

ADVOCACY VERSUS INDOCTRINATION: A REPLY TO KENNETH MARCUS

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I. WHAT POLITICS IN THE CLASSROOM IS ACTUALLY ABOUT

As we all know, “politics,” the widely savored third rail of this generation’s pedagogical debates, covers much more than endorsements for candidates running for political office. Even a strictly institutional and governmental definition of politics—covering both elections and the full range of subjects of state and national legislation—engages more areas of public policy and social life than one could readily list comprehensively, from funding for public education to national defense policy to health care regulation to constitutional rights. Scores of such subjects at any time are the objects of public debate, discussion, analysis, and passionate opinion. Topics like these intersect with scores of academic disciplines and hundreds of course topics.

Making that case does not entail invoking the quite different argument that all instruction is inherently political—a potentially deeper claim about the penetration of politics into daily life and the political nature of all thought. The case I am making here merely requires recognizing that course subject matter often intersects with political issues, concerns, and controversies. Faculty members may well believe that responsible instruction requires exploring those connections and offering evaluations of their character. The freedom to do so—I would argue—is essential to

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maintaining a vibrant liberal arts tradition in higher education. It is particularly ironic that the National Association of Scholars (NAS), which rails endlessly against politics in the classroom, also sees itself as a champion of a traditional liberal arts education¹, for that is precisely what the broad campaign against political advocacy would eviscerate.

At least where candidate endorsements are concerned, many faculty members prefer to keep their preferences to themselves. Others may offer occasional political asides as a way of communicating their values, rather than as a way to recruit students for candidates of their choice, though it is best to withhold such remarks until a relationship of trust is established with a class. But for faculty members to maintain the illusion of neutrality across the full range of contentious state, national, and international subjects would leave much classroom debate impoverished.

Of course faculty members must avoid imposing their views on their students, but it is easy enough for them to voice their own opinion while encouraging debate. They can honor alternative views, withhold their own views strategically, adopt the opposition's arguments as a temporary debate strategy, and so forth. They can also assign students to research different views and present the results in class. A little humor about their own convictions can go a long way toward empowering students to voice alternative positions and make it clear that professors are not insisting their students agree with them.

Encouraging students to disagree with professors not only produces a more interesting classroom, but it also empowers students for future responsibilities. And it can generate moments when faculty members change their minds, a particularly valuable pedagogical experience. The idea that advocacy necessarily leads faculty members to suppress alternative opinions has no pedagogical or psychological basis. It can have a basis in individual character, but that is a personal weakness that colleagues should address, not a rationale for universally constraining free speech in the classroom.

Should a professor of constitutional law withhold his or her reading of the Second Amendment, limiting a lecture to summaries of other peoples' arguments? Should a literature professor analyzing a group of Langston Hughes poems about the politics of racism hide his or her own views about the significance of racism in American life? Should a professor of the history of art offer no opinions about the effectiveness of the political paintings reproduced in the course textbook? Should a music professor avoid judgments about the persuasive power of political music? Should a faculty member training social workers remain silent about the effects current legislation might have on the clients students will be serving?

1. See generally *NAS Overview*, NAT'L ASS'N OF SCHOLARS, <http://www.nas.org/about/overview>, (last visited Mar. 29, 2013) (providing portal access to a variety of sources in support for this assertion).

Should a faculty member teaching an ecology or geology class suppress what he or she believes to be the scientific consensus about controversial topics like global warming? Should political science or rhetoric professors refrain from analyzing and evaluating political arguments during an election season? Should a philosophy professor guard against comments about the coherence or social consequences of contemporary political philosophies? Should a history professor properly offer no moral judgments about the past or present actions of nation states? Should economics professors analyzing the 2008 recession suppress their views about the interface between congress and the financial services industry? Should a professor of medicine refrain from criticizing the impact the politics of health care will have on the medical care students will be able to deliver when they graduate?

This list of examples, which may already try a reader's patience, could obviously be substantially expanded. I offer it so that readers can understand how pervasive politically charged issues are. They touch all disciplines and all departments. Moreover, I have limited myself in the paragraph above to political concerns that directly correlate with disciplinary subject matter. But these matters overlap. That constitutional law professor in the first sentence could easily have occasion to comment on topics in a number of the other examples. The literature, art, and music professors might choose to make comparisons with other forms of political art. Many of these faculty members might have reason to reference global warming. Philosophy professors not uncommonly have wide cultural interests that cross many disciplinary boundaries. In "Academic Freedom and Political Indoctrination" Kenneth Marcus decries the American Association of University Professors' (AAUP's) "efforts to eliminate barriers between politics and academia," but in all the examples I have cited no such barriers exist. Academic freedom protects faculty members' right to comment on the political matters listed above. Mr. Marcus is actually trying to create barriers where there are none.

The right has created a fictional monster, an undefined and undifferentiated beast called "politics," that forces its way into a hitherto innocent, Edenic classroom. One bite of the political apple risks casting an instructor out of the garden. Worse still if he or she develops a taste for the fruit of the poisoned political tree. Then he or she can end up on David Horowitz's growing list of dangerous professors.²

"Politics in the classroom" actually means a thousand different topics germane to the subjects at hand. Politics is not one thing. Whether "politics in the classroom" is even a valid category for the content it embraces is itself debatable, given its myriad registers, but in any case it is anything but a unitary one. Indeed faculty members commonly forge convincing

2. See generally DAVID HOROWITZ, *THE PROFESSORS: THE 101 MOST DANGEROUS ACADEMICS IN AMERICA* (2006).

connections between subject matter and political issues that neither their students nor their colleagues would anticipate. Consider the case of a professor teaching a statistics course, who habitually used politically charged contemporary examples to spark student interest and persuade them that statistics actually does matter. During the Vietnam War he regularly cited battlefield body counts as a way of establishing the interpretive and political nature of statistical claims. He was also thereby casting doubt on military reports about the progress of the war. Should he have been prohibited from using such examples?

If we established a strict firewall separating all the political issues above from the academy, just what would be left on the academic side? What would students be missing, and how would education be impoverished, if all faculty members held their tongues on these and thousands of other politically charged matters? A conservative argument runs that students would be better off were that the case, that students would be freer to adopt their own positions if faculty members hid theirs.³ Of course students are exposed to conflicting opinion through newspapers, radio, television, the Internet, campus lectures, and dormitory conversation. The idea that faculty opinion, when freely expressed, trumps all these influences and towers over their lives in some categorically definitive way considerably exaggerates the half-life of classroom experience. What is arguably more important is that a rigidly neutral education deprives students of direct experience of informed advocacy.

If all classroom political advocacy were prohibited, would an instructor be free to say that democracy is the best known form of government? Could an instructor press the argument that electoral participation is a civic duty? Could he or she advocate for the political benefits of free markets? Could he or she criticize regimes that deny basic human rights? Could one argue that the forced starvation of Ukrainians in the 1930s and the Holocaust of the 1940s were fundamentally evil?⁴ Could one claim that 1947's UN Resolution 181 gave Israel the political warrant to exist as a nation state?

What credible definition of academic freedom could protect the faculty right to advocate for these positions, but not a range of opposing stands? That *not* voting is a valid form of citizen protest? That evil is a politically and culturally constructed concept and thus finally unprovable? That Israel is a colonialist imposition on Arab lands? Perhaps: "Academic Freedom guarantees US faculty the right to advocate for any political position that a majority of American citizens would support." Of course some societies essentially honor such a standard.

3. *Id.* Note that this is one of Horowitz's recurrent assertions which is repeated in each of his books about the contemporary Academy.

4. *See generally* TIMOTHY SNYDER, BLOODLANDS: EUROPE BETWEEN HITLER AND STALIN (2010).

Every four years virtually every department on campus offers courses devoted all or in part to studying the presidential elections. It is an opportunity to take advantage of student interest and to provide timely real world application of established disciplinary skills. It also represents an education in critical citizenship. Thus, students and faculty share and comment on political speeches and editorials. They visit highly partisan web sites and watch political videos. Evaluating the arguments put forward by politicians, talk show hosts, pundits, and members of the public alike also enables, directly or indirectly, evaluation of the candidates themselves. Some students obtain academic credit by working on political campaigns and writing papers about their experience. If students become better at judging our political process as a result, if they can imagine a higher standard for political discourse as a consequence, that is hardly regrettable. Should classes be restricted to studying only examples from past political campaigns? Would such a restriction be compatible with academic freedom? Can we impose limits on what students say about candidates during such class discussions? Are the students free to offer opinions but their teachers pledged to silence?

It is hardly in dispute that much public political debate relies on superficial sound bites, misrepresentation, and hyperbole. The public sphere can hardly be accounted a good training ground for learning reasoned argument at its best. A college or university education, on the other hand, should offer a very different model of what counts as sufficient evidence, let alone evidence at all. It should hold to a higher standard of what persuasive argument entails. It should demonstrate how personal conviction can be supported and dignified. Hearing a faculty member advocate for a position at length is one important component of establishing the difference higher education can make for students. Simply to equate advocacy with indoctrination, or to argue that every time a faculty member offers an opinion amounts to an effort to impose that opinion on students, largely eviscerates the potential for classroom dialogue.

Experiencing professorial advocacy about a variety of issues helps prepare students to think for themselves. The experience of advocacy is a critical component of personalizing both how to think and what it means to think. Effectively performed, classroom advocacy is not about transmitting “ready-made conclusions,” to cite one of the admonitions in the AAUP’s founding 1915 “Declaration.”⁵ It is about what it means to speak with conviction, about how one arrives at a state of conviction, and how to communicate one’s conclusions to others.

When it is well done, classroom advocacy has the character of a

5. AM. ASS’N OF UNIV. PROFESSORS, APPENDIX I: 1915 DECLARATION OF PRINCIPLES ON ACADEMIC FREEDOM AND ACADEMIC TENURE, 298 (1915), *available at* <http://www.aaup.org/file/1915-Declaration-of-Principles-on-Academic-Freedom-and-Academic-Tenure.pdf> [hereinafter 1915 DECLARATION].

condensed scholarly paper. It can be thorough, detailed, and nuanced. It can be backed up by assigned readings of greater length. The AAUP has been issuing policy statements and reports for almost a hundred years that advocate for particular conclusions on political issues, and does so with meticulous care. Faculty members routinely assign essays, including their own, that advocate for particular politically inflected conclusions. Should they be free to advocate as scholars, but not as teachers? Should they be barred from assigning their own essays?

In the long run, the experience of campus models of informed advocacy often matters far more than the topics that occasion them. Issues evolve over time, but standards for informed debate, the character of advocacy that is worth emulating, can last very long indeed. Serious, committed advocacy is fundamental to what it means to profess, to be a professor, not only when faculty fulfill the role of giving advice in the public sphere, but also when they take stands in the classroom. Of course some faculty members will be better advocates than others, but drawing such distinctions is also part of an education.

That does not, of course, mean that faculty members are either expected or required to reveal their beliefs. The dispassionate presentation of opposing arguments is equally valuable. There is no moral, professional, or pedagogical necessity to hue to either practice. A college or university education is likely to include classes both from faculty who are frank about where they stand on certain issues and from faculty who never reveal themselves. An administrative decision to impose either inclination on all faculty members not only violates academic freedom, but also impoverishes the character of education. Students who never experience informed advocacy in the classroom may be less well prepared for the workplace and less effective as citizens—either in evaluating advocacy or in carrying it out themselves.

II. THE PERSISTENCE PRINCIPLE

The American Association of University Professors has regularly addressed the issue of politicized classroom speech—both in major policy statements and reports and in occasional public comments on high profile cases receiving media attention. The organization warned against faculty bringing controversial material unrelated to a course into the classroom in its 1940 statement.⁶ That document, however, was a collaborative, consensual text intended to attract multiple signatories, which it has. Over 200 organizations have endorsed it.⁷ It was also necessarily concise, and

6. AM. ASS'N OF UNIV. PROFESSORS & ASS'N OF AM. COLL. AND UNIV. [hereinafter AAUP], 1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE WITH 1970 INTERPRETIVE COMMENTS, 3 (rev. Jan. 1990), available at <http://www.aaup.org/file/principles-academic-freedom-tenure.pdf>.

7. *Id.* at 7–11.

the AAUP has recognized the need to elaborate on and clarify its arguments. Especially notable is the organization's 1970 clarification, which warned against the *persistent* intrusion of controversial political material unrelated to course content.⁸ Despite Mr. Marcus's assertion that the AAUP has abandoned the "persistent" standard, the organization has not done so.⁹

As I point out in *No University Is An Island*¹⁰, one reason it was necessary to make "persistent," rather than infrequent, intrusion of extraneous material into the classroom the standard was in order to allow students and faculty in any class to address compelling local or national events—from a campus employee strike to the assassination of a national leader to the outbreak of war. One would not want to see a math professor's tenure challenged because he or she talked in class about the attack on Pearl Harbor the morning after it happened, though a faculty member who chose not to do so would also be within his or her rights. Nor, I would argue, would one want to tell students they could not speak to such topics because they were not anticipated in the course syllabus. There was also a recognized need to avoid the chilling effect of surveillance protocols and elaborate disciplinary hearings triggered by one or two classroom asides.

What constitutes "persistence" is a matter of judgment, though the most obvious trigger for concern would be student complaints. Such complaints would be handled by a committee of faculty members and would be honored with due process. Again, contrary to Mr. Marcus' assertion, the AAUP's recent policy statements and reports do not abandon the warning against persistent introduction of extraneous political or controversial material into the classroom.¹¹ Rather we warn that what seems extraneous is itself partly a political determination. Disciplinary standards give some guidance, but interdisciplinary work alone, coupled with the evolution of disciplinary standards that Judith Butler emphasizes, gives reason to attend to and honor nuances embodied in individual classes and pedagogical agendas.¹² The danger in the application of the "persistence" standard is that some faculty will use it to fault inclusion of material that their colleagues regard as germane, not extraneous. The kind of obviously unacceptable examples that Mr. Marcus and others cite—such as repeated complaints about Israeli conduct in a calculus class¹³—would not be

8. *Id.* at 5.

9. *See, e.g.,* Kenneth L. Marcus, *Academic Freedom and Political Indoctrination*, 39 J.C. & U.L. 727, 736 (2013).

10. *See generally* CARY NELSON, *NO UNIVERSITY IS AN ISLAND: SAVING ACADEMIC FREEDOM* (New York Univ. Press 2010).

11. *Compare id. with* Marcus, *supra* note 9, at 736.

12. *See* Judith Butler, *Academic Norms, Contemporary Challengers: A Reply to Robert Post*, in *ACADEMIC FREEDOM AFTER SEPTEMBER 11*, 107, 107–42 (Beshara Doumani ed., 2006).

13. *See* Marcus, *supra* note 9, at 737.

defended by the AAUP.

The notion that any intellectual or political connections are possible does not mean that all such comparisons and contrasts are guaranteed in advance. The relevance has to be demonstrated. Sometimes both students and instructors will fail to do so adequately, but that does not mean that “anything goes,” as Mr. Marcus asserts the AAUP claims.¹⁴ Nor does it mean that the right to propose comparisons and contrasts between fields, across the whole field of human knowledge, should be denied. Mr. Marcus expresses astonishment that “if ‘all knowledge can be related to all other knowledge,’ then *nothing* is educationally extraneous,” but that is exactly the point. That is the position both I and the AAUP endorse. But it does not remove the necessity of convincing an audience that the connections you propose are valid. One also needs to emphasize that—for the university as a whole—its proper role is potentially to study the whole of the physical universe and the entirety of human culture. There are no limits except those our imaginations impose, no boundaries save those we erect. Anything can be the subject of university-based inquiry.

None of this changes the standard that the persistent intrusion of irrelevant political material is unacceptable. Nowhere does the AAUP argue or imply, as Mr. Marcus claims, that “instructors must be permitted to devote unlimited class time to controversial topics that are not related to the subject matter of the course.”¹⁵ Quite to the contrary. The organization’s position does not risk the “‘reckless freedom’ that comes with rejecting academic norms altogether.”¹⁶ Indeed I challenge anyone to imagine what that hyperbolic moral panic might entail. How would an institution abandon all academic norms? What would such an institution look like? How would it conduct its affairs? At best we are talking about a science fiction scenario, one, however, that I at least cannot imagine.

Some years ago, a president of a small Catholic college was confronted by complaints about a faculty member who regularly harangued his students with attacks against abortion rights in every course he taught, regardless of whether abortion rights had anything to do with the topic of the course.¹⁷ Proffering both carrot and stick, the president told the faculty member he would have to stop, but offered to schedule him for an entire class about abortion rights.¹⁸ The faculty member agreed, but the students

14. *Id.* at 739.

15. *Id.* at 737.

16. *Id.* at 739 (citing Judith Butler, *Academic Norms, Contemporary Challenges: A Reply to Robert Post on Academic Freedom*, in *ACADEMIC FREEDOM AFTER SEPTEMBER 11* (Beshara Doumani ed., 2006)).

17. See generally *Molloy College President Resigns*, *THREE VILLAGE TIMES* (Elmont), Feb. 26, 1999, <http://www.antonnews.com/threevillagetimes/1999/02/26/news/molloy.html>;

18. Interview with Martin Snyder, former president of Molloy College, in Rockville Center, NY (March 18, 2011).

voted with their feet.¹⁹ No one enrolled in the course. Although most of the students at the college were likely opposed to abortion rights, they were not interested in being hectored about the issue in the classroom.²⁰ The faculty member had received a very nicely targeted wakeup call about the marketability of his opinions.²¹

More complex still is deciding whether controversial or political subjects may in fact be relevant to the course. That was one of the topics taken up in the AAUP's 2007 report *Freedom in the Classroom*, drafted by a subcommittee of which I was a member.²² One of the central aims of that report was to preserve the broad intellectual freedom that makes for stimulating classroom discussion, indeed to credit the unpredictable and sometimes challenging or inspiring nature of human reasoning and imagination. Every student and teacher has likely experienced moments in class when an unexpected connection with or comparison to an apparently different subject has come to mind. It may be a comparison, analogy, or contrast between different historical periods, different disciplines, different art forms, different individuals, or different discursive traditions. Sometimes these insights are illuminating and sometimes they fall flat. In either case, speculation of this sort is essential to the life of the mind and thus essential to pedagogical freedom.

Some commentators, among them David Horowitz, want the much more restrictive horizon of a course catalogue description or syllabus to govern whether such "intrusions" of potentially political or controversial subjects is permissible.²³ Horowitz has also experimented with an argument that faculty members need to be professionally credentialed before they address other disciplines, despite the fact that faculty members acquire new areas of expertise in the course of their careers by way of reading, conversation, and attendance at scholarly meetings.²⁴ *Freedom in the Classroom* argues instead for a test of demonstrable relevance. It is up to the faculty member to persuade students that the political issues he or she raises are relevant, and for the most part colleagues and administrators must respect the faculty member's judgment in any disciplinary proceeding. Students, however, are free to contest the claim of relevance; academic freedom guarantees them that right.²⁵

Such a debate was, in effect, conducted on a national stage after University of California at Santa Barbara sociology professor William

19. *Id.*

20. *Id.*

21. *Id.*

22. *Freedom in the Classroom*, AM. ASS'N OF UNIV. PROFESSORS, <http://www.aaup.org/AAUP/comm/repA/class.htm> (last visited Mar. 29, 2013).

23. DAVID HOROWITZ, *THE PROFESSORS: THE 101 MOST DANGEROUS ACADEMICS IN AMERICA* xlii (2006).

24. *Id.* at xxvi.

25. *Freedom in the Classroom*, *supra* note 11.

Robinson sent an email to students in his 2009 “Sociology of Globalization” course. The email matched photos of the 2008-09 Israeli military action in Gaza with photos of the German occupation of the Warsaw Ghetto in World War II.²⁶ Depending on how Professor Robinson’s syllabus was structured, he certainly could have discussed the Mideast conflict and the status of Gaza in a globalization course, but the national debate focused instead on the provocative character of the photographic comparisons. The debate centered on whether they were anti-Semitic, and whether Professor Robinson was inappropriately imposing his views on his students.²⁷

As I point out above, not all historical comparisons are sound or illuminating. I considered Professor Robinson’s comparison to be facile, unpersuasive, and historically sloppy. He paired an image of armed Israeli soldiers walking through Gaza with an image of Nazi troops in Warsaw. The angles of the rifles each patrol held were close enough to suggest some similarity. Civilians pressed up against a wire fence in both contexts provided another analogy. It should be needless to point out that one could easily add a dozen similar photographs from other historical moments, perhaps thereby producing something like a universal “cruelties or iconography of war” photo spread. The analogy between Israel and Nazi Germany was, I felt, basically empty.

Nonetheless, in comments to the press at the time, I defended the potential relevance to the course and Professor Robinson’s right to send out the email. What Professor Robinson did was covered by academic freedom.²⁸ That doesn’t mean one needs to respect his reasoning, only that one needs to respect his rights. By the time he sent his now notorious email, comparisons between Israel and Nazi Germany were commonplace in the academy.²⁹ The comparisons between Israel and Nazi Germany that eventually became relatively common in academic fields like Middle

26. Arthur Gross-Schaefer, *Academic Freedom: Moving Away from the Faculty-Only Paradigm*, 16 J. OF LEG. STUDS IN BUS. 45, (2011), available at spme.net/cgi-bin/articles.cgi?ID=7593.

27. *Id.*

28. *Contra* Marcus, *supra* note 9, at 743–45.

29. The comparisons between Israel and Nazi Germany that eventually became relatively common in academic fields like Middle Eastern studies had their origins in the public sphere. HERBERT DRUKS, *THE UNCERTAIN ALLIANCE: THE U.S. AND ISRAEL FROM KENNEDY TO THE PEACE PROCESS* 50 (2001). The Soviet Union compared Israeli and Nazi military tactics after the 1967 Six Day War. *Id.* A generation later reports of comparisons between Nazism and Israeli policies appeared in major newspapers like *The Christian Science Monitor*, *The New York Times*, and *The Washington Post*. See ISRAEL STOCKMAN-SHOMON, *ISRAEL, THE MIDDLE EAST, AND THE GREAT POWERS* 79 (1984). Such comparisons then evolved to the point where they became a feature of anti-Israeli protest demonstrations. TOM LANTOS, *IN THE DURBAN DEBACLE: AN INSIDER’S VIEW OF THE UN WORLD CONFERENCE AGAINST RACISM* 17 (2002) (describing a placard reading “1940s Hitler 2000s Sharon” carried by a group in a demonstration at the 2001 UN conference in South Africa).

Eastern studies had their origins in the public sphere. Professor Robinson's views were not exceptional, which seriously undermines claims that he did not deserve tenure or should have been sanctioned. The protest about his email, moreover, suggests that students and community members were well armed against easy indoctrination to his views.³⁰ Indeed, Professor Robinson insisted at the time that students were free to disagree with him. UCSB initiated an investigation of the charges against Professor Robinson, an investigation that I considered both unwise and unwarranted because of its obvious chilling effect. Fortunately, the charges were dismissed after months of controversy.³¹

Curiously enough, I would now be quite ready to use Professor Robinson's photo array to stimulate class discussion of irresponsible or unwarranted historical comparisons. The use of his display as an example of ineffective comparison is hardly what Professor Robinson had in mind, but a possibility that demonstrates the unpredictable pedagogical utility of historical comparisons of all sorts. Hyperbolic scholarship or pedagogy can be productive when others make use of it. Faculty members commonly assign highly polemical readings because they generate good class discussions. The Robinson incident is now as well a case study in the politics of academic freedom.

III. POLITICS CAN BE PAINFUL

Professor Robinson was, in my opinion, advocating for his interpretation of contemporary political, military, and cultural practices. His email photo array was certainly highly charged and provocative, but I do not see it as part of an indoctrination program. While campus debates about the Middle East can be not only challenging but also coercive, the simple fact of placing the email before his students and arguing for its truth-value does not amount to intimidation or coercion. Moreover, it certainly provoked discussion and debate, leading some to question or defend their own or Professor Robinson's views with some of the detailed arguments one hopes a college or university education would provoke. In specific settings, discussions of evolution or global warming could be equally intense. I can understand that some of Professor Robinson's students were offended, but they were offended by what was, by then, a common analogy. It's the job of a college or university to confront such claims.

One purpose of a college or university to challenge preconceptions and beliefs. Such challenges are sometimes painful. Intellectuals can learn to enjoy having their beliefs questioned. Countering a well-articulated critique is stimulating. Changing your own thinking can be fulfilling. But some students with deep convictions will inevitably take challenges to their

30. See Marcus, *supra* note 9, at 744.

31. *Id.*

thinking personally. One may make an effort to critique the position and honor the person, but the categories readily get blurred emotionally. Mr. Marcus's language—"instructors properly subject students' ideas to intense, even withering criticism, in an even-handed and professional manner"³²—embodies the inherent risk whether he realizes it or not.

College or universities cannot protect every student from experiencing withering criticism by treating it as a "hostile environment."³³ They can work to discourage and defuse critique infused with rage, which mostly comes from other students, but a student who hears his or her cherished beliefs demolished for the first time may well be seriously unsettled. Mr. Marcus argues that "instructional bias . . . occurs when an instructor creates an atmosphere which is objectively offensive to some students based upon their intellectual point of view."³⁴ But if an instructor insists that dinosaur bones were deposited naturally over millions of years and a student accepts the idea that God placed them here to test our faith in a literal interpretation of the six-day creation story in Genesis, the classroom atmosphere may seem offensive. Some students may simply have to opt for an institution that reinforces their convictions, rather than one that subjects them to scrutiny.

This example suggests how students themselves might experience advocacy as an attempt at indoctrination. Nonetheless, a confusion about—or deliberate conflation of—the categories of advocacy and indoctrination animates many critiques of both campus debate and AAUP policy. Mr. Marcus's essay suffers from exactly that problem. He treats all advocacy as indoctrination and then rails against indoctrination as if were a widespread problem and as if the AAUP and its leaders had endorsed it, when we have done exactly the opposite. Thus he claims that the AAUP's *Freedom in the Classroom*³⁵ "condones instructors' use of classroom time to impose political views on students as long as the students have an opportunity to present contrary views."³⁶ Whereas what the AAUP condones is advocacy of certain political interpretations and analyses, while simultaneously making it clear that faculty cannot require students to adopt those views. The conflation of advocacy with indoctrination allows him to create a problem where none exists. There is plenty of advocacy in higher education, but relatively little indoctrination. Few of us need convincing that actual indoctrination is unacceptable.

In the now long-running national debates about the matter, paradoxically, unwarranted umbrage about "indoctrination" often focuses

32. Marcus, *supra* note 9, at 742.

33. *Id.*

34. *Id.*

35. AAUP, *Freedom in the Classroom* (2007), <http://www.aaup.org/AAUP/comm/rep/A/class.htm>.

36. Marcus, *supra* note 9, at 109.

on exactly those topics about which students are best armed to debate. This ability to resist alternative viewpoints comes from prior opinion or family and institutional schooling. Predictably, those are also among the topics debated most hotly in the media, sometimes by way of intellectually debased “balance” that credits opposing arguments even when scientific or disciplinary consensus would argue that only one view is correct.

Although I have argued here for a very broad notion of what counts as political—including all the ideological positions and institutional structures that condition and structure public life—it is worth noting in this context that the most narrow construction of politics, namely the contests for elective office, represent the area where students are most thoroughly immunized against faculty opinion. They may well have been thoroughly indoctrinated by friends, family, and media commentary, but they often, as a result, hold very strong opinions about their political preferences. Although elections are but one among many potential subjects of advocacy, I cannot imagine an area of student belief less susceptible to faculty persuasion. The point is that neither students with settled opinions nor those who have been endlessly exposed to alternative views are obviously ripe for brainwashing. The most reasonable conclusion is that those making the most noise about political “indoctrination” are actually more interested in suppressing faculty opinion with which they disagree.

Critics of classroom advocacy argue that leftist faculty members do not object to indoctrination because their fellow leftists are running our colleges and universities. In truth, though,³⁷ faculties of business, economics, agriculture, and engineering, among other powerful fields, characteristically display rather different political biases from those of their liberal arts colleagues. These critics often also point to party affiliations to prove that university faculties are “imbalanced,” though there is no guaranteed correlation between national party affiliation and a faculty member’s take on disciplinary issues, pedagogical practices, or university governance.³⁸

Faculty members in some disciplines are more likely to register as Democrats, whereas faculty in others are more likely to register as Republicans, but that is the result of the lure that varying disciplinary ideologies have for people of different political persuasions. Identified for two generations with efforts to expand the canon to include more women and minorities, literature departments are more likely to appeal to Democrats. Linked, except for Marxist economists, with business interests—and often well paid as financial service industry consultants—economists gravitate toward the Republicans. In any case, as I argue below,³⁹ there is no one-to-one correlation between party affiliation and

37. *Id.* at 106–07.

38. *Id.* at 114.

39. *See infra* text accompanying note 32.

campus politics. Put simply, registered Democrats often engage in conservative advocacy on key classroom and campus issues. Registered Republicans are often staunch defenders of free speech on campus. Attitudes toward faculty unionization is one widespread example of a disconnect between national party policy and faculty opinion. During collective bargaining campaigns at the University of Illinois and the University of Oregon, both I and other organizers commonly met professors who were registered Democrats but opposed collective bargaining for faculty members. Faculty members are no less tolerant of inner contradiction than any other humans, though they may be more adept at rationalizing it.

The most depoliticized way of describing the debate regarding political controversy in the classroom is to say that what is most fundamentally at issue is pedagogical philosophy. Thus Stanley Fish insists that the neutral study of the rhetorical character of different positions should be the gold standard of a proper pedagogy.⁴⁰ A pedagogy aimed, say, at making students better artists or citizens, he regularly repeats, is at best an unachievable fool's errand. A pedagogy promoting a particular political point of view is he says, worse still, a corruption of the college or university mission.⁴¹ On that basis Fish should take a very dim view alike of religious colleges and universities and proprietary institutions devoted to the profit motive.

Part of what is in fact particularly healthy about most secular institutions is the variety of pedagogical philosophies at work in their classrooms. Even in disciplines or departments that are more politically uniform, the philosophical agendas of classrooms will vary; moreover, those variations will play out in differently nuanced political implications. Whether left or right, a faculty member who discourages contrasting opinion will have a different impact on students from one who encourages free expression and debate. The rhetorical style and manner of advocacy, its relationship at once to assigned readings and classroom discussion, varies immensely. Both advocacy and indoctrination are dispersed and deconstructed by differing pedagogical practices, despite the fantasy of those who speak of Cambodian reeducation camps masquerading as American colleges and universities.

IV. THE MISGUIDED CAMPAIGN FOR "BALANCE"

Another way of putting this is that I am offering the unplanned variety of methods and opinions as an alternative to the persistent drumbeat demanding balance in the classroom presentation of controversial subjects.

40. See generally STANLEY FISH, *SAVE THE WORLD ON YOUR OWN TIME* (NY: Oxford University Press, 2008).

41. *Id.*

Requiring that all instruction be balanced—a demand usually accompanied by vague demands for classroom oversight—would create a hostile environment for academic freedom and free expression in the classroom. As much as anything else, the demand for “balance” is a political appeal to what passes for public common sense, rather than an effort to reform instructional practices. It sounds eminently reasonable to those unfamiliar with the wide variation in the nature and degree of intellectual and disciplinary consensus in the academy. Disseminated in the public sphere and offered as an inducement to legislation, demands for instructional balance constitute an invitation to political intrusion into the academy, not an effort to reform university instruction.

Lack of balance, for Mr. Marcus, invites instructional bias, and “instructional bias,” he argues, “tends to be indoctrinating.”⁴² He offers variations on the equation—“Imbalanced presentations tend to have an indoctrinating effect”⁴³ or “indoctrination communicates an authoritarian disposition”⁴⁴—so that the cumulative effect is to turn a modest concern about unchallenged opinion into a clarion call against university instruction coalescing into unqualified brainwashing. The effects Mr. Marcus fears would require lock-step curricula policed by monolithic institutions. The world he warns against does not exist in the United States. Indeed Mr. Marcus seems undecided as to which moral panic he wants to commit to—chaos (anything goes) or totalitarianism (indoctrination). Balance apparently insures against both risks.

Yet many opposing arguments simply do not weigh equally on the scales of reason. Some opposing arguments have been widely discredited. Others have always been weak. Some arguments deserve equal time. Others do not. And the status of many disagreements changes over time. Faculty members need the academic freedom to make both individual and collective decisions about how to negotiate this shifting terrain. A uniform imperative for equal time would be a fundamental assault on intellectual integrity and the process of discovery.

In my own teaching I give equal time to opposing arguments when I think it is merited. On other occasions I cite positions I consider discredited only very briefly. Sometimes it is pedagogically useful to chart the history of evolving opinion and consensus, other times not. These are of necessity partly individual decisions. As background for my modern poetry courses, I maintain a web site with thousands of pages of background readings that aim to include every existing scholarly interpretation of over 700 modern poems, both those analyses I consider sound and those I consider silly.⁴⁵

42. Marcus, *supra* note 9, at 742.

43. *Id.* at 114.

44. *Id.* at 105.

45. See THE MODERN AMERICAN POETRY SITE, <http://www.english.uiuc.edu/maps> (last visited Mar. 28, 2013).

Many deal with political subjects such as Native American and African American history, racist violence, just and unjust wars, women's rights, genocide, and individual politicians. With the web site, to use the language of the 1915 Declaration, I provide my students with "access to those materials which they need if they are to think intelligently."⁴⁶ Then in class I often offer my own views and encourage students to offer theirs.

The demand for instructional "balance," perhaps surprisingly, can be most problematic when applied to areas widely regarded as controversial. Matthew Finkin and Robert Post offer a very thoughtful rejection of requirements for balanced classrooms in *For the Common Good*, taking up, among other examples, the case of intelligent design. "To require a biologist to give equal time to a theory of intelligent design, simply because lay persons who are politically mobilized believe this theory," they write, "is to say that a scholar must in the name of political balance present as credible ideas that the scholarly profession repudiates as false."⁴⁷ Mr. Marcus finds particularly telling "the extent to which Finkin and Post recoil from the idea of teaching intelligent design,"⁴⁸ and indeed it is, but not, as he apparently thinks, because they endorse political bias in science classrooms, but because they reject it.

Nothing could be more disabling and compromising to scientists than a requirement that they treat beliefs they regard as mass delusions with the same respect they award established scientific fact. While scientific consensus changes over time, some public misconceptions are simply false. This problem has become more clearly defined recently, as it has been demonstrated that doubt and controversy have been willfully manufactured in an effort to distort and undermine university science.

The most telling case is that of the tobacco industry, which created a controversy over whether smoking causes cancer that lasted for roughly half a century after the scientific case for the link was definitively established. Indeed, in 2006, a group of tobacco companies was convicted under the RICO statute⁴⁹ of conspiracy to deceive and defraud the public by distorting scientific evidence.⁵⁰ A whole series of "controversies" have been artificially manufactured by industries marketing carcinogenic products since the tobacco industry initiated the strategy in 1954.⁵¹ The aim

46. 1915 DECLARATION, *supra* note 5 at 298.

47. MATTHEW W. FINKIN and ROBERT C. POST, *FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM* 103 (New Haven, Yale University Press) (2009).

48. *See* Marcus, *supra* note 9, at 741.

49. Racketeer Influenced and Corrupt Organizations, 18 U.S.C. §§ 1961–1968 (2012).

50. *See* ROBERT N. PROCTOR, *GOLDEN HOLOCAUST: ORIGINS OF THE CIGARETTE CATASTROPHE AND THE CASE FOR ABOLITION* (Berkeley: University of California Press) (2012).

51. DAVID MICHAELS, *DOUBT IS THEIR PRODUCT: HOW INDUSTRY'S ASSAULT ON*

in each case was to sow doubt about the scientific consensus that the product was harmful. Media reports then typically treated each case as a “controversy” requiring a balanced presentation of the arguments from both sides. Balance in these cases was the opponent of science and a danger to public health. The most notable current example of the strategy is the controversy over whether global warming is real and whether it is a consequence of human activity.⁵²

Some controversies merit study as cultural phenomena—if a faculty member chooses to do so—but not as serious debates about the truth. For example, one might interrogate the 2008 controversy about whether Barack Obama was an American citizen without taking the arguments of the “birthers” seriously. International politics is rife with conspiracy theories that generate controversy but remain phantasmatic. One can certainly find some faculty members who endorse counter-factual convictions—there are faculty who believe the airplanes that struck the twin trade towers were remotely piloted by the CIA—but that does not elevate them to the level of issues that would benefit from balanced treatment. When the AAUP in 1915 urged faculty members to communicate “the divergent opinions of other investigators” to students,⁵³ it was referencing serious scholarly disagreements, not the delusional, misguided, or malicious views of non-specialist members of the general public.

Even within the campus itself, the practice of policing classroom “balance” would seriously distract faculty and administrators from the business of teaching and undermine academic freedom. In 2007 the system used by Pennsylvania State University to review student complaints about lack of balance in the classroom was tested. An English class, titled “Effective Writing in the Social Sciences,” scheduled a session on global warming after several students expressed an interest in writing about the topic. Background essays—one endorsing and one questioning global warming science—were assigned. Then, the instructor showed 20-30 minutes of Al Gore’s film “An Inconvenient Truth.” A student wrote several times to administrators to complain that the discussion of global warming had no place in an English class, even though the class was about *social science* writing. He also felt that the relative attention to the alternative positions was out of balance. The complaints were eventually dismissed, but only after the instructor and responsible administrators spent considerable time responding to repeated complaints from the same

SCIENCE THREATENS YOUR HEALTH (2008).

52. See AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, RECOMMENDED PRINCIPLES & PRACTICES TO GUIDE ACADEMY-INDUSTRY RELATIONSHIPS (2012), available at www.aaup.org/eport/recommended-principles-practices-guide-academy-industry-relationships (describing the half-century long effort to undermine scientific consensus on multiple fronts, culminating in the controversy over global warming).

53. 1915 DECLARATION, *supra* note 5, at 298.

student.⁵⁴ The student, incidentally, had received a grade of “A” in the course.

Like David Horowitz, Mr. Marcus reserves a special level of distress for entire academic disciplines that he believes have become “unbalanced.”⁵⁵ Although most disciplines eventually heal themselves—partly through contact with and critique by faculty members outside their boundaries—it is true that intellectual distortion and bias can dominate a field for some time. Challenges by those outside the field are important correctives, but enforced correction by academics or administrators who are convinced that they know better creates the academic equivalent of thought police. One of the consequences of our system of academic freedom is that faculty members will sometimes individually or collectively make mistakes. Mr. Marcus is correct that academic freedom protects the right to make claims others can disprove. That is the price we pay for a system that offers more benefits than liabilities. But there is a limit. You are not protected from the consequences of making statements that demonstrate you are incompetent to teach in your discipline.

To demand that faculty members actually abandon the standards and consensus judgments of their disciplines, however, is to undermine the whole structure of academic knowledge. Yet, at the same time, we must find ways of protecting faculty members who break with disciplinary bias or consensus. One way faculty members do that is to adopt the standards of disciplines other than their own, a practice that academic freedom must also protect.

V. POLITICS IN THE PUBLIC SPHERE

As early as 1915, the AAUP recognized that faculty members have a special responsibility to offer analysis and advice in the public sphere, not simply to profess on campus.⁵⁶ Sharing the reasoned judgments and expertise of informed faculty with the public and with state and national legislators is indeed a core academic function. It is a natural corollary to the task of advancing and disseminating knowledge through publication. As a

54. See English 202A Academic Freedom Complaint Department Communications, DISCOVER THE NETWORKS, <http://www.discoverthenetworks.org/Articles/acadfreepsuebler.html> (last visited Mar. 25, 2013) (detailing the communication between the student and the school regarding the complaint).

55. See DAVID HOROWITZ & JACOB LAKSIN, ONE-PARTY CLASSROOM: HOW RADICAL PROFESSORS AT AMERICA’S TOP COLLEGES INDOCTRINATE STUDENTS AND UNDERMINE OUR DEMOCRACY (2009).

56. See 1915 DECLARATION *supra* note 5, at 295 (“The responsibility of the university teacher is primarily to the public itself, and to the judgment of his own profession; and while, with respect to certain external conditions of his vocation, he accepts a responsibility to the authorities of the institution in which he serves, in the essentials of his professional activity his duty is to the wider public to which the institution itself is morally amenable.”).

result, protection from institutional retaliation for such extramural speech has gradually been recognized as a central component of academic freedom itself. Indeed, it is one of the reasons the AAUP was founded. As Robert Post and Matthew Finkin argue persuasively in *For the Common Good*, however, distinctions between extramural statements that do and do not bear directly on a faculty member's expertise can be difficult to draw. Furthermore, institutional retaliation for controversial extramural political speech would have a chilling effect on faculty members' confidence that they could speak forthrightly in the classroom and in their professional publications. Finally, once a university takes responsibility for enforcing what the 1915 Declaration called "the tyranny of public opinion,"⁵⁷ it becomes difficult either to set limits to that task or to deny institutional responsibility for all faculty speech.

Mr. Marcus argues that academic freedom should be applied only to functions that are narrowly academic. However, faculty advice to the public and faculty extramural speech on controversial political issues are valuable public goods, requiring academic freedom encompass a broader range of issues than Mr. Marcus is willing to do. Moreover, it has been clear for some time that First Amendment protections do not extend to speech that offends private employers.⁵⁸ Now there is reason to fear that public employees may be sanctioned for speech related to their jobs when it meets with employer disapproval.⁵⁹ Mr. Marcus also suggests that elements of institutional mission statements—he mentions preparing students to be better participants in a democracy—should not be covered by academic freedom, but faculty in fact need the right to comment on such matters without fear of retaliation. Contractual guarantees can help protect faculty engaged in collective bargaining, but the majority of American faculty do not presently have that option. Protections built into faculty handbooks and linked to academic freedom remain the only option.

VI. CONCLUSION: IF IT IS NOT BROKEN

Political indoctrination in the classroom is a serious and disabling problem in many countries. Those same countries lack anything similar to the kind of academic freedom that American students and faculty members experience.⁶⁰ That is no accident. The two characteristics go hand-in-hand. Political indoctrination is not a systemic problem in American colleges and

57. *Id* at 297.

58. See Paul Horwitz, Grutter's *First Amendment*, 46 B.C. L. REV. 461, 567–74.

59. See CARY NELSON & STEPHEN WATT, ACADEMIC KEYWORDS: A DEVIL'S DICTIONARY FOR HIGHER EDUCATION 46–50 (1999) (discussing how the 2006 U.S. Supreme Court decision in *Garcetti v. Ceballos* poses a growing risk to faculty speech on institutional matters at public universities).

60. See generally SCHOLARS AT RISK, www.scholarsatrisk.nyu.edu (last visited March 30, 2013). The organization *Scholars at Risk* is an international network of institutions and individuals that tracks the stays of academic freedom in other countries.

universities. And we do possess a high degree of academic freedom.

On college and university campuses in the United States, the corrective measure for speech that is intolerant, oppressive, hostile, irrational, or ill-informed is more speech. That is the strategy behind the AAUP's long-standing position against campus speech codes.⁶¹ It is also the strategy we recommend for the rebuttable assertions on campus—those statements that could “be dismissed as intellectually unsupportable”—that so trouble Kenneth Marcus. A regime of surveillance and sanctions, whether imposed from within or without, would make American campuses repressive, if not now then later. That is the ultimate danger in what is now a generation's worth of scare tactics about a factitious crisis.

61. *See generally* AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, FREEDOM IN THE CLASSROOM (2007), available at http://www.epi.soe.vt.edu/perspectives/policy_news/pdf/ClassroomFreedom.pdf.