to them that both the faculty and administration expect that in recommending appointments and promotion in all academic ranks, down to and including teaching assistants, due attention should be paid to character as well as to academic record. When there is reason to feel that a department chairman is negligent with respect to the proper obligations of his staff, he can and should be either instructed or replaced. This is a function of the President's Office, which can and does avail itself of the advice of the Budget Committee and of the deans.

The chairman of the department should be the one to deal with an individual in his department who does not measure up to these standards. Any information pertinent to the case which comes to the attention of the Regents should be brought to the attention of the chairman through the President, and his decision should be reversed by higher authority only after consultation with him. This procedure should apply to all faculty members and other academic employees, including teaching and research assistants.

Finally, the Academic Senate has voted virtually unanimously (a) its endorsement of Regulation 5, and (b) to "request the privilege of affirming their loyalty to the principles of free constitutional government by

1. Quotations are from University Regulation No. 5.

subscribing voluntarily to the oath of loyalty sworn by officers of public trust in the state of California."

This Committee therefore unanimously believes that the present disagreement between the Regents and the faculty should be resolved along the lines set forth in the preceding paragraphs.

APPENDIX

Memorandum on the Procedures Whereby Faculty Members Are Selected and Appraised

1. Recommendation of appointment in any department is on the basis of careful investigation by that department as to the candidate's qualifications in terms of proven ability in impartial scholarship, effective teaching, and general good conduct.
2. Every such recommendation is checked by the Committee on Budget and Interdepartmental Relations and by appropriate administrative officers - deans, provost, president.
3. If the nomination is for academic rank above that of instructor, the qualifications of the nominee are also carefully scrutinized by a special appointment committee, again with particular reference to impartial scholarship, objective teaching, and general good conduct.
4. The Committee on Budget and Interdepartmental Relations each year goes over the entire membership list of the faculty and, again with these same three criteria in mind, enters a recommendation in each instance for retention or nonretention.
5. In initiating recommendations for advancement the administrative officers, the Budget Committee, or, more frequently, the department again applies these three criteria.
6. If a change in rank is involved, the Budget Committee nominates a special committee to investigate the candidate's worthiness for promotion. This committee makes an independent study of the candidate's qualifications as a scholar, teacher, and citizen.
7. The recommendations of such a committee are reviewed by the Budget Committee and by deans, provost, and President, before the Regents are asked to give final approval.
8. For instructors at or before the end of the second year in the rank, and for assistant professors at or before the end of the sixth year in the rank, there is mandatory review of fitness for continued service in the faculty by a special committee which appraises the individual's scholarship, teaching, and conduct.
9. If, at any stage in this elaborate and repetitive screening process, adequate evidence of unfitness for membership in the faculty is discovered, department chairmen, deans and other administrative officers, and the Budget Committee are charged with responsibility to recommend dismissal. If this recommendation is sustained, due notice is given of termination of appointment.
10. Upon receipt of such notice, appeal may be made to the Committee on Privilege and Tenure, which will conduct an investigation, taking note of the evidence for dismissal and giving the appellant full opportunity to present evidence in his behalf. The findings of this committee are couched as recommendations, but without exception they have been followed by the administration and the Regents.

The procedures with regard to dismissal, as described in paragraphs 9 and 10, are in accordance with the practices endorsed by the American Association of University Professors.

This ten-fold procedure is a far more rigorous testing of personal qualities and professional qualifications than is applied in other professions and even in most other educational institutions. The University's record of

integrity and its place of leadership among scholars demonstrate the adequacy of this method of selecting and sifting for membership in the faculty.