

Loyalty Laws: Supreme Court Upholds Academic Freedom

The U.S. Supreme Court in recent years has been gradually extending its doctrine of constitutionally protected freedoms to embrace academic freedom. On 23 January the Court took a major new step in that direction by overturning New York's loyalty standards for teachers and declaring that any law casting a "pall of orthodoxy over the classroom" is offensive to the First Amendment. The decision, in *Keyishian v. University of New York*, appears to make similar laws in other states vulnerable to constitutional challenge.

The ruling indicates—and this may be its chief significance—just how far the Court has come from its position of 15 years ago. In *Adler v. Board of Education*, decided in 1952, the Court upheld some of the same New York statutes it now regards as constitutionally unsound. In *Adler*, the Court said teachers must abide by "the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere." The opinion, written by the late Justice Minton, held, further: "A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds toward the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society cannot be doubted."

In *Keyishian*, the Court acknowledged the legitimacy of New York's "interest in protecting its educational system from subversion" but declared that the state loyalty statutes were vague and had an "overbroad sweep." The case arose, in 1962, from the refusal of five faculty members at the University of Buffalo to certify, as all teachers employed within the state system were required to do, that they were not Communists. The requirement for a signed certificate of loyalty was rescinded in 1965, but teachers were told that thenceforth the loyalty statutes would constitute part of their contracts.

The statutes are complex, and, besides making membership in the Communist Party prima facie evidence of disqualification to teach, they forbid, among other things, the "utterance of any treasonable or seditious words." The Court, in finding the laws unconstitutional, observed, "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."

In declaring that academic freedom is a "special concern of the First Amendment," whose guarantees include those of freedom of speech, press, and assembly, the Court recalled that, in an earlier case, *Sweezy v. New Hampshire*, it had said: "To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly

is that true of the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

The Court split 5 to 4 in the *Keyishian* ruling, however, and it is entirely possible that someday it will revert to its thinking in *Adler*, which for more than a decade gave constitutional sanction to loyalty statutes enacted during the McCarthy era. Justice Brennan wrote the opinion in *Keyishian*, and was joined by Chief Justice Warren and Justices Black, Douglas, and Fortas.

Justice Clark, in a minority opinion in which Justices Harlan, Stewart, and White joined, said the "majority has by its broadside swept away one of our most precious rights, the right of self-preservation." The issue in *Keyishian*, Clark said, is a narrow one: "May the state provide that one who, after a hearing with full judicial review, is found to willfully and deliberately advocate, advise, or teach that our government should be overthrown by force, violence, or other unlawful means . . . is prima facie disqualified from teaching in its university? My answer, in keeping with all of our cases up until today, is 'Yes!' I dissent."

Whatever the Court may do in the future, it has for the present seemed to give loyalty statutes another shove into legal quicksand. Such statutes take various forms, of course, and it is conceivable that some may meet the Court's test of constitutionality.

Laws requiring loyalty oaths, even positive affirmations of loyalty, have been in trouble for several years. In its decision of 1964 in *Baggett v. Bullitt*, invalidating a Washington State loyalty oath law, the Court said, "Those with a conscientious regard for what they solemnly swear or affirm, sensitive to the perils posed by the oath's indefinite language, avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited."

Altogether, more than 30 states have had laws imposing loyalty oaths or standards on teachers. Rulings of federal or state courts already have overturned the loyalty statutes of several states, including those of Arizona, Arkansas, Florida, Georgia, Idaho, Oklahoma, and Oregon. A legal assault on some of the surviving statutes, such as those of Massachusetts and Colorado, is under way. The "positive" loyalty oath required under the National Defense and Education Act also is under attack. The plaintiff in that case is a teacher in Washington State who was denied an NDEA summer study stipend because he refused to sign the oath. In view of the encouragement given by the Supreme Court's *Keyishian* decision, it will be surprising if the volume of litigation against loyalty statutes does not soon swell to flood tide.

—LUTHER J. CARTER