

**OPEN LETTER to U.S. COLLEGES and UNIVERSITIES
on the ACADEMIC BOYCOTT RESOLUTION ADOPTED
by the AMERICAN STUDIES ASSOCIATION**

In December 2013, the governing body of the American Studies Association (ASA) voted unanimously to boycott Israeli educational institutions. The ASA membership then endorsed the resolution by a 2:1 vote. The resolution's rationale was that Israeli universities play a central part in Israel's violations of Palestinians' human rights.¹ It excludes individual scholars from the boycott² and is nonbinding.

Many colleges and universities have responded with harsh official condemnations of the ASA resolution, claiming to speak for the academy, but without prior campus debate or input from their faculties. A small number have unilaterally withdrawn their institutional ASA memberships, without input from or prior request for such withdrawals by their American Studies faculty. They have rationalized these unilateral administrative actions as principled rejections of a perceived affront to academic freedom.

We write to state the case for the real interests at stake in the controversy over the ASA's adoption of its boycott resolution. The issues include the right of faculty to associate together in professional organizations and to take positions on important human rights issues as members of such organizations, without coercive administrative interference or countermanding actions.

Academic freedom has been the protective mantle for the robust exchange of views and creative expression. Yet now, some university administrators are wielding the term to stifle collective and peaceful opposition to a long and worsening human and political crisis.

Contrary to the positions taken by some university administrators, the significant threat to

¹ The resolution endorses the boycotting of Israeli universities, which provide military research, programs that teach soldiers techniques for the suppression of civilians, and other research and training services that sustain a military occupation that relies upon disproportionate killing; torture; imprisonment of children; extensive expropriation of occupied lands; theft of water and other natural resources; denial of the freedom to travel, even within occupied lands, often making it impossible to engage in business, seek medical care, and of particular relevance to the ASA resolution, attend school at home and abroad; segregation by ethnicity; denial of basic due process rights to be free from incarceration without being charged with wrongdoing and afforded a fair hearing; denial of free speech rights and the right to associate politically and as labor organizations; and denial of the right to belong to a country. These are violations of the Fourth Geneva Convention and other international laws.

2

We are expressly not endorsing a boycott of Israeli scholars engaged in individual-level contacts and ordinary forms of academic exchange, including presentations at conferences, public lectures at campuses, and collaboration on research and publication. U.S. scholars are not discouraged under the terms of the boycott from traveling to Israel for academic purposes, provided they are not engaged in a formal partnership with or sponsorship by Israeli academic institutions. The academic boycott of Israeli institutions is not designed to curtail dialogue.

http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/.

academic freedom and to free speech and association rights does not come from the ASA's nonbinding academic boycott resolution. It comes from official university responses that communicate intolerance for and in some cases an intent to quash controversial views on the human rights issues underlying the boycott resolution and to expressions of support for principled protests against widely documented human rights abuses by the Israeli government. In a rush to dissociate themselves from the boycott resolution, some schools have trampled academic freedom, while purportedly defending it.

A viewpoint announced by a university as its official position on an important matter of public concern, in the name of academic freedom but without the discussion and debate that characterizes a healthy campus environment, or even a nod to the rationale of the rejected opposing perspective, deforms the concept of academic freedom.

A crucial aspect of academic freedom is the right of faculty to associate together in academic organizations and to state their views on matters of public concern through those organizations, thereby demonstrating the strength of scholarly support for a controversial viewpoint. When an academic institution condemns such speech, or withdraws its institutional membership in an academic organization based on its stated views on a matter of public concern, without campus debate or honoring its own administrative protocol, such action violates academic freedom.

A recent AAUP statement summarizes well this perversion of academic freedom principles:

[I]t is “the right of individual faculty members or groups of academics not to cooperate with other individual faculty members or academic institutions with whom or with which they disagree.” Academic freedom is meaningless if it does not protect those who support unpopular positions, including the advocacy of academic boycotts. We urge opponents of academic boycotts to engage boycott advocates in dialogue, rather than seek to impose inappropriate restrictions on their activities that violate principles of academic freedom.³

Similarly, in a strongly worded editorial, the New York Times has criticized the New York Legislature's attempt to punish universities that fund ASA chapters on their campuses, as “an ill-considered response to the American Studies Association resolution [that] would trample on academic freedoms and chill free speech and dissent.”⁴

In contrast to the institutional rush to judgment by some universities, without institutional debate, the ASA resolution itself culminated six years of membership discussion, including a full year of debate within its governing body about the language of the proposed resolution. Although not required to do so, ASA's National Council agreed to hold a full membership vote on the

³[http://www.aaup.org/sites/default/files/files/AAUP%20Opposes%20New%20York%20Assembly%20Bill%20A_8392\(1\).pdf](http://www.aaup.org/sites/default/files/files/AAUP%20Opposes%20New%20York%20Assembly%20Bill%20A_8392(1).pdf)

⁴ New York Times, Editorial, A Chill on Speech (Feb. 3, 2014), at: http://www.nytimes.com/2014/02/04/opinion/a-chill-on-speech.html?_r=0

resolution. Sixty-six percent of the voting members endorsed it. The resolution compels no action by those who disagree with it, even within ASA's own membership ranks.⁵ The process presents a model for democratic decision-making by organizations on controversial issues.

Official intolerance for controversial views also has repeatedly run afoul of the First Amendment. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."⁶ An attempt by university officials to repress or penalize political speech because they disagree with its message, whether through institutional condemnation, threats, or funding restrictions, is impermissible "viewpoint discrimination," a serious First Amendment violation.⁷

The ASA boycott resolution is part of the movement for Boycott, Divestment, and Sanctions ("BDS"), which calls for traditional grassroots forms of peaceful protest against Israel's military occupation of the Palestinian territories, now in its 47th year.⁸ The boycott is one of the few peaceful options available to individuals to press collectively for social change and human rights. It has a distinguished history in this country. The United States is itself a product of a colonial boycott against British, Irish, and West Indian goods, issued by the First Continental Congress in an effort to avoid war, and influence British lawmakers and public opinion.⁹ The California grape boycott in the late 1960s compelled employers to negotiate fair wages with Cesar Chavez and the United Farm Workers. The civil rights movement included multiple forms of boycott that led eventually to the demise of Jim Crow. The U.S. boycott against South Africa was a crucial aspect of the movement that brought down South African apartheid. Countless other examples abound.

The U.S. Supreme Court has recognized the right to advocate and implement human rights and

⁵ The ASA explains:

"As a large member organization representing divergent opinions, the National Council further recognizes the rights of ASA members to disagree with the decision of the National Council. The Council's endorsement of the resolution recognizes that individual members will act according to their conscience and convictions on these complex issues. As an association that upholds the principle of academic freedom, ASA exercises no legislative authority over its members. By contrast, it is a civil offense for scholars within Israel to endorse this boycott."

http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/

⁶ *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

⁷ *Snyder v. Phelps*, ___ U.S. ___, 131 S. Ct. 1207, 1219 (2011).

⁸ The Palestinian call for boycott endorsed by the ASA is directed against perceived official human and legal rights violations and will end when the challenged violations end. Accusations that BDS activism is directed against the Israeli people or Jews are incorrect.

⁹ Cong. Journal, 1st Sess. (Oct. 20, 1774), reprinted in 1 Journals of the Cont'l. Congress 75-81 (Worthington C. Ford *et al.*, eds. 1903).

other boycotts for social change as having “always rested on the highest rung of the hierarchy of First Amendment values.”¹⁰

Yet, as this movement gains strength in the U.S., students and faculty who express support for BDS, or merely criticize Israeli policies and practices, are being branded as anti-Semites, and official student organizations such as Students for Justice in Palestine and the Muslim Students Association are being maligned as potentially disloyal to U.S. interests and laws.¹¹ These accusations, and fearful anticipation of them, chill activism by students and faculty as well as faculty guidance. Foreshadowing the rise of a new McCarthyism, they are the real threats to campus free speech, free association, and academic freedom.

The issue is not whether one agrees or disagrees that the ASA resolution strikes the proper balance on academic freedom. Rather, the issue is whether college and university communities and scholarly organizations should remain free to express their views on matters of public concern and, if they choose, to act lawfully to implement them by a call to boycott.¹²

The post-WWII McCarthy Era was a dark time, when anti-communist orthodoxy on campuses was aggressively promoted. That fearful era taught us important lessons, and the Supreme Court eventually held that efforts to compel orthodoxy in political expression on campus was unconstitutional.¹³ The response by academia to the ASA resolution offers either a sad occasion to relive that era or a liberating one to apply those lessons by honoring the principles of academic freedom -- teaching, by modeling, democracy, tolerance, and the courage to dissent.

We urge all U.S. colleges and universities to reject academic censorship clothed as academic freedom. We ask you to review any plans you may be contemplating, in light of the serious constitutional and academic freedom problems presented. We urge you to rescind any threats,

¹⁰ *NAACP v. Claiborne Hardware*, 458 U.S. 886, 911 (1982).

¹¹ See, e.g., <http://spme.org/anti-semitism/american-studies-association-needs-learn-american-values/16441/>; and September 8, 2011 letter from Shurat HaDin to U.S. colleges and universities.

¹² See, e.g., R.R. Sauders, “Boycotts, Academic Freedom & the Activist Scholar,” *Anthropology News* (American Anthropology Ass’n. Feb. 1, 2014), at <http://www.anthropology-news.org/index.php/2014/01/31/boycotts-academic-freedom-the-activist-scholar/>:

As one who works regularly with both Palestinian and Israeli scholars, who will not participate in the ASA boycott, and who is unconvinced that such a boycott is the correct strategy, I strenuously defend a scholars right to engage in principled activism....

[P]rohibiting the individual from enacting their opposition to objectionable policies and practices is the greater affront to academic freedom.

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The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Keyishian v. Board of Regents, 385 U.S. 589, 684 (1967).

explicit or implicit, public or private, you may have made against your faculty members for belonging to the ASA or supporting its resolution. We especially ask you to vitiate the chilling effects of official condemnations made without campus debate, by affirmatively encouraging such debate and clarifying your openness to it. And we respectfully ask our institutions of higher education, public and private, to reaffirm your commitment to departmental and individual faculty autonomy and academic freedom.

Sincerely,



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National Lawyers Guild

Rebecca Vilkomerson, Executive Director,
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Dima Khalidi, Director,
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