

## **Rescuing the Historical Profession from the Nation: Threats to Academic Freedom in the Age of Homeland Security**

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The emergence of “history” as a discipline is often linked to the emergence of the nation as the principal form of sovereignty and political identification. Indeed, it is difficult to think of the modern historical narrative apart from the rise of the modern nation-state. Many scholars, following Prasenjit Duara’s lead, seek to liberate historical research from the teleologies of nation-state formation, a concern that is manifested mainly in their scholarly conversations. For Duara and others, historians’ persistent tendency to treat the nation as an inevitable outcome of human history is a serious obstacle to critical historical research. Such concerns operate mainly at the level of theoretical and conceptual debate; but in more practical terms, it is challenging to separate the practice of history from the nation, for it is the nation that defines which groups and individuals can cross its borders and participate in conferences or teach at universities, what gets organized into archives and who gets access to them, and even what can be safely said in the classroom or in published form. Thus the nation can enable historical research and safeguard free inquiry, but the nation and “national interest” can also form a very immediate material and tangible obstacle, not just a conceptual one, to the academic freedom that most historians would regard as the *sine qua non* of historical scholarship, and this has been particularly apparent during the presidential administrations of George W. Bush. Emboldened by the very real concerns over national security generated by 9/11, both federal and state governments have used their powers to intervene in academic life, and nibble away at the parameters of academic freedom.

I would cite three major forms of state intrusion in academia that have diminished or threatened to diminish academic freedom for historians and other scholars over the past six years. The first is the denial or delay of visas to foreign scholars; the second is the withdrawal of government records and other documentation from public and scholarly scrutiny; the third is the campaign spearheaded by David Horowitz to have state legislatures pass what Horowitz calls the “Academic Bill of Rights” (ABOR), but which others have re-named the “Academic Bill of Restrictions.”

Many academics and even non-academics are familiar with the case of Tariq Ramadan, an eminent professor of religious studies who had to decline a chair at the University of Notre Dame when Homeland Security refused to grant him a visa. He even appeared on the cover of the NY Times magazine a while back. The case of Waskar Ari Chachaki, a Bolivian historian of Aymara descent who earned his Ph.D. at Georgetown, received considerably less publicity in the mainstream media. Dr. Ari waited over two years for a visa to allow him to leave Bolivia and join the faculty at the University of Nebraska at Lincoln. During that time, the American Historical Association, the Latin American Studies Association, and other societies and institutions wrote letters of protest to the State Department, but it was only with the initiation of a lawsuit by the University of

Nebraska that the DHS finally agreed to allow the application for Dr. Ari's work visa to go forward through the usual channels. Perhaps someone in a position of authority finally was struck by the absurdity of excluding a Bolivian who had already lived, studied and taught in the US for many years from US territory. The exclusion of Dr. Ari raised the frightening possibility that any criticism of US government policies (or association with any group or nation that might be critical of US policies), in and of itself, would be defined as constituting a danger to national security. Right-wing commentators, in attempting to justify Dr. Ari's prolonged exclusion, cited remarks on his website in which he sought to explain the cultural context for an act of popular violence in a Peruvian Aymara community. Apparently, his failure to overtly condemn the community members as barbarians and terrorists made Dr. Ari too dangerous to teach university students in Nebraska. It should be noted, however, that his colleagues in Nebraska thought otherwise. The main reason why Dr. Ari is now in the United States is the remarkable commitment that the university and the history department at Nebraska made to keeping his position open for him virtually indefinitely, and their willingness to initiate a lawsuit against Homeland Security (for which the AHA would have filed an amicus brief but that became a moot point when DHS allowed his case to go forward).

Just when I thought the AHA could put its protest letters in mothballs, we were contacted by the former advisor of Marixa Lasso, a faculty member at Case Western Reserve. Professor Lasso, a Panamanian citizen married to a US citizen, did her masters at Pitt, her Ph.D. at Florida, and taught for several years at Cal State-Los Angeles before moving to Case Western. She had returned to Panama to renew her visa, but was told when she went to pick it up at the consulate that they had to do "security checks" that would take an indefinite amount of time. She already missed the start of the fall semester, but here again the ending was a relatively happy one—Marixa received her visa in early October.

Beyond the handful of cases that have become visible to the public eye, there are many more foreign scholars who have been frustrated in their attempts to get visas, including those who simply want to attend a three-day symposium in the United States. Cuban scholars have been categorically denied entry; indeed, the membership of the Latin American Studies Association (LASA) voted overwhelmingly to transfer its September 2007 meetings from Boston to Montreal so that Cubans could participate. The AHA recently awarded the Haring Prize for the best book on Latin American history published in Latin America to a Cuban scholar—who could not attend the meetings to receive the prize. But individual historians in places like India have also been denied visas to attend conferences, usually without explanation. And then there are the innumerable scholars whose desire to attend a conference or take up a job or postdoctoral fellowship in the US is thwarted by the expensive and cumbersome visa application process, which requires traveling to a consulate that grants a visa, having at least one personal interview, and paying a very large fee. In countries like Brazil and India, where the consulates in question are few and far between, just the need to appear in person may make the process prohibitively expensive. And this is not even to mention the often rude and humiliating treatment meted out by consular employees (though that probably is only a dress rehearsal for the abuse foreign visitors can expect at our borders or passing through

customs). It is impossible to calculate how many scholars simply don't bother to try to come to the US as a result of such conditions.

What seems most important to emphasize is that these exclusionary practices don't only infringe on the academic freedom of historians based outside of the US. Even those of us who are citizens and presumably don't need a visa to circulate in the North American academic milieu face restrictions regarding whom we can hire, whom we can invite, whom we can engage in discussion and debate at conferences. Once we cede to a government the capacity to decide what ideas are too dangerous to be in our midst (or which people can be designated, a priori, as potentially too dangerous to breathe the same air as us, how can we assume that this discretion will only be exercised at our borders or our airports? If certain ideas or criticisms are that dangerous, shouldn't they be crushed wherever they rear their head? If it's homeland security we're talking about, why should the government draw the line at non-citizens? In other words, as soon as national security measures shift from material indications of intention to do harm to the realm of the thought and ideas, we should all worry.

Moreover, even if all the scholars who have experienced a visa delay or denial in recent years suddenly found themselves in possession of a passport with the appropriate stamps, the damage would have been done. As Waskar Ari succinctly put it in remarks addressed to faculty and students at UNL soon after his arrival, he used to think of himself as a "transnational scholar," someone who circulated freely in the world of ideas, and for whom the scholarly community transcended any specific national location. Now he feels like a "foreign scholar," someone who must carefully consider where he can go and what he can do. Who knows how many other one-time "transnational scholars" now feel like foreigners or aliens who have no rights, even to an explanation for why they have been or are being excluded.

Not only does the U.S. government's policy of excluding scholars on undisclosed ideological grounds place restrictions on all of us with regard to the open exchange of scholarly ideas, it has also eroded our moral authority to address violations of academic freedom elsewhere in the world. Take the recent case of Middle East scholar Haleh Esfandiari, detained for several months in Iran's notorious Evin Prison. To be sure, her treatment at the hands of the Ahmadinejad regime was far more inhumane than the denial of a visa, but it is worth recalling that her infraction, according to the Iranian government, consisted of fomenting a "soft revolution"—that is, supporting and spreading ideas that could be seen as eventually creating an ideological climate propitious for the overthrow of the current regime. This accusation is not absurd—as director of the Wilson Center's Middle East programs, Dr. Esfandiari surely makes statements on a nearly daily basis (as do most of us) that Pres. Ahmadinejad would regard as incompatible with an ideological climate conducive to his government's stability and security. Yet the idea of detaining or expelling a scholar for expressing ideas that could be construed as criticism by those in power seems both outrageous and profoundly incompatible with even the most minimal notions of academic freedom. Unfortunately, the U.S. government is hardly in a position to denounce the Iranian government's policies in this regard.

The second trend I mentioned—the withdrawal of access to public records—may not seem as direct a danger to academic freedom as the denial of visas to foreign scholars, but it is certainly one that is especially troubling to historians as a group.

Since the signing of the Freedom of Information Act in 1966, historians and other scholars have emphasized the relationship between academic freedom and freedom of information. Over the next three decades, all signs indicated that we were moving toward a political culture of greater openness, especially after Watergate, which led to Congress' passage of the Presidential Records Act (1978), which made all presidential records public 12 years after the end of an administration. Then in 1995 Pres. Clinton signed an executive order automatically declassifying all federal documents over 25 years old.

Not surprisingly, this last measure allowed for federal agencies to withhold or redact certain documents judged to be particularly sensitive, and even under the Clinton administration there was both a move to classify certain government records beyond the 25-year barrier, and to postpone the date that the executive order became effective. But by all accounts, this process escalated dramatically under the Bush administration, with federal agencies not just classifying mountains of documents but even RE-classifying documents that had already been made public, some of them dating back to the Korean War and others having already appeared IN PRINT. (In other words, if you owned a book that included a published version of that document, you could, in theory, be arrested for a national security violation).

The other effort by the Bush administration has been to reduce and constrain access to presidential papers through an executive order (no. 13233) issued in November 2001 (at the height of his post-9/11 powers) that would give the president and/or vice-president the right to block access to presidential papers indefinitely. To make matters worse, this right is extended back to previous presidents' papers, starting with the Reagan administration, and is bestowed not only upon the president and vice-president, but their designated heirs.

While under Republican control, Congress did nothing to challenge this unprecedented expansion of executive control over government records. But in April 2007 the House voted in veto-proof numbers to overturn E.O. 13233. Meanwhile, a federal district court has declared a portion of the executive order unconstitutional. Presidents do not have the right, according to Judge Colleen Kollar-Kotelly, to keep their papers classified indefinitely. But E.O. 13233 may be like that vampire that doesn't die no matter how many stakes get driven through its heart. The court decision left several provisions of the executive order intact (though the ruling was "without prejudice," meaning that future lawsuits may be brought). As for congressional action, the bill in the Senate is being held up by Senator Jim Bunning of Kentucky, who claims to believe that the president has a right to do what he wants with his records. So Bush and Cheney's drive to inflate the powers of the presidency and vice-presidency and reduce the executive's accountability has encountered some serious speed bumps, but has not yet been brought to a halt. And in a grimly amusing instance of life imitating art, *National Treasure 2*--the sequel to a

preposterous but mildly entertaining movie with a history buff protagonist—has as its macguffin “The Presidents’ Book of Secrets.” The American Historical Association has been in the forefront of the campaign to overturn EO 13233—the AHA was the lead plaintiff in the court case mentioned above, and was the most vocal critic of the reclassification campaign at the National Archives. But let me point out the obvious: this trend toward greater government secrecy may be of greatest concern to historians and other historically-minded scholars, but they are also against the interests of the “ordinary citizen” who gains no benefit whatsoever by allowing those in power to keep their conversations, their decisions about matters of life and death, secret.

Then there’s the curious case of David Horowitz, ‘60s Radical turned extreme right-wing Republican. Bolstered by the righteousness of the convert and \$15 million in grants from right-wing foundations, Horowitz has unloosed his mighty sword on academia, the one small corner of American existence that was not entirely re-made by the Republican juggernaut. Apparently assuming that, absent bias or prejudice, the faculty of colleges and universities would represent a cross-section of American public opinion, Horowitz claims that the small percentage of Republicans in academic life must be the result of deliberate discrimination (actually, the percentage is now close to Bush’s latest approval ratings, but never mind). Cleverly appropriating the language of diversity and pluralism first invoked by progressive scholars, Horowitz has sought to convince state legislatures to pass his so-called “Academic Bill of Rights.” ABOR would require “balance” (as he puts it) in everything from departmental hiring decisions to university curricula and campus speakers. What is interesting is that Horowitz cannot entirely escape his own language; as much as he decries the current state of things in academia, he is rather slippery and vague when it comes to how the ABOR is to be enforced, knowing that the idea of state agencies “cracking down” on unbalanced syllabi is a bit difficult to square with any interpretation of the phrase “academic freedom.”

My point is not to imply that Horowitz is utterly and entirely incorrect—there are surely instances where a certain ideological orthodoxy emerges in a particular department, and it would be difficult for someone with a very different perspective to get a job or teach a course in such a program. But first of all, I think he errs very badly in thinking that this would generally manifest itself as a left/right (or liberal/conservative) split. Most of the time, these days, when there is such a dispute for intellectual hegemony, the grounds of the conflict are more likely to be theoretical/methodological and to defy any sort of left/right or Republican/Democratic dichotomy.

Second, as Stanley Fish pointed out in a recent online piece, “intellectual diversity” is not necessarily a goal in academic life in and of itself. There are moments in the lives of disciplines when certain paradigms become dominant and to insist that a department needs to hire people who disagree with that paradigm or assign readings that dispute it would simply make no sense. What promotes intellectual diversity in academia is the incentive to produce something new and innovative, which is what produces the greatest rewards. For awhile one can sustain a career with various iterations of familiar themes, but if you really want to make a splash, your best bet is to think of something new and

different; there is a built-in incentive to construct new arguments that are simultaneously intelligible to your intended audience, and challenging to existing paradigms.

But most important, I would emphasize that the biggest potential threat by far to academic freedom is always the state (by which I mean the government at any level). The capacity of politically correct colleagues to suppress a particular type of research or argument pales in comparison to the power of the state to crush the life out of free academic expression. Because of that any initiative that claims to be promoting academic freedom by escalating the involvement and the decision-making power of the state in the day-to-day functioning of colleges and universities is a fraud. What Horowitz is doing is simple: he calculates that the average state legislator is more conservative than the average university professor, and indeed probably harbors certain negative assumptions about academia. The legislator may have not the slightest idea of what is involved in teaching history or anthropology or literature to a college class, but he/she does have the power of the state at his/her disposal. In this scenario, the state legislature is a particularly unsavory version of the schoolyard bully.

Just to provide an example of the kinds of absurdities one can get once a politician decides he/she is in a position to define how history should be taught, we have the following nonsense, mandated by the Florida State legislature in 2006:

“American history shall be viewed as factual, not as constructed, shall be viewed as knowable, teachable, and testable, and shall be defined as the creation of a new nation based largely on the universal principles stated in the Declaration of Independence”

To any historian who hasn't been asleep for the past forty years, this statement isn't just pernicious; it's a bit stupid. No history can be viewed merely as “factual” since even the question of which “facts” we choose to emphasize and what words we use to present them constitute a form of selection and interpretation. As for the “universal principles” stated in the Declaration of Independence, are their meanings transparent and beyond dispute? Even at the time it was written, there were multiple views of what that text meant; how are we, at this distance in time to pronounce on their single, indisputable, unchanging meanings? Either the Florida legislators are unaware of this or, more likely, they are well aware of the faux populist appeal of a statement that simultaneously invokes patriotism and anti-intellectualism in the guise of championing “historical truth.”

State intrusion into matters of “historical truth” should be unwelcome even when apparently well-intended. Thus, at the International Committee of Historical Sciences (CISH) meeting in Beijing this past September, AHA delegates issued a statement opposing pending European Union legislation that would broadly criminalize what the courts would define as “genocide denial.” I will close with the text of this statement.

The Council of the American Historical Association believes that it can never be in the public interest to forbid study of or publication about any historical topic, or to forbid the publication of particular historical theses. Any limitation on freedom of research or expression, however well intentioned, violates a

fundamental principle of scholarship: that the researcher must be able to investigate any aspect of the past and to report without fear what the evidence reveals. All historical publications are subject to the judgment and criticism of the scholarly community to which the researcher belongs. If any other body, especially a body with the right to initiate legal proceedings and impose penalties, seeks to influence the course of historical research, the result will inevitably be intimidation of scholars and distortion of their findings. Some historians, inevitably, will wield historical evidence in ways that anger certain groups in their societies. In some cases, regrettably, they will use their skills to expunge terrible events from the historical record, or to make them appear less terrible than they were. But the appropriate way for such errors to be penalized is for other scholars to expose them. The consequences for a historian who is widely judged as distorting historical evidence should take the form of denial of positions in universities, based on the critical opinions of scholars in the field, or, in extreme cases, the denial of access to publication venues, again based on evaluations from informed colleagues: not criminal penalties. Freedom of inquiry enables some writers to put forward untenable or otherwise questionable arguments, but it also enables others to rebut them, and it is in that realm of free public debate that historians can and must work. As the authors of the French petition *Liberté pour l'Histoire* [Freedom for History] rightly argued in 2005, “In a free State, it is not within the power of either Parliament or the judiciary to define historical truth.”