

## Book Review

Marjorie Heins. *Priests of Our Democracy: The Supreme Court, Academic Freedom, and the Anticommunist Purge*. New York: NYU Press, 2013. 384 pp. Cloth \$65.00.

*Priests of Our Democracy* offers a cautionary tale of the political, cultural, and legal events that gave rise to academic freedom as a special concern of the First Amendment. The characterization of academic freedom as a special concern comes from the Supreme Court's 1967 *Keyishian* decision and provides the framework for understanding Heins's approach to this legal history of academic freedom. A second framework subtly used throughout the text is one of misplaced optimism—from faculty members, students, university presidents, board of education members, politicians, and justices—in the policies and procedures of the dicey 1950s and 1960s red scare witch hunts in academia. The study predominantly investigates loyalty oaths in New York City schools and colleges between the 1952 *Adler* decision and the 1967 *Keyishian* decision. Although there are many examples from schools, the balance of the text tilts toward higher education, as do the court precedents that inform the study.

Heins divides the text into five parts. The first part begins with an accessible summary of the development of academic freedom in the United States, providing the familiar who's who of early academic freedom cases that defined our professional understanding of the concept in the early-twentieth century. For Heins, the Smith Act of 1940 was a crucial turning point in this history as it was the first peacetime law criminalizing the expression of antigovernment ideas since the Alien and Sedition Acts of 1798. Heins provides a particularly interesting account, based on extensive archival materials, of the Rapp-Coudert Committee's investigation of New York's public schools in the early 1940s and makes the case that the red scare typically associated with Senator Joseph McCarthy in the mid-1950s was preceded by more than a decade in New York City with a powerful mission to identify early communist influencers in the public schools. One rather unpopular figure, Brooklyn College Professor Bernard Grebanier, figures prominently in the discussion of Rapp-Coudert—and reappears throughout much of the following two decades of legal battles over loyalty oaths in New York City as his testimony, which included names of other suspected communists, provides fuel to the fire of investigators for years. Heins recounts the shifting definitions of acceptable political beliefs and associations with an ease and rich familiarity of her primary source material. But, as Heins points out, in these early cases of academic

freedom there was very little role for the First Amendment, and therefore no legal grounds of defense.

The second part of the book hones in on the contentious relationships between the New York City Teachers Union, the Feinberg Law, and the Boards of Education and Higher Education. Discussion of the Feinberg Law introduces a controversial era for the Supreme Court. Heins uses well-selected biographical information about the justices and the plaintiffs that add a layer of explanation to oft-cited court opinions and the, in many cases, defenseless faculty members who challenged them. It is predominantly through these written court opinions and draft papers that Heins adds a unique perspective to our existing understanding of some of the most significant decisions handed down by the Supreme Court on this issue. The twin attacks on personal freedoms in 1947—Truman's executive order creating loyalty investigations for federal employees and the Taft-Hartley Act requiring non-communist affidavits—shepherded a dark era for public school and college employees. These national restrictions were aided by nimble and shiftily New York City officials willing to bend the law, or rewrite it if necessary, to purge the schools of any potential communist threats. Heins also grapples with the various roles New York City College presidents played during this time and vividly highlights those who joined the inquisition against communists, teachers unions, racial integration, and labor movements.

By the end of part three, the reader is left with the overwhelming image of a vindictive Brooklyn College President Harry Gideonse and the painstaking intrusion of privacy undertaken by the NYC Board of Education to weed out suspected communists from the schools. In parts one and two, the book's framework is predominantly academic freedom as a professional concept and the cases and debates that comprised early attempts to define it as part of free speech and due process. In part three the text shifts to framing the issue as a First Amendment principle and identifying cases within that framework. The National Defense Education Act is introduced, somewhat belatedly to the loyalty oath discussion, but plays a significant role in the affirmative affidavit controversies considered by the court. Heins portrays the Vinson Court's conservative, anticommunist, pro-loyalty oath, and proguilt by association ideology, which had obvious consequences for faculty academic freedom. Heins highlights Queens College economics professor and teachers union activist Vera Shlakman's early attempt to defend academic freedom with the First Amendment and the landmark *Slochower* decision regarding Fifth Amendment defenses.

Part four poignantly highlights the dramatic shift between the Warren Court's so-called Red Monday (June 17, 1957) and the 1960s emergence of academic freedom as a condition of the First Amendment

during Justice William Brennan's tenure. Heins meticulously traces the 1957 *Sweezy v. New Hampshire* case—the first case in which a Supreme Court majority embraced academic freedom under the First Amendment. *Sweezy* was the beneficiary of shifts in public opinion stemming from the 1954 Army-McCarthy hearings on forced-informer policies, which is useful context to understand the case. One of the key distinctions made in *Sweezy* was Justice Frankfurter's concurrence that academic freedom cases were not only about due process—but rather the First Amendment. This is a critical claim because most of the cases Heins discusses prior to *Sweezy* could be interpreted as due process cases, and not First Amendment cases. But each of these earlier precedents led to the now famous lines from *Keyishian*: “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom” (p. 215). *Keyishian*, according to Heins, is a “decisive moment—in the history of the Court, of academic freedom as a part of the First Amendment, and of the heresy hunt that had dominated American politics for 20 years” (p. 216).

Part five presents a summary of the post-*Keyishian* environment for academic freedom as both a policy issue for institutions and a First Amendment issue for the courts. A chapter devoted to post-September 11, 2001, issues of loyalty oaths, outspoken professors, Middle East studies, and dissent silenced in the name of national security bridges the gap between the 1950s–1960s and today's chilling environment for academic freedom and free speech.

To readers of the educational historiography of academic freedom, many of the court cases presented will be familiar, but the detail and character development of litigants and justices offers new insight into the legal identity of academic freedom in the United States. The text does not incorporate much of the recent scholarship in the educational historiography of academic freedom and interestingly also excludes some legal scholars, most notably William Van Alstyne, from the analysis. The text is clearly focused on public schools and colleges, so excluding the *NLRB v. Yeshiva* case makes sense, and yet some treatment of it may have added a deeper understanding of the changing conception of the role of faculty members in society, which is clearly a concern in defining legal aspects of academic freedom differently than freedoms afforded by any other professional. There were only passing references to the roles, now fairly well documented by educational historians, of national organizations, such the ACLU, AAUP, and AFT, in these academic freedom cases that could have provided additional context to these cases. Finally, although distinctions between individual and

institutional academic freedom or student and teacher freedoms have yet to develop a large case history, including examples of these legal debates may have added yet another dimension to our legal understanding of academic freedom.

Justice Frankfurter provides the inspiration for the book's title and it is fitting. Writing for the 1952 opinion in *Wieman v. Updegraff* he stated, "To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens" (p. 123). In this text, Heins gives voice to many of the teachers who saw their day in court as they battled vindictive and close-minded assailants. In doing so, she also provides voice to the thousands of faculty members across the nation whose cases never made it to court, but whose experiences provided the momentum to eventually define academic freedom as a special concern of the First Amendment.

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