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## Hidden (and Not-So-Hidden) New Threats to Faculty Governance

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Faculty governance has been under serious attack across the country in recent years. Some of the threats are obvious; others are not. Some are directly connected to one another; others are linked only by their ultimate effects. In Parts 1 and 2, I describe an outrageous Residence Life program at my institution. While this so-called “educational” program was a flagrant violation of students’ rights, its appropriation of faculty prerogatives and responsibilities was no less important. In Parts 3 and 4, I discuss several other current threats to faculty governance.

Although separate from questions of political indoctrination and the violation of student rights, some of them are pointed up by the Residence Life program, such as the disappearing distinction between academic and administrative powers. Others concern dangers to faculty independence stemming from recent rulings in federal courts. The common thread running

through all the new threats, hidden and obvious, is the growing attempt on the part of administrators and others to corporatize higher education in America.

### 1. Residence Life as Soul-Craft

I suppose, like many other professors, I hadn't given much thought to Residence Life activities since graduating from college. Over the years, students invited me into dorms for various student activities, and what I found was generally what I expected. If anything, those enjoyable visits probably lulled me. I took for granted that student activities in the dorms were one good part of college life that would always remain good. I was wrong.

I have helped students with political correctness problems. I tell my classes that I am no friend of PC, and if they (or others they know) have a problem, let me know and I will do what I can to help. I said that to my classes early in the fall of 2007. Right away, students came up to tell me stories about the University of Delaware's Residence Life program that I initially thought were wildly exaggerated. What they said seemed too extraordinary to be true.

I went to the Director of Residence Life, Kathleen Kerr, and asked her about the program. She not only confirmed that the students had described it accurately, but proudly handed me a thick looseleaf notebook with hundreds of pages of damning documents. I'm sure that Kerr is now sorry that she gave me the material, but at the time she seemed to think that no right-minded person could possibly object to the program. If I only knew more about it, she seemed to think, my concerns would be allayed.

The documents described a mandatory education, or re-education, program for all seven thousand students living in University of Delaware dorms. The program combined intimidation and humiliation, coercion and indoctrination, to inculcate a hardline ideological stance favored by ResLife officials. For good reason, some faculty joked that the program looked like something designed by the North Korean Minister of Propaganda. One Residence Life administrator said that the program was meant to leave "a mental footprint on [students']

consciousness." The University's own official materials described it as "a treatment": "through the...curriculum experience (a treatment), specific attitudinal or behavioral changes (learning) will occur" (parentheses in the original).

One part of the program was one-on-one sessions in which Residence Assistants would interview newly arrived freshmen and have them fill out questionnaires about their personal thoughts and lives. "When did you discover your sexual identity?" one question asked. "When was a time you felt oppressed?" Staff members kept individual files on the students and their beliefs. The files were to be archived after graduation. Residence Assistants were also required to report their "best" and "worst" one-on-one sessions to their superiors, who, in turn, reported them (along with students' names and room numbers) in their annual review. When one student, asked about her sexual identity, replied, "That is none of your damn business," she not only became listed as the Residence Assistant's "worst"; she also received an "incident report," which is what a student gets for serious rowdy behavior. The same Residence Assistant's "best" one-on-one session involved a student who complained that she "grew up with a racist and opinionated father," who, "when [he] found out that she registered as a Democrat...sat her down and had a talk with her as to why...she should be a Republican."

Another part of the program was group sessions. These sessions, requiring students to take public stands on controversial social and political issues, usually without the opportunity to explain themselves, singled out and shamed nonminority students for their "privilege" in American society. If students approved of gay marriage, for example, they were to stand on one side of the room; if they disapproved, on the other. No one was allowed to stay in the middle because, the students were told, the real world is polarized like this. Nor was anyone allowed to opt out. The group sessions, one Residence Assistant e-mailed her students, gave her "a chance to know how everyone's doing and where everyone stands on certain issues or topics. Not to scare anyone or anything, but these are MANDATORY!!" Where the one-on-one sessions

intruded upon their private, even intimate, lives, the group sessions publicly pressured the students. The former violated the moral autonomy of students; the latter compelled them to conform. In addition, the Residence Life ideological positions were trumpeted everywhere with posters and door decorations, while contrary positions were banned as “intolerant.” As one ResLife administrator explained, students “should be confronted with this information at every turn.”

The tenor of this “information” is captured by the part of the Residence Assistants’ training called “Diversity Facilitation Training.” The following two definitions are taken from the Residence Assistants’ training material:

A RACIST: A racist is one who is both privileged and socialized on the basis of race by a white supremacist (racist) system. The term applies to all white people (i.e., people of European descent) living in the United States, regardless of class, gender, religion, culture, or sexuality. By this definition, people of color cannot be racists, because as peoples within the U.S. system, they do not have the power to back up their prejudices, hostilities, or acts of discrimination....

Thus, by the same token,

REVERSE RACISM: A term created and used by white people to deny their white privilege. Those in denial use the term *reverse racism* to refer to hostile behavior by people of color toward whites, and to affirmative action policies, which allegedly give ‘preferential treatment’ of people of color over whites. In the U.S., there is no such thing as ‘reverse racism.’

For anyone who has been out of college for a while, such programs are entirely new. Many who run college dorms today are no longer interested just in issues of student housing, dining,

safety, comity, study breaks, health, homesickness, and other traditional matters. They have appropriated a new mission for themselves. They now regard themselves as educators—in fact, as their institution’s real educators. While faculty, in their view, do nothing more than fill students with facts, the Residence Life administrators shape the whole human being, they say. Faculty may shape careers, but Residence Life shapes souls. The college or university has no higher mission than soul-craft, and Residence Life is best prepared to fulfill it.

You only need look at the publications of the American College Personnel Association (ACPA) to see this. The publications proclaim “a shift in thinking.” The traditional distinction between “academic affairs” and “student affairs” is said to be misguided, and Residence Life administrators must unite the two. The challenge, the publications say, is “to create living–learning environments that fully engage students at meeting desired learning outcomes.” The emphasis is on “learning outcomes,” as defined by Residence Life. ResLife administrators are to create so-called “education” or “curricular” programs that change students’ opinions, beliefs, and actions in a predetermined direction. The aim is to “turn” students, as UD Residence Life administrators openly announced—to convert students with “traditional” beliefs into “allies” and “change agents” of social justice, workers’ rights, living wages, fair trade, redistribution of wealth, water rights, immigrant rights, the rights of indigenous peoples, corporate responsibility, anti-consumerism, anti-environmental racism, multicultural competencies, affirmative action, gay rights, gender equality, domestic partnership, and so on.

UD’s ResLife Director Kerr, who has won ACPA awards for her work as a social justice educator, described the shift in a 2006 article (“Beyond Seat Time and Student Satisfaction: A Curricular Approach to Residential Education,” *About Campus*, 11[5], 9-15). The basic difference, she explained, is that success in a traditional residence life program was typically measured by the number of students attending an event and how much they liked it. Success in a new

“educational” or “curricular” program is to be measured by how much the (captive) students’ opinions, beliefs, and actions change to meet the desired learning outcomes.

Let me give an example from Delaware’s program. One of the intended “learning outcomes” (also called a “competency”) is the following cluster: “A) Each student will learn about the forms of oppression that are linked with social identity groups. B) Each student will recognize that systematic oppression exists in our society. C) Each student will recognize the benefits of dismantling systems of oppression.” To measure its success, Residence Life surveyed the students at the beginning of the year and then again at mid-year after four months of “treatment.” According to ResLife’s 2007-2008 report, 71 percent of students in a certain dorm complex said at the beginning of the year that it is important to speak up against social injustice. In the mid-year survey, a similar percentage said that they now feel *even more* concerned about social injustice than at the start of the year. “Even more importantly,” the report says, in the mid-year survey “80 percent [of the students] said they feel sadness and/or anger about the injustices that minority groups face” and “76 percent said they feel sadness and/or anger when people fail to acknowledge the privilege they have in society.” With telling slippage, the report lists these results under the rubric not of opinions or beliefs or even feelings, but of “taking action.”

## 2. Academic Freedom

Some people have argued that administrators have the same academic freedom as faculty. Residence life administrators should therefore be as free as faculty to educate students. This argument may sound plausible, especially to those who support academic freedom, but it overlooks something crucial. No faculty member (at least at the University of Delaware) may do what the Residence Life administrators attempted. Academic freedom does not mean that anything goes—that I may do whatever I like with my students. Academic freedom permits me to teach, but not to indoctrinate. This fall, one of my classes is reading *Oedipus Rex*. Academic

freedom allows me to gauge how well the students understand Zeus, but not whether they now believe more (or less) in Zeus, let alone whether they will act on their new belief. Similarly, I may discuss politics in class, if it is relevant, but I may not grade students according to whether or not they agree with me. Academic freedom permits requiring students to understand given material, but not to adopt certain opinions or to take certain actions on which reasonable people may disagree. The latter is not a “competency” or a proper “learning outcome.” I may require students to know, say, the arguments for (or against) separation of powers, but not to adopt the view that Barack Obama is (or is not) a monarchical president. Academic freedom is freedom to learn and to teach. It is not license to indoctrinate or to insist on desired opinions, beliefs, and actions. It does not permit me to “turn” students, to stamp “a mental footprint on their consciousness.”

UD’s Residence Life program required several hundred staff to do other things that I would likely (and properly) be fired for doing. Academic freedom does not permit faculty to intrude into the intimate lives, including the sexual lives, of students or to publicly ridicule and humiliate them and their families, as the Delaware program did.

### 3. Faculty Governance

Delaware’s program might never have come to public light had it not been so outrageous (and illegal and unconstitutional for a public university). But the lurid and scandalous aspects of UD’s program may serve to distract public attention from the problems of so-called residence life “education” programs in general, which have become widespread. Most important, the horrors of the UD program may obscure some serious matters of faculty governance, wholly apart from the questions of political indoctrination and the violation of students’ rights.

At the top of the list, I think, is that such self-proclaimed “educational” programs blur the line between academic and administrative powers. It is no wonder that administrators—and not

only in residence life and student affairs—tend to welcome the programs. The programs erode faculty governance and transfer academic control to service units that answer directly to the administration, not to faculty. At least at Delaware, university by-laws give the faculty control over just one thing: the curriculum. Academic courses and programs must be proposed, reviewed, approved, and implemented by faculty. ResLife adopted the term “educational” (or “curricular”) “program” as well as related academic terms; but it bypassed or ignored faculty review completely. Rather than submit its program to any faculty committee, as is required for all educational programs, ResLife simply set up and began its program (with, I hasten to add, the full support of the University’s then-president, David Roselle). Far from the faculty having reviewed and approved it, virtually no one but administrators (and the students subject to it) even saw or knew of the program until a colleague, Linda Gottfredson, and I helped the Foundation for Individual Rights in Education (FIRE) blow the whistle. It would be a mistake to regard Residence Life’s avoidance of faculty review as merely a procedural matter. It was a dangerous precedent for an administration’s usurpation of the faculty’s essential responsibility and prerogative.

The scope and uniformity of the ResLife program are a second issue. Although it underwent no faculty review, the program was, by design, meant for all of the undergraduate students living in dorms—about seven thousand a year, or one-third of the entire student body. No other UD program comes close to that in size or sameness. And although the Residence Life administrators knew that the program could not be mandatory, they deliberately told the students that it was. As far as the students knew, the program was required of everyone living in a dorm. It was not only uniform, but involuntary.

I see the introduction of such nonfaculty “education” programs as being of a piece with the national tendency of replacing tenure-track with non-tenure-track faculty, who are more beholden to administrators. Both steps, I think, are part of the broad effort to replace faculty governance (limited as it is) with top-down corporate management. From what I can tell, the



aim of the effort is, most generally, to corporatize higher education in America. Rather than be scholars and teachers, professors are to become mere employees. The faculty is to minister to the administration.

The general erosion of tenure is a serious threat to faculty governance. So are the recent Federal Court rulings following the 2006 U.S. Supreme Court's *Garcetti v. Ceballos* decision. In that case, a deputy district attorney, Richard Ceballos, claimed that he had been passed up for promotion because he had criticized the legitimacy of a warrant. He argued that the district attorney's denial of his promotion violated his constitutional right to free speech. The Court, in a 5-4 decision, rejected his claim on the grounds that his criticisms were not protected speech because Ceballos made them as a public employee, not as a private citizen. Statements made in pursuit of official duties have no constitutional protection against employer discipline, the Court ruled. "Ceballos wrote his disposition memo because that is part of what he...was employed to do," Justice Anthony M. Kennedy said, writing for the Court. "Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created."

Justice David H. Souter, in a dissent, warned that the overly broad notion of official duties in *Garcetti* may imperil the constitutional protection of academic freedom at public colleges and universities, where faculty necessarily speak and write "pursuant to official duties." The *Garcetti* Court, replying to Souter, acknowledged the possibility of a serious problem, but explicitly deferred the question of whether the Court's "customary employee-speech jurisprudence...would apply in the same manner to a case involving speech related to scholarship or teaching." Whether it would or would not apply must await such a case. The answer must await a public institution's restricting a faculty member's scholarship or teaching, not on the grounds that the scholarship or teaching fails to measure up to professional

standards, but, on the contrary, precisely on the grounds that it falls within the faculty member's professional duties. It was professional and is therefore punishable. The faculty member in question conceivably might win a favorable Supreme Court decision, but not before public colleges and universities throughout the country suffer substantial and probably irreversible damage. Victory, if there were one at all, would likely come too late.

The status of scholarship and teaching is not the only problem with the *Garcetti* decision. While the Court explicitly set aside the question of the constitutional protection of "speech related to scholarship or teaching," it said nothing at all about the protection of speech related to service and faculty governance, which are also part of a faculty member's official duties. Do faculty members at public institutions have constitutional protection for their statements regarding the institution's policies, programs, procedures, and decisions? May a faculty member be fired, for example, for remarks made in good faith at a department or a faculty senate meeting, in a memo to a chair or a dean, or in any other service capacity? Unfortunately, federal courts have extended the *Garcetti* ruling to faculty members at public institutions and have applied it to speech directly related to faculty governance. As has become all too clear, under the *Garcetti* progeny, the reduction of faculty to mere employees threatens to eliminate faculty governance. Three cases are noteworthy.

Juan Hong, a full professor at the University of California, Irvine, challenged the UCI administration on several issues concerning appointments, promotions, and staffing. He was subsequently denied a routine merit increase and assigned an increased teaching load. He sued, claiming that his criticisms were protected by his First Amendment rights. In 2007, the U.S. District Court for the Central District of California, Southern Division, relying on *Garcetti*, rejected his claim, saying that the Constitution does not protect public employees when they make statements pursuant to their official duties. Speech in the course of faculty governance at a public institution may therefore be punished by the administration. The case, *Hong v. Grant*, is on appeal to the Ninth Circuit Court of Appeals.

In a second case, Kevin J. Renken, a tenured associate professor at the University of Wisconsin at Milwaukee, criticized administrators for mishandling a National Science Foundation grant to him and several colleagues. The university subsequently reduced his pay and returned the grant. Renken sued, alleging illegal retaliation. In 2008, the U.S. Court of Appeals for the Seventh Circuit, applying *Garcetti*, ruled against Renken, saying that his statements were spoken in his capacity as an employee and therefore not legally protected speech. “Renken was speaking as a faculty employee, and not as a private citizen, because administering the grant as a primary investigator fell within the teaching and service duties that he was employed to perform.” Because he spoke as a faculty member, his speech was unprotected.

In a third case (*Gorum v. Sessoms*), the U.S. Court of Appeals for the Third Circuit upheld Delaware State University’s firing of a tenured professor, Wendell Gorum. The court’s ruling in this case is more troubling than the courts’ rulings in the *Hong* and *Renken* cases. Gorum admitted to altering, substantially for the better, many students’ grades in courses other than his own, in some cases changing withdrawals or failing grades to passing grades, and in others awarding passing grades to students who had not attended or done any work for the class. He also admitted that his actions violated DSU policies and procedures. Gorum argued, however, that he had been dismissed in retaliation for advising a student in disciplinary proceedings and rescinding a speaking invitation to the university’s president. He claimed that the dismissal therefore violated his First Amendment rights. The court could have upheld Gorum’s termination without touching upon the speech issue. Gorum could have—and in my view certainly should have—been fired for his professional misconduct. This was not a free speech case. The court, however, declared that, while Gorum’s conduct by itself warranted termination, his speech was unprotected because it was part of a public employee’s official duties. Needlessly relying on *Garcetti*, the court gratuitously turned a professional misconduct case into

a professional conduct case and ruled that a faculty member could be fired for his speech precisely because he remained within his professional duties.

One can only hope that the *Garcetti* progeny are all eventually disclaimed or disowned by their progenitors. In the meantime, it is vital that colleges and universities revise their collective bargaining agreements and their academic freedom policies so as to restore the *status quo ante* and include the protection of service and faculty governance—so-called “intramural expression”—as well as scholarship and teaching.

#### 4. Academics

Faculty deserve some blame for blurring the line between academic and administrative powers. We have made it much easier for residence life programs to claim “educational” or “academic” standing by letting learning standards slip. Today, we give students academic credit for many activities that are “academic” in only a loose sense. It is of course hard to know where to draw the line, but I think it is safe to say that not everything that teaches, or is learned, is academic. One example of such slippage is “service learning,” which is much the rage today. Service learning claims to combine service objectives and learning objectives, so that students take part in active education while at the same time addressing the concerns, needs, and hopes of their community. Typically, however, service learning lacks rigor and faculty oversight, and is based largely on the student’s own idiosyncratic, self-generated experience. I strongly favor students performing community service (as I did in college), especially at a time when students are often highly self-absorbed. My concern is that giving academic credit for such activity not only waters down academic standards, but also erodes the line between academic and non-academic. Everything becomes—or may become—academic, and so nothing is academic. Not just the standards within academics are eroded, but the standard for “academic” itself—and who may properly claim to be an “academic.” As a result, the term becomes easy to hijack. Not surprisingly, UD’s ResLife administrators used as part of their cover the semi-academic, semi-

non-academic coupling of learning and service objectives. Taking advantage of the lapse in terms, they were able to use the quasi-academic to justify or disguise the non-academic as academic. Indoctrination became “education.”

Academics are being diluted in other ways, as well. The ResLife officials at Delaware were “educating” students in subjects about which they themselves knew little or nothing. If it weren’t so serious, the officials’ combination of ignorance and presumption would be the stuff of comedy. Even though they showed contempt for the faculty’s ability to teach anything important, the Delaware Residence Life administrators, whose professional training is limited to counseling and dorm management, purported to educate every undergraduate student at the University (via Residence Assistants) in justice, citizenship, community, rights, personal choice, cultural diversity, individual consumption, environmental sustainability, and much more. Such administrative presumption—ignorant indoctrination elevated by self-righteousness (and careerism) to “education”—should be of great concern to faculty members whose professional standing rests on their genuine qualification to teach. Impostors should not be looked on with indifference or favor.

In one way, however, the UD ResLife program did educate students. The program claimed to be teaching “citizenship.” Ironically, it succeeded in a way it never intended. By forcing students to join together to defend their liberty, it taught them basic lessons in democratic citizenship. The lessons were straight out of Tocqueville.

But if the ResLife program inadvertently educated students, it also, more generally, stunted their education. Residence Life claimed that its program helped prepare students for adult life. But, as a number of students noted, ResLife was competing with student organizations. It co-opted student life. Instead of encouraging students to arrange their own extracurricular activities, Residence Life was doing it for them. To the students, it seemed that everything was being done *for* them (or *to* them), and nothing *by* them. Students feared their adulthood was

being delayed, not advanced. Not surprisingly, the more pervasive the administration's "education" program, the more limited the students' actual education.

Residence Life also sharply curtailed some of the students' activities in the dorms. One student described how, if a Residence Assistant heard students discussing politics or religion, the Residence Assistant would intervene, give each student the chance to state a position, and then tell them to disperse. There were to be no questions and answers, no back and forth. Discussion meant no exchange, no probing, no explanations, no real listening, no real thinking. It meant not being held accountable, or holding another accountable, for what one said or thought. Residence Assistants said that they had been trained to quash such discussions, whether private or public, as being uncivil. Considerate behavior toward others came to mean considering no one's thought, including one's own.

Radically diminished intellectual inquiry characterized the Residence Life program as a whole. In many ways, the program was a model of what to avoid in higher education, not least of all for this: Students were taught to accept an authority's conclusions and begin their thinking from there. The clearest example was the pervasive topic of oppression. The U.S. is an oppressive country: That's the premise. Today's question is, What can we do to get rid of the oppression? The program was mass education in non-thinking. It was miseducation of the first order. As academics became indoctrination, education became commodification.

The AAUP came into existence in 1915 to guard against colleges and universities regarding their faculty legally as mere employees subject to the full control of their employers. As John Dewey wrote at the time, higher education had been "based upon the conception of the relation of a factory employer to his employe[e]" (John Dewey, letter to *The New York Times*, October 22, 1915). The model, then, was the factory; today, it's the corporation. A century has passed, but the problem is the same. Faculty autonomy is shrinking as administrative power and control grow. Centralized, top-down management is replacing shared governance. Even academic decisions are slipping away from faculty, while faculty who disagree with the administration

can be fired for openly stating their views. Faculty must prevent the usurpation of their core functions and the nullification of their fundamental rights. They must guard against the erosion of academic life. Unless the corporatizing of higher education is resisted, faculty will become no different from any corporate employee.

**Note:**

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