

## CALIFORNIANS REDEFINE ACADEMIC FREEDOM \*

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### ABSTRACT

This position paper discusses the changes to the UC Academic Senate's regulations on academic freedom and on policies for teaching potentially contentious or political issues, arguing that the new regulation has not been adequately considered in light of its detrimental effect on academic standards. Whereas previously the university's policy had stated that faculty were not to use their teaching to "convert" students, the new regulation relies on individual instructors' "competence" and allows for their politically committed viewpoints instead of establishing any guidelines for unbiased teaching practices.

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In the Spring of 2003, University of California President Richard Atkinson forwarded to the U.C. Academic Senate a proposed revision of the existing regulation bearing on how university teachers should treat contentious and disputed issues, both political and academic, in their classrooms. The existing regulation on this matter, APM 010, had been introduced into the university regulations under the presidency of Robert Gordon Sproul in 1934. The operative section of APM 010, now to be replaced by APM 015, reads as follows.

The function of the university is to seek and to transmit knowledge and to train students in the processes whereby truth is to be made known. To convert, or to make converts, is alien and hostile to this dispassionate duty. Where it becomes necessary, in performing this function of a university, to consider political, social, or sectarian movements, they are dissected and examined, not taught, and the conclusion left, with no tipping of the scales, to the logic of the facts.

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The University is founded upon faith in intelligence and knowledge and it must defend their free operation. It must rely upon truth to combat error. Its obligation is to see that the conditions under which questions are examined are those which give play to intellect rather than to passion. Essentially the freedom of a university is the freedom of competent persons in the classroom. In order to protect this freedom, the University assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda.

In his letter to the Academic Senate in support of the proposed revision, President Atkinson argued that the existing regulation was "outmoded," and suggested that it was "not useful" when applied to a contentious case of a course at Berkeley. The replacement for Regulation 010 put forward by the President had been drafted at his request by a Berkeley law professor, Robert C. Post. The proposed revision was endorsed by the Academic Council of the Senate at their meeting in June of this year, and will be submitted to the Assembly of the Academic Senate at its July 30, 2003 meeting. The proposed Revision, to be identified as APM 015, reads as follows:

*Proposed Revisions to APM 010 - Academic Freedom*

The University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. The principles of academic freedom guarantee freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. These freedoms enable the University to advance knowledge and to transmit it effectively to its students and to the public, both inside and beyond the classroom. The University also seeks to foster in its students a mature independence of mind, and this purpose cannot be achieved unless students and faculty are free within the classroom to express the widest range of viewpoints within the standards of scholarly inquiry and professional ethics. The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty. The contours of these duties are more fully set forth in The Faculty Code of Conduct (APM 015).

Academic freedom requires that teaching and scholarship be assessed only by reference to the professional standards that sustain the University's pursuit and achievement of knowledge. The substance and nature of these standards properly lie within the expertise and authority of the faculty as a body. The competence of the faculty to apply these standards of assessment is recognized in the Standing Orders of the Regents, which establish a system of shared governance between the Administration and the Academic Senate. Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care.

Members of the faculty are entitled as University employees to the full protections of the Constitution of the United States and of the Constitution of the State of California. These protections are in

addition to whatever rights, privileges and responsibilities attach to the academic freedom of university faculty.

President Atkinson reported to the Academic Assembly on March 12th that in the process of reviewing events surrounding a controversial writing course at Berkeley last fall, it became clear that the existing statement on Academic Freedom was not useful in addressing contemporary questions. The course in question, "The Politics and Poetics of Palestinian Resistance," was offered as a writing course on Palestinian poetry. Its course description stated that "Conservative thinkers are encouraged to seek other sections." That exclusionary requirement was not acceptable to the University. But there was widespread discussion beyond the University about the course, during which it became clear that the course was strongly committed to the Palestinian perspective in its conflict with Israel, and was taught without any special obligation to present alternative views or inconvenient facts about the same issues. But "the controversy over to what extent faculty should incorporate personal political viewpoints into their curriculum remained." Under the existing Regulation 010, this treatment of the Israel/Palestine conflict was at odds with the requirements of "objectivity," and formal objections could be raised to the course not just about its exclusionary criterion (which was modified) but to the treatment of the issues discussed. The revision of the regulations bearing on the treatment of such issues in UC classrooms takes care of that problem. The instructor now can be as biased as he wishes, subject only to his or her own "competent" judgment. And that does indeed make the revised regulation "more useful" in addressing contentious questions, i.e., in keeping them out of the papers and making challenges to their bias with the authority of APM 010 no longer possible.

Another substantial objection to the existing Regulation 010 is that the Regulation is largely unknown to the faculty and ignored in practice. The revision therefore merely brings the Regulation into line with widespread if not universal practice in the University – this is perhaps what the President meant when he said that the existing regulation was "outmoded." But this begs the question of the wisdom of a regulation of faculty behavior that no longer demands "objectivity" in the treatment of material in the classroom, and merely legitimates any degree of deviation from it that can be covered by the broad reference to the "competence" of the instructor.

This requirement that they be "competent" is a qualification without substance. All UC faculty are assumed to be "competent" in their teaching, merely by evidence of their appointment and retention through the stringent procedures that are involved in the appointment and promotion of academic staff. So a reference to teachers' "competence" is no criterion at all; it does not even preclude teaching quite outside one's formal disciplinary field of competence. We all know that in the search for knowledge and truth we must transcend disciplinary boundaries and seek to link one perspective with others ordinarily outside the boundaries of an individual's presumed competence. Far from earning criticism or condemnation, teaching across disciplinary lines, outside the boundaries of one's scholarly or scientific "competence," is likely to earn a teacher an accelerated promotion or election as teacher of the year, rather than a censure.

What are we losing or gaining in the replacement of APM 010 by APM 015?

1. First, contrary to what has been said about it, the old Regulation APM 010 did not require a teacher to surrender his/her own views on the matters under discussion, or preclude her presenting those views to the class. What "objectivity" meant was the moral obligation to make students aware of alternative facts and views on the issue,

the obligations to make them aware of what we might call "negative evidence," ideas, arguments and knowledge that were – as Max Weber put it in his classic essay on this issue – "inconvenient for [the teachers'] party position." And he meant by that phrase not the formal party affiliation of the teacher, but any political or ideological tendency or preference that might affect the way the teacher presented that material in a class.

Weber, or any university teacher, would understand that it is not realistic to require or expect that teachers can wholly conceal their own preferences on issues where their preferences would affect their treatment of the material. Indeed, Weber thought it to be wholly legitimate for a teacher's values and political preferences to influence their choice of subjects to study. But having chosen a subject for study, then while they are free to present their own views in the course of that study or presentation, they are not free to exclude alternative views. On the contrary, they then have a moral obligation to bring those alternative views to the attention of their students. Weber, writing just after WW I at a time of nationalistic fervor in defeated Germany when many German academics were using their lecture podiums to forward political doctrines, strongly criticized this tendency of academics to use their podiums as political platforms. Weber reminded academics of the difference between their calling and that of politicians; while it is expected that politicians will present their own views as persuasively as possible, for academics it is "their damned duty" to make their students aware of alternative ways of seeing an issue, and of the "inconvenient" facts and arguments that bear on it. And that is precisely what the revised Regulation APM 015 would no longer require of teachers in UC.

2. The proposal to replace APM 010 with APM 015 can be ignored by a large part of the university, because the issue is really only problematic in those subjects where the discipline itself does not have built into it the requirement to confront negative evidence. That includes all the science and math subjects and science/math based professions, which are ultimately founded on experiments or their methodological equivalents. And that may help explain why this proposal has moved so quickly through the Senate, and with so little response from the academic community. The issue arose in connection with a politically committed course, and will apply to other politically committed courses like "The Politics and Poetics of Palestinian Resistance."

3. The problem of negative evidence is acute where the burden of objectivity rests wholly on the shoulders of the instructor, without the help of an experimental tradition or the quantification of data – as in the soft social sciences and humanities. Those subjects have over time developed their own strategies and mechanisms for sustaining a measure of objectivity in their treatment of their subjects – not out of lofty moral or ethical considerations, but out of a general recognition that without such constraints on personal bias and preference, the discipline would rapidly become an instrument for the demonstration of the correctness of a position, rather than a search for a deeper or wider understanding of the issues in question. The pursuit of truth would be a victim of the conviction that it had been discovered and needed only to be effectively taught and demonstrated; factual "evidence" could be chosen to illustrate a position rather than to test it.

The costs of such a posture for a discipline are large: a loss of credibility in the intellectual community, a loss of standing with students and prospective scholars, and a general decline in the power and standing of the discipline in the academic community. It would be invidious to give examples here; the reader can surely supply his/her own.

4. The fact that the issue of objectivity of the instructor about the substance of a course is only problematic in a minority of disciplines in the university may account for why it has not raised more opposition – and indeed, among scientists, a puzzlement about why these words are necessary at all, given the considerable machinery of science for finding and correcting error, not least error which arises from ideological bias. Scientists are aware of the scientific costs of an ideologically driven science, as in Nazi Germany and in the Soviet Union. Stalinist biology – as practiced by Lysenko and his followers – is known by all scientists, as are the jokes made about a Marxist physics or mathematics. So the problems of sustaining a measure of objectivity in the non-experimental and non-math based subjects are not widely understood throughout large sections of the university.

Those vulnerable subjects have in the past tried to protect themselves against politicization, their subordination to the politics of the "urgently committed" teacher alone in his/her classroom, in a variety of ways. Among these were:

- The socialization of graduate students. This was done by precept, by readings, and by example. The Weberian dictum was visible on the reading lists, in the lecture hall and seminar room, and most powerfully, in the instructor's marginal notations on essay drafts and term papers.
- The efforts to find approximations of the experimental method in the soft disciplines, e.g., randomization and quantification in survey research.
- The commitment by teachers to requiring their students to read books and studies which present facts and arguments at variance with those held by the instructor.
- The habit of inviting visiting lecturers whose views are critical of, or at least different from, those held by the instructor.
- At the departmental level, the tendency to appoint new faculty to the department who reflect different social/political/moral/ethical perspectives, ensuring that students would be likely to hear differing views in different courses, if not in a single course.

Teachers who adhere to the Weberian conception of the norms of teaching are not necessarily more moral or ethical than those who prepared or approve of the revised APM 015. On the contrary, the Weberian requirement accepts the propensities of teachers to teach the versions of controversial social and political issues that are closest to their own preferences. And those who accept Weber's requirement – to present negative evidence and positions at odds with one's own "party position" – can only do so by accepting methodological constraints into their research and teaching, thus forcing themselves to confront awkward findings in some of the ways cited immediately above – and these do not exhaust the possibilities. To the extent, for example, that researchers set forth procedures for the selection of respondents for interview or survey on some issue, and then actually select respondents according to that procedure, they are more likely to learn from the results rather than merely use them to illustrate what they already know to be true. And in the design of courses, a teacher can resolve to include the work of those authors and researchers whose research and writings reflect a sensitivity to the dangers of personal bias, and include ways of limiting that bias. Much depends on whether the teacher feels it morally incumbent on himself to balance his own preferences with research and writing at odds with those preferences.

That commitment was present in APM 010; it is absent from APM 015, which drops the requirement of objectivity, and accepts as legitimate any presentation of material that the competent (and urgently committed) teacher chooses. The Academic Council's gloss on the text in the footnote to its presentation of proposed APM 015, (quoted in full above), is revealing of its meaning and intent:

Although competent scholarship requires the exercise of reason, this does not mean that faculty are unprofessional if they are urgently committed to a definite point of view. It means rather that faculty must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion. Competent scholarship can and frequently does communicate definite and politically salient viewpoints about important and controversial questions.

The central question in the new regulation is not what material the teacher presents to the class, but how he/she arrived at their views of that material. If they applied "professional standards of inquiry," and were not motivated by "monetary gain or political coercion," then competent scholarship "can communicate definite and politically salient viewpoints about important and controversial issues." The teacher is under no obligation to inform the students that there are other, different viewpoints, held by other equally "competent" scholars, who are also "urgently committed to a definite [though perhaps different] point of view" about the same issues.

But even if there is little diversity of perspective in a single course, is it not likely that a student will at some point be exposed to these other perspectives in the classrooms of other teachers of the same or related subjects? Is not diversity of perspective ensured by the diversity of the political views of the academics themselves?

A study, reported in *The American Enterprise* magazine, of the political affiliations of members of social science and humanities departments in some leading research universities shows the heavy bias – the near absence of political diversity – in these departments. The researchers visited Boards of Elections in the areas of 21 colleges or universities, including such institutions as Cornell, Brown, Harvard, Penn State, Stanford, Syracuse, Berkeley, UCLA, the State University of New York at Binghamton, and the University of Colorado. They looked at party registration for faculty members in various disciplines. Even discounting that the researchers had only limited registration records in some places, there is little doubt their statistics capture the general political picture in the humanities and social science departments in this cross-section of American research universities.

The study divided the parties into right or left: Republican or Libertarian on the right, and Democrat, Green, or the like on the left. At Cornell, they found one English Department member in a party of the right as opposed to 35 registered on the left. In Cornell's History Department, they found no one registered on the right, but 29 on the left. At Harvard, the researchers found one member of the Political Science Department on the right versus 20 on the left. Roughly the same held true for Economics and Sociology. At the University of California at Santa Barbara, the ratio across five departments was 72 to one. The nearest thing to a conservative bastion is the Stanford Economics Department, where seven of 28 members (25%) belong to parties of the right.

If we report here only the results from some UC campuses, we find the following distribution of political preferences in humanities/social science departments on four campuses.

	Left leaning	Right leaning
UC Berkeley:		
Economics	20	3
Political Science	24	4
Sociology	15	0
UCLA:		
English	29	2
History	53	3
Journalism	12	1
Political Science	16	1
Womens' Studies	31	2
UC San Diego:		
English	28	4
History	26	1
Journalism	11	0
Political Science	27	0
Sociology	7	1
UC Santa Barbara:		
English	21	0
History	28	1
Journalism	8	0
Political Science	13	0
Womens' Studies	2	0

None of this will surprise academics in research universities. The same pattern can be found in every leading American research university – including Cornell, Harvard, Stanford, and Brown – as well as in the leading liberal arts colleges, which both supply and hire a disproportionate number of their graduate students. The pattern persists in the second rank research universities like Colorado and New Mexico.

American universities have had a kind of treaty with the society – a treaty embodied in the "old-fashioned" assumptions of the now-discarded APM 010, that "The function of the university is to seek and to transmit knowledge and to train students in the processes whereby truth is to be made known. To convert, or to make converts, is alien and hostile to this dispassionate duty. Where it becomes necessary, in performing this function of a university, to consider political, social, or sectarian movements, they are dissected and examined, not taught, and the conclusion left, with no tipping of the scales, to the logic of the facts." While many academics in many departments may not have accepted (or even known about) that moral obligation, or known and rejected it, I believe that non-academics outside the university – the supporting society – have assumed that it was still in effect, and based their treaties with the universities on that assumption. Those treaties, variably honored in different times, states, and institutions, have underpinned the very high measure of academic freedom and institutional autonomy of American academics and research universities, as compared with their counterparts in other countries. When those commitments are abandoned to the preferences of an academic profession whose own political preferences in no way resemble that of the distribution of such preferences in the larger society, then that fundamental treaty with the society, to teach its ablest youth and not "to convert or to make converts" of them, is in danger of being broken. If the university gives to this politically unrepresentative body of academics the right to teach their political views without the

necessity to present alternative perspectives if only they are "urgently committed to a definite point of view" and are "competent" to hold those views, then people outside the university might be inclined to suspect that in some academic subjects and departments, there may be more indoctrination and conversion than teaching going on. The costs to the university of its breaking that treaty, and of the trust on which it is founded, may be slow in coming. But the consequences of breaking that treaty can be seen in other societies which have withdrawn their trust from the universities, and govern them more directly according to the preferences of the governments of the day. And that is a very high price – maybe the highest price – that universities can be asked to pay for their own arrogance in the treatment of issues on which many of their academic staff are "urgently committed to a definite point of view," issues on which such teachers no longer need to pursue the truth since they already possess it.

The replacement of APM 010 by APM 015 deserved more serious and extended discussion in the university than it has had.

### **Afterward**

The revisions of APM discussed in this paper were passed by the UC Academic Assembly by an overwhelming 43 to 3 at its meeting on July 30, 2003. This was no surprise; the Academic Assembly is unlikely to overrule a recommendation by the Academic Council, which is the effective legislative body of the UC's Academic Senate, meeting monthly. Its committees do the detailed work of review of policies and the drafting of legislation. The Assembly, a larger elected body, meets once or twice a year, chiefly to give the Council and UC President a chance to get its news and policies heard by more members of the Senate, who can then take that information back to their several campuses. In addition, the Assembly members can make their concerns known to the Council and President, but very very rarely in ways that will affect decisions already taken.

Moreover, criticisms, including the statement by the CAS above, of the proposed revisions of the Academic Personnel Manual (APM) bearing on "academic freedom," were never brought to the floor of the Assembly. So except for those who might have read those criticisms on the Internet, or heard about them through the Chair of the Council – a strong supporter of the revisions, and thus unlikely to press the criticisms on the Assembly members – they were not likely to have heard any arguments against the revisions, or even to postpone the decision to allow a larger number of Senate members to learn the issues and make their views known.

Those of us who did develop arguments against the revisions do not expect that behavior in the classroom is likely to be changed by sanctions by the University, since everything can ultimately be defended on the ground of academic freedom (except for such grossly egregious conduct as telling conservatives not to enroll in a specific course). The sections of the APM bearing on the behavior of teachers in the classroom, if they have any effect, state the university's expectations of faculty behavior; as we stress in our statement, they set forth norms of conduct, the Senate's (and thus the university's) shared notions of what is right and proper behavior in the classroom. My sense of the real meaning of the revision of APM 010 is that it is part of the broader "de-moralization" of society that Gertrude Himmelfarb has written about. It shifts the criterion for right conduct in the classroom away from any moral obligation to allow and require students to see that there is more than one perspective on most issues, especially in the humanities and soft social sciences, and even to some degree in the natural and physical sciences as well. In principle,



these obligations should be enforceable, though they serve an important function as a statement of the university's expectations whether or not they are ever likely to be "enforced" by actual proceedings against a biased teacher. What the revised sections of the Academic Personnel Manual do is to replace the sense of obligation to present different views of the material to students by an appeal to "competence." The teacher is no longer required or expected to present differing views of material "if they [the teachers] are urgently committed to a definite point of view." There is in the revised APM 010 no longer any norm of right action beyond teaching what teachers believe or wish to be true. The shift is from a norm of behavior to a dependence on technical expertise, the teacher's acknowledged competence in the subject.

Moreover, as we noted in our statement, the leadership of the Senate ignored the context in which these revisions were proposed and passed, a context marked by an enormous imbalance of political preferences among academics in the humanities and social sciences. In the study that we cited in our statement, of the 394 faculty members at four UC campuses – Berkeley, UCLA, San Diego, and Santa Barbara – whose political registrations were established, 371 of them registered as Democrats or Greens, as compared with only 23 Republicans or Libertarians – i.e., over 94% left-leaning. This was not just the case for sociology, where one might expect strong left-leaning majorities; in a representative social science subject like political science, on these four UC campuses the tally of political scientists runs 80 leaning left to 5 leaning right, i.e., 94% left-leaning. Under such circumstances, with so little diversity in the faculty, one would imagine that the Senate (and President Atkinson) would want to lean over backwards to encourage diversity of political perspectives in the curriculum, if not in the faculty. They did not, and are apparently not concerned that the disparity in political sentiments in the faculty might be translated into bias in the curriculum, alleviated only by the behavior of teachers who still feel guided by concepts of fairness and the obligation to present alternative views despite their own political commitments. That number is small, and diminishing with every retirement. And that perspective on teaching is no longer part of a moral statement about the nature of teaching in the Academic Personnel Manual of the Senate.

Ironically, a test of the University's capacity to deal with what common sense would suggest are clear violations of the primacy of reason, evidence, and a commitment to truth in academic life surfaced only a few days after the Assembly's action. A student at Berkeley taking a summer course in beginning Arabic reported that her teacher had announced to the class that he believed that the Protocols of the Elders of Zion were in fact true and moreover had been written by Jews. When challenged in class, so it is reported by the student, the teacher assured the class that he was "one hundred percent certain in his belief that Jews were behind the Protocols."

When queried about the response of the University to teaching such a flagrant lie about an anti-Semitic forgery, the answer by a senior officer of the Senate was that the Academic Personnel Manual does not apply to graduate student instructors, which the teacher of this class was. In addition, the Senate leader defended the remark as falling under the protection of "academic freedom" thus:

I too had always assumed these "Protocols" are a fraud but I am hardly an expert on the subject...but quite frankly there are many theories in social science I think are pure nonsense that have currency; I guess that is part of the messiness of academic freedom... and we each have our favorite "excesses."

There is, I gather, now no lie or distortion taught in a classroom in the University of California so gross that it cannot be defended on the grounds of "academic freedom"

and the "competence" and strong feelings of a teacher – even of a graduate student instructor. In adopting the revised sections of the APM the University expressly rejected the section, including these words:

The function of the university is to seek and to transmit knowledge and to train students in the processes whereby truth is to be made known. To convert, or to make converts, is alien and hostile to this dispassionate duty. Where it becomes necessary, in performing this function of a university, to consider political, social, or sectarian movements, they are dissected and examined, not taught, and the conclusion left, with no tipping of the scales, to the logic of the facts.

The President's justification for his decision to abolish those words was that they "have become outdated." They are instead replaced by abdicating the University's accountability for what is taught in its classrooms in favor of the individual teacher's own conception of "the messiness of academic freedom." And besides, "we each have our favorite 'excesses.'"