

CIVIL DISOBEDIENCE AND ACADEMIC FREEDOM[©]

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What is the relation between the forms of principled law-breaking that we know as civil disobedience and the special rights of teachers and students that comprise academic freedom? It is argued that academic freedom does not give them a right to engage in civil disobedience, not even on campus. At the same time, however, academic freedom does protect them in studying, discussing, assessing, and even recommending civil disobedience—even when their opinions and recommendations are misguided or wrong. The subject is discussed in light of some recent cases.

Quel est le rapport entre les formes de transgression de la loi justifiée par des principes, que nous connaissons sous le nom de désobéissance civile, et les droits particuliers des enseignants et étudiants, formant la liberté des universités. On avance que la liberté des universités ne leur donne pas le droit de participer à la désobéissance civile, pas même sur le campus. Mais en même temps, leur liberté les protège bel et bien lorsqu'elles étudient, débattent, évaluent, et appellent parfois à la désobéissance civile—même lorsque leurs opinions et recommandations sont fourvoyées ou erronées. Le sujet est débattu à la lumière de certaines affaires récentes.

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I.	A QUESTION	

One of the relationships between civil disobedience and academic freedom is well established. Martin Luther King writes, “academic freedom is a reality today because Socrates practiced civil disobedience.”¹ That way of putting it is exaggerated and anachronistic—Socrates was not exactly what we now call a civil disobedient—but the idea is both correct and important. We were not granted academic freedom by the magnanimity of politicians, priests, donors, and deans who thought it a good idea. We won it, always with a

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¹ Martin Luther King Jr., “Letter From Birmingham city Jail” in Hugo Adam Bedau, ed., *Civil Disobedience in Focus* (London: Routledge, 1991) 68 at 75.

struggle and sometimes as a by-product of principled lawbreaking. We think immediately of the celebrated cases: Bertrand Russell, dismissed from Trinity College, Cambridge in 1916 for his anti-war protests (and then again in 1940 from The City College of New York for his views on marriage and contraception); John Scopes, convicted in 1925 of violating Tennessee's prohibition on teaching the subject of evolution; the Berkeley students in 1964 who broke university regulations governing speeches and displays in order to secure genuine space for debate. All of this is, or should be, familiar.

But what about the *other* relationship? If civil disobedience helped to secure academic freedom, how far should academic freedom protect us in studying, teaching about, or even engaging in civil disobedience? This is an important question. With new campus protests against corporatization of universities, global injustice, and now the American invasion and occupation of Iraq, it is again becoming an urgent one. There is a tangle of issues. There are questions of strategy: how will others react if we defend protest on the grounds of academic freedom? Will the question of academic freedom distract us from the substantive issues? There are questions of law: How far can tenure and collective agreements protect faculty? What sort of speech and conduct restrictions may universities legally impose on their students? But there are also issues of principle and it is by these that we must ultimately judge the permissibility of strategy and the adequacy of law. These larger and more abstract questions of political morality are my concern here, though I shall also have something to say about a few illustrative cases.

Academic freedom is important in itself, but its intersection with civil disobedience is especially interesting. Civil disobedience is *lawbreaking*. It is distinguished from the other, more usual, sorts of illegality by its motivation and purpose. Civil disobedience is undertaken to protest injustice or other wrong; it aims at social improvement, not individual enrichment. In John Rawls' influential definition, civil disobedience is "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government."² Its scope, means, and justification are all shaped by these features.

What function has the concept of civil disobedience in political argument? Why class together these kinds of principled law-breaking? The fact that we may confidently describe something as civil disobedience does not show that it is justified. Like any other form of protest, civil disobedience may be wrong, misguided, or ineffective. Even so, its nature sets it apart from

² John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) at 364. There is controversy about various aspects of the definition: Is violence never permissible? Must a conscientious appeal to the values actually accepted in a society? Nothing in this article turns on these issues. For a sample of the literature, see Bedau, *supra* note 1.

ordinary criminal and unlawful behaviour in morally relevant ways. Civil disobedience has an important, even necessary, role in a democratic society. Anyone can think of serious injustices with respect to which the possibilities for lawful reform were exhausted or ineffective, or would themselves produce further or worse injustice. A society in which there was no possibility of murder would be a better one, but a society in which there was no possibility of civil disobedience would be much worse. Thus, the thought that we always have a moral duty to obey the law until it has been lawfully changed rests on a false view of political obligation. And there is a second reason for treating civil disobedience differently. A just response to lawbreaking always depends on the intentions of the offender. We react differently to intentional wrongs than to reckless or negligent ones; so too we respond differently to those who break the law out of selfishness or vengeance than to those motivated by principle and justice. And this survives disagreement on the substance. Even when we reject protestors' aims, we recognize that a good-faith intention to provoke reform may be a mitigating or excusing fact. A furiously disproportionate response to civil disobedience (for instance, charging someone with weapons offences for catapulting toy animals across a police barrier³) is therefore itself a kind of injustice.

The nature of civil disobedience is in these ways relevant to political morality. Nonetheless, there is no denying the fact that civil disobedience is lawbreaking, and that fact raises an interesting question for academics. One can exaggerate a teacher's duty to the moral character of his or her students (and certainly our capacity to influence it), but is it not arguable that we should try to encourage respect for the law? The complaint that we are failing here was heard many times during the last major wave of campus protests in the 1960s, but the idea that universities fundamentally cannot be trusted is an old one. In 1651, Hobbes charged the English universities with letting down the nation:

[T]he Instruction of the people, dependeth wholly, on the right teaching of Youth in the Universities. But are not (may some men say) the Universities of *England* learned enough already to do that? or is it you will undertake to teach the Universities? Hard questions. Yet to the first, I doubt not to answer; that till towards the later end of *Henry the Eighth*, the Power of the Pope, was alwayes upheld against the Power of the Common-wealth, principally by the Universities; and that the doctrines maintained by so many Preachers, against the Sovereign Power of the King, and by so many Lawyers, and others, that had their education there, is a sufficient argument, that though the Universities were not authors of those false doctrines, yet they knew not how to plant the true. For in such a contradiction of Opinions, it is most certain, that they have not been sufficiently instructed; and 'tis no wonder, if they yet retain a relish of that subtile liquor, wherever they were first seasoned, against the Civill Authority.⁴

³ "Summit Protester Freed on Bail" (2001) 35 Canadian News Facts 6241.

⁴ Thomas Hobbes, *Leviathan: Revised Student Edition*, ed. by Richard Tuck (Cambridge MA: Cambridge University Press, 1996) at 237.

Notice that Hobbes does not say that the universities have been the *authors* of “false doctrines” such as popery and limited government; it is enough that they *tolerated* them thereby exposing young lawyers and clergy to dangerous ideas that would, he thought, ultimately undermine all law and order. This is no rhetorical flourish: Hobbes wants us to take very seriously the idea that academic freedom instills a dangerous taste for dissent.

We surely reject Hobbes’ view that civil authority must be absolute, and with it the stringent regime he prefers. But some would endorse a moderate version of Hobbes’ claim according to which the universities should encourage, if not absolute obedience, then at least a healthy respect for law. I denied above that we always have a moral duty, all things considered, to obey a law until it is changed. But that leaves open the moderate idea that we owe the law deferential respect, other things being equal. Admittedly, we should not even go this far unless the law is *worthy* of respect, so any responsibility of teachers must be understood in light of our duty to encourage the intellectual and moral capacities that enable students to determine *whether* the law is worthy of respect. But even when thus hedged, does something vital not remain? Does it not suggest, for example, that we should be especially hesitant about engaging in civil disobedience when young eyes are watching, and that if we are teaching about civil disobedience that it should be done, if not in a spirit of condemnation, then at least with restraint? We may agree that the disobedience of Mahatma Gandhi, Susan B. Anthony, and Bertrand Russell was justified *overall*, but perhaps we should remind our students that they were also in *one respect* bad men and women: they were lawbreakers. And if that is the proper approach to these champions of familiar liberal causes, how much more circumspect should we be regarding protests that have not yet been embraced by social consensus: the environmental, anti-war, or global-justice movements? No one pretends that academic freedom is absolute. Perhaps at civil disobedience we encounter one of its limits?

II. THE CONCEPT OF ACADEMIC FREEDOM

It is time to get a bit clearer about academic freedom. Its main constituents can be quickly enough sketched: the right to teach, learn, study, and publish without requirement of orthodoxy or threat of reprisal and discrimination. These lie at the core, and supporting them are certain procedural rights, including a right to fair participation in whatever mechanisms of governance regulate the core functions of the academy. I will fill in this abstract idea as we go, but I want immediately to stress four points.

First, although supported by general moral and political rights (including freedom of expression and opinion), academic freedom reaches further and only applies to certain people and certain contexts, particularly in

schools and universities. Everyone is entitled to freedom of speech; teachers and students, especially in the classroom, are also entitled to further protections associated with their roles. Academic freedom is thus a matter of *special rights*, not general rights. (I shall say more about this shortly.)

Second, one cannot understand the nature and purpose of academic freedom apart from its institutional and functional context. Thus, the reputed connection between truth and the marketplace of ideas is inadequate to explain the specificity of academic freedom. Free enquiry is also valuable in the private sector—a biotechnology firm that forces Lysenkoism on its researchers will go broke. Yet it is not wrong for such a company to require its employees to study some problems rather than others, to withhold their research from publication, or to refrain from helping its competitors. A private firm may be mission-driven in ways that a university must not be.

Third, although the most vocal defenders of academic freedom are typically teachers and professors, we should take care not to exaggerate the importance of some academic roles over others. No plausible justification for special academic rights can proceed without regard to the way universities are dedicated not just to inquiry, but to education. Were it not for the central interests of students, the shape of academic freedom would be quite different.

Finally, academic freedom is not to be identified with university autonomy. Universities are autonomous to the extent that they can set their internal policies with independence from outside influence. Whether they respect academic freedom depends on the character of the policies they set. In practice, university autonomy stands in the same ambiguous relation to academic freedom as national sovereignty stands with respect to human rights: sometimes it protects it from a hostile external environment; sometimes it merely facilitates internal assaults.

Academic freedom is a matter of role-related special rights, and I need to say a word about that. The idea of special rights has fallen on bad times and now functions mainly as a term of opprobrium. Real rights, we are sometimes urged, are those rock-bottom entitlements we have as members of the human community. Special rights, so-called, are but the grasping demands of special interests: of women, of people of color, of gay men and lesbians, of trade unionists. And let us not forget that special rights are not confined to equality-seeking groups. Whatever one thinks of the cases of women or gay men, it would be a bit much to say that students and professors constitute a marginalized, oppressed group in need of special protection from the majority. Can it be surprising then that among the already-suspect special rights, academic freedom is so poorly understood?

A couple of preliminary observations might help. First, special rights are universal in form. They can always be given a generic statement; it is only in virtue of some general features that anyone deserves rights that others lack.

Special rights are justified by reasons, and reasons are logically universal. If p is a reason for A_i to have X or to do Y , then it is such a reason *for all* A similarly situated. The right of parents to guide and discipline their children is a special right for it falls to them as parents, rather than as people or citizens, but at the same time it falls to *anyone and everyone* who is in fact a parent. So we need not worry about special rights failing what philosophers call the “universalizability” requirement for moral principles: it is always possible to express special rights in the form of universal prescriptions, without proper names or other individually identifying terms.

Apart from this conceptual point, there is also a substantive one. If rights are not merely to be the objects of theoretical discussion, but actually enforced and protected, then there must be institutional mechanisms to do just that. Even if it is true that outside political society everyone enjoys what John Locke called the “executive power of the law of nature,” permitting them to identify and punish wrongdoing, it is also true, as Locke insisted, that such power must be limited if rights are to be secure at all. Even if matters of right and wrong were perfectly clear, we would still be likely to judge too leniently in our own cases and too harshly in others’; we would be tempted to take shortcuts to justice and to let our retributive sentiments be inflamed by revenge or dampened by apathy. Outside the smallest of societies and the simplest of issues, human rights therefore need institutionalized means of recognition, adjudication, and enforcement. And this means there must be people with special rights, powers, liberties, and immunities who are charged with those tasks. In this way, the actual practice of human rights rests on the existence of special rights.

So special rights are not suspect so far as the logic of morality goes and they are bound to play a significant role in any political theory. What grounds them? As the examples suggest, special rights are often justified by the way they serve or constitute particular roles—parents have a special right to discipline, police to arrest, judges to decide, parliamentarians to legislate, and so forth. We can easily name the main academic roles: teacher, student, researcher, author. But what exactly do these roles require when set in institutions oriented to the aims of knowledge and education? The rights I set out above are obviously an important part, but they leave room for controversy. The fact of this controversy is better understood than is its shape. Even more than the parental or judicial role, the concept of the academic role is essentially contested.⁵ That is to say, we find argument not only about its boundaries but about its core, and the controversy about its essence is *part of* its essence. While there are core parts of the academic role (teaching and learning) and agreed

⁵ W.B. Gallie, “Essentially Contested Concepts” (1955-1956) 56 Proceedings of the Aristotelian Society 167.

exemplars of it (professors and students), there is also self-embracing disagreement, an end to which would give us better reason to think that our society had lost the academic role than to think that it had resolved the debate. Nor is this essential pluralism a matter for regret. The controversy keeps alive different valuable aspects or facets of a form of life that may be incompatible, rival, or conflicting.⁶ It is no accident then that protections for the possibility and vitality of debate figures so prominently in all accounts of the academic freedom.

III. ACADEMIC FREEDOM AS A SPECIAL RIGHT

So much for generalities. As a first step towards understanding the relationship between civil disobedience and academic freedom, let us think a bit about its limits, bearing in mind what I have said above about pluralism. Academic freedom does not protect every sort of academic behaviour. Consider some examples. It does not protect the professor who is drunk in class; or who submits to a journal material she has already published elsewhere; or who represents as co-authored what is really the work of his students; or who pressures an assistant into ghost writing her talk; or who bullies his junior female colleagues. Such wrongdoing is familiar enough—drunkenness, lying, cheating, and bullying are among the ordinary vices⁷ of academic life. These always merit condemnation; egregious cases warrant discipline. None is protected by academic freedom. But notice something important. This is *not* because the ordinary vices are exceptionally bad. Indeed, many of them are *less* wrong than some protected activities.

A recent example illustrates the point. Like most Canadian universities, the University of Toronto memorializes the 1989 massacre of fourteen female students gunned down in Montreal's *École Polytechnique*. In December 2000, University of Toronto computer science professor Charles Rackoff responded to that year's memorial announcement by broadcasting the following e-mail to his colleagues: "[T]he point of this is not to remember anyone. The point is to use the deaths of these people as an excuse to promote the Feminist/Extreme left-wing agenda." He went on to say that it is in some respects worse than Ku Klux Klan propaganda.⁸

⁶ On these distinctions see Leslie Green, "Pluralism, Social Conflict, and Tolerance" in Arend Soeteman, ed., *Pluralism and Law* (Dordrecht: Kluwer, 2001) 85.

⁷ I take the term from Judith N. Shklar, *Ordinary Vices* (Cambridge, MA: Harvard University Press, 1984).

⁸ "It is no different, and no more justified, than when organizations such as the Klu-Klux-Klan [sic] use the murder of a white person by a black person as an excuse to promote their agenda. (Even the KKK, as far as I know, has never suggested that all Black people should wear white ribbons to apologize for the collective

Now, saying that feminist academics are on a moral par with racist murderers is much worse than being drunk in class, and worse than self-plagiarism and some forms of cheating. But even Robert Birgeneau, President of the University of Toronto, could grasp the principle at stake. It is often expressed in a remark attributed to Voltaire: "I disagree with everything you say, but I will fight to the death for your right to say it."⁹ Birgeneau's loyalty to that principle was not tested as far as a fight to the death, but he did fend off enraged students and faculty who demanded an official response. Deploring Professor Rackoff's views as "repugnant" and "abhorrent," he reminded the university of the importance of respecting the "difficult balance between deeply disturbing remarks and the fundamental principle of free speech."¹⁰ Abhorrent as the remarks were, and whatever effect they may have had on the climate of sexism in the university, a professor must be free to denounce even valuable university practices. Not only did the university *tolerate* Rackoff's remarks, it *protected* them by resisting demands for retaliation. University spokeswoman Susan Bloch-Nevitte acknowledged: "[W]e have a campus of more than 70,000 people, each of whom has a view on every issue," and "the university takes a fairly broad view on issues of controversy."¹¹

It is crucial to see that taking a "broad view" does not depend on supposing Rackoff's action to be morally innocent. What it requires is seeing this obviously wrong action as a member of a *class* of actions, freedom with respect to which is vital to the academic role. Why does a computer science professor need the right to attack feminism? Is this a computer scientist's role? This is the wrong question, for Rackoff's action was not protected under the description "attack on feminism," but under the description "political criticism of the university." And the issue is not whether a computer scientist needs this liberty, but whether a professor does. Had a firm lost staff in the World Trade Center (WTC) attacks, it would not need to permit an employee the use of its network to denounce a memorial as Zionist propaganda. The active pluralism

sins of their race."): Colin Freeze, "'Klan' furor mars massacre vigil" *The Globe and Mail* (7 December 2000), online: <<http://globeandmail.com/servlet/RTGAMArticleHTMLTemplate/C/20001207/ncamp?tf=RT/fullstory.html&cf=RT/config-neutral&slug=ncamp&date=20001207&archive=RTGAM&site=Front>> (date accessed: 2 July 2003).

⁹ Attributed without source; some scholars doubt its authenticity.

¹⁰ Susan Bloch-Nevitte, "Rackoff Sparks E-Mail Debate" *University of Toronto: The Bulletin* (18 December 2000), online: University of Toronto <<http://www.newsandevents.utoronto.ca/bulletin/12-18-00/12-18-00.pdf>> (date accessed: July 2, 2003). She quotes President Birgeneau somewhat differently in an article for the University of Toronto Website: "Nonetheless, I acknowledge the difficulty of balancing deeply disturbing views expressed by members of our community with the University's fundamental principle of free speech.": "Email views 'repugnant': president" *News at U of T* (7 December 2000), online: University of Toronto <<http://www.newsandevents.utoronto.ca/bin1/001207a.asp>> (date accessed: 2 July 2003).

¹¹ *Supra* note 8.

of academic life has no parallel in the bureaucratic environment of work for hire. (That explains the resentment some feel about things like academic freedom and tenure: we claim special exemptions from the restrictions that dominate most people's whole working lives.)

We reach the limits of academic freedom when we go beyond what is needed for the academic role. That is why the ordinary vices are not protected, even while much worse things are. This is in fact a familiar feature of all liberty rights: they include a right to do wrong.¹² Academic freedom protects the false with the true, the repugnant with the righteous, and the misguided with the prudent. Of course, it does not do this *in order* to shelter falsehood, injustice, and so on. It does this because the liberty is valuable and because a policy of permitting that only truth be said and only justice be done is certain to secure neither. The wrong-embracing feature of rights is of great significance. It means that when we (correctly) appeal to our right to do *X*, we still have not shown that *X* is the right thing to do. In arguing that it is right to do *X*, we normally appeal to the merits of doing *X* in order to establish that the agent has a reason to do it.¹³ In arguing that there is a right to do *X*, we offer instead reasons for people other than the agent not to interfere with his doing *X*, or to *protect* it from interference, even if the agent lacks adequate reason to do it or has a valid reason to refrain.

The foregoing bears on the question of whether academic freedom gives faculty or students a special right to engage in civil disobedience. One should engage in principled lawbreaking only if one has a justification for doing so. This is true also of lawful protest: the injustice of a war is a reason to join a peace march, having a right to march is not. But is the proper response of *others* to an unlawful protest conditioned by the merits of one's case, or does one have a right to break the law wrongfully? That it retains some independence of the merits is shown in the ways that protestors' bona fides bear on punishment—in mitigation or excuse, for instance. But there is reason for thinking that it does not reach further:¹⁴ "Every claim that one's right to political participation entitles one to take a certain action in support of one's political aims (be they what they may), even though it is against the law, is *ipso facto* a criticism of the law for outlawing this action."¹⁵ In a fair system of political participation, then, this unjust restriction would not exist and one would be permitted to make the

¹² For a discussion see Jeremy Waldron, "A Right to Do Wrong" (1981) 92 Ethics 21.

¹³ There is an exception in the case of content-independent reasons. I shall not discuss it here. See Leslie Green, *The Authority of the State* (Oxford: Clarendon Press, 1990) at 36-59.

¹⁴ The argument of this paragraph follows, with some modifications, Joseph Raz, *The Authority of Law* (Oxford: Clarendon Press, 1979) 272-75.

¹⁵ *Ibid.* at 273.

protest. Hence, the only unlawful protests that others would be morally required to tolerate or protect would be those that were defensible on their merits. Whenever there is a fair right to participate, there is therefore no moral right to engage in civil disobedience. This is not the case, however, when one does not have the right to participate at all, or when that right is rendered pointless or ineffective. So Martin Luther King did, in the circumstances, have a right to disobey. In that way, a right to political participation may sometimes support a right to unlawful protest. If we consider a university's rules to be analogous to a legal system, similar considerations apply to faculty or students who are without fair rights to participate in university governance. This case will necessarily be somewhat different, for universities are not democracies. What fairness requires by way of rights of collegial governance differs from what it requires by way of political participation (and it applies differently in the cases of professors and of students). For the rest of this discussion, however, I am going to set these issues aside and assume the right to participation is secure.

Thus we have our first conclusion: academic freedom does not protect us when engaging in civil disobedience, not even disobedience on campus. That truth is an important one, but we must take care not to confuse it with two falsehoods. The first supposes that if civil disobedience is not protected by the special rights of academic freedom, then it must be wrong. That, of course, does not follow. We may be fully justified in doing things that we have no right to do. The second mistake supposes that if there is no right to engage in civil disobedience, then there is no right to express views about civil disobedience or views displayed in an act of disobedience. Consider this example: In July 2000 an Agence France-Presse photograph showed Professor Edward Said of Columbia University hurling a stone across the Lebanese border towards an Israeli guard post.¹⁶ (No one was struck and it is doubtful that any laws were broken, but let us entertain the supposition.) A vigorous pro-Israel lobby demanded that Said be sanctioned; even the Columbia student council appealed to the administration for a punitive response. To his enormous credit, and at some political expense, Provost Jonathan Cole refused and vigorously defended Columbia's tradition of academic freedom. (It had been one of few American universities to stand firm in the McCarthy years.) Now, Professor Said's stone throwing is not protected by academic freedom, but his right to work without reprisal for his political views is, and that includes the views expressed by hurling the stone. But this is not a right to civil disobedience; it is an aspect of the right to freedom of opinion.

IV. ACADEMIC FREEDOM AND CIVIL DISOBEDIENCE

¹⁶“Columbia College Today” *Columbia College* (September 2000), online: <http://www.college.columbia.edu/cct/sep00/sep00_quads7.html> (date accessed: 3 July 2003).

Engaging *in* civil disobedience is not the only way that academics engage *with* civil disobedience. We also study it, teach about it, assess it, criticize it, and commend it. Whether any of this is protected by academic freedom is not determined by the argument of section III. I want to approach these issues first with a hypothetical; a discussion of a real case will follow. We are to consider a sequence of statements that an instructor might make in class. They bear on justice and taxation, but we need not suppose it to be a class in tax law or theories of justice, simply that the context is such as to make the intervention intelligible.¹⁷ It begins with the following:

(S1) “*Murphy and Nagel argue that the income tax system is grossly unfair.*”

The statement set out above does not actually quote the eminent philosophers, Liam Murphy and Thomas Nagel, but it does, I am confident, fairly represent their views about the income tax systems of most rich countries.¹⁸ In any case, if I am wrong about that, they have all the resources they need to correct me, as would a class to which I said it. Absent bizarre circumstances, there would be no reason for anyone to stop me from saying this and much reason for them to protect me from anyone who tried. Or so I shall assume. (An argument for that assumption can be given, but if we are dealing with someone who actually thinks it permissible to interfere with teachers saying things like (S1) then we are dealing with a much more difficult problem than merely academic freedom.) There are, of course, universities where instructors cannot, without fear of reprisal, even mention Darwin’s views, the efficacy of condoms, or the corporatization of the university, but it is obvious that they have sacrificed academic freedom in the service of things they value more highly: doctrinal purity, moral tone, cash flow, and so forth. Even if one supposes that they are right in these sacrifices, it can scarcely be denied that what they give up in the bargain is the freedom of their students and teachers.

¹⁷ The American Association of University Professors (AAUP) “1940 Statement of Principles on Academic Freedom and Tenure With 1970 Interpretive Comments” stated, “Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.” At the time, this statement was more radical than it now seems. In 1970, the AAUP issued this interpretive comment: “The intent of this statement is not to discourage what is ‘controversial.’ Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.” Online: <[http://www.aaup.org/statements/Redbook/1940stat.htm#\[2\]](http://www.aaup.org/statements/Redbook/1940stat.htm#[2])> (date accessed: 23 March 2003).

¹⁸ Liam Murphy & Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002).

As Isaiah Berlin says, “[A] sacrifice is not an increase in what is being sacrificed ...”¹⁹ More interesting issues emerge in comparing (S1) with (S2):

(S1) “*Murphy and Nagel argue that the income tax system is grossly unfair.*”

(S2) “*Murphy and Nagel correctly argue that the income tax system is grossly unfair.*”

Might a professor be protected in saying that Murphy and Nagel *say* the income tax system is grossly unfair, but not in saying that they are *correct* in saying that? It is hard to think of an argument, unless it is this one: there is a *fact* of the matter about what they *say*. It may be a complex fact turning on questions of interpretation. (Perhaps they don’t mean by “unjust” quite what we mean by “unfair;” perhaps it is an exaggeration to say they think it “grossly” unfair.) Making due allowance for that possibility, it is still perfectly natural to describe this as a matter of fact and, the argument continues, facts are what we should discuss in class. In contrast, whether Murphy and Nagel are right turns on whether the tax system *really is* unfair. About that, there is no fact of the matter since moral predicates like “unfair” or “unjust” are merely subjective—a tear in the eye of the beholder. Lacking cognitive content, their function is to inspire, condemn, provoke, and so on, not to inform or instruct. Teaching and learning is about making better knowledge, not about making better people, so it falls within the proper scope of the academic role to make (S1)-type statements—here we have a privilege—but not to make (S2)-type statements.

That is, I think, the best argument to drive a wedge between (S1) and (S2). Something like it is entertained by Max Weber in his celebrated 1918 essay, “Science as a Vocation,” which remains one of the best discussions of the academic role. Weber thinks that “politics is out of place in the lecture-room,”²⁰ on the part of both students and teachers. He is well aware that students are often moved by, and seek out, leaders and prophets, and aware too that teachers too easily succumb to the temptation to try (usually impotently) to fulfill these roles. But Weber thinks that moral and political argument is fundamentally irrational. We can argue scientifically about facts, including facts about the best means to presupposed ends, but not about ultimate ends themselves. The language of political morality is thus poorly suited to scientific analysis. Even words like “democracy” are suspect: “They are not plowshares to loosen the soil

¹⁹ Isaiah Berlin, “Two Concepts of Liberty” in Anthony Quinton, ed., *Political Philosophy* (Oxford: Oxford University Press, 1967) 141 at 144.

²⁰ Max Weber, “Science as a Vocation” in H.H. Gerth & C.Wright Mills eds., *From Max Weber: Essays in Sociology* (London: Routledge, 1970) 129 at 145.

of contemplative thought; they are swords against the enemies: such words are weapons.”²¹

It is hard to imagine teaching political science or law while avoiding words like “democracy” or “justice,” and I think that Weber’s dim view of the prospects for rational argument about value is wrong, but I cannot argue that point here. At best, his argument shows that these debates cannot be “scientific”; but no one is about to defend the view that the academic role properly extends only to making and testing scientific claims, or that only in such subjects does debate merit protection. In the arts, humanities, and social studies, our reasons for caring about (S1) statements include that fact that their authors offer the embedded claims as correct. It is true that some excruciatingly historicist scholars have denied the relevance of this. They think that we might explore what Karl Marx meant when he called talk of equal rights “obsolete verbal rubbish” while ignoring whether they in fact are. Few of its proponents actually hew to this detachment as consistently as they propose, but, in any case, the most important reason for trying to discover what Marx meant by calling rights rubbish is that it matters whether he is right. That is, after all, why Marx wrote those words: not in order that the genealogy and causes of their utterance be studied, but that they be understood, believed, and acted on. With that in mind, consider this pair:

(S2) “*Murphy and Nagel correctly argue that the income tax system is grossly unfair.*”

(S3) “*The income tax system is grossly unfair.*”

Here the personalities drop out and we confront the embedded claim apart from any reference to who might have uttered it. Does (S3) escape the proper boundaries of academic discourse? Though it is occasionally hard for law students (and even some professors) to grasp, we can reason about normative arguments in a way independent of any authorities. It is the professional vice of the legal outlook to confuse instances in which it is appropriate to appeal to authority with instances in which it is not. Like many other vices, it is a deformation of a virtue: the lawyerly virtue of seeking an authoritative source—a statute, a case, a convention—for any legal proposition. But we err when we suppose that most normative argument is like this, when we carry our preoccupation with what people have said beyond the realm where authority is relevant (for example, when we treat policy questions as if they are resolved by quotations from experts, reports of committees, or opinion polls). If we avoid that mistake, we are unlikely to be tempted by the thought that

²¹ *Ibid.*

academic freedom applies to discussing what a scholar says, and whether it is true as he or she says, but not to whether the proposition at stake is simply true.

(S3) “*The income tax system is grossly unfair.*”

(S4) “*The income tax system is so unfair as to justify a tax strike.*”

The move from (S3) to (S4) marks the transition to a statement about a possible act of civil disobedience, and I want to underscore two important points. First, I am assuming that uttering (S4) is not itself an act of civil disobedience; it is a speech act *justifying* an act of civil disobedience. Second, I am not deriving (S4) from (S3). Perhaps something like (S3) is necessary for the validity of (S4). Law may have other vices—it can be inefficient, stupid, inelegant, and so on—but when we are talking about tax law, justice really is something like the first virtue of this social institution. But the truth of (S3) is not sufficient for the validity of (S4): maybe disobedience would do more harm than good; maybe the entrenched injustices can eventually be corrected, if voters care, at the ballot box; or maybe matters of economic policy should not be protested by lawbreaking.²² Any argument from (S3) to (S4) involves these and other considerations of political morality and calls for judgment; it will never amount to a logical deduction or demonstration.

What then should be our attitude to (S4)-type statements? On reflection, we see that the stakes are not so different from what they are in (S3): it is but another normative proposition, and one whose truth or validity matters in the same way. Moreover, (S4) can be understood as indicating a degree of injustice: it is an index of how unjust the tax system is that civil disobedience could be warranted as a means of changing it. It is inconceivable that academic freedom would protect us only in making claims about modest injustices but not about serious ones. After all, to assert that an injustice is modest is to deny that it is serious. It cannot be the case that we are at liberty to deny the latter proposition but not to assert it. Think about other examples: might a professor be protected in saying that Saddam Hussein’s regime was unjust, but be exposed to sanction for saying it was so unjust that the United States was justified in its invasion? Of course, (S4) also makes something more than a claim about the degree of injustice. This is brought out more clearly in (S5):

(S4) “*The income tax system is so unfair as to justify a tax strike.*”

(S5) “*The income tax system is so unfair that you would all be justified in withholding your income tax.*”

²² See Rawls, *supra* note 2 at 372 and Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985) at 112.

Here (S5) makes vivid what is already implicit in (S4), namely that a tax strike is about not paying one's taxes. The differences are mainly stylistic. With a few modest premises, (S5) actually follows from (S4), for what it is for a tax strike to be justified is for one to be justified in participating in it. One can imagine circumstances in which a professor says, "the income tax system is so unfair as to justify a tax strike," but then goes on to add, "of course, I do not mean that *you* would be justified in withholding your taxes." This would be natural if, for instance, the audience were beneficiaries of the injustice. But unless something like that intervenes, the normal practical inference will follow.

Thus far, we have been tacitly assuming that (S4) and (S5) are said by an instructor who seriously endorses them. It is possible to use normative language in a more detached way.²³ I may say to an observant Jew, "You ought not to eat that, it isn't kosher," without for a moment endorsing any dietary taboos. What I mean is, obviously, that he or she ought not to eat it, but the force of what I say carries no religious commitment on my part. Likewise, a professor may discuss "fairness" in taxation in a similarly detached, "let's suppose," or "as if," sense, exploring the implications of principles treated as valid but without commitment to their validity. But to say that detached normative statements are possible in the classroom is not to say that only detached statements are permissible. Doubts about this come, I think, from wrongly supposing that normative statements made with their full force can have but one function: to get others to endorse them. If this is conjoined with the notion that teachers ought never try to get the endorsement of their students, we might be attracted to the idea that academic discussion should always be detached. Quite apart from the fact that this would be terrible pedagogy, it rests on two mistakes. It is not true that teachers should refrain from trying to win over their students to normative claims: that is what we do every time we argue, "this case is wrongly decided." Second, full-blooded normative statements need not have this other-directed function; they may be primarily expressive, declaring and displaying one's own allegiances. Weber thinks it especially important for a scholar to be clear and open about his or her value positions. Sincerely expressing them in committed normative statements is one good way to ensure this.

Finally, then, let us think about a last modification:

(S5) *"The income tax system is so unfair that you would all be justified in withholding your income tax."*

(S6) *"You should all withhold your income tax until the unfairness of the tax system is removed."*

²³ On detached normative statements see Joseph Raz, *Practical Reason and Norms* (Princeton: Princeton University Press, 1979) 175-77.

(S6) is the sort of statement that will occupy us for the remainder of this article. In this section, I only want to make a few observations. Here, (S6) is offered, not as the deliverance of some brooding omnipresence about what ought to be done, but rather as a first-person claim about what one person, a teacher, thinks that other people, the students, ought to do in an actual case, that is, in their own case. How much of a gap separates (S5) and (S6) is a matter of context. From my spare example it is not immediately evident; it might be nothing more than a hairbreadth; (S6) might just be a stylistic variation of (S5). Or perhaps (S5) has the quality of a permissive conditional—“if you should choose to withhold your taxes that would be perfectly justified, though you need not do so”—while (S6) purports to state what is obligatory in justice. Or perhaps (S6) intends some other, more stringent force. (I shall come back to this possibility below.)

Even if the gist of (S6) is already implicit in (S5), or for that matter in earlier statements in the sequence, here it is quite overt. The professor says that a course of civil disobedience would be justified for the students. But it is illegal not to pay one's income tax! Admittedly, (S6) is not counseling tax fraud; openly withholding one's tax in political protest is the antithesis of secretly cheating on one's returns. Still, the *Income Tax Act* does not make one's obligations conditional on their justice. I think that the points we made about (S5) are relevant here too, and that although (S6) is less likely to be purely expressive, those considerations are just about sufficient for thinking that (S6) is also protected by academic freedom. I say just about because the lack of any social context in this example leaves room for a certain worry that I address in Section VI. But first, I want to leave this cool and abstract fantasy to discuss a parallel, but chilling, reality.

V. A CASE OF CLASSROOM SPEECH

Some may think that section IV is a needless circuit to an obvious conclusion. Campuses have long been sites of protest; professors have often been in the vanguard, with signs in the quadrangle and seminars in the classroom. When students invented the sit-in, teachers invented the teach-in. If such forms of active dissent are permissible, who could possibly object to the comparatively passive matter of mere remarks in a classroom? Since it is a fundamental truth of modal logic that whatever is actual must also be possible, let me offer an actual case illustrating the point and importance of section IV. I choose it both because I have intimate knowledge of the facts, and because it invites direct comparison with the Rackoff case, involving as it does the same

university, the same administration, and the same issue.²⁴ But here the freedom to criticize university policy also involves remarks about a possible protest.

In 2001, the first-year program at the University of Toronto's law school had full-year courses with practice tests at Christmas. The official policy was that these could help but not hurt students' grades: no official record of the practice results was kept; faculty were free to grade without conformity to the standard curve; the results were not subject to the normal appeals process. But this pedagogical exercise had been corrupted. Large law firms began to offer more students jobs in the summer after first year, and they wanted to see the practice results when choosing employees. These summer jobs are prestigious and lucrative, especially for students with crushing debt loads. They are also very controversial. They ruin the first year of law school in the same way the much-criticized "early decision racket" is ruining American high schools.²⁵ Thoughtful lawyers in Toronto's elite firms even acknowledged this, some refusing on those grounds to hire first year students at all.²⁶ Above all, however, there was the simple question of honesty. As the law school nurtured a symbiotic relationship with the large firms, its claim that these really were practice results for internal consumption became increasingly disingenuous. Students were encouraged to apply for the jobs and to release their practice results, without any of the usual protections. It felt like bait and switch.

Some of Professor Denise Réaume's torts students certainly felt that way, and made their anxieties known in a class discussion in November 2001. Appalled at the pressure on the first-year programme, the administration's complicity in it, and the lack prospects for change, she sympathized with her students. In a passing remark, she said that if anyone asked for their practice results, "the first year class should enter into a collective pact that everyone would claim straight A's on the practice exams." If they did, "it would be obvious that it couldn't be true and the firms would get the message that it is destructive to the learning environment of first year to rely on these results as the firms appear to do, and would stop asking for them in the future."²⁷ The

²⁴ The account that follows does not purport to be neutral, only to be factually correct. When one's colleague (let alone, as in this case, one's companion) is attacked, neutrality is not a virtue, but a vice. Academics have duties not only to refrain from attacking academic freedom, but also to defend it against such attacks: see section VI, below.

²⁵ A student applies early to a single university, receives an early answer, and promises to attend if accepted. James Fallows, "The Early-Decision Racket" *Atlantic Monthly* 288:2 (September 2001) 37.

²⁶ Brian Dominique, Head of Recruiting at Cassels Brock, states: "This firm does not hire first-year law students. One of the reasons we don't is that we think there's too much pressure on students too early in their academic careers to be making these kinds of decisions and applications in the first place." David Gambrill, "U of T marks scandal: Are market pressures forcing students to lie?" *Law Times* (2001), online: <http://www.canadalawbook.ca/headlines/headline94_arc.html> (date accessed: 14 July 2003).

²⁷ Letter from Denise Réaume to Ronald Daniels (13 February 2001) [archived with author].

motivation was protest, the means a collective gesture. Would it also have been civil disobedience? Although a self-refuting claim cannot be deceptive, it might nonetheless be disruptive. Whether students are under any obligation to refrain from disrupting a hiring process is perhaps open to argument. But if nothing else, the hypothetical protest would have shared the comedy of the dodo's comment on *Alice in Wonderland's* caucus race: "Everybody has won and all must have prizes!"²⁸

In any case, there was no such protest. Why then did Dean Ronald Daniels ask the university to establish an inquiry to investigate Professor Réaume for her classroom remarks? Why did administrators accede to his request and announce it to the national press? Something else had happened. About thirty first-year students were discovered to have falsified their practice results in summer job applications: not openly, not in concert, not claiming straight As, and not in protest. They individually lied to get jobs. Clearly, Réaume had not said anyone would be justified in doing *that*. To confuse or even associate her remark with such cheating would be very odd indeed. Perhaps the administration imagined that her words had lowered the moral tone, corrupting youth in some subtle way. To recommend an act of protest, the university may have thought, far exceeded the bounds of permissible classroom speech, whether the remark was intended seriously or not, and even if no such act resulted.

Obviously the students' lies were wrong, and shamed the law faculty. Exactly how wrong is a more complex question. Shortly after the law scandal, it was revealed that just across campus, University of Toronto medical students had been performing pelvic examinations on women under anaesthesia, without therapeutic reason and without the women's prior consent, but *at the request of their instructors*.²⁹ This is not just a bad idea—it is battery. While the medical students' wrongdoing raised eyebrows, the law students' wrongdoing brought career-destroying penalties. The medical instructors (identities unknown) who commended the wrongdoing faced no sanction; Réaume who commended something opposed to the wrongdoing was vigorously pursued by her university. Rackoff's erstwhile defender, Susan Bloch-Nevitte, now trumpeted on the university's website that "[a]ccording to the Office of the Provost, law professor Denise Réaume may have played a role in the incident." Vice-Provost Paul Gooch told the press he had "no idea of exactly what Ms. [sic] Réaume said to her class ..." but said that if the investigatory committee found grounds for disciplinary action, she could face "everything from a reprimand in the file,

²⁸ Lewis Carroll, *Alice's Adventures in Wonderland* (New York: J.H. Sears, 1900) at 22.

²⁹ Lisa K Hicks *et al.*, "Understanding the clinical dilemmas that shape medical students' ethical development: questionnaire survey and focus group study" (2001) 322 *British Medical Journal* 709.

up to and including termination for gross misconduct.”³⁰ President Robert Birgeneau called the extraordinary and unprecedented investigation of a faculty member for her classroom remarks a matter of “impeccable fairness.”³¹

Beyond the minute compass of that administration, however, it was seen differently. The University of Toronto Faculty Association filed grievances; the Canadian Association of Law Teachers, the Canadian Association of University Teachers, faculty from around the world, and hundreds of students protested Réaume’s harassment. Shocked, eight of the world’s most eminent jurists³² stated the obvious in an open letter to Birgeneau:

The remarks in question could not be interpreted by any reasonable observer as an invitation to any acts of individual deception. Accordingly, there is no remotely arguable claim of wrongdoing, and there are no grounds for the University to launch an investigation “to see if [it] will proceed” with disciplinary proceedings. Publicly announcing the intention to launch such an investigation, especially an investigation into a named individual, is itself an act of harassment and intimidation and a violation of academic freedom. It stifles opposition and betrays the core academic mission to debate and dissent.

Even the accused students—only one of whom had actually heard Réaume’s remark—were baffled by Daniels’ attack: their lawyer and prominent civil libertarian Clayton Ruby said, “The dean was very obsessed with the idea [that Réaume played a role in the scandal] and asked every student about it and they all said ‘we knew she was advocating civil disobedience and that was not what we were doing’—all of them.”³³

It took significant international pressure, mounting bad publicity, two grievance actions, and a libel notice served on Daniels, Gooch, and the University, to bring the matter to an end. The University settled it by fulfilling a number of conditions that included disbanding the committee of inquiry and publishing a statement and apology that read in part:

The University of Toronto accepts that Professor Réaume did not counsel or intend to counsel students to cheat or otherwise commit an academic offence. No student who has committed an academic offence has implicated Professor Réaume in the explanation of their conduct.

³⁰ Jonathon Gatehouse, “U of T law probe advice from Professor—allegedly told first-year students to falsify marks” *National Post* (21 February 2001) A1, A12.

³¹ Susan Bourette, “Law School Probe Fair, U of T Says” *Globe and Mail* (28 February 2001) A16.

³² Open Letter to Robert Birgeneau signed by Professors Jules Coleman (Yale Law School), John Gardner (Oxford), Nicola Lacey (London School of Economics), Joseph Raz (Oxford), Sir Neil MacCormick (Edinburgh), Andrei Marmor (Tel Aviv), Jeremy Waldron (Columbia), and Dean Patricia White (Arizona State) [archived with author].

³³ Jonathan Gatehouse, “Law Professor not guilty in marks scandal, lawyer says: Dean is ‘Obsessed’” *National Post* (10 May 2001) A2.

The University regrets having named Professor Réaume in the media and on its web site in connection with events at the Faculty of Law. Professor Réaume is an accomplished academic and the University apologizes for any harm caused to her reputation for integrity.³⁴

Better late than never, it also went on to affirm academic freedom while reserving the right to disagree with her opinion: “Notwithstanding that there are views to the contrary, the University's administration believes that Professor Réaume's remarks to her class were inappropriate.”³⁵

The unjust conduct of Daniels, Gooch, and Birgeneau did nothing for the University's reputation: a prominent international ranking of graduate schools cautioned readers about the threat to academic freedom at the University of Toronto.³⁶ After being forced to abandon the inquisition, the University took a further step. It terminated all external inquiry into the law school affair. No external committee was established to examine rumors that similar cheating had occurred in the past or to test published allegations linking a member of the Dean's own staff to the scandal.³⁷ When the attack on Réaume collapsed, the need for a special committee to “find the facts” lost its urgency. How could the University of Toronto's best and brightest have contained such a large pack of liars? Interviewed later by a journalist, Daniels' response was brief: “We may never know.”³⁸

VI. POWER AND CONTEXT

Academic freedom does not give teachers or students the right to engage in civil disobedience, but it does protect them from intimidation on the ground that they do engage in it, and it protects their right to study, discuss, and even commend it. But at the end of section IV, we left an issue hanging. What then accounts for the residual unease some feel in contemplating (S6)?

³⁴ Susan Bloch-Neveite, “U of T, faculty association and law prof reach agreement” *University of Toronto: The Bulletin* (18 June 2001), online: University of Toronto <<http://web.archive.org/web/20010628125326/www.newsandevents.utoronto.ca/bin2/010618a.asp>> (date accessed: 2 July 2003).

³⁵ *Ibid.*

³⁶ “Controversy last year in the law school pertaining to academic freedom raises questions about institutional governance ...”: *The Philosophical Gourmet* (2001-02), online: <<http://www.philosophicalgourmet.com/2001/rankings.htm#study>> (date accessed: 23 March 2003).

³⁷ “Two students sought advice from the dean's office before making their applications for the summer jobs. One expressed her concern that a ‘bad’ grade would disqualify her. An official asked, ‘What is the rational thing to do in these circumstances?’ The student responded that the rational thing to do when one received a bad grade in the practice exams was to lie. The official reaffirmed that the law school would not verify these test marks if asked. Word of this spread like wildfire to first-year students.” Quote from Clayton Ruby, “Cheating law students got raw deal” *Toronto Star* (4 May 2001) A21.

³⁸ James Cowan, “Atonement” *Toronto Life* 36:9 (June 2002) 70.

Might it simply be that the right to say something like (S6) comes at the end of a chain of reasoning, while the rights to say (S1) and (S2) lie near the beginning? Even if on reflection we can see that (S6) is protected, the fact that it takes reflection may affect our attitude to it. Nothing is more common than reasoning from obvious premises to non-obvious conclusions, even when the steps are deductive inferences. (Were this not so, there would be no point in studying logic or mathematics.) This, however, is not the explanation we seek. The sequence $\langle (S1), (S2), \dots (S6) \rangle$ is not a chain of inference. The claim is not that the protected character of (S1) entails that of (S2), and so on, until we arrive at a surprising theorem about (S6). The claim is that the same family of moral considerations applies to each of the statements. The sequence is not an argumentative ladder, but spokes radiating from a central hub.

Another possible suggestion relies on the fact that a series of imperceptible differences can add up to an obvious one. Just because we can detect no moral difference between saying (S1) and (S2), nor between (S2) and (S3) ... it does not follow that saying (S6) is on a moral par with saying (S1). To deny that is to indulge in the famous Sorites paradox, a puzzle that has to do with vagueness. A traditional example begins with the assumption that a single grain of sand is not a heap, and that a single grain cannot make the difference between some sand being a heap and not being one. So if n grains do not make a heap of sand, then $(n+1)$ grains do not either. But by serial application this is true for all n . So a zillion grains of sand is no heap—in fact, there are no heaps of sand! The indeterminacy of such borderlines seems to entail the emptiness of concepts. (You may think this a silly philosophical game, but whole schools of legal theory have been founded on this mistake.) Could (S6) be an impermissible heap even if (S1) is a protected grain? We found no reason to think so. Moreover, the sequence is not, in fact, a Sorites problem. The point is not that these are indistinguishable comparisons, nor that the sequence of statements forms a unidimensional continuum without any bright lines. The claim, again, is that there are sound moral reasons for treating all the statements in the same way.

The real explanation for any hesitation we might feel about (S6) lies elsewhere. Let me return to Weber. When he says, “[T]he prophet and the demagogue do not belong on the academic platform,”³⁹ he is relying not on his non-cognitivism about the status of value judgments, but on a substantive thesis about value. He writes,

[T]he true teacher will beware of imposing from the platform any political position upon the student. ... In the lecture-room we stand opposite our audience, and it has to remain silent. I deem

³⁹ *Supra* note 20 at 146.

it irresponsible to exploit the circumstance that for the sake of their career the students have to attend a teacher's course while there is nobody present to oppose him with criticism.⁴⁰

This is the crucial point, but it is important to understand exactly what it is. Weber is not arguing that teaching must be neutral and without moral purpose. His view of the duty of teachers is actually a robust one: "The primary task of a useful teacher is to teach his students to recognize 'inconvenient' facts—I mean facts that are inconvenient for their party opinions."⁴¹ We are to prepare students to choose among fundamental values and not to shy away from unpleasant realities or indulge in wishful thinking as they "take a stand."⁴² Weber is insisting, however, that the *way* we pursue this duty is conditioned by the rights of students not to be coerced in the process. For it is not only the academic freedom of teachers that matters, but also the academic freedom of their students. It is for this reason that teachers must take care not to impose their political positions on students, and why they must not exploit the features of their role that make this imposition possible and, sometimes, tempting. In Weber's time and place, that role included a duty of students to remain respectfully silent. Our universities are significantly different, our expectations more liberal, but we nonetheless need to remain alert to the realities of power, in the classroom and out. There is, then, nothing apolitical about Weber's view of the academic role.

When we think about power, context is all-important: we judge the motivation and good faith of the actors by looking to the whole web of their speech and conduct. In the sequence of statements set out in section IV, no context was provided. We could basically tell what each statement meant, but without background or context we could only guess at its possible force. This, I think, is where any worries about (S6) might begin. Those who feel skeptical may be concerned that the statement is not really counsel or commendation, but some kind of order backed up by some kind of threat. (And if we think enough about it, we might begin to have the same worries even about (S2).) What takes that beyond the scope of academic freedom is that it amounts to imposing one's views on students, violating *their* academic freedom. Neither Professor Rackoff's nor Professor Réaume's words functioned that way, nor did anyone suggest they did. They were not part of any system of command or threat directed at people constrained to remain silent, but passing remarks made in contexts that not only permitted, but actually attracted, vigorous discussion. We can imagine malignant contexts about which our view would be different; in fact, we do not need to exercise our imaginations. We can look again at a real

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

case. Here is what one of the University of Toronto medical students has to say about why they engaged in wrongful treatment of patients:

We were all very intimidated; we thought it was inappropriate and we all talked about it later, but he [the clinical teacher] put us all in a position where we were scared to death of him. We were afraid to say anything [although] he was probably wrong.⁴³

When students are “intimidated” and “scared to death” of their teachers, something is terribly wrong; to call it a violation of academic freedom is too mild. It is difficult to imagine what sort learning can go on in such an environment. When teachers start to intimidate students, or for that matter when deans intimidate professors, all bets are off. But notice that this wrong has nothing at all to do with any concern about the propriety of imposing political views. It is the imposition and intimidation itself that corrupts academic life. It would be just as wrong to force one’s factual or theoretical views on students or colleagues. You may think public ownership is inefficient, or you may think that tort law is a matter of corrective justice; you may want your students to share your views. But you may not go about it by threat, offer, or intimidation; you may not even tease or humiliate them into agreement. This injunction holds independent of the content of the controversy.

Academic freedom does not give us a right to engage in civil disobedience—when there is a fair right to participate we are no more privileged than any other citizen: if we are going to break the law, we need to have right on our side. But it does protect us, at least in the classroom, in studying, assessing, and even commending civil disobedience. Here it protects us even when we are in the wrong, and even when our words are thought inappropriate or abhorrent. These rights have correlative duties, not only to refrain from interfering with others’ academic freedom, but also to protect it from interference. Teachers owe those duties to their colleagues, but especially to their students. Universities owe them to students and teachers alike.

Weber says, “Ideas occur to us when they please, not when it pleases us.”⁴⁴ I am afraid that is so. All the same, we can try to tempt the ideas by making it more pleasing for them to come. Academic freedom is the environment that ideas like best—including ideas about civil disobedience.

⁴³ *Supra* note 29 at 710.

⁴⁴ *Supra* note 20 at 136.