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Freedom versus Accountability in the Academy

THE QUESTION OF FREEDOM OF INQUIRY HAS BEEN IN THE AIR, NO DOUBT, ever since human inquiry began in any systematic way. But institutions of learning face the question in a rather more specific form since, on the one hand, they may claim to be uniquely privileged in possessing such freedom because inquiry itself is their most central function, yet on the other hand, they may be host to *constraints* on freedom that are necessitated by the institutional protocols that academies, as sites that combine both pedagogy and research, must adopt.

Academic freedom has had a long and complex evolution, and that complexity owes to a wide variety of factors, some from changes of the culture within academic institutions and some from conditions in the mundiality of the world at large—whether political, economic, technological, or ideological—since such institutions are no longer (perhaps never were) sealed as cloisters. Though it might seem that the issues faced by Galileo in Europe were in essence no different from those faced by proponents of Darwin’s ideas today in the American heartland, it would be obtuse to consider that essence as something unaffected by the tremendously large changes in the polity, the state, the law, the church, and the mentalities of ordinary people. That much is obvious given the vast distance of time and space between Renaissance Europe and contemporary America. But often the context of discussions of freedom of inquiry can change much more locally and within a very few years, and yet carry a vast conceptual

transformation in what the central issues are. I want to focus on one such local and *very recent* change in American universities, and consider what I believe is a really quite novel development in the entire question of academic freedom. It has been the subject of intense debate on campuses in the past couple of years, with cool heads increasingly gone missing on both sides.

Before I address the dispute itself and come to one large conclusion about it at the end of this short essay, it may be worth first briefly expounding how the dispute has emerged against a background of political developments in the wider social and political context and their curricular and ideological effects on American universities. This story may be utterly familiar, but it bears retelling, if only to put into context the particular cast and character of the contemporary dispute I want to focus on.

THE CREATIVE TURMOIL OF THE UNIVERSITIES IN THE 1960S TO A considerable extent emerged out of a broadly conceived Left politics among students, initially reacting to the draft and, therefore, highly critical of the government's misadventures in Southeast Asia, but then often going on to derive that criticism from a wider and more fundamental Left critique of capitalism and its effects both on American society and distant nations. Racial politics ran parallel to this mobilization on campuses and, as we know, produced one of the more remarkable pieces of legislation in American history.

I say that it ran "parallel" to the Left politics on campuses initially triggered by the war in Vietnam, but I don't want to give the impression by that term that they were merely contingently or miscellaneously related. An ethos in which racial issues were raised in tandem with conspicuously Left-based mobilizations gave the politics of race a very specific complexion in that decade. Its focus was primarily on a struggle to acquire *rights* hitherto unpossessed by a group defined upon a racial identity, and that *political* focus did not get dispersed to a more broadly *cultural* racial politics as it did in the decades that followed, especially in the 1980s and 1990s, and which

came to be described as “identity” politics. This is a point of some significance, and something like this initial restricted political focus dispersing to a broader cultural canvas is also perhaps true of the trajectory of feminist politics from those earlier decades of the 1960s and 1970s to the later decades of the past century.

This is not the occasion to make clear or rigorous what is meant by the term “identity” in the expression “identity politics,” but what I do want to stress is that the interest in that expression, however hazy its meaning, derives from a political critique of the perceived limitations of the earlier political radicalism of the Left. Let me trample with great big boots on a lot of subtle distinctions and details—given the restrictions of space, there is no avoiding this—and summarily say that this critique pushed further a criticism that the earlier Leftists had made against the complacencies of liberal universalism, which they felt prevailed in the academic establishment. Such a universalism was said to hide the deep class distinctions that a capitalist society had generated—and the later emergence of identity politics sought to locate a similar complacence in the prevalent conviction among the Left that the only identity that was fundamental was class identity, dismissing all other identities as in one way or another parochializing what should be the more fundamental struggle against the destructive tendencies of capital. The identitarians shared with the Left a rejection of the Enlightenment’s liberal legacy in its prevalent orthodox forms, but it insisted that there were forms of disrespect and hatred that had their source in distinctions other than class and material difference, had their source in race, gender, ethnicity, caste, and other such forms of difference. Difference itself, it was argued, must now become a subject of *cultural study*, over and above a mere struggle for political rights and material improvement, and diversity of identities must be acknowledged as intrinsically worthy, so as to restore dignity and autonomy to groups who had been the target of centuries of cultural contempt over and above material deprivation and exploitation.

This critique caught fire on American campuses, introducing curricular trends and innovations in the social sciences and especially the humanities, and the faculty in these disciplines led the charge, often dismissing more traditional scholars as out of date not only in their thinking but in their *frameworks* of thinking, something that could only be corrected if the syllabi and the pedagogical techniques in these subjects were radically transformed. The old guard often turned defensive in the face of these changes and dug its heels in. “Culture wars” was the term by which such disputation came to be described.

Who was right? It would be impossible (and unsuitable) even to try to adjudicate this question in detail in a short essay of this kind, though looking back on it now from some distance, it does seem as if there was right on both sides. On the one hand, the insistence by the traditional Left on the fundamental nature of class was often wrongly wielded to deny the significance of identity politics and the ameliorations it sought (and to a considerable extent achieved over these later decades) against a longstanding culture of, at worst, contempt for certain minorities (women, counted as minorities in status if not in numbers) and, at best, insouciance regarding their marginalization. But, on the other hand, the Left’s claim has real merit in the following sense at least, a sense perfectly compatible with the acknowledgment of the right that may also be found in identity politics and these ameliorations it sought and achieved. The Left could surely rightly claim that the ameliorations that were sought and achieved by identity politics, however justified they were, would never have been allowed if they had in any deep way undermined the domination of capital (or to put it less abstractly, the deep and widespread influence of corporations in shaping American society). If this speculation is right—which, on the face of it, it does seem to be—then there is surely some justification to the claim that class identity is, after all, more fundamental than the other identities that identity politics put on center stage.

This ecumenical understanding of the rightness and wrongness of the two sides of this dispute was not, however, how things actually played out. There is little doubt that the identitarians won the dispute on the campuses of the nation. As a result, a good deal of the curriculum in a range of disciplines—as well as what got counted as important and what was deemed irrelevant and arcane or harmful in intellectual inquiry—was reshaped over these years. Some of this was very worthwhile, though there was much justifiable resentment sometimes at the extent of the reshaping in some subjects and at the disdain for the old guard, a sort of mirror image of the frustration felt by those excluded and dismissed when fundamental identity issues were for so long simply not on the horizon of discussion. The identitarians' victory also had significant effects on the cultural ethos in universities, often for the better, for instance—to mention just one example—by reducing the unreflective sexism on the part of faculty members not only in their relations with one another but in their relations with students, both in and outside classrooms. In fact, so wide was the victory, that the very term “Left” came now to be owned by identity politics, and the traditional Left began to be described as just that—with the ineliminable dismissive qualifier, “traditional.”

I am keen to highlight this entire background and pedigree for the current dispute partly because I want to stress that this identitarian critique of liberal universalism as well as the traditional Left was primarily mobilized by the *faculty* of the humanities and the social sciences, and its initial battleground was intellectual and curricular more than social and political, though the fallout of its triumph, as I said, was to reshape the cultural ethos of classroom and campus life. But then, looking more closely at the most recent years, once this fallout of the recent past came to be settled in place over these decades, the entire identitarian point of view came to be increasingly owned by *students*, not faculty. In fact, what we are witnessing today in the contemporary dispute I want to focus on (now that I've retold its historical background in potted form) is an interesting retreat of the faculty from some of the new developments around the identity

politics of diversity and difference that students on campuses have adopted, in particular from recent efforts on the part of students to put constraints of accountability on freedom in the academy, constraints arising out of (the surely salutary) commitment that universities have adopted in the past few decades to the value of diversity and difference.

WHAT, THEN, IS THE CURRENT DISPUTE? THE PROBLEM, AS WE FACE IT, seems to be this: the commitment to diversity and difference that came to pass as a result of the developments over the past few decades (which I have tried to crudely sketch) has generated a wide variety of demands, mostly from students—such as the curbing, with sanctions, of the incivility of aggressive hate-mongering speech and even the many “microaggressions,” as they are called, that lie just below the surface of seemingly *civil* speech and cause offense to particular groups, such as the creation of safe spaces for minority and even women students facing an insensitive and complacent majoritarian and male ethos; such as the requirement of trigger warnings in the classroom when teaching texts containing material that might offend particular groups (descriptions of rape or of brutal treatment of African-Americans in the South, for instance); and so on.

Those are the demands on one side. On the other side, there is the claim that all these demands are either direct threats to freedom of speech or create an ethos of inhibition of free and open inquiry, discouraging the full expression of the voices and personalities of free inquirers to pursue controversial paths of inquiry that have in the past frequently yielded new and fruitful forms of knowledge. And since the pursuit and transmission of knowledge is the chief mission of institutions of higher learning, such inhibitions are particularly unwelcome in such institutions.

Let me begin by putting aside one sort of person on each side of this dispute who I think does not deserve to be taken seriously. On the side of free speech, I am not going to consider the sort of person I actually find contemptible, who is brazenly inconsistent in champi-

oning free speech. I myself know a few such people who, for instance, express high indignation about the threats to free speech that come from what they describe as the “political correctness” that pervades campuses deriving from ideas of diversity and the acknowledgement of historically oppressed minorities, but then are quite prepared to ignore the value of free speech when it comes to the expression of criticism of Israeli government policies toward the Palestinians and the American government’s support for such policies. It is obvious that these are people who do not care to protect free speech; they only care to protect the speech that they politically favor. As I said: contemptible.

On the side of diversity, I am not going to consider the sort of person who simply subscribes to the politics of identity and difference as a reflex, just following a trend that is widely in the air, pursuing diversity more out of a sense of not wanting to go against the current political fashion, rather than out of a genuinely compassionate conviction for the sensitivities of disadvantaged groups in our midst. The pejorative term “politically correct” is a good description of such people, and as a term it should be restricted to describing them in particular, not the general politics that recognizes the importance of diversity, which—when it is genuine rather than merely a reflex—is a humane and worthy form of politics. I should admit that I particularly mention and dismiss such people because I fear I might, as a callow youth, have in some small portion been such a person with just such a tendency to unreflectively follow trends—not regarding issues of diversity, but on issues that motivated the more “traditional” Left in the late 1960s.

Putting aside, then, these contemptible or shallow ways of subscribing to the positions on one or other side of the conflict between freedom and diversity, what shall we say of the conflict itself?

Here, first, are some elementary sociological observations. As I have already hinted above, the first and obvious thing to notice is that it is the *younger* generations on campus, the students, who are on the side of diversity and are prepared to forgo free speech when-

ever speech expresses hate and causes offense. Though there are no doubt many faculty (after all, if my remarks setting the background are right, it is the faculty who had generated the underlying politics for these demands) and administrators who are on that side of the dispute and many students on the side of free speech, the older and younger generations by and large do distribute differently, with the former more clearly and insistently, and in larger numbers, on the side of free speech trumping the demands coming from the politics of identity and diversity.

The historical reasons for this are not hard to find. For all the commitment of some faculty to identitarian ideals in the 1980s and 1990s, the older generations on campus today grew up in the shadow and legacy of McCarthyism, and even after McCarthyism subsided they experienced the inhibitions on certain kinds of left-wing speech and expression during the long Cold War. It is a reaction to this experience that shapes much of their (I should say “our” since I am part of that generation) deep commitment to free speech. But for the younger generation, the students on our campuses today, all this is lost in the mists of what seems like ancient history. It is certainly not what centrally shapes their experience as it did for us, and so for them there is no such historical ground on which free speech seems to stand with the same compelling centrality. What *they* grew up on is a quite different kind of politics, a politics of identity battling the complacency of standard liberal universalist ideas that, as I put it earlier, dismissed identities as parochializing sites of mobilization; and even battling traditional Left politics that, to also repeat, recognized no forms of disrespect that did not owe to class differences, often explicitly downplaying the disrespect that owed to difference of race and gender, and in my own country, the difference of caste in particular. These battles have reared in them the sensitivities that they want respected even if it means putting aside the protections of freedom of speech.

There is a further element of their experience that fortifies this. They were born into a social setting where social encounters are

by no means restricted to face-to-face (or voice-to-voice telephonic) conversations. The Internet, in which they participate with far greater relish and ease than the older generations do, has undoubtedly increased the freedom with which speech can be aired. But, at the same time, the Internet—precisely because it is the site of conversations and eavesdropping on conversations that are not only *not* face-to-face but are frequently with anonymous interlocutors—can generate a form of abusive discourse on sensitive matters without identification of the agent behind it. As a result, the younger generations—too remote from the history of McCarthyism and the Cold War to see what is so ultimately compelling about free speech for the older generation—actually *associate free speech with the boundless possibilities of abuse and offense* that its exercise can make possible on the electronic social sites that dominate their social orbit. It is hardly surprising, therefore, that they can quite easily place free speech second when it clashes with what they feel much more strongly about—the importance of the dignities long under threat by social biases of race, gender, ethnicity, and so on.

SO MUCH FOR THE SOCIOLOGY OF SUCH DISPUTATION. HOW SHALL WE, then, think of its effect on the nature of knowledge and inquiry, especially in the humanities, where these demands and sensitivities are most present?

I'd like to recklessly make a bold proposal, which needs much qualification that I will not pursue in detail here, so I must apologize for the broad stroke with which I have to make it. I'd like to suggest that what many of the students are seeking—in their desire to put constraints on liberty or autonomy from this perspective of greater accountability—is a model of inquiry in the humanities that is closer to the ideal of what happens in inquiry *in the law*, especially criminal law. This is not how they or anyone else has put it, as far as I know, but it does seem to be implied by the sorts of demands they have made. Let me explain what I mean by “inquiry in the law, especially criminal law.”

Take the instruction given to jurors that a defendant must be presumed to be innocent until proven guilty beyond a reasonable doubt. On the face of it, this seems the wrong instruction to give someone who is in charge of making an inquiry. The usual instruction in inquiry is: keep an open mind. If in inquiry one makes a presumption on one side, then the presumption might cause one to be skeptical of the evidence that is presented by the other side. Why, then, does the juror not get the instruction to keep an open mind instead of presumption of innocence? The answer, ultimately, lies with some sense that there are prevailing and submerged prejudices that need to be countered. On the practical side, there is the obvious prejudice that ordinary people tend to be swayed by those in power and authority (just think of the Milgram experiments), and it is more usual to find prosecutors (rather than the defense) relying on those in power and authority (though criminal cases regarding police brutality are one large exception to this). On the cognitive side, there is the prejudice of thinking that if a charge has been brought against someone, there must be something to it, a prejudice often expressed by the cliché “where there’s smoke there’s fire.” So, to combat these prejudices, an instruction of presumption of innocence puts certain normative constraints on inquiry. And this entire constraining model for inquiry carries over in detail to how evidence may be gathered, indeed, even to what constitutes admissible evidence and what does not, what may be said by the witness and what must be struck from what is said, and so on.

What does this model of inquiry in the law contrast with? Most obviously it contrasts with a longstanding ideal of scientific inquiry (if Thomas Kuhn is right, more honored in the breach than in the observance) where there are supposed to be no such constraints. You gather whatever you can gather in coming to and testing scientific hypotheses in whatever way you feasibly can. In saying this, I am of course not denying that in the last few decades constraints have come from animal rights concerns about testing in laboratories, nor am I denying that there are many experiments that simply cannot be performed on human beings for obvious reasons; and, to repeat, there

are also the subtler constraints that Kuhn described as the unspoken prejudices of orthodoxy or of what he called “normal science.” Despite all this, what is traditionally considered exemplary in the natural sciences is inquiry that is as unfettered *as is possible*—that is, to proceed without any *ex ante* and *built-in* constraints. But criminal law practice as it has evolved would not be criminal law practice if the constraints I mentioned were not *ex ante* built into what we conceive inquiry and investigation in the law to be. And students today are increasingly claiming, I think, that inquiry in the humanities is like inquiry modeled in this way on criminal law rather than as in science. (It is worth noting that historically, until late in the eighteenth century, evidence law was also governed by the refusal of roadblocks placed in the path of inquiry into evidence. It is only when trials and defense lawyers began to be the norm, and when the adversarial system settled deeply in, that issues of fairness became central and constraining of investigation.)

In methodological debates among scholars in the humanities, the ideal of scientific inquiry has been questioned at least since Weber, and then Dilthey, and then through the entire *verstehen* tradition. But the familiar issues there had to do with the fact that there is a more *interpretative* perspective at work in the humanities rather than explanatory hypothesis-construction as in the sciences. That is not exactly what the students’ demands are seeking today; nor are they pointing to the other familiar element of humanistic study that contrasts with science—that its objects of study, unlike the objects of natural scientific study, are much more pervasively laden with value. The idea is not, or not merely, to say that the subject matter of the humanities is value laden but rather that the responses we have to that value-laden subject matter may turn on sensitivities that have been sharpened by a greater awareness of the importance of diversity than hitherto existed in our societies with their widespread prejudices against what is anomalous and unconventional, not to mention majoritarian prejudice or, at the very least, majoritarian complacency in society at large. Thus, just as with criminal law, it is in order to correct preexisting prejudice owing to one or other social or historical

factor that a sort of analogue to *due process* is demanded in inquiry and pedagogy. So the model of inquiry that I am suggesting is being sought by the young in the past few years is not just a replacement of the scientific model with a more interpretative and value-laden model of inquiry of the *verstehen* and hermeneutical traditions, but the quite different model of criminal law with its form of constraints of accountability on the processes and the articulations of the outcomes of investigation.

All this, I believe, is a relatively *new* development on the methodological horizon of scholarly knowledge and inquiry. Is it a healthy development? Is it the right model for inquiry in the humanities? Though I have views, some even rather strong views, on the matter, I won't in a short opinion essay say much by way of response to this question, even as I think it is a question that will become increasingly important to explore and address.

But I will say this. Assuming for the sake of argument that what I have said is more or less right, let me close by adding one nuance to the proposal that might help to deflate some of the anxieties it *prima facie* gives rise to. Suppose it were the case that we decided to take seriously this new “criminal law” model for how to think about inquiry in the humanities that seems to have emerged from the demands of the younger generation on our campuses. I would think that the first thing to notice is that even in criminal law there is more than one way to understand the sorts of constraints that it places on inquiry and its outcomes and their expression.

In the past several decades, ever since the outreach of the law into the realm of *transitional* justice, the possibilities of a quite new model of inquiry emerged even within criminal law. This new model sometimes even puts aside the very ideal of forensic justice because the aspiration—where transitional justice is concerned—is that one must *live in the future side by side with* the people one was judging; moreover, much of their crime was not merely active or explicit on the part of a few but complicit on the part of large numbers in the population. Forensic investigation was therefore beside the point; it actu-

ally undermined this idea of engaging with the people one had to live with, even as one judged them. How did it undermine that? Forensic investigation is a *detached* or disengaged form of inquiry, whereas the need was to *engage* with the accused and the adversary, not simply see them in objective terms of evidence.

All of this has deep relevance to the academy, and even if we were to take criminal law as a model for how to understand humanistic inquiry, even if we were to accept the increasing adversarial and accusatory ethos on university campuses, the thought cries out that it is a model of criminal law that emphasizes engagement rather than the detachment of forensics that better fits inquiry in the humanities.

But if that is so, then it is not clear that the constraints of accountability that the young seek today can be seen—even by them—as posing any kind of threat to the liberty that has traditionally been cherished in inquiry. The reason for this is quite straightforward. One can only engage, even with one's adversary, if one is prepared to *hear* their claims, and for that one has to give them the freedom and autonomy to inquire and to speak the deliverances of their inquiry so that we might hear it and engage with it. That notion of engagement is what the transitional cases of justice introduced into the criminal law, the refusal to treat the subjects of judgment as objects by seeing them in purely disengaged or detached terms, *silenced* targets of investigation sitting in the dock. If the model of criminal law that is emerging for humanistic inquiry understands itself along *these* lines, modeled on the transitional rather than the forensic exemplar, a whole sea of controversy that is expressed in the anxious dichotomy of my title—"freedom *versus* accountability"—can subside. There is right on each side; that is to say, even if there is right in the demands that push us toward modeling humanistic inquiry on the law rather than as in science, a proper understanding of that model of criminal law, as it is relevant to the humanities, would allow for autonomy and liberty—though now liberty would be legitimated not by clichés regarding the "marketplace of ideas" but on grounds that link the law itself to a less detached and more engaged understanding of itself and its processes of inquiry.

