

The Politics of Letters of Reference and Recommendation

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This paper offers two cases for discussion. In each of them, an American university professor was taken to task for refusing to write letters of recommendation for students. The first was charged with “religious discrimination,” and the second with a form of “political discrimination.” Each offered a defence based on “academic freedom.”

The first faced an inquiry by the United States Department of Justice, but managed to finesse the matter by adding an innocuous phrase to his statement of course requirements. The principle of academic freedom in this case was left unsettled. The second was disciplined by his administrative superiors and his career appears still to be in jeopardy.

It is, however, neither the particular cases nor the substantive outcomes of either conflict that are of primary concern here. Rather, they are just two representative examples among many of the highly contested rights and obligations of teacher’s vis-à-vis students in public educational facilities that are up for debate. Moreover, the issues at stake are not restricted to education. The implications are important for anyone and everyone who is in a supervisory role or is otherwise expected, whether as part of the traditional norms of their positions or as an explicit part of their job description, to deal with requests for letters of reference and recommendation. The issue, therefore, has relevance to all public sector administrators, supervisors and mentors. They reflect changing workplace relationships in which duties and obligations as well as rights and freedoms are becoming more complicated.

The issues in both cases are inherently interesting from the perspective of employment law, contract law and administrative law. They raise important issues around the concepts of rights and responsibilities of the professors *qua* employees that are relevant to others in comparable positions in the public sector. They do more than this, however, for they involve issues that are important for the entire category of public sector employees whose positions entail a certain amount of power and influence over subordinates as well as a measure of autonomy and discretion as highly educated, highly skilled “professional” workers.

So, the discussion following the consideration of the two cases, makes an important categorical leap, and asks readers to consider the relationship among individual and collective employment agreements, the nature and status of professional employees, and the obligations and entitlements of professors to students and other public sector employees to clients, taxpayers and the general public.

Setting the Dilemma

They may not be noticed until it’s too late. Sometimes, however, violations of perfunctory workplace regulations, breaches of arcane professional ethics, or unintended or ill-

considered social or political gaffes can have unanticipated consequences that catch people unawares and leave them exposed to serious disciplinary up to and including dismissal or retributive measures including judgements in civil or even criminal court.

Workplaces are now acutely sensitive to complaints of discrimination and harassment—whether the cause of action is based on such well-established human rights categories as religion, ethnicity, race, age, or sex, or on newly emerging and intensifying protected categories such as disability or gender identity.

Problems can arise in a number of areas. They can take the form of discriminatory hiring and promotion practices, inappropriate comments and unwanted sexual advances, or a host of more subtle “microaggressions.” So, while some workplaces have become at least marginally more inclusive from one perspective, they have become more contentious and litigious from another. Employers and employees alike may support the strict enforcement of legal and organizational standards of employment equity and codes of interpersonal conduct, but a backlash—often expressed in accusations of excessive “political correctness”—cannot be discounted or ignored.

Most of the issues that have arisen over the past few decades are well publicized and reasonably well understood. The pertinent precepts and principles mainly relate to questions of *rights* and *freedoms* of the sort that require safeguards and shields against prejudice and persecution. The resulting policies and resolution processes are also fairly well defined, as are relevant evidentiary rules and standards of proof before the various internal and external administrative tribunals that have been established to deal with such cases.

<p>He’s not saying he wouldn’t write a letter for a Christian—he’s saying he wouldn’t write a letter for someone who doesn’t believe in evolution – Megan Rooney, 2003</p>

Increasingly, however, some of the matters that are gaining attention have more to do with *obligations* and *entitlements* than with *infringements* and *infractions*. The “philosophical” distinction between the two categories has been well articulated for decades and can be reduced to two contrasting, but not necessarily contradictory, concepts of liberty: negative liberty or *freedom from* external restraints and positive liberty or *freedom to* maximize our full human potential (Fromm, 1941; Berlin, 1969; Taylor, 1985; Carter, 2016). Both, of course, lie fully within the tradition of political liberalism as it has evolved from its origins in the European Enlightenment to the present day. Misogyny, for instance, constitutes a general external restraint on women from which they may and should be liberated, whereas individual internal restraints such as so-called “learned helplessness” call for positive steps to overcome fear, intimidation, economic dispossession, political oppression, social repression and psychological suppression. The former can be alleviated by, for example, removing restrictions such as discrimination in hiring; the latter may require affirmative action to overcome historical social or economic inequities.

While we are all familiar with issues from systemic, institutional racism and sexism to cases of individual and personal bad behaviour, there are other less well-publicized instances and

circumstances that ought not to escape our notice. One that has recently and somewhat surprisingly come to my attention is the ostensibly mundane matter of a letter of recommendation requested from a professor by a college student or, rather, the refusal of a professor to write such a letter based upon his political principles.

What I am learning now has implications, not just for teachers and students, but for anyone in a supervisory or other “asymmetrical power relationship” (Dunbar, 2015) or even in a peer relationship, who is asked to write a supportive letter—perhaps for colleague seeking a research grant, a professional award, a promotion, or a job with another employer.

Although I have been a postsecondary educator who has mainly been teaching various elements of political theory, politics and government, and public administration in diploma and degree-granting colleges and universities at both undergraduate and postgraduate levels in Canada and the United States for over fifty years, I must acknowledge that the “ethics” of writing routine letters in support of students and colleagues seeking admission to programs, promotion within departments or access to alternative employment was never a matter that deeply troubled or even interested me very much. Performing such tasks was, I thought, just a normal part of the job and not a topic of much ethical interest, much less a matter that could result in heated controversy and the potential ruination of whole careers. I now know better.

The Ethics of Letters of Reference and Recommendation

I have, of course, tried to be thorough and truthful whenever I have found myself enthusiastically or tepidly endorsing someone’s ambition. I have certainly known enough neither to solicit nor accept bribes, nor to write glowingly of a third-rate performer just to be rid of their incessant nagging ... but that was about it. I sometimes considered it a pleasure and sometimes merely a chore to offer an opinion on someone’s competence or suitability, but it raised few ethical “red flags” in my workaday life.

For those who felt the need for detailed instruction on such matters, of course, there have been plenty of reliable resources that provide useful information about ethical standards concerning letter of reference and recommendation. Although I have not studied them carefully, I know that they typically suggest that such letters should be (Larkin & Marco, 2001, p. 70):

- authentic (based on adequate first-hand knowledge of the candidate's skills);
- honest (accurate; avoiding exaggeration or hyperbole);
- explicit (avoidance of veiled omissions);
- balanced (taking care to incorporate both strengths and weaknesses);
- confidential (avoiding unnecessary or unanticipated disclosure);
- of appropriate detail and length (content relevant to the institutional or individual requests);
- Technically clear (avoidance of unnecessary abbreviations and jargon).

Some also go on to urge letter-writers to take into account institutional policies and specific pieces of government legislation. Questions of confidentiality, for example, regularly arise. So, it is necessary to determine whether the people in support of whom a letter is being

written should be able to read what has been written on their behalf. This is a legitimate conundrum that the government of the United States addressed in the 1974 *Family Educational Rights and Privacy Act*. That statute gave students the right to inspect letters written about them, but it also allowed the author of the letter to decline to write such a letter if it were to be made available to the person being written about. I can imagine the potential struggles over the privacy implications involved, but the practical consequences of such torments have been limited and seldom result in irresolvable controversies—much less litigation. Mostly, such matters are dealt with routinely and no one is significantly threatened or harmed by the process.

Now, however, I have been forced to reconsider the matter in light of two controversies over college professors, who “took a stand” on a contentious political issue. I have learned that there is more to the politics of recommendation letters than I had previously appreciated, much less felt personally conflicted about. The first case which I wish to present opens the door to a contentious category of what is called *professional integrity*. It raises the question of what that term “professional” actually means in public sector educational, administrative, regulatory and service organizations today.

In the past, the norms that governed such matters were largely informal, contextual, and collegial. They were more the products of organizational culture than the content of codified rule books—especially at managerial and senior executive levels. While detailed manuals and directives about ethical behaviour might be appropriate for clerical, operational and technical work, the instructions for people in more elevated positions were generally softened. Considerable flexibility was often permitted to accommodate individual taste and to allow for personal discretion. Now, however, the wickets have become markedly stickier.

The Easier Part: The Case of Michael Dini

Michael Dini prefers not to discuss his personal religious beliefs. We can, however, be forgiven for (correctly) inferring them when we learn that he won a PhD in Biology from the private, non-profit Roman Catholic University of Notre Dame du Lac or, simply, Notre Dame—often pronounced without a hint of Gallic delicacy and nuance—near South Bend, Indiana, USA. Dini’s current and former students and colleagues also bear witness to the fact that he is a devout Christian who spent fourteen years in a Roman Catholic order of teaching brothers. He now resides in Lubbock, Texas, where he is an Associate Professor in the Department of Biological Sciences at Texas Tech University. About fifteen years ago, he found himself in the unlikely vortex of a storm about writing letters of recommendation. It came about when he posted the following message on his Texas Tech website: “I will ask you, ‘How do you account for the scientific origin of the human species?’ If you will not give a scientific answer to this question, then you should not seek my recommendation” (Dini, 2003). The case remains symbolic of the sort of squabble to which we are now becoming increasingly accustomed.

In 2003, the Liberty Legal Institute (now the First Liberty Institute), a right-wing non-profit specializing in what it chooses to call cases of “religious freedom,” (Posner, 2018; SPLC, 2018) took up the case of Micah Spradling. Mr. Spradling was a 22-year-old student who was

not enrolled in any of Dr. Dini's courses, but who visited a few classes before dropping out and transferring to Lubbock Christian University.

Mr. Spradling took offence at Professor Dini's online comment. Although teaching evolution seems not to trouble Roman Catholics unduly (McKenna, 2014; Emurayeveya & Gray, 2018), Mr. Spradling's insisted that belief in evolution was an affront to his Christian values. So, he accused Professor Dini of religious discrimination and persuaded the United States Department of Justice to initiate an investigation. That investigation was quietly dropped after Dini added the comment that his policy was not to be "misconstrued as discriminatory against anyone's personal beliefs." The damage, however, was done—not so much to Dini, who is still teaching happily at Texas Tech, but to the idea that science should not be held to religious standards.

Whatever stroke you swim in this ethical soup, you are well-advised as you write letters to consider the issue of discrimination as a complex, potentially combustible one. – John Schall, 2018

Journalist Ellen Goodman (2003) neatly summed up the main argument for Dr. Dini's defence: "Mr. Dini's refusal to recommend a creationist for a graduate degree in medicine or science," she wrote, "is not like refusing to recommend an African-American. It's like refusing to recommend someone who doesn't believe in gravity for a Ph.D. program in physics."

Generally speaking (and however tepidly and tentatively), most colleges and universities today uphold intellectual integrity and embrace academic freedom in the pursuit of the truth as we may know it. They do not normally give astrology equal time with astronomy, phrenology equality with neurology, or oxymoronic "creation science" equal footing with evolution. Truth, I prefer to believe, still matters in fact and in theory (Gould, 1983). Still, the matter is far from being "settled" in higher education.

[Full disclosure: At about the same time as Dr. Dini was facing a federal investigation in the United States, I was confronted with a student complaint supported by a few other "creationists," who objected to my teaching Darwinism in a "general education" elective course called "Understanding Science and Technology." I, too, successfully deflected the criticism without (I think) cravenly abandoning academic integrity. It was, however, chilling to hear my department chair speculate—perhaps accurately—that, if the charge against me had gone to a formal internal hearing of my alleged "religious discrimination and harassment," the college's expressed commitment to the Faustian balance between academic freedom and student sensitivities would have meant that the objection to teaching evolution to people who do not "believe in it" would have prevailed. I am also confident that, if discipline had been applied, my case would subsequently have prevailed in Union grievance arbitration but, as it happened, neither proposition had to be tested.]

The Harder Part: The Case of John Cheney-Lippold

The second case which I present invites discussion of what is called *professional obligation*. The last I heard, John Cheney-Lippold is still an Associate Professor in the Department of American Culture at the University of Michigan. The reason for my hesitancy is that his status is currently uncertain and it may change before this piece is published. The problem is that, earlier this year, he was asked by a third-year student named Abigail Ingber for a letter of recommendation. Ms. Ingber wished to study abroad. Professor Cheney-Lippold neglected to attend to her request immediately and, when he did, he apologized for being tardy. That, however, was not the main problem. The main problem was explicitly “political.”

Ms. Ingber wanted to participate in an international learning experience—something that is commonly encouraged and occasionally made a mandatory part of an undergraduate program. The tricky bit was that the professor was a supporter of the Boycott, Divestment and Sanctions movement (BDS). The place where the student wished to go was Tel Aviv, Israel. Support of BDS is, of course, an especially controversial and often highly partisan matter.

Attitudes toward BDS “in principle” range from those who believe that *any* restriction on intellectual interchange should be challenged, to those with a roster of countries that are deemed hostile to liberal democratic values and which they believe should be off limits to academics. In between are those who claim to support open intellectual borders, but consider BDS to be appropriate in *some* cases. As a rule, the explanations for shunning particular countries include the claim that it is unethical to participate in joint programs and exchanges with nations with evident contempt for human rights and academic freedom. For some, this includes Israel. For others, it includes certain dominantly Muslim nations (notably Saudi Arabia even before the apparent assassination of dissident journalist Jamal Khashoggi). As well, in relatively recent history, both legislation and informal pressure have been used to impose or persuade restrictions against intellectual exchanges with South Africa under *apartheid* and such putatively “communist” countries as the Union of Soviet Socialist Republics, the People’s Republic of China, and Cuba.

A professor is not obligated to write a recommendation letter for organizations complicit in unlawful or unethical activity—whether it’s the NRA, President Trump or Israeli institutions complicit in violations of Palestinian rights.

– Radhika Sainath (quoted in Derwin, 2018)

In the case of Professor Cheney-Lippold and Ms. Ingber, the communications between teacher and student appear to have been cordial. In fact, although Cheney-Lippold refused to write a letter to the Israeli institution, he said that he would be “happy” to write letters supporting her applications elsewhere. As it happened, however, a senior administrator acted as an alternative referee and Ms. Ingber’s wish to travel abroad was met and, to the best of my knowledge, she is pursuing her studies in Israel as I write. No lasting damage seems to have been done to her, but that does mean that the case was agreeably closed.

A copy of Dr. Cheney-Lippold’s written explanation for his refusal was obtained by “Club Z”, a self-described Zionist youth organization. The content was then posted on Facebook and ultimately reported in the Israeli media (Cortellesa, 2018). What had begun as a local matter between a student and her professor quickly escalated into something akin to an “international

incident?” I am not at all concerned here with the notorious politics of the Israeli-Palestinian question. No doubt the fraught nature of that relationship, the overall context of increasing anti-Semitism in North America, the plight of stateless Arab refugees in Gaza, and the ever-fluid, highly problematic and intense geopolitical situation from North Africa to Pakistan have much to do with the publicity that this case has received—not only within, but far from idyllic campus of the University of Michigan as well. I, on the other hand wish to focus on the narrower topic.

I am interested here exclusively in the question of professional obligations. Specifically, do professors or others in formal or even informal positions such as supervisor, teacher, or mentor have an *obligation* to write a recommendation for a student, a junior colleague, a co-worker or a volunteer under their supervision?

The question was framed in two ways by Elizabeth Redden (2018a):

- (a) is writing such letters a professional *responsibility* regardless of the writer’s personal or political views?
- (b) do potential letter-writers have a *right* to refuse a request for a letter of reference or recommendation because of their personal or political views?

Professor Cheney-Lippold defended his refusal by saying that professors' political and ethical beliefs should inform their decisions about writing letters of recommendation: "The idea of writing a letter of recommendation is a part of being a professor where your own subjectivity comes into play," he said. "I don't want professors to be seen as just rubber-stamping." In this case, he explained that he experienced “extraordinary political and ethical conflict [about] lending my name to helping that student go to that place." In the end, however, he felt it was his ethical duty to refuse.

<p>Professors have the ethical responsibility to stand by our political convictions, to advance social justice, and to expose falsehoods and partial truths and are entitled to act in a manner that conforms to their stated positions.</p> <p style="text-align: right;">– AAUP, 2009</p>

The University of Michigan took the opposite view. It made its opposition to the BDS movement clear, at least as it applied to Israel. It added that “no academic department or any other work unit within the University of Michigan has taken a moral position in support of BDS,” and asserted that “injecting personal politics into a decision regarding support for our students is counter to our values and expectations as an institution.”

That clarified an earlier description of the professor’s action merely as “disappointing.” More recently, the *Detroit News* (Kozlowski, 2018, October 9) reported that the university has upped the ante. It now says that it will withhold Dr. Cheney-Lippold’s annual merit pay raise for the current academic year (2018-2019) and that it will freeze his sabbatical leave for the next two years (he was scheduled for sabbatical leave commencing in January, 2019). Since Dr. Cheney-Lippold is tenured and cannot be terminated without cause, the university made the following threat: “Your conduct has fallen far short of the university’s ... expectations for how ... faculty

interact with students.” It then warned that Dr. Cheney-Lippold’s “failure in this circumstance was inappropriate and will not be tolerated.” In short, the professor has been placed on notice by the university that “further conduct of this nature is subject to additional discipline, up to and including initiation of dismissal proceedings” (Cole, 2108). In the meantime, of course, he has received a number of death threats.

For academics, the predominant issue here is the application of “academic freedom,” which itself is a subspecies of the principle of freedom of conscience, thought and speech that is secured in the constitutions of most liberal democratic societies including the United States. Academic freedom is generally regarded as the particular right of scholars to research, teach and publish their findings without risk of official interference or punishment from internal or external religious, state or corporate authorities. It is not so much a special privilege as it is an obligation to pursue their studies and promulgate the results in the classroom and in publications in the common quest for knowledge and understanding in the public interest. It is certainly not a *carte blanche* to speak with impunity about matters outside their areas of expertise and, of course, it does not imply exemption from such legitimate constraints on free speech as libel, slander or “hate” laws that have evolved in free and democratic societies. It is, however, intended to ensure that academics are free from institutional suppression and censorship if they explore and comment on topics of controversy and express educated opinions—no matter how unpopular those opinions may be (AAUP, 1940; Horn, 1999).

<p>I believe faculty members generally have a social responsibility to try to speak rationally, not just hurl insults, but the Israeli/Palestinian conflict regularly meets with abusive and counterproductive faculty remarks from both sides – Cary Nelson (Flaherty, 2014)</p>

The issue, however, goes far beyond the ivory towers, red-brick walls and online platforms of the academy. The *autonomy* of scholars, scientists and other “professionals” who are employed by public sector institutions has recently become highly contested. It is not difficult to find instances of restrictive practices in authoritarian and totalitarian societies; however, even in presumptive liberal democracies, governments have taken steps to suppress research and publishing (Kassam, 2017; Milman, 2018; Turner, 2013). Disciplinary action up to and including dismissal has been taken, especially against social scientists and natural scientists who break draconian rules about pursuing “inconvenient” environmental research or communicating embarrassing scholarship to the public. It may seem like a long stretch from questionable practices having to do with recommendation letters to, for example, the current American president forbidding scientists in the US Environmental Protection Agency and the Center for Disease Control from using words such “climate change” (Waldman, 2018) and “fetus,” “diversity” and “transgender” (Cohen, 2017), but it is all part of a more general problem, the nature and scope of which will soon be made clear.

It is commonly understood in the academy and elsewhere that letters of recommendation fall within an area of personal and professional discretion. No one outside of a dictatorial and tyrannical polity or corporate entity—public or private—legitimately thinks that a professor or other professional should be obliged to write in support of someone whom the writer believes to be incompetent, corrupt, mendacious or otherwise undeserving. It is true that some potential

writers may evade the problem by deflecting requests from people they cannot in good conscience support. Rather than writing an honest opinion describing the person's many inadequacies in grisly and gruelling detail, they may simply suggest that the supplicant look elsewhere. However pusillanimous that practice, however, we are left with the question of what are the professor's duties in terms of *non-academic* considerations?

The ethical dilemma is this: while writing a letter of recommendation is a seemingly voluntary activity that is rarely, if ever, covered in personal employment contracts or in negotiated collective agreements, refusing to write *because of personal political beliefs* can be deemed ethically wrong. Redden (2018a) quotes Cary Nelson, a former president of the American Association of University Professors and a person who, himself, has been criticized for taking a strong pro-Israeli positions and refusing to support professors who have experienced discrimination for making pro-Palestinian statements in the past (Fichtenbaum & Reichman, 2014). Says Nelson: "What [Cheney-Lippold] did was violating the student's academic freedom—the right to apply to study at any program anywhere in the world."

The idea that students enjoy a commensurate right to academic freedom along with faculty is, of course, far from universally accepted. Nonetheless, Nelson insists that "a faculty member has the right not to write a recommendation, but not based on political objections to the university or nation in which the student is interested in studying or the student's own politics (Caron, 2018)."

Less often discussed but, in my opinion, critical to this problem is the proposition that students are entitled to faculty recommendations as a matter of *transactional* ethics; that is the presumption that, by paying tuition fees to an educational institution in a buyers' market with plenty of "brands" competing for the student's "business," professors are obligated to provide "services" such as "delivering curriculum" to "customers" as part of the education "business." The domination of the "corporate business model" in higher education is one of the most important trends in college and university cultures and ought to be kept firmly in mind as a prime background variable in the political economy of postsecondary teaching and learning (Giroux, 2014; Newson & Polster, 2010).

The issue is further complicated by Israel's own refusal either to permit entry to Muslims and Arabs seeking to study in Israel, or to permit Israeli Palestinians to travel outside the country for educational purposes (Redden, 2017; Redden 2018b). In fact, according to Cynthia Franklin, a professor at the University of Hawai'i and an activist with the US Campaign for the Academic and Cultural Boycott of Israel, "Israel's anti-boycott laws mean that they can bar entry to any students who are known for their work supporting the BDS movement." Accordingly, to write such a letter would be, in her view, to legitimize a program that discriminates against some classes of students for their political views. To a dispassionate observer, it seems like a stultifying situation of mutual antagonism in which the arguments for both sides are disturbingly similar. Whether or not you believe that they achieve moral equivalency will probably depend on which "side" in the dispute you favour.

So, let us try to escape the particulars and approach the matter in another way. Let us address the underlying issue of *professionalism* as it applies to teachers, administrators, scientists and others.

Shifting the Focus: A Category Leap

The two examples presented above provide genuine ethical dilemmas upon which reasonable people are said to be able to reasonably disagree. What I want to ask now, however, is: Should they? Should such ethical problems be addressed in an apolitical, ahistorical context as matters of principle, or should they be addressed in the concrete social situations in which they were raised? To tackle this question requires us to think about what “ethics,” both as an academic discipline and a practical matter that applies to personal choices and political decisions alike.

We should first understand that, philosophically, ethics is a very broad category. It typically includes inquiries into judgements of value and obligation. It can overlap with morals (ideas about issues of right and wrong) and mores (social beliefs incorporating moral precepts). It can be “procedural” (concerned about the proper rules to be followed in coming to a decision); it can be substantive (concerned about whether the decision is the “right” one). It can embrace any number of contrasting theories: “absolutism” or “relativism,” “idealism” or “materialism,” “naturalism” or “intuitionism.” It can be “metaphysical,” “teleological,” “transcendental,” “axiological” or even “situational.” Ever since Plato, ethics has been a primary field within which philosophers, moralists, theologians and pretty much everyone else have sought knowledge about right and wrong, good and evil, justice and injustice.

When related to specific areas of human activity, ethics takes on the character of the field to which it is applied. When related to putative professionals, ethics deals with the specific kinds of decisions that are intrinsic to the practice of the profession itself. So, the ethics of real estate sales may have little to do with the ethics of palliative medicine, just as the ethics of military engagement may not be relevant to the ethics of plagiarism in journalism . . . or in student essays. Each field has particular concerns and differing ways to frame questions of propriety. What is tolerable in one circumstance may not be in another. Such decisions may depend on the nature of the choices to be made and the (in) flexibility of the standards to be met.

Most of us, of course, are not “professional” ethicists (though that seems to be a rapidly expanding job category), but we are certainly familiar with all sorts of theories and practical applications in our daily lives. Particularly pertinent here are statements of professional ethics. They are cobbled together and trotted out to regulate bankers and stock traders, dentists and psychiatrists, police officers and prison guards, social workers and personal trainers, green grocers, accountants, electricians, librarians, hotel concierges, Olympic athletes, ministers of religion and Ministers of the Crown. They admonish practitioners to do the “right thing” in their various occupations and vocations. And, of course, those of us who are not clinically certified psychopaths also regularly struggle with matters in our private lives having to do with what we call our “consciences.”

Now, while it is an amusing pastime to bicker cheerfully about what particular thoughts, words, and deeds are or are not ethical for the practitioners of any profession, it is the word “professional” that I want to interrogate. It is, you see, my view that status of the word professional and the concept of “professionalism” are problematic. Professional ethics, I contend, involve not only questions about *what* is deemed acceptable or not, but also *who* gets to do the deeming. In the case of professional ethics, the latter question is seldom adequately addressed and needs to be openly discussed before any sensible wrangling over details can be done. Who are the pipers? Who call the tunes?

It seems to me that "professional" is a member of that large category of "essentially contested concepts" which, following W. B. Gallie (1956), engenders a great deal of false debate—not because the term is unimportant or misunderstood, but because participants in discussions take it to mean many different things. Essentially contested concepts are ideas that are typically complex, abstract, normative and open-ended. Examples include words such as justice, beauty, democracy and, of course, professional. Arguments about them are not usually resolved by appeals either to logic or empirical evidence. They turn on the competing meanings the term which, in turn, reflect competing social, economic or political interests. To begin with the elementary definition, the word “professional” can have one of (at least) three meanings. They are not mutually exclusive, but they are *different*:

- Professional may be distinguished from "amateur" in that a person may receive monetary compensation for certain activities (work). So, it is possible to be a professional or an amateur landscape painter, carpenter, tennis player, pianist or, for that matter, a teacher.
- Professional may refer to the quality of one's work and the sense of pride that one takes in doing it to a high standard. By this definition, it is possible to be professional in contrast to being incompetent, indifferent or even unethical in one's practice of a craft.

As it happens, however, I do not set much store by either of the first two, for they must be seen in the context of the third. It has to do with power, authority, independence and autonomy. Let me digress.

Professional: A person, who is a member of a professional body due to the [sic] education qualification and follows the prescribed moeal [sic] and professional [sic] code of conduct – https://thelawdictionary.org/professional/

I have never had quite as much reverence (or disdain) as some of my compatriots for former Canadian Prime Minister Pierre Trudeau. I am, however, much in his debt for clearing up the meaning of professional in Canadian law and public policy.

In 1975, during a flurry of worry about monetary inflation, Trudeau introduced "wage and price controls" in the form of the *Anti-Inflation Act*. In imposing wage controls (there were no effective price controls), Trudeau took pains to explain his terms. He divided Canadian income earners into two categories: "professional" and "non-professional." He then provided a

comprehensive list of the professions. It included accountants, architects, barristers and solicitors, dentists, physicians and surgeons among others. Teachers (from kindergarten to post-doc supervisors) were *not* on the list. Neither were many highly educated specialists in the public sector. In the process, the Prime Minister made clear the criteria according to which people had or did not have "professional" status. Professionals, Trudeau said, could be distinguished from "non-professionals" in terms of the power and authority that they exercised over their occupation. A profession, he continued, is a work classification in which the practitioners have exclusive power with regard to control. So, the third (and my preferred) definition is this:

- Professional is a status term that applies to people who control: admission to, discipline standards of performance and fees for service within, and exit or expulsion from the profession.

In this sense, a profession is to be contrasted with any type of work in which a person is employed for "wages" or a sales "commission," etc. They are hired and fired by an "employer," who determines who can do the work, establishes wage or salary rates, exercises exclusive supervisory functions and is permitted (subject to *Collective Agreements* where unions act as collective bargaining agents and to labour laws where they do not) to hire and fire at will. Non-professionals do not exercise either overall or day-to-day control over the rights and responsibilities of their work.

In *Garcetti et al. v. Ceballos*, the US Supreme Court upheld disciplinary action against a government employee who wrote a memo undermining his supervisor ... The justices said employees give up their First Amendment protection when they speak "pursuant to their official duties."

Now, admittedly the line between professionals and non-professionals has recently become a little blurred. In Canada, for instance, physicians may no longer have the exclusive right to set their own fees, but rather must negotiate a fee schedule with the various provincial governments if they wish to be compensated for their work through provincial health insurance programs. Likewise, junior lawyers may work for a time as "Associates" with a negotiated salary in large "Limited Liability Partnerships." Nonetheless, although the independence and self-rule of professions (reminiscent in many ways of the antique craft Guilds) is being compromised in the current political economy, it remains an important element in the definition of what it is to be a professional. And, at least for the foreseeable future, who gets to be licensed as a doctor or a lawyer is a decision that rests with the pertinent medical or legal professional association. It is this structural relationship in the production of goods and services that is the key to knowing what a professional (as opposed to what could be called a "proletarian" or even a "plebian") *really*

According to this third definition, college and university professors do not qualify as "professionals" by *any* of the relevant criteria. One need go no further that a cursory reading of Article 6 of the *Collective Agreement* that governs my own work to see that *all* authority and power (euphemistically called "exclusive management functions) rests with college authorities and that *none* are vested individually or collectively in the teaching faculty (Doughty, 2018; OPSEU, 2017-2022).

The allocation for power describes is the *crucial* definition of "professional" for all pertinent purposes—whether the employer is a national, subnational or municipal government, a public sector agency or service provider, a non-governmental organization, charity or private business. It is crucial because, in order to have "responsibilities" other than standards of performance dictated by an organization superior, it is necessary to have "rights." Except for the possibility of initiating a grievance through the Union against managerial malfeasance or initiating a lawsuit under whatever employment laws apply in the jurisdiction of the employer or making an appeal to a human rights commission or tribunal where applicable, the employer and the employee are formally locked into an inherently adversarial relationship.

It is true that, in many circumstances, the conditions of the workplace may allow for limited authority to be delegated to employees who may enjoy provision freedom to set the parameters and standards of their work. Such delegations, however, take the form of contingent, revocable privileges. So, no more than any other job from horticulturalist to house painter to hod carrier, public sector work from teaching to postal delivery is structurally a "proletarian" occupation. We are more accurately to be called "education workers" (akin to agricultural workers, chemical workers, mine workers, steel workers and so on) than we are to carry the merely honourific label of "professionals."

Surely there must be a strategy more ennobling than a pre-emptive cringe. – Frank Eastham, – private correspondence, 1969

The reason that this is so important, of course, is that educators, administrators, scientists, social workers, technicians and highly qualified and committed employees of all kinds can easily become "two-time losers." As workers, we are subject to *total* control by management, except when we can successfully demonstrate before a court or arbitrator that management has abused its almost unfettered right to treat us as it wishes; however, to the extent to which we accede to the conceit that we are professionals and are therefore subject to a higher standard of excellence, we collude in the imposition upon ourselves of certain expectations and responsibilities over which we have no effective control. The obligations of professionalism are therefore nothing more than an inventory of *additional* burdens born by teachers and subject to the assessment of management.

I have, of course, no objection to being paid for my work and I like to think that I do my work well as befits professionals in the first and second sense. To impose or to imply further standards upon me and my colleagues, however, would require that there be, at a minimum, a form of "power sharing," "participative management," or "workplace democracy" (call it what you will). I know, however, that management has no interest in, nor any intention of accepting such a relationship. If anything, it is moving in the opposite direction. So, the most we can expect is the functional equivalent of a shop-floor "suggestion box," which carries no weight except that which management may bestow upon it.

Perhaps, paradoxically then, I find it curiously "insulting" to be called a "professional" and to be called upon to measure up to extra-contractual standards, when the brute facts of the employer-employee relationship dictate that my colleagues and I have no corresponding power to influence the nature of those rights or responsibilities, to exercise those rights or to mete out

punishment to those who failing to fulfill those responsibilities, or to establish fee structures and rewards for exemplary professional conduct.

It might have been more conventional to raise dilemmas other than the examples with which I began. After all, there are plenty of ethical conflicts of a much more dramatic nature than ones having to do with letters of reference and recommendation. There are also more obviously sympathetic individuals and causes than the ones brought up here.

Classic instances of the moral dilemmas encountered by, for example, scientists working for national governments and assigned to develop hideous weapons of mass destruction or to serve as attending physicians in instances of “enhanced interrogation” can definitely focus attention on a quandary. Moreover, in fields familiar to readers of this journal, when difficult issues up to and including the very survival of our species are raised, the quality and extent of workplace freedom becomes critical—especially when fundamental innovation in the architecture of the relationship between the ecology and the economy is in question. The reactive forces of the fossil fuel industries, for instance, are currently set against the harbingers of new energy technologies. Innovation is not longer an exotic luxury, but is fast becoming a human necessity.

When, however, scientists work for science-deniers, we have a problem. What is a climatologist to do when facing an employer that doesn’t “believe in” climate change and thereby puts the anthroposphere at risk? What is the right course of action for someone working with the US Department of Energy or the Environmental Protection Agency when they are put under the control of Cabinet Secretaries who demonstrably oppose the policy implications of the science they are appointed to oversee? Especially when facing the gathering storms of climate change (IPCC, 2018), public sector employees are legitimately conflicted.

As members of a “professional public service,” they are expected to perform as non-partisan employees and to park their “personal opinions” at the door of their labs and offices. They are required to implement the policies determined by the duly elected governments of the day. Yet, as citizens with superior expertise to that of their ideologically driven political masters, they may find that acting contrary to scientific fact is an offence against their conscience. When, however, their governments require them either to speak falsely or to refrain from speaking at all, we must ask which “higher power” they required to obey (Watts & Doherty, 2018).

It turns out that the ethical predicaments encountered by the Texas Tech or the University of Michigan professor are not as far removed from the medical doctor in a medical school who has signed a non-disclosure agreement with a major pharmaceutical firm and then finds the drug she was testing is potentially lethal, yet gets fired for making her results public; or, the researchers who reveal the problems with budgetary cut-backs that leave municipal water supplies vulnerable, the social service workers who explain the economic effects of cancelling anti-poverty programs or the environmental scientists who make public the ecological consequences of reversing wilderness protection policies. In such cases, public sector employees with the knowledge to reveal the problems with ideologically driven policy choices must choose between serving the public good and serving the political party in charge.

While it would do my heart good to witness some change that would permit such experts the opportunity to make their research results and policy assessments known, the prevailing organizational arrangements that *define* the culture of complex public institutions are able to ensure that their employees demonstrate professionalism in terms of responsibilities without allowing them the benefits of professionalism in terms of rights. I must therefore invite you to ponder the question of whether there is reason to accept *any* attempt to insinuate “ethics” into public institutions beyond those negotiated between employers and employees. The fact is that employer/employee relations are essentially, ultimately and inherently adverse and conflictual *by law*. If, therefore, “professional” ethical precepts such as the responsibility to remain neutral with regard to controversial matters within one’s professional area of expertise, then such responsibilities must not simply be assumed as an institutional cultural inheritance. They must be properly negotiated wherever possible through the collective bargaining process.

The structure of power in public institutions is, after all, defined by statute and requires that employees behave submissively in the face of managerial directions. Limits on managerial discretion can normally be achieved only through statute, collective agreements, or the instrumentality of the pertinent judicial and quasi-judicial procedures. Since management is under no obligation to share responsibility and authority with employees. The workplace is, in G. D. H. Cole’s phrase, “a training in subservience.” Until and unless this relationship changes, workers who accede to An extra-contractual code of ethics are complicit in their own oppression and win no meaningful rewards for deference, acquiescence, pusillanimity. The only alternative would be to recognize the autonomy of professional knowledge with the autonomy of professional status. Achieving some middle position between the industrial model and authentic professional independence would be an innovation truly worthy of the name.

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