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## Proceedings of the Second Meeting of the WORLD CONGRESS FOR FREEDOM OF SCIENTIFIC RESEARCH

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**What does it mean to have a right to research?**

This conference seems to have two basic aims: to advocate scientific freedom, and to think critically about what scientific freedom means. As a matter of advocacy, I fully agree with the conference organizers that scientific freedom is important and needs to be defended against ideological restrictions. But in this talk, I want to focus on the second task of considering what it means to have scientific freedom and a right to research. Freedom does not have a single meaning, and unless we think carefully about different meanings of freedom, we risk advocating a kind of scientific freedom that ultimately undermines itself.

There are at least three traditions of thinking about freedom in Western societies. The first is the standard liberal view, which political theorists associate with Thomas Hobbes. This view sees freedom as a matter of freedom from interference. This is the most common way of conceiving scientific freedom today. For example, in the United States in November 2004, the voters of California passed Proposition 71, which established three billion dollars in public funding for stem cell research. This proposition also amended the California State Constitution to include "a right to conduct stem cell research". The sponsors were responding to the ideological policies of the Bush administration, and they presented Prop. 71 as a way of protecting stem cell research from political interference. They assumed that it would provide a barrier against government interference with science. What actually happened, however, is that Prop. 71 led to years of legal and political controversy. As soon as it passed, it was challenged by two lawsuits, and the newly created stem cell institute was widely criticized for nepotism and the misuse of public funds. The state legislature has repeatedly tried to require more transparency in the distribution of public funds for stem cell research. In short, Prop. 71 did not keep politics out of science. It became a political issue itself.

The California experience with Prop. 71 suggests at least two problems with the standard liberal view of scientific freedom. First, by at-

tempting to isolate science from society, the standard liberal view conveys an image of science as pure and value-free. This image conflicts with empirical studies of science, especially in applied areas like biomedicine, which shows how science is intertwined with social and political values. Second, the standard liberal view of scientific freedom implicitly promotes the politicization of science. It does this by suggesting that scientific knowledge should lead directly and necessarily to particular policies. For example, defenders of scientific freedom often argue that because science promises cures for disease, it should be both free of political restrictions and generously funded. I happen to agree that science does promise cures for many terrible diseases, and that it should be generously funded. But many other worthy projects also require government funding, and there is never enough money to go around. This means that political decisions require difficult comparisons and trade-offs between competing goals. The standard liberal view of scientific freedom is not prepared to undertake such comparisons, because it isolates science from society. What often happens instead is that advocates of scientific freedom feel pressured to exaggerate the short-term promise of science and to suggest that medical cures are just around the corner. In this way, science becomes politicized. And when the public realizes that the promises were exaggerated, scientific freedom seems to be nothing more than a way to promote the self-interest of scientists. Scientific freedom gets reduced to interest-group politics.

A similar problem occurs when people defend scientific freedom with reference to free-market principles. Some have argued that science is like an economic market, because in each case government interference supposedly distorts incentives and hinders growth. Governments cannot pick winners in the marketplace, the argument goes, and they also cannot pick winners among scientists. Although there is something to be said for this argument, it ultimately poses a threat to scientific freedom. It encourages a view of scientists as private entrepreneurs, concerned with nothing more than their own careers. It also reinforces the current trend toward the commercialization of science. In many fields today, private funding of science is much higher than public funding. And the restrictions imposed by private corporations often pose a greater threat to scientific freedom than restrictions imposed by governments. In democratic societies, government restrictions are at least open to public criticism and revision through the political process. It is more difficult to challenge the restrictions on public disclosure and licensing contained in many corporate research contracts. If efforts to resist the politicization of science implicitly support the commercialization of sci-

ence, they will end up throwing scientists from the frying pan into the fire. This becomes a serious risk when scientific freedom is defended in terms of the standard liberal conception of freedom.

A second view of freedom can be traced back to Aristotle and Rousseau. This communitarian view sees freedom as a matter of freedom through collective self-government. I do not want to discuss this view today, except to say that I think it also tends to threaten scientific freedom. The communitarian view tends to suppress political disagreements in favor of social consensus, and it easily leads to paternalistic policies and ideological restrictions on science.

A third view of freedom that I find more promising is that found in the republican tradition associated with Machiavelli. According to republicans, freedom is freedom from domination. That is to say, the key threat to freedom is not interference as such, but unjustified and arbitrary interference. This view of freedom recognizes that some forms of interference actually enhance freedom. A traffic light, for example, certainly interferes with automobile drivers, but by preventing accidents it enhances their freedom. In the same way, government restrictions on research with human subjects, or restrictions on the use of hazardous materials, enhance scientific freedom by increasing public confidence in science. In some cases it may be better for scientists to establish such restrictions themselves, rather than government. But in many cases, governments are better able to enforce restrictions that benefit science. Scientists alone, for example, would have a difficult time prosecuting and punishing criminal activity in the laboratory. Moreover, when beneficial restrictions are imposed by governments, they are open to public deliberation and debate. Although scientists tend to perceive public deliberation about science as a threat, it has the potential to increase public support for science. Citizens are more likely to accept public funding for science, when they have some say in how their tax monies are spent. In sum, the republican view says that government restrictions may enhance scientific freedom, if they are publicly justified and revisable through a democratic process.

Now, scientist's main concern today, of course, is not with restrictions on human subjects research or hazardous materials, but on stem cell research and other areas that are morally controversial. In opposition to such restrictions, scientists often claim a right to research. In English and several other languages, the word *right* comes from the Latin *rectus*, meaning "straight". When applied to human affairs, the word "right" originally referred to an objective standard of conduct. To do something "rightly" meant to do it "correctly". By the seventeenth century, the meaning had changed. A right began

to refer, not to something being right, but to the notion that people have rights. The idea of doing something that is right changed into the idea of doing something because one has a right to do it. The notion of right referred, not to an objective standard, but to property in oneself that offers protection from the social order. The idea of self-possession implied rights to life, liberty, bodily safety, speech, religion, and so on. This new concept of right retained aspects of the older view, because rights were conceived as natural and, therefore, prior to society and politics. Within this history, however, there have been two distinct concepts of rights, and they each have very different implications for scientific freedom.

The more common view of rights builds on the liberal conception of freedom. The liberal view of rights sees them as natural individual protections against interference by society and the state. During the Enlightenment, this notion of rights played a key role in the struggle against absolutism and the rise of liberal democracy. It has become nearly synonymous with liberalism, even though some prominent liberals, such as Jeremy Bentham and John Stuart Mill, did not share the idea of rights as prior to politics.

Recent claims for a "right to research" have usually been phrased in the liberal protective language of natural rights. I already mentioned some of the problems this created with California's Prop. 71. To some extent, however, it makes perfect sense to think of a right to research as a negative right against State inference. Almost nobody claims that the right to research provides a positive right to the means for conducting research. Even if governments have a duty to promote research in general, most people recognize that governments cannot fund all promising research. In this sense, the issue is a matter of what government may prevent, not what it must promote.

But the right to research is not properly understood as a fundamental right or a basic human right. The right to research is not like the right to free expression or the free exercise of religion. Conducting scientific research is not a requirement of basic human dignity. Nor is conducting research necessary for human fulfillment. A close look at some of the leading international human rights declarations supports this view. For example, the United Nations Universal Declaration of Human Rights lists rights to basic education, fairly paid work, a standard of living adequate for health and well-being, and even rest and leisure - but it does not mention a right to research. To be sure, Article 27 recognizes a right to copyright and patent protection - that is, a right to the benefits resulting from scientific, literary, or artistic production. It also mentions a right "to share in scientific advancement and its benefits". But a right to enjoy the products of sci-

ence is not the same as a right to produce science.

The same is true of the UNESCO Universal Declaration on the Human Genome and Human Rights. Article 12(b) does mention that "freedom of research, which is necessary for the progress of knowledge, is part of freedom of thought". And articles 14 and 15 encourage governments to promote research. But these same articles also make clear that governments should "consider the ethical, legal, social and economic implications of such research", and that research should "safeguard respect for human rights, fundamental freedoms and human dignity and... protect public health". It seems fair to conclude that these declarations do not portray the right to research as a fundamental human right.

This makes sense, when one considers that not all people are capable, even in principle, of enjoying a right to research. Not everyone is capable of doing the sort of advanced scientific work that advocates of a right to research want to defend. Indeed, many defenders of scientific freedom seem to be thinking not of a right to research, but rather the rights of researchers. They do not mean to defend a general right to do research that applies to everyone. Of course, the rights of researchers need to be defended. But it may be helpful to recognize that because the right to research cannot include everyone, its moral force is more limited than other more basic rights.

In sum, when conceived as an individual protection, the right to research draws a boundary between science and politics. It asserts a quasi-private sphere within which the political community has no jurisdiction. But by isolating science from society, this view of the right to research ultimately does more to threaten science than protect it.

Fortunately, the liberal view of rights has long co-existed with a different view, which I will call the republican view of rights. For republicans, rights are claims to civic membership. The republican view emphasizes the link between individual rights and human equality, which is what gives rights their moral force: my claim to have a right to something is only persuasive, if I recognize that you are entitled to make the same claim. That is why masters do not demand that slaves recognize their rights. And slaves who demand rights assert their equality with the masters. In this respect, the phrase "equal rights" is redundant. Although most people today conceive rights in the liberal mode as natural protections against society and government, in practice the republican view of rights is what has given rights their real power. Rights have acquired moral force only through political struggles for equality. Whether or not rights actually are "natural", historically rights have only become effective when

they are brought to life in political culture. The rights of workers, women, minorities, and other groups have been promoted not primarily through philosophical claims, but through political arguments and popular mobilization. When these groups demanded rights, they demanded to be fully included in society. In the same way, the republican view of the right to research argues for the inclusion of science within the political community. The right to research becomes a particular instance of a more general right to inquiry that all citizens share. Non-scientists are more likely to accept a right to research, if it is also linked to corresponding obligations. If ordinary citizens have an obligation to fight disease by promoting science, as John Harris has argued, scientists may have an obligation to support democracy by engaging in politics. Unless scientists begin to see the right to research as a claim to membership in society, non-scientists have little reason to grant them the freedom (and public funding) they need. To put this somewhat differently, the republican view sees the right to research not as a right against the democratic process, but as part of the democratic process. Here it may be helpful to distinguish among three sorts of rights:

- *political rights* - such as freedom of speech and assembly - which are integral to democracy
- *social rights* - such as basic education and health care - which are a precondition for democracy
- *civil rights* - such as religious liberty, property, and privacy - which are external to the democratic process, but generally supportive of democratic culture.

The right to research may take any of these forms, but which form it takes will affect the degree of protection it deserves. Generally speaking, civil rights are more subject to restriction than social and political rights, because social and political rights are required for citizens to manage their disagreements about all rights. Any restrictions on social and political rights are difficult to revise, since they limit the process of revision itself.

It makes sense to include inquiry - as distinct from the more narrow category of scientific research - in the scope of political rights that are integral to the democratic process. The most obvious reason is that democracy requires an informed citizenry. If citizens are not free to conduct inquiries of various kinds, democracy becomes the rule of ignorance. Freedom of the press, for example, is crucial for democracy. Other sorts of inquiry are also important, but they may contribute less directly to democracy than freedom of the press. This has been the view of United States courts, in any case, which have

created a hierarchy that prefers political speech and publication to commercial speech and publication, and both to pornography.

This framework may be used to distinguish different levels of protection for different kinds of scientific research. When scientific inquiries produce knowledge necessary for democratic governance, they deserve more protection than when they do not. Scientific research that promotes public health and economic growth also deserves protection, but it deserves protection as a social right, not as a political one. And research pursued for the sake of curiosity deserves protection as a civil right, but it may deserve less protection than research that contributes more directly to democracy.

Of course, these categories are somewhat artificial, and many areas of research fit into more than one category. Also, given the unpredictability of science, the democratic significance of research often changes over time, so its claim to protection may change as well. Nonetheless, this framework offers a heuristic for thinking about how claims for a right to research may support rather than undermine democratic processes.

Finding a mutually supporting relationship between science and democracy is important for at least three reasons. First, democracy has been better for science than other kinds of political systems. And despite its many flaws, democracy has also been better for individual rights than other political systems. In this respect, asserting a right to research against the democratic process risks killing the goose that lays the gold eggs for science. It is no accident that religious fundamentalists attack both scientific freedom and liberal individualism. If we want to effectively counteract these attacks, it will not be enough to simply reassert liberal principles. That just leads to a shouting match. Instead we need to acknowledge the limits of liberalism, and improve the relationship between science and democracy.

Second, even if scientists enjoy extensive rights to research, democratic processes are required for generating public acceptance for their research. Although asserting a right to research may protect scientists from public interference, it does not establish that any particular line of research is in fact worth pursuing. Rights protect choices; they do not guide choices. In this respect, asserting a right to research should not be used to avoid public deliberation on what kinds of research governments should restrict or promote. Instead, asserting a right to research should be the starting point of public deliberation.

Third, asserting a right to research is not the most effective barrier to public restrictions on science. There are many other ways of re-

straining misguided politicians besides making claims about rights.

In particular, rights claims are most effective when their proponents avoid the temptation to escape politics. The best way to protect the right to research is to combine talk about rights with efforts to generate the popular support that give rights their real power. And that, I hope, is precisely what this conference will achieve.

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