

## MOSES FINLEY AND THE ACADEMIC RED SCARE

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Moses Finley was perhaps the most eminent academic to have tangled with the anticommunist inquisition of early Cold War and to have lost his job. Unlike many other victims of the academic red scare, he was able to salvage his career and, to put it mildly, Sir Moses landed on his feet. Even so, it is possible that he was scarred by what had happened to him. In the late 1970s, when I was doing research about higher education's response to McCarthyism, I tried to contact Finley as I tried to contact the other academic victims of McCarthyism. Most responded. Finley did not. I later heard through a third person that he was unhappy with my treatment of his case.<sup>1</sup>

As it turns out, I could not have avoided dealing with Finley's experiences, not because of his eminence, but because his case was central to the development of the academic red scare. When he was fired from Rutgers University at the end of 1952, Finley was one of the first, if not the first, academic to lose his job specifically for taking the Fifth Amendment before a congressional investigating committee. His dismissal and subsequent blacklisting set important precedents and precipitated the formulation of the academic community's quasi-official policy on such cases.

What happened to Finley in 1952 and after was to happen to about one hundred other academics who also refused to cave in to the anticommunist inquisition. Accordingly, an examination of Finley's case will reveal much about the way the academy's response to McCarthyism operated. It is not a pretty story, for it exposes how adroitly the nation's leading educators and intellectuals came to rationalize firing and blacklisting so many college and university teachers whom they knew had done nothing wrong.

As we analyze Finley's experiences, we need to realize that the academy was responding to external political pressures. Had outside investigators left the nation's campuses alone, it is likely that few faculty members would have lost their jobs. But the nation's colleges and universities did

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<sup>1</sup> Schrecker 1986. This volume contains more information about many of the issues I deal with in this essay.

not—and do not—operate in a vacuum. During the late 1940s and 50s, faculty members and administrators shared many of the same fears and assumptions about Communism and its adherents as other Americans. They often had little knowing contact with actual members of the Communist party (CP) and so were unaware of how much variety it encompassed. Instead, they subscribed to a demonized stereotype that portrayed Communist professors as mindless robots under Kremlin control, devious conspirators who were trying to undermine the American system and indoctrinate their students.

At the same time, however, the nation's colleges and universities are institutions dedicated to rational discourse and intellectual autonomy. That mission creates considerable tension when outsiders demand political or intellectual conformity. Over the years, the academic community has dealt with those tensions by elaborating the concept of academic freedom. It is a concept that stresses the specific protections professors need in order to do their educational work of teaching and research. It also seeks to defend the activities of college teachers as citizens in the public sphere. As long as they exercise 'appropriate restraint' and make 'every effort to indicate that they are not speaking for the institution', they should not be punished by their academic employer. Or so the traditional formulation by the American Association of University Professors says in its authoritative 1940 'Statement of Principles on Academic Freedom and Tenure'.<sup>2</sup> Although most major institutions of higher learning (Rutgers included) had adopted that statement or something very like it in their governance documents and by-laws, it was a formulation that, as Finley's experiences show, was readily flouted when external political forces demanded it.

The event that led to Finley's dismissal from Rutgers was his appearance on March 28, 1952, before the Senate Internal Security Subcommittee (SISS) of the Senate Judiciary Committee or the McCarran Committee as it was then known. Though the committee focused on the scholars and diplomats who had supposedly 'lost' China to the Communists, its counsel, Robert Morris, had previously worked for a New York State legislative committee that had questioned Finley before the war during a probe into communism in New York's municipal colleges. Since some of the principals in the China investigation were academics, the opportunity that

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<sup>2</sup> American Association of University Professors, '1940 Statement of Principles on Academic Freedom and Tenure', <http://www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm>.

it offered Morris to reopen the New York City one was too tempting to pass up.

At the time of his hearing before McCarran, Finley was teaching at the Newark campus of Rutgers University. The school's administrators had known for several months that Finley might receive a subpoena. He had been named as a Communist by two witnesses before the SISS the previous August. One, the eminent East Asian specialist Karl Wittfogel, described Marxist seminars at Finley's apartment in the 1930s, the other, a former CCNY instructor named William Canning, identified Finley as a member of the City College faculty unit. Finley had immediately alerted his superiors at Rutgers to the possibility of trouble. He gave them a signed statement, denying that he had ever been in the party and refuting in detail the charges that Wittfogel and Canning had made.<sup>3</sup>

Since he was already something of a superstar at Rutgers—someone his dean considered 'brilliant' and 'an unusually strong addition to the University Faculty' as well as 'likely to develop into the University's most distinguished historian'—the administration was willing to let the matter lie, especially since it got no publicity.<sup>4</sup> Nor was there much of a flap about his appearance before the Committee seven months later. The Rutgers administrators he consulted had apparently assured Finley that his job was not in danger.<sup>5</sup> McCarran was looking for the people who had 'lost' China and was after bigger game than an assistant professor of ancient history at Rutgers-Newark.

At his hearing, Finley took what came to be known as the 'diminished Fifth'. He answered many of the Committee's questions and denied that he was a current member of the Communist Party. But he invoked the Fifth Amendment when asked if he had ever belonged to the party.<sup>6</sup> The whole hearing lasted all of about twelve minutes. The Rutgers authorities did not seem concerned about it. In fact, they loaned Finley the money for his attorney, published his first book, and invited him to speak to the trustees about Greek law—all after his congressional appearance.

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<sup>3</sup> M. I. Finley to Dean Herbert F. Woodward, Sept. 5, 1951, Records of the Rutgers University Office of the President (Lewis Webster Jones) Series II, Academic Freedom Cases, 1942–1958, RG/C No: 04/15/02, Alexander Library, Rutgers University, New Brunswick, N. J., Box 4, Folder 1 (hereafter, Jones papers).

<sup>4</sup> Promotion Rating Blank, Herbert Woodward, May 14, 1949; Promotion Rating Blank, Herbert Woodward, Mar. 10, 1950, Jones papers, Box 4, Folder 1.

<sup>5</sup> Herbert Woodward to Edward Fox, Jan. 15, 1958, in Jones papers. Box 4, Folder 1.

<sup>6</sup> Finley testimony, March 28, 1952, Senate Internal Security Subcommittee of the Senate Judiciary Committee, 'Hearings on the Institute of Pacific Relations', 4152–58.

Actually, it is likely that Finley might have kept his job had the McCarran Committee not called up Simon Heimlich, another Rutgers professor in the fall of 1952. Heimlich, who seems to have been a very principled fellow, refused to answer any of the Committee's questions about himself or others. At that point, under considerable pressure from the New Jersey media and political leaders, Rutgers' top administrators felt compelled to act. The school's president, Lewis Webster Jones, who claimed that he was 'shocked and deeply concerned' about Heimlich's behavior, summoned him to his office to ask him to explain why he had not cooperated with McCarran. Jones also had Heimlich dictate a statement, affirming that 'I am not a member of the Communist Party and never have been one'.<sup>7</sup> The Rutgers authorities had no plans to investigate Finley, but after a university public relations official ('improperly' in the dean's opinion) took it on himself to tell reporters at a press conference that the university would 'of course' examine Finley as well as Heimlich, the school's administrators believed they had no choice, especially since Finley had just been named yet again by another ex-Communist witness before the McCarran committee.<sup>8</sup>

By the fall of 1952, as Rutgers was figuring out how it would deal with its Fifth Amendment witnesses, it was widely known that current members of the Communist Party were not welcome on the nation's faculties. That had been the case for quite a while. Even before the Second World War, during the supposed heyday of the Old Left in the 1930s when many schools housed party units, Communist faculty members tended to keep their political affiliation a secret to avoid losing their jobs. Whatever we may feel about the ethics or wisdom of that secrecy, it was not unreasonable. During the 1930s, right-wing newspapers and politicians had been charging that Communists had infiltrated higher education. And there were a few cases of left-wing academics losing their jobs because of their political activities.<sup>9</sup>

Then, in 1940, during what one scholar has called 'a rehearsal for McCarthyism', at a time when the Nazi-Soviet Pact destroyed the Popular Front and rendered the party particularly unpopular,<sup>10</sup> a special

<sup>7</sup> Statement of Dr. Lewis Webster Jones, President Rutgers University, September 26, 1952, in 'It Did Happen at Rutgers: Basic Documents', *The Educational Record* (April 1953) (hereafter *Educational Record*).

<sup>8</sup> Woodward to Fox, Jan. 15, 1958, Jones papers, Box 4, Folder 1; Minutes of President's Special Advisory Committee, Oct. 3, 1952, Jones papers, Box 1, Folder 2.

<sup>9</sup> Johnson 1970; Iversen 1959, 199; *AAUP Bulletin* 23, No. 5 (May 1937), 256–81.

<sup>10</sup> See Jones, this volume, p. 000.

New York State legislative committee, the so-called Rapp-Coudert Committee, decided to investigate Communists within New York City's municipal colleges. It called up dozens of faculty members. A few, including William Canning, who became the committee's key witness, admitted they had been in the party and identified their comrades. The rest simply denied that they were Communists. They felt they had little choice in the matter, since the Board of Higher Education had decreed that party members would be automatically fired.

After Rapp-Coudert finished with them, the Board took over. Because it operated in a quasi-judicial manner, it required that two witnesses identify a tenured teacher as a Communist before that person could be fired. Over thirty faculty members from Brooklyn College and the City College of New York lost their jobs. Belonging to the party was bad enough, lying about it—since it was obvious that most of the people Canning and the other informers had fingered were Communists—was even worse. It was, the Board ruled, 'conduct unbecoming a member of the staff' and a 'violation' of the faculty member's 'academic duty' to conduct his 'extra-curricular affairs openly, with candor and without resorting to deceit or concealment'.<sup>11</sup>

Finley, who was then teaching at City College while he worked on his Columbia dissertation, was named by Canning. But he was not fired. Unlike most of the people Canning identified, Finley lacked tenure and so was simply not rehired. And, in any event, his politics became moot once the U.S. entered World War II and the campaign against academic and other Communists fizzled out.

That campaign resumed with the advent of the Cold War. At that point, Communists were no longer viewed as members of an undesirable political organization. Because of their party's connection to the Soviet Union, they had become a potential threat to national security. Ambitious politicians and journalists rushed to expose these dangerous individuals wherever they were lurking—in the federal government, the entertainment industry, the labor movement, and the academic community. Though lacking the sex appeal of Hollywood or the State Department, the nation's campuses did attract some investigators in the late 1940s. As the academic community scrambled to deal with those investigations, it began the collective process of formulating a policy that would exclude

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<sup>11</sup> Schrecker 1986, 81.

Communist teachers from the nation's faculties without a formal violation of academic freedom.

The most important development in that formulation occurred in response to an investigation by the Washington state legislature's Fact-Finding Committee on Un-American Activities in July 1948 under the chairmanship of a former deputy sheriff named Albert Canwell. The University of Washington's president, Raymond Allen, planned to accommodate the committee. Accordingly, he warned the potential witnesses on the faculty to cooperate with Canwell and, when a few did not, he brought charges against them.

During the course of their hearing before a faculty committee, two of the unfriendly witnesses admitted that they were still in the Communist party. At that point the administration decided to drop all other charges against them and base its case on the grounds that Communists were unqualified to teach. The academic community had not yet reached a consensus about that proposition. In 1947, for example, the AAUP insisted that belonging to the CP should not 'in and of itself' be grounds for dismissal.<sup>12</sup> Thus, in order to gain credibility for firing its Communist professors, the University of Washington not only had to comply with the AAUP's procedural requirement that the accused professors receive a hearing before a panel of their peers, but it also had to produce such an intellectually and professionally compelling rationalization that it would not appear to have violated academic freedom.

Surprisingly, the administration did not examine the two professors' teaching and research. In fact, even President Allen admitted that neither man had abused his classroom or slanted his scholarship. Instead, he asserted that simply belonging to the Communist Party disqualified someone from academic life. The university had imported a batch of professional anticommunists to describe the party's operations. And, basing his assessment on that hardly unbiased testimony, Allen insisted that the CP's demand for uncritical obedience to the party line interfered with the quest for truth 'which is the first obligation and duty of a teacher'. As a result, Allen went on to explain, 'by reason of their admitted membership in the Communist Party', the two men were 'incompetent, intellectually dishonest, and derelict in their duty to find and teach the truth'.<sup>13</sup>

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<sup>12</sup> 'Report of Committee A', *AAUP Bulletin* 34, No. 1 (Spring 1948), 126.

<sup>13</sup> For a detailed discussion of the University of Washington dismissals, see Countryman 1951.

Washington's dismissal of the two Communist teachers along with a third professor (who had refused to cooperate with the university as well as the Canwell committee) sparked a national debate. President Allen's statement about the case was widely circulated, as were similar formulations by such intellectual heavyweights as the philosophers Sidney Hook and Arthur O. Lovejoy. As a result, by the beginning of 1949 a consensus had developed within the academic community that favored the exclusion of Communists.

From Stanford to Harvard, college and university presidents rushed to put their institutions on record. 'There will be no witch-hunts at Yale', President Charles Seymour proclaimed, 'because there will be no witches. We do not intend to hire Communists'. That theme pervaded the year's commencement addresses. And, on many campuses special committees were established to devise new regulations banning party members. The notorious loyalty oath that tore the faculty apart at the University of California in 1949–50 was a product of a similar move by the Regents and administrators to ensure a Red-free campus.<sup>14</sup>

Actually, by that point, there were few, if any, Party members on the nation's faculties. The anti-communist repression combined with the CP's own rigidity and irrelevance as well as the demands of their own careers and families led most of the academics who had joined the party during the 1930s and 40s to drop out. And, although they may have retained their sympathy for many of the causes they had formerly embraced, they were, like Moses Finley, no longer politically active.<sup>15</sup> As a result, I can't think of any public cases during the 1950s of professors losing their jobs specifically because they belonged to the Communist party.

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Instead, as Finley's experiences reveal, the issue that was to roil the nation's campuses during the early 1950s was not that of card-carrying Communists, but of former ones who did not want to name names. By that point, HUAC and the other committees were requiring their ex-Communist witnesses to identify their former comrades as a sign that they had actually broken with the CP. Many of those witnesses would have been willing to talk about their own activities, but they did not want to discuss those of other people. Unfortunately, however, the Supreme Court left these people with few good options.

<sup>14</sup> Blauner 2009.

<sup>15</sup> Mason W. Gross to Benjamin F. Wright, Dec. 19, 1952, Jones papers, Box 3, Folder 6.

In the early days of the Cold War, the men and women called before the anti-Communist investigators—and their lawyers—believed that the First Amendment covered their refusal to answer questions about their political beliefs and activities. Several Supreme Court decisions of the mid-1940s had seemed to imply that such behavior would be protected; but the times and the Court's personnel had changed and, by the late 1940s, the federal judiciary refused to allow such a defense. Unfriendly witnesses who relied on the First Amendment, risked contempt of Congress and could, like the Hollywood Ten, end up in prison. As a result, the only way that witnesses could avoid a contempt citation without having to name names was to invoke the Fifth Amendment's privilege against revealing information that might result in a criminal charge against them. Since the 1940 Smith Act had essentially made membership in the Communist Party illegal, the Supreme Court did allow the Fifth Amendment to protect witnesses who refused to talk about their relationship to the party.

Unfortunately, however, the Court had also ruled that people who were willing to talk about themselves but not about others had 'waived' their privilege under the Fifth Amendment and could be prosecuted for contempt. This meant that ex-Communists who did not want to name names could not explain why they had joined the party and why they had left it. They had to invoke the Fifth Amendment when questioned about their relationship to the CP. From the perspective of ordinary citizens, who rarely understood the 'waiver doctrine', such a stance looked bad. It looked as if the witnesses were concealing something. The committees, of course, pushed the notion that such 'Fifth Amendment Communists' were hiding their subversive activities behind the Constitution. As Senator Joseph McCarthy put it, 'a witness's refusal to answer whether or not he is a Communist on the ground that his answer would tend to incriminate him is the most positive proof obtainable that the witness is a Communist'.<sup>16</sup>

It is, to say the least, disheartening to realize how many of the nation's institutions of higher learning acted as if McCarthy's dicta were true. In any event, whether or not the professors and administrators who dealt with the Fifth Amendment witnesses on their faculties really believed that those individuals were dangerous Communists, they certainly knew that they created a disaster for public relations.<sup>17</sup>

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<sup>16</sup> Schrecker 1986, 176.

<sup>17</sup> Minutes, Special Committee of Review, Oct. 31, 1952, Jones Papers, Box 1, Folder 5.

Such was the case at Rutgers, where Heimlich's appearance before the McCarran committee created a storm of pressure from the local press and politicians—including the governor of New Jersey who proclaimed that 'the professors should have answered the questions or get out'. Since the state funded 60 percent of his budget, President Lewis Webster Jones felt compelled to act.<sup>18</sup> He did so by creating a special advisory committee of trustees, alumni, and faculty members under Tracy Voorhees, a former Undersecretary of the Army and trustee, to review the case in order, as Jones put it 'to protect the University against any possible subversive influences and to protect the rights of Professor Heimlich'.<sup>19</sup>

There were no precedents for the Voorhees committee to follow. Though a few other academics had taken the Fifth before congressional committees and lost their jobs, they either tended to be junior people who could easily be denied reappointment or else Rapp-Coudert survivors in New York's municipal colleges who were automatically dismissed under a section of the New York City Charter that required city employees to cooperate with official investigations. But because Heimlich had tenure and Finley was such an administration favorite, the Rutgers authorities decided to offer them all the procedural protections available. The two men, therefore, became the first Fifth Amendment witnesses to face a full academic investigation.

The Voorhees committee met four times, questioned both men, and sought information from the McCarran committee's staff. Then, on October 14, less than three weeks after its formation, it issued a unanimous report recommending that the faculty open a formal investigation. It noted that the Board of Trustees had (as had their peers elsewhere) recently revised the University's by-laws to stress the teacher's 'special obligations' to ensure that his 'utterances' did not threaten the institution's standing with the public and to 'seek at all times to conduct himself appropriately'. Since those 'utterances' could also, the committee explained, 'include a failure to speak in circumstances in which such appropriate conduct requires that the person should speak', the refusal of Finley and Heimlich to answer the Senate committee's questions does 'raise a real question as to their fitness to continue as teachers on the University faculty'. Then, perhaps reflecting its chairman's position as a leader of the recently formed hawkish Cold War Committee on the Present Danger,

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<sup>18</sup> Ibid.

<sup>19</sup> Jones, 'Statement', *Educational Record*.

the report discussed the evils of Communism and the clear and present danger that it posed to the University as well as to the nation. Voorhees and his colleagues obviously wanted a quick decision, but recognized that such a decision would have more credibility if it was rendered after a faculty investigation in accordance with AAUP regulations.<sup>20</sup>

Thus, a Special Faculty Committee of Review was duly selected and set to work right away. It consulted widely, quizzing Finley, Heimlich, and their lawyers, Joseph Fanelli and Leonard Boudin, as well as students, administrators, alumni, members of the Voorhees committee, and such outside experts as the General Secretary of the AAUP. Its members read up on the relevant legal literature. They also tried—and failed—to get the counsel of the McCarran Committee to explain why it had subpoenaed the two men or to offer them the opportunity to recant. The Special Faculty Committee also received from the administration what was probably something that the FBI called a ‘blind memorandum’, four typed pages of plain paper listing Finley’s suspect affiliations.<sup>21</sup> Most significantly, it gave itself a crash course on the Fifth Amendment, for it wanted to know the answer to what it considered ‘the crucial question’: ‘why anyone should refuse to answer the questions of a duly constituted committee of the Senate of the United States’?<sup>22</sup>

While endorsing the school’s stated policy that ‘a member of the Communist party should not be permitted to teach at Rutgers University’, the committee’s December 3rd report noted that its members had originally felt that there was something wrong with taking the Fifth, but came to realize that Finley and Heimlich had good reasons for relying on their privilege against self-incrimination. It would protect them from having to give information that might become ‘a link in the chain’ of evidence against them. Finley, after all, had been named by three people and he feared that anything he said to rebut their testimony could become the basis for a perjury indictment, while Heimlich claimed that the Senate subcommittee’s questions not only set him up for an indictment, but also

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<sup>20</sup> ‘Report of the Special Trustee-Faculty Committee’, Oct. 14, 1952. *Educational Record*.

<sup>21</sup> Memo, ‘MOSES ISAAC FINLEY’, Nov. 15, 1952, Jones papers, Box 4, Folder 1. This memo was probably prepared in accordance with the FBI’s ‘Responsibilities Program’ which had been instituted in the early 1950s to give high public officials, including some college presidents and school system superintendents, information about the supposed subversive affiliations of people in their employ. In the course of my research in academic archives, I saw many similar documents.

<sup>22</sup> ‘Report of the Special Faculty Committee of Review Concerning Simon W. Heimlich and Moses I. Finley’, Dec. 3, 1952, *Educational Record*.

violated his right to privacy. The committee recognized that faculty members did have a special obligation to their school, but it believed that such an obligation should not require them to waive their constitutional rights. Accordingly, the committee unanimously recommended that the university take no further action in the matter.<sup>23</sup>

The Trustees disagreed. Unless Finley and Heimlich returned to the SISS before the end of the year and answered all its questions—something neither man would do—they were out of a job. In its December 12 resolution, dismissing the two men and ordering the immediate dismissal of anyone who took the Fifth with regard to membership in the Communist party, the Board invoked the ‘special obligations’ of college teachers. It stated that by taking the Fifth, a faculty member ‘impairs confidence in his fitness to teach’ and ‘is also incompatible with the standards required of him as a member of his profession’. With its reference to professional standards and the faculty member’s ‘privilege of freedom to search out and to teach the truth’, the Trustees’ resolution was, to a large extent, echoing the earlier rationales for disqualifying Communists.<sup>24</sup>

The faculty was outraged. At its meeting on December 18, the University Assembly endorsed the Special Faculty Committee’s report, as did a subsequent poll of the faculty which also requested that the Board of Trustees reconsider its decision. On January 19, a self-selected twenty-three-person faculty Emergency Committee submitted a statement opposing the dismissal of the two men. It began by criticizing the Trustees’ failure to consult with the faculty before imposing a blanket prohibition on taking the Fifth Amendment. The statement also decried the lack of any specific charges against Finley and Heimlich or any concrete evidence of problems with their ‘fitness to teach’.<sup>25</sup>

And, just as University of Washington president Allen supplemented the dismissal of his school’s Communist professors with a formal statement, so too President Jones rushed to deliver a rationalization for the Rutgers Trustees’ action. By the beginning of 1953, he seems to have convinced himself that Finley and Heimlich had essentially dismissed themselves by refusing ‘to reconsider their stand’. He felt strongly that the two men were

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<sup>23</sup> Ibid.

<sup>24</sup> ‘Resolution of the Rutgers University Board of Trustees, Adopted at Its Meeting December 12, 1952’, *Educational Record*.

<sup>25</sup> Emergency Committee of Rutgers Faculty on the Trustees’ Decision of December 12, 1952 to Members of the Board of Trustees of Rutgers University, Jan. 19, 1953, Jones Papers, Box 1, Folder 12.

'ill-advised': though they 'had the right to claim privilege under the Fifth Amendment . . . the legal and civic wisdom of its exercise is questioned'. In particular, they had not given enough consideration to the well being of the university. Their refusal to testify had made Rutgers 'vulnerable to disastrous demands for public control'.<sup>26</sup> Thus, in order to head off such demands as well as to placate such partisans of academic freedom as the AAUP, Jones released a formal statement on January 24, 1953. He did so, he explained, because Rutgers was, in his words, 'setting a precedent for the larger university community'. Accordingly, he wanted to clarify the reasoning behind that precedent—especially since the faculty was up in arms over the Trustees' rejection of the Special Faculty Committee's findings and the rest of the academy was bracing for further congressional investigations.<sup>27</sup>

Jones based his argument on a narrow view of academic freedom, one that protected teaching, research, and the 'right to hold unorthodox opinions'. Since the questions Heimlich and Finley refused to answer 'did not relate to their opinions, but to their membership in the Communist party', their behavior would not be protected by academic freedom, especially since 'such membership is not compatible with freedom of thought'. Not surprisingly, he emphasized that along with the privileges of academic freedom, professors also had 'special obligations'—one of which just so happened to be 'the obligation to render an explanation, as clearly and rationally as possible, whenever such an explanation is called for by duly constituted governmental bodies acting within the limits of their authority'. In particular, because of 'all the circumstances of our relations to world communism', professors owed it to the University to 'state frankly where they stand on matters of such deep public concern, and of such relevance to academic integrity, as membership in the Communist party'. This 'minimum responsibility' held, Jones explained, even if 'they believe they might incur certain personal risks'. In other words, faculty members were to surrender their constitutional rights in order to prevent 'damage to the entire University, and to the profession to which the two men belong'. Finally, of course, there was the ultimate value—the need

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<sup>26</sup> Notes on the memorandum of the Emergency Committee, n.d., Jones Papers, Box 1, Folder 13.

<sup>27</sup> 'Statement of President Lewis Webster Jones of Rutgers University on the Heimlich-Finley Cases, January 24, 1953', *Educational Record*.

to uncover the 'Communist conspiracy' which invocations of the Fifth Amendment served to shelter.<sup>28</sup>

Jones insisted—and his later correspondence reinforces his public statement on that account—that if Finley and Heimlich had exposed themselves to criminal prosecutions by answering the McCarran committee's questions, the Rutgers administration and Board of Trustees would have backed them to the hilt. Tracy Voorhees had advocated a similar policy, directly urging both men to take the 'clean and honorable way for you out of this morass' by unburdening themselves before the committee.<sup>29</sup> The issue was moot, of course; neither man was prepared to recant and the Senate committee was not about to give them the opportunity. Nor was it likely that, given the political situation in early 1953 at the height of the red scare, the University would have offered them much support if they had admitted a Communist connection and then been indicted for perjury or sedition. That two such presumably well-informed and conscientious individuals as Jones and Voorhees would make such an unrealistic request speaks volumes about the willingness of the American establishment to go along with the witch-hunt.

For all its flaws, however, Jones' statement received wide attention. It was known that the main congressional investigating committees planned to question college teachers in the spring of 1953 when Congress would be in Republican hands. And, as they prepared to deal with potential witnesses, many schools looked to Rutgers for guidance. Jones willingly supplied it. He had taken the precaution of printing 5000 copies of his statement and shipped them out in bulk to his fellow college presidents, as well as to individual faculty members, trustees, politicians, and ordinary citizens.

Jones was not alone in formulating a policy for dealing with unfriendly witnesses on the faculty. Harvard's leaders, who assumed—correctly—that their school would soon attract the investigators, wanted to be prepared. At the request of a member of the institution's governing Corporation, two Law School professors, Zechariah Chafee and Arthur Sutherland, produced an analysis of the Fifth Amendment that purported to discuss the legal issues involved. Since Chafee was perhaps the nation's most eminent civil libertarian, the document had considerable impact. While not speaking to the issue of academic freedom, it stressed the 'duty of the

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<sup>28</sup> Ibid.

<sup>29</sup> Tracy S. Voorhees to Simon Heimlich, Dec. 16, 1952, Jones Papers, Box 3, Folder 7.

citizen to cooperate in government'. According to Chafee and Sutherland, a witness can only use the Fifth if engaged in some kind of criminal venture and 'is neither wise nor legally justified in attempting political protest by standing silent when obligated to speak... the Fifth Amendment grants no privilege to protect one's friends'. Published initially as a letter to the Harvard student newspaper, January 8, 1953, the Chafee-Sutherland statement soon received wide circulation. It was, in fact, cited repeatedly in a private memo that President Jones used as he prepared his formal statement on the Rutgers case.<sup>30</sup>

An even more influential document appeared in March. Released by the Association of American Universities, a group composed of the presidents of the 37 leading universities in the United States and Canada, it explained why the academic community had to cooperate with the anti-Communist investigators. Its dissemination subsidized by the Rockefeller Foundation, this statement was as close as the academic community came to an official policy. It deviated little from the earlier formulations we have seen. After reiterating the by-then standard position that because of the party's 'use of falsehood and deceit' as well as its reliance on 'thought control', Communists could not be teachers, it noted some of the scholar's special obligations, including that to 'maintain' the university's reputation. 'Above all', the statement continued,

he owes his colleagues in the university complete candor and perfect integrity, precluding any kind of clandestine or conspiratorial activities. He owes equal candor to the public. If he is called upon to answer for his convictions it is his duty as a citizen to speak out. It is even more definitely his duty as a professor. Refusal to do so on whatever legal grounds, cannot fail to reflect upon a profession that claims for itself the fullest freedom to speak and the maximum protection of that freedom available in our society. In this respect, invocation of the Fifth Amendment places upon a professor a heavy burden of proof of his fitness to hold a teaching position and lays upon his university an obligation to reexamine his qualifications for membership in its society.<sup>31</sup>

If nothing else, these various pronouncements made it clear that prospective witnesses would not encounter the kinds of mixed signals that Rutgers had given to Finley. They would have to cooperate with the committees

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<sup>30</sup> For a more detailed discussion of the Chafee-Sutherland statement, see Schrecker 1986, 183–5; Notes on the memorandum of the Emergency Committee, n.d., Jones Papers, Box 1, Folder 13.

<sup>31</sup> *The Rights and Responsibilities of Universities and their Faculties*. A Statement by the Association of American Universities, March 24, 1953, Princeton, New Jersey.

or lose their jobs. And over the next few years, most of the fifty or so academics who took the Fifth Amendment in public found themselves unemployed, usually, though not always, after their own universities mounted a quasi-judicial proceeding before a faculty committee.

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And, like Finley, they would find it nearly impossible to obtain another teaching position within the United States.

An academic blacklist was in place. Actually, it had already been in operation for several years before Finley tangled with the McCarran Committee. The three faculty members fired by the University of Washington sent out hundreds of letters seeking jobs, but received not a nibble and had to leave the academy. One became a carpenter, another went on the dole, and the third, a social psychologist, went into private practice as a therapist. A group of young physicists who had become enmeshed in a HUAC investigation of the atomic bomb project in 1948 and 1949 also found themselves unemployable in academe unless they could emigrate. The Rapp-Coudert hold-overs in the New York City municipal colleges who were fired at the same time as Finley and Heimlich patched together careers outside the academy in fields ranging from psychoanalysis to public relations. Heimlich, who at the time of his dismissal told President Jones that 'I haven't the faintest idea, at the present time, of any possibility of earning a livelihood', apparently went into business.<sup>32</sup> By the 1960s, however, as the anti-Communist furor receded and the academy expanded, many of those defrocked academics were able to return to college teaching, though their decade and a half absence from the campus did take a toll on their careers.

Finley, of course, managed to find another—and arguably better—university position rather quickly. Even so, at least at first, his experiences on the academic blacklist were not unusual, though the support he received from the Rutgers administration was somewhat unique. For it was clear that his superiors deeply regretted having to let their brilliant classicist go. And they did what they could to find him some kind of alternative employment. Thus, for example, presumably on the assumption that private institutions might be more amenable to a politically controversial teacher than a public school, the provost tried to persuade the President of Smith College to hire him. But even in the bucolic setting

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<sup>32</sup> Heimlich to Jones, Dec. 23, 1952, Jones Papers, Box 3, Folder 8.

of Northampton, Massachusetts, Smith's president explained that Finley's 'refusal to answer a question for the McCarran Committee would make him ineligible'. This was especially the case since the Committee was planning to investigate Smith in the beginning of 1953 and it was 'obvious that the appointment of someone who has already refused to testify before that committee would not be in the interests of the College'.<sup>33</sup> There was a possible opening at Columbia and Barnard, but, as his correspondent there explained to the provost, though Finley's qualifications would be considered, 'just how great a disadvantage his refusal to testify will prove to be, I cannot say in advance, although it is certain that this aspect of his record will not be listed among his strong points'.<sup>34</sup>

The Rutgers administrators kept pushing, nonetheless. They wrote to prospective employers at foundations as well as universities, explaining the situation and touting Finley's virtues. Nonetheless, the academic blacklist was impermeable. There was an attempt to place his name before a hiring committee at a major Ivy League university. Though Finley was already recognized as perhaps the leading ancient historian of his generation, the committee members would not even read his folder. 'Why ask for trouble?' was the response. Even as late as 1958, when Finley was in contention for a position in ancient history at Cornell, for which he was viewed as by far the strongest candidate in the running and 'the only man on this list of clearly outstanding achievement and promise', Cornell's president, Deane Malott, scotched the appointment. He had spent years fending off demands to fire the eminent—and ex-Communist—physicist Philip Morrison and he obviously did not want another controversial figure on the faculty. Accordingly, Malott claimed that Finley's refusal to cooperate with McCarran was a 'serious moral and civic error'. When the History Department appealed that decision to the faculty's academic freedom committee, Malott solicited secret information from Rutgers to convince the faculty committee that hiring Finley would be unwise. Though the members of the faculty committee remained unconvinced, they did not dispute the president's power to block the appointment.<sup>35</sup>

Although Finley remained unemployable at major American universities, he did gain a belated vindication from the AAUP. Because of the failure of its executive secretary to act on any of the McCarthy era cases,

<sup>33</sup> Mason Gross (Provost) to Benj. Wright, Dec. 19, 1952; Wright to Gross, Dec. 29, 1952, Jones Papers, Box 3, Folder 5.

<sup>34</sup> Dwight C. Minor to Mason Gross, March 21, 1953, Jones Papers, Box 3, Folder 5.

<sup>35</sup> Schrecker 1986, 267, 272–73.

it was not until 1955 that the Association put together a special committee of eminent academics to examine these academic freedom violations. Its 1956 report on 'Academic Freedom and Tenure in the Quest for National Security' reiterated the organization's earlier assertion that belonging to the Communist party did not automatically disqualify someone from an academic position. It then went on to specify that 'the invocation of the Fifth Amendment by a faculty member under official investigation cannot be in itself a sufficient ground for removing him'. At the same time, it also stated that 'if a faculty member invokes the Fifth Amendment when questioned about Communism, or if there are other indications of past or present Communist associations or activities, his institution cannot ignore the possible significance for itself of these matters' and would be justified in examining that person's fitness to teach.<sup>36</sup> While the AAUP report did not contain the same kind of digressions about the evils of communism as, for example, the AAU's statement did, it nonetheless seemed to imply that under certain circumstances the academy could impose a political test for employment. Even so, the report did not exonerate Rutgers. The Board of Trustees' policy of automatic dismissal for taking the Fifth Amendment 'violated the right of a faculty member to a meaningful hearing in which his fitness to remain in his position would be the issue, and attempted to turn the exercise of a constitutional privilege into an academic offense, without reference to other relevant considerations'. Accordingly, the special committee recommended that Rutgers be censured.<sup>37</sup>

By then, of course, Finley was no longer unemployed. Like quite a few other blacklisted professors he had been able to find an academic position outside the United States. Most of those émigrés were scientists and most, unlike Finley, returned to the U.S. during the 1960s. But except for occasional visits to pick up honorary degrees and to deliver the Sather lectures at Berkeley as well as the first endowed lecture series at Rutgers, Sir Moses remained in England, where his career flourished.

Would his work have been different had Finley remained at Rutgers? Scholars in other fields have described how they reshaped their research agendas during the 1950s to eliminate vestiges of Marxism or avoid controversial social issues. Thus, it is possible that Finley's emigration may have freed him from such constraints. In any event, the extent to which

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<sup>36</sup> 'Academic Freedom and Tenure in the Quest for National Security: Report of a Special Committee of the American Association of University Professors', *AAUP Bulletin* 42, No. 1 (Spring, 1956), 58.

<sup>37</sup> *Ibid.* 78.

Finley's dismissal from Rutgers and his relocation to Cambridge affected his scholarship is a question that I am not equipped to deal with. Perhaps his colleagues in the field of ancient history can answer that question.

There is a post-script, however, for Rutgers did learn something from its treatment of Moses Finley. In 1965, when the recently tenured historian Eugene Genovese told a university teach-in on the Vietnam war, 'I do not fear or regret the impending Viet Cong victory in Vietnam. I welcome it', there was a huge outcry. Even the former Vice President, Richard Nixon, entered the fray. This time, however, the Rutgers' administration, headed by Mason Gross, the provost at the time of Finley's dismissal, stood its ground and refused to fire Genovese. The AAUP, which had censured the institution less than ten years before, now gave Rutgers its annual academic freedom award. But, like the story of Finley's dismissal, nothing within the world of higher education is quite what it seems. The Rutgers' authorities, while keeping Genovese on the faculty, also made it clear to him that, as he later recalled, 'I was going to be a second class citizen in salary and promotion possibilities'. Since he was on the verge of producing his path-breaking work on American slavery, Genovese left New Brunswick for a more hospitable institution in Canada.<sup>38</sup>

Rutgers was not unique here; for, despite the turmoil of the 1960s and 1970s, the academic community did not repeat the flagrant dismissals of the McCarthy era. Today other problems threaten the nation's faculties. Financial constraints now challenge academic freedom in unprecedented ways. A contemporary Moses Finley might not lose his job because of his politics, but in an age of austerity where vocationalism is undermining the humanities, he might never have found one in the first place.

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<sup>38</sup> Wiener 1989, 416.