

- **OVER MY SHOULDER (BOOK REVIEW)**

James L. Turk and Allan Manson (eds.) (2007), *Free Speech in Fearful Times. After 9/11 in Canada, the U.S., Australia & Europe*, James Lorimer & Company Ltd., Toronto

Roger de la Garde  
Université Laval

Part I “Lessons from History” examines the personal histories of intellectuals and university professors whose free speech was curtailed and even censored in “fearful times”. The first chapter, written by Andrew G. Bone, Senior Research Associate at the Bertrand Russell Research Centre at McMaster University, recounts how Bertrand Russell, philosopher, mathematician and outspoken critic of Britain’s entry in World War I was refused his fellowship at Trinity College and later summarily dismissed in 1916. His publicly known anti-conscription views and writings moved the British Foreign Office in 1917 to lay charges of undermining the war efforts in a court of law which found him guilty for publishing what was construed as an anti-conscription pamphlet and for criticizing British war policy. He was to relive the experience of being deprived of academic freedom in 1940 when his appointment to City College New York (CCNY) was blocked by the New York State Supreme Court and by the patron of Barnes foundation “over the objections of all levels of college administration and over those of the New York Board of Higher Education, as well” (p. 20). This prompted him to “produce his most considered reflections on the question of academic freedom” in his 1940 essay *Freedom and the Colleges*.

In the second chapter Lee Lorch, Professor Emeritus at York University, recounts briefly a “homegrown example”, a “shameful episode, instigated by cold war political posturing [which] deprived Canada of one of the world’s most outstanding theoretical physicists, Leopold Infeld” (p. 43). Other exemplary accounts, including his own, are offered as he examines how during the period leading up to and including the Cold War “US policy [damaged] traditional scholarly activities, with obvious consequences for Canadian academics [...]” (p. 45). That was “then”, as for “now” Lorch writes: “our greatest challenges may lie ahead, especially with the growing influence of US policies on Canada and the threatening political climate there” (p. 54).

The third chapter written by Chandler Davis, Professor Emeritus at the University of Toronto, draws “lessons from the cold War Era”. Davis’ experience of the “Red-hunt of the 1950s” serves as a background for comparing, and distinguishing, US and Canadian “repressive times”. The first lesson is that “deans or police or legislators who implement repressive policies are plainly not their originators” (p. 57). Then who? No easy answer, only conjecture for which the author makes no apology. “By providing an excuse, however flimsy, for increased military budgets, the Red Menace [of the 1950s] and today’s al Qaeda Menace are immensely useful to the arms industry” (p. 59). And one might add to constituencies who would restrict academic freedom, freedom of speech and association. The security campaign, accordingly, “is aimed at increasing terror [and hysteria] in the public” with “effects back on the elites” and most disturbingly, on fundamentalist leaders of all stripes.

In “The rule of law, and academic freedom in fearful times: Canada after Gouzenko” (chapter 4), Allan Manson, Professor in the Faculty of Law, Queen’s University, points out two major dangers “within the current Canadian statutory response to 9/11” (p. 64) with the introduction of the Anti-terrorism Act of 2001. The two dangers are: (1) the prospect of prosecution for an anti-terrorism offence based only on

suspicion and association: (2) the prospect of lengthy deprivations of liberty without charge for investigative purposes (*idem*). To these Manson adds a third, "whether the concept of academic freedom is sufficiently strong and entrenched to protect the rights of academics to freely associate and to freely express their views". To answer, we are taken back to 1946 and to the "sordid chapter in Canadian legal history marked publicly by the name Igor Gouzenko, Justices Kellock and Taschereau, and Fred Rose" (*idem*) and to one academic "whose story typifies these dangers". In conclusion "the handling of the Gouzenko affair taught us how easily the executive branch can, in fearful times, move civil liberties and human rights into a forgotten alcove, while it asserts the justification of national security and preservation." (p. 84)

Jon Thompson, Professor in the Department of Mathematics and Statistics, University of New Brunswick, finds that history repeats itself as regards "security myths" (chapter 5). If an "informed citizenry is integral to democracy" then, as Thompson argues, "we must be prepared to examine the past and distinguish between myth and reality" (p. 85). This willingness to examine the past should be high among academics and other intellectuals upon whom "society depends [...] to speak out against abuses of power and dispel myths" especially those myths that are politically inspired such as: "security intelligence services always provide security and intelligence" or that "secrecy is always in the national interest" (p. 86). To illustrate, Thompson recalls that, today as yesterday, the West helps to "create enemies" but "the difference is that we take military action only against comparatively modest enemies while creating illusions through which they seem much more significant. Such transformations serve to justify the removal of civil liberties at home and the slaughter of civilians abroad" (p. 87).

Part II "International perspectives" begins with an overview by Peter Leuprecht, current Director of the Montreal Institute of International Studies and Professor at the Département des sciences juridiques de l'UQÀM. He takes issue with the misnomer War on Terror and its casualties, the first being truth. "Other casualties are the rules of law, at the domestic and at the international level, and human rights and fundamental freedoms" (p. 110).

The first chapter written by Kent Roach, Professor of Law at the University of Toronto, examines the "evolution of Canada's national security policy since 9/11, including its effects on academic and other freedoms" (p. 123).

Broadening the perspective, Jonathan R. Cole, Professor of sociology, Columbia University, looks at "Academic freedom on American campuses in troubled times". He associates threats to academic freedom with a recent "rising tide of anti-intellectualism" in the United States and the increasing influence of "external politics on university decision making" (p. 162). He deplores the "paucity" of empirical research on the question of academic freedom and the lack of reference to any "common understanding of core ideas or concepts". (p. 186).

To answer the question "Academic freedom after September 11: Where are we now in the US?", Robert M. O'Neil, founding director of The Thomas Jefferson Center for the Protection of Free Expression, addresses himself to "three especially keen observers": the chief executive officer of the American Association of University Professors (AAUP), the director of university libraries and the editor of the scientific journal *Science Magazine*. Each, in turn, provides an example of the reach of antiterrorism laws in the daily, even mundane, activities of university professors and researchers. One such example is a provision of the Patriot Act that could earn an editor of a science magazine a fine of several hundreds of dollars and up to ten years in jail if he offered editorial assistance to a researcher from any of the five countries (China, Iran, Iraq, Libya, and Sudan) who submitted a paper for publication. A letter from the US Treasury Department's Office of Foreign Assets Control "reported a hitherto unnoticed late September 2003 ruling that giving editorial advice to an author from one of the five trade-embargoed countries might

well violate federal export-control laws" (p. 210). In other words, giving editorial assistance would constitute illegal exporting of US technology (in this case, technical and scientific writing).

The following three chapters focus on Australia. Jenny Jocking, associate professor at Monash University, looks at "Academic freedom in Australia in an Age of terror" while Joo Cheong Tham, from the Melbourne Law School focuses on "Australian terror laws and academic freedom". Lastly George Williams, Director of the Gilbert + Tobin Centre of Public Law at the Faculty of Law, University of New South Wales explores some of the "Strategies to protect academic freedom in Australia".

As with Australia Ben Hayes, joint coordinator of the European Civil Liberties network and research associate at the Human Rights and Social Justice Institute at London Metropolitan University, contends that the United Kingdom's counterterrorism laws have wreak "havoc on [the] legal system". In his chapter titled "Anti-terrorism law and academic freedom: Some reflections from Europe" he claims that the UK Terrorism Act 2000 "went further in terms of legitimizing and deregulating state surveillance than the notorious US PATRIOT Act" (p. 253). What has occurred is "(1) the construction of a separate criminal justice system to deal with suspected terrorists, (2) the creation and demonization of a 'suspect community', and (3) the introduction of measures in the name of counterterrorism that are actually about normal policing, surveillance and control" (p. 256). His conclusion that "Globalization has set up a monolithic economic system; [that] September 11 threatens to engender a monolithic political culture [and together] they spell the end of civil society" (p. 263) serves as an introduction to CAUT's senior legal counsel Maureen Webb's piece on "Academic freedom and the new infrastructure for mass, globalized surveillance".

Her concerns lie with the construction by governments of "an infrastructure for the mass, globalized registration and surveillance of populations [under] *the radar of the public*" (my italics), thus avoiding tabling initiatives, such as biometric travel identification documents and biometric national ID cards, before the "houses of government" and thus "submitting [them] to the public debate and democratic accountability" (p. 265).

"Looking back/looking ahead: CAUT's role in the defence of freedom" by Roland Penner, past president of CAUT, looks at the history of protecting academic freedom and examines new threats since 9/11 and the need to strengthen the role of CAUT in these matters. In their concluding chapter, "From fear to a culture of fear", Allan Manson and James L. Turk, professor in the Faculty of Law at Queen's University and Executive Director of CAUT, draw from the accounts in *Free Speech* a principal lesson. "Today, as in the past, we are witnessing the combination of fear, aggressive rhetoric by political leaders and constant media attention. Together, these elements work to produce a culture of fear [that] inhibits debate, hinders public institutions and eventually undermines democratic values" (p. 296-297).

This coherent, well balanced, diverse, multidimensional, and informative book constitutes a wake up call to real issues. As underlined by most of the contributors, academics can (and should) "use their freedoms and privileges to play an important role in preserving respect for freedoms and human rights" (p. 161). *Free Speech in Fearful Times* challenges academics, in a most direct and compelling way, to "convince the public [...] that a threat to academic freedom poses a threat as well to the welfare and prosperity" (p. 163) of any and all nations. It draws attention to the sometime direct consequences of counterterrorism policy and laws on activities which teachers and researchers, perhaps unwittingly, consider to be outside their reach or responsibilities. If I were to recommend specific chapters to help grasp the complexity of this issue of academic freedom, I would choose chapter 8 ("Academic freedom on American campuses in troubled times" by Jonathan R. Cole), to measure the far reaching effects of antiterrorist and counterterrorist policy and laws on academic freedoms and civil liberties, see chapters 9 ("Academic freedom after September 11: Where are we now in the US?" by Robert M. O'Neil) and 10 ("Academic

freedom in Australia in an Age of terror" by Jenny Jocking). For a glimpse of the data-mining technology "so powerful it's scary" used for mass registration and surveillance see chapter 14 by Maureen Webb ("Academic freedom and the new infrastructure for mass, globalized surveillance").