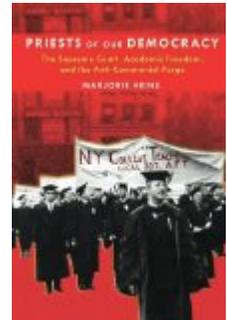


**Marjorie Heins.** *Priests of Our Democracy: The Supreme Court, Academic Freedom, and the Anti-communist Purge.* New York: New York University Press, 2013. 373 pp. \$24.00, paper, ISBN 978-1-4798-6060-9.



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**Published on** H-USA (August, 2014)

**Commissioned by** Donna Sinclair (Central Michigan University)

Marjorie Heins crafts a complete picture of the process in which academic freedom became a “special concern of the First Amendment” (p. 8). She argues that both the legal repudiation of loyalty oaths in *Keyishian v. Board of Regents* (1967), and the witch hunts and purges of teachers leading up to the *Keyishian* victory still resonate today. Heins claims, “We remain a society in which the range of acceptable views is remarkably narrow and where emotional appeals often overwhelm coherent discussion of political issues” (p. 269). So although the author explicates the course of events that led to the dismantling of the system of loyalty programs, she astutely notes that legal opinions do not fully change societal attitudes. Heins examines more than just the legal history of the academic freedom cases in the early Cold War. By highlighting the way in which political motivations, societal pressures, and anti-communist hysteria collided, Heins tells the story of the people who were directly affected.

Heins, using her expertise as a civil liberties

lawyer, makes this legal history accessible by placing the court cases into the broader context, not only of the early Cold War but also of the 1920s Red Scare and the foundation it laid for the 1950s. Heins explains how citizens, government officials at all levels, and Supreme Court justices overreacted to the perceived threat of communism.

The book uses New York to generalize the problems related to loyalty programs confronting teachers and to the ensuing purges. Heins notes that in the early 1940s “more than 500 professors, teachers, staff, and students were interrogated by Rapp-Coudert,” the committee whose original function was investigation of education finances but that eventually was tasked by the New York state legislature to unearth subversion in schools (p. 66). Although the committee lost its power during World War II, it already set the tone for questioning the parameters of academic freedom and these issues reemerged following the war. With laws to prevent subversive individuals from be-

coming teachers already on the books, New York solidified its position with the Feinberg Law in 1949, which assumed the “absence of evidence is proof of danger,” and guilt by association became normal operating procedure (p. 75).

Heins illustrates the buildup toward the legal insulation of loyalty programs and the tools of such programs, including guilt by association, barring defendants from seeing the evidence against them, invoking the Fifth Amendment as indication of guilt, and public humiliation of investigation and the forced naming of names. Heins examines the multiple facets of the legal arguments related to the early Cold War witch hunts. Then she shows how the programs were dismantled by discussing court cases that inched closer to the final overturn of the Feinberg Law in *Keyishian v. Board of Regents*. Justice William J. Brennan Jr.’s majority opinion built on minority opinions of the past to dismantle the notion of guilt by association and to uphold the necessity of critical inquiry in academia. Just as Justices Felix Frankfurter and William O. Douglas argued in the past, Brennan claimed that teachers need to be free to think critically and maintain an open mind in order to effectively do their jobs.

Although, thankfully, Heins is careful not to draw too many simplistic or straight-line connections between the early Cold War and the post-9/11 years, the chapter “September 11 and Beyond” remains somewhat of an outlier. This is partly due to the lack of cases that directly relate to academic freedom. Heins mentions a few related to loyalty oaths, particularly with an instructor at California State University-Fullerton, yet these are cases that have either not made it to the Supreme Court or have been decided on technicalities unrelated to the First Amendment. Also, while there are some direct connections between loyalty oaths of the Cold War and loyalty oaths of the twenty-first century, Heins undermines the argument that the War on Terror has a direct impact on academic

freedom because she explicates how the courts have been narrowing the *Keyishian* decision ever since the late 1960s.

The tension between national security and individual freedoms remains today. Heins presents a fascinating perspective on how these tensions became influential in debates over academic freedom, while offering a somewhat scathing review of the high court’s inability to truly lead. Heins reminds the reader that the court more often follows societal trends than pushes toward progress. She contends that “a primary lesson of the history recounted in this book is that the American political system is all too vulnerable to political repression and demonizing the dissenter, both on campus and off” (p. 279).

If there is additional discussion of this review, you may access it through the network, at <https://networks.h-net.org/h-usa>

**Citation:** Jennifer Vannette. Review of Heins, Marjorie. *Priests of Our Democracy: The Supreme Court, Academic Freedom, and the Anti-communist Purge*. H-USA, H-Net Reviews. August, 2014.

**URL:** <https://www.h-net.org/reviews/showrev.php?id=42299>



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