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### Boomerangs of academic freedom

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## Boomerangs of academic freedom

### Abstract

The Ted Steele case is an important episode in the defense of academic freedom in Australia. In addition, it offers a wealth of evidence on how a dismissal, perceived as an attack on academic freedom and free speech, can boomerang on the administration. Yet the matter is more complex than a simple boomerang: the actions of dissidents and unions can also boomerang. In this paper, I examine academic boomerang dynamics through a close analysis of the Steele case.

### Keywords

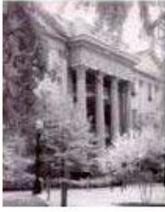
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BRIAN MARTIN

## BOOMERANGS OF ACADEMIC FREEDOM

*Boomerang, n.* A scheme that recoils on its originator.

### Introduction

1.1. In 2001, Ted Steele, a biologist at the University of Wollongong, was summarily dismissed from his tenured position, resulting in an enormous outcry. This became the most prominent Australian academic dismissal case in half a century.

1.2. The Steele case is an important episode in the defense of academic freedom in Australia. In addition, it offers a wealth of evidence on how a dismissal, perceived as an attack on academic freedom and free speech, can boomerang on the administration. Yet the matter is more complex than a simple boomerang: the actions of dissidents and unions can also boomerang. In this paper, I examine academic boomerang dynamics through a close analysis of the Steele case.

1.3. It is nothing new to note that academic attacks sometimes rebound against the attackers. For example, censoring a publication sometimes generates greater attention to it. Dismissing an outspoken scholar sometimes creates a public relations nightmare for the administration. Before turning to the Steele case, it is worthwhile looking at other sorts of cases in order to better understand boomerang dynamics.

1.4. The beating of Rodney King by members of the Los Angeles police force on 3 March 1991 led to massive adverse publicity for the police (Owens, 1994). Claims about police beatings had been made for years, sometimes leading to large pay-outs to victims but with relatively little adverse publicity. But in the case of Rodney King, observer George Holliday made a videotape of the beating and sold it to a television station. Before long it was broadcast around the world. This suggests that in order for an attack to boomerang against the attackers, wider audiences need to be shown and convinced about what happened.

1.5. On 21 March 1960, in Sharpeville, South Africa, white police opened fire on a protest by black South Africans, killing perhaps a hundred people (Frankel, 2001). This act caused outrage around the world, leading to a large increase in anti-apartheid actions. A few of the protesters had thrown pebbles at the police, though without causing much harm. What seemed to generate the outrage was the great disproportion between the actions on the two sides: minor stone-throwing in a largely peaceful protest versus lethal force unleashed without warning.

1.6. In the 1980s, McDonald's sued five members of a small anarchist group called London Greenpeace for defamation over the group's leaflet, "What's wrong with McDonald's?" Two of them, Helen Steel and Dave Morris, refused to acquiesce. Although McDonald's won the court case, it was a massive public relations disaster for the company. Steel and Morris were able to prove, to the judge's satisfaction, many of the damaging claims in the leaflet. It was the longest case in British legal history and generated ongoing publicity. Steel and Morris's supporters produced a website, McSpotlight ([www.mcspotlight.org](http://www.mcspotlight.org)), that brought the original leaflet and the struggle to the attention of millions of people who otherwise would not have known about it (Vidal, 1997). This so-called McLibel case backfired against McDonald's because people sympathized with poor yet principled protesters who were attacked by a powerful censorious multinational corporation.

1.7. In these cases, there seem to be two keys to triggering a boomerang effect. One is a qualitative or quantitative difference between the scale or type of action taken by the two sides. Numerous police repeatedly beat Rodney King, who on the videotape did not appear to be fighting back. South African police used lethal force against protesters, most of whom were entirely peaceful. McDonald's, a wealthy corporation, used legal intimidation against indigent activists. When there is a gross disproportion in the actions taken, or a qualitative difference such as violence versus nonviolence, many observers see the engagement as unjust.

1.8. The second key to a boomerang effect is communication. Others need to know what is happening. A videotape was essential to making the Rodney King beating backfire against the Los Angeles police. The publicity campaign mounted by Steel and Morris's supporters was central to making the McDonald's legal action boomerang against the corporation.

1.9. Gene Sharp, the world's leading researcher on nonviolent action, has documented large numbers of cases in which physical assaults against nonviolent protesters have backfired against the attackers (Sharp, 1973). The methods used by the protesters might be leaflets, rallies, strikes, boycotts, fasts or sit-ins; whatever the method, physical attacks on the protesters can generate greater support among observers, among the protesters' previously nonactive sympathizers, and even among members of the attacker group. Sharp calls this process "political jiu-jitsu," since it is a political analog of the sport of jiu-jitsu in which the opponent's strength and power are used against them. So predictable is this effect that Sharp listed political jiu-jitsu as one of the stages of his "dynamics of nonviolent action" through which many campaigns are observed to pass. For political jiu-jitsu to work, it is essential that protesters maintain nonviolent discipline. If even a few protesters use violence, the qualitative difference between the two sides—one side using violence but the other not—is lost, and so also is the protesters' great moral and political advantage.

1.10. Although Sharp only analyzed struggles involving nonviolent action in the face of physical assault, the same dynamics can operate in other sorts of situations, including censorship (Jansen and Martin, 2003), torture (Martin and Wright, 2003) and war (Martin 2004a). Hence it is reasonable to expect that the same sorts of dynamics occur in struggles over academic freedom.

1.11. Some previous academic freedom cases seem to have involved boomerang effects. For example, the 1958 dismissal of Harry Crowe from United College, Canada, on the basis of material in an intercepted private letter, triggered a huge outcry (Horn, 1999: 220-245). The Principal of the College, Wilfred Lockhart, later said in interview that "if he had known what would happen...he would have destroyed the letter or buried it at the back of a file drawer" (Horn, 1999: 225), a good indication that he thought his actions had boomeranged. The dismissal of Herbert Richardson from St. Michael's College in 1994 appears to fit the backfire model quite well (Martin, 2004b).

1.12. In the next section I give the background to the Steele dismissal, and in following sections I examine boomerang dynamics in relation to the administration, the union, Steele and the Department of Biological Sciences. Then I summarize how to undertake boomerang analysis of an academic freedom case. The postscript reveals some of the responses to my writing about the Steele case. A list of key events concerning the case is given before the references.

1.13. Although the Steele dismissal is significant in itself as a major Australian academic freedom case, my purpose here is primarily to analyze the operation of boomerang dynamics. The Steele case is especially useful for this purpose because it is recent, because there is much published documentation and commentary, and because I have been able to observe the events from close at hand.

1.14. The Steele case can be categorized as involving academic freedom, free speech, or both. The expressions "academic freedom" and "free speech" are contested concepts, so it is possible to find differing interpretations of their meaning. Academic freedom is commonly taken to cover both institutional autonomy from governmental intervention and the autonomy of faculty to undertake teaching and research without interference and—in some circumstances—to make public comment. The Steele case involved only this latter dimension of academic freedom, namely making public comment.

1.15. Free speech is the right to express opinions without penalty. It usually refers to expression in the public domain, and can be claimed by corporations as well as individuals. Within most large organizations, though, there is seldom a presumption that employees have a right to speak in public about organizational problems: those who do are called whistleblowers and frequently suffer reprisals. Universities are a partial exception in that the tradition of academic freedom sometimes offers protection for those, like Steele, who go public about internal problems.

## **The Steele Case**

2.1. The University of Wollongong is located in the city of Wollongong, just south of Sydney. Originally an extension of the University of New South Wales, it became a separate university in 1975 and grew rapidly through the 1980s to reach its present size of about 20,000 students. The university also grew significantly in reputation during this time, especially in research.

2.2. In 1985 Steele was appointed as a lecturer, a tenurable position roughly the status of a U.S. assistant professor. He advanced rapidly, being promoted to senior lecturer and then associate professor, a rank in Australia equal in status to full professor in the U.S. Steele was an iconoclastic biologist, having proposed a mechanism for the inheritance of acquired characteristics at a genetic level (Steele, 1979; Steele et al., 1998). Originally from Adelaide, he had worked overseas after his PhD but could not sustain a career in Britain due to resistance to his ideas. Wollongong provided a reasonably supportive platform for his research.

2.3. In dealing with his detractors and competitors in biology, Steele at times adopted a confrontational style. As well, he often engaged in campus issues using a similar style. With the introduction of a campus-wide email system in the 1990s, Steele soon became a familiar commentator, noted especially for his comments hostile to the university administration. One of his prime targets was what he called "Mickey Mouse professors." A full professor in the Australian system is an elite academic post, typically comprising no more than one out of seven faculty positions. Until recently at most universities, the rank of professor could not be obtained by promotion but only by appointment to an externally advertised chair. Steele claimed that such chairs were being given to people of marginal scholarly achievement because of their connections with senior administrators.

2.4. Steele's dismissal was triggered by his comments about "soft marking," namely the awarding of undeservedly high grades to students. It is widely thought that there has been some grade inflation in Australian universities, though nothing like what is said to occur in some parts of the US system such as Harvard. At Wollongong, like most Australian universities, grades are high distinction, distinction, credit, pass, pass conceded and fail. Many students mainly receive passes and credits and this is considered quite acceptable. Very high marks are not common. It is common for only one to five students in a class of 50 to receive a high distinction, or perhaps even none. For a student to receive all high distinctions in a semester is unusual. For example, at the University of Wollongong in the first semester of 2001, out of nearly 10,000 undergraduate students, fewer than 100 taking three or four courses received all high distinctions. Grade inflation may be more significant at the bottom end of the grade spectrum given that there seem to be fewer vocal protests about massive failure rates in certain courses.

2.5. Over a period of decades starting in the 1960s, Australian higher education moved from an elite to a mass system. This led to concern about declining standards, as some academics complained that they had to reduce the level of difficulty in their classes. Much more contentious, though, has been the commercialization of higher education since the late 1980s, including the massive increase in full-fee-paying foreign students. Australian students pay significant fees but are entitled to a zero-interest loan that is paid back gradually through an income tax surcharge payable when their taxable income exceeds a specified threshold. Foreign students, on the other hand, pay larger fees (typically around A\$12,000 per year, about US\$8000) and must pay them immediately. Overseas student fees have become a significant component of many university budgets and some academics complain that there is pressure, open or subtle, to pass foreign students in order to maintain the income flow. Controversies over "soft marking," raised periodically in the media, are largely about allegedly lower standards for foreign students. Higher education has become a major Australian export industry.

2.6. At the beginning of 2001, the *Sydney Morning Herald*—one of Australia's "quality" daily newspapers—ran a series of stories about soft marking, drawing on an advance report of a survey of social scientists, some of whom claimed that the emphasis on fee-based courses was leading to lower standards (Kayrooz, Kinnear and Preston, 2001). However, very few academics were willing to speak publicly about this. Steele jumped into this ferment by making the dramatic allegation that two students in his own department, Biological Sciences, had had their marks boosted—indeed, that he had been instructed to raise their marks (Contractor, 2001a, b).

2.7. Other members of the department denied Steele's allegations, as did Gerard Sutton, the Vice-Chancellor (equivalent to a US university president). Claims and counterclaims flew about on the university e-mail system, with some of the commentary leading to stories in the mass media.

2.8. Steele, in one of his e-mail missives detailing his allegations, sent a copy to the New South Wales Ombudsman, among others. He received a formal reply from the Deputy Ombudsman, who said the office had been obliged to treat the e-mail as a formal submission. In a careful analysis of the case, the Deputy Ombudsman said there was no evidence of any impropriety in marking and therefore no basis for a formal investigation (Sewell, 2001). On the basis of this assessment, plus information provided by Biological Sciences and the administration, Steele lost credibility in the eyes of many.

### **The University Administration and Boomerang**

3.1. Then on 26 February 2001, Steele was summarily dismissed. The Vice-Chancellor stated in a media release that the dismissal "was necessary in the light of Associate Professor Steele's knowingly false allegations undermining the essential fabric of the employment relationship and puts at serious risk the good name of the university" (Contractor and Noonan, 2001).

3.2. For the administration, the dismissal boomeranged in a dramatic fashion. Steele, previously perceived by many as having little credibility, was overnight transformed into a martyr. The method of dismissal accentuated the image of free speech muzzled. The dismissal notice was delivered to Steele at his home at 5:15pm; at the same time, the locks on his university office doors were changed.

3.3. Commentary in the media was overwhelmingly critical of the dismissal (Anonymous, 2001; Jackson, 2001; Lowe, 2001; McGuinness, 2001). Many Wollongong staff were dismayed; I heard many say that they did not support Steele's behavior but they opposed the way he had been dismissed. Indeed, many people unfamiliar with the details assumed that Steele's allegations about boosting of grades must be correct—after all, why else would he be dismissed? In contacts with academics from other universities, I—like many others from Wollongong—was frequently quizzed about the affair. For a period, the university seemed more known for the dismissal than for its undoubted achievements.

3.4. The attack on Steele boomeranged because it seemed to compromise his freedom to speak out on matters of academic and social significance and because it was perceived as disproportionate to anything Steele had done. In short, it was seen as both contrary to academic freedom and as unjust treatment.

3.5. Some administrators may consciously take precautions to prevent or reduce backfire from their actions. Others may have an intuitive grasp of how to achieve this. However, it is not necessary to probe motivations in order to observe common methods used by administrators that inhibit a boomerang effect. Among them are:

1. hiding actions;
2. disguising actions;
3. stonewalling, namely not responding;
4. following procedures.

Depending on the case, other methods may be deployed as well, especially devaluing the target and intimidating and/or bribing key participants.

3.6. Hiding actions is perhaps the most effective means of inhibiting the boomerang effect. After all, if few people know about the issue, few will be outraged. In previous cases at the University of Wollongong, academics had lost their jobs with little or no publicity. For example, tenured Geosciences senior lecturer John Formby was dismissed in 1998 following an investigation into allegations about his behavior, even though an investigation committee recommended against dismissal. Formby did not seek publicity, instead making a legal challenge to the decision, which he lost. Aside from gossip around campus, the dismissal was only publicized in an e-mail from departing Geosciences lecturer Laurie Brown (29 August 2001).

3.7. In contrast, there was little prospect of hiding Steele's dismissal, especially since Steele had a penchant for going to the media. Both the electronic and print media reported the story, using both the administration's brief media release and commentary from Steele, the union, and others.

3.8. A second common means for inhibiting the boomerang effect is to describe the events in ways that minimize outrage. When academics are dismissed, administrators virtually never say "We are dismissing Professor X because she was a vocal critic of the university president" or, even less likely, "We are dismissing Professor X for exercising her academic freedom." Instead, in almost every case, administrators rhetorically endorse academic freedom while presenting some rationale for their actions: shortage of money, necessary redeployments or reorganizations, procedural violations, or poor performance. The Steele dismissal was unusual in that the administration explicitly stated that the reason was Steele's public comments about marking and standards.

3.9. A third way to minimize the boomerang effect is to say very little, for example by refusing to comment to the media. This is commonly called stonewalling. This reduces the risk of getting caught in lies or contradictions and reduces the attractiveness of the story to journalists, who normally like to obtain comment from both sides. This was the approach adopted, for the most part, by the University of Wollongong administration.

3.10. When Steele made his original allegations about soft marking—but before his dismissal—all of his colleagues in the Department of Biological Sciences disagreed (Whelan et al., 2001). However, unlike Steele, they were not used to or comfortable with media campaigning and could not agree on a common approach to it, and so after the dismissal they did not make formal public comment—aside from rebutting Steele's claims on the department's website—leaving media comment for the administration, which said very little. For the first year after the dismissal, the same pattern prevailed, with Biological Sciences academics saying virtually nothing publicly and the administration producing only occasional brief formal statements.

3.11. A fourth way to reduce the boomerang effect is to follow formal procedures. The boomerang effect relies on a perception of injustice due to disproportionality or to a violation of an important boundary or precept, such as free speech. Formal procedures, such as grievance procedures or courts, give the appearance of providing justice. Following procedures therefore undercuts the boomerang effect even when the procedures themselves are unfair in practice, as in the case of court battles between an unemployed individual and a large organization.

3.12. Steele's dismissal was, on the surface at least, a gross violation of procedure. A bit of background is necessary to explain why. Australian academics are covered by a single trade union, the National Tertiary Education Union (NTEU). In the framework of Australian industrial law, each university is expected to come up with an "enterprise agreement" about wages and conditions, with management and the local NTEU branch negotiating to reach the agreement. At Wollongong, the enterprise agreement negotiations in 1999 were exceptionally difficult. To push the process along, academics held a one-day strike, then a two-day strike and finally a three-day strike. For academics, this was an exceptional level of industrial action. Part of the enterprise agreement reached after this struggle stated that dismissal of an academic could only occur after following a set of procedures, including laying of charges and setting up of an investigation committee. None of this was done in the case of Steele's dismissal. Instead, the administration relied on an inventive reading of a particular clause in the enterprise agreement.

3.13. In summary, the University of Wollongong administration did little that mitigated the boomerang effect. Rather than hiding the dismissal, it was carried out in a heavy-handed manner. Rather than disguising the reason for the dismissal, it was openly stated. Rather than follow obvious procedures, they were openly violated. The administration did reduce backlash by limiting comment to the media and by arguing that its actions could be justified under a particular clause in the enterprise agreement, but this had limited effect. The result was that the dismissal boomeranged against the administration in a major way.

### **The Union and Boomerang**

4.1. Just as administrations dislike the boomerang effect, so defenders of academic freedom would like to magnify it. If they are ready and able to achieve this, then administrations will be far less likely to mount attacks in the first place. After Steele was dismissed, his defense was largely undertaken by the NTEU, which mounted a three-pronged strategy involving a legal challenge to the dismissal, publicity, and lobbying.

4.2. The first prong was a legal challenge. Out of half a dozen legal options, the union decided to launch a case in the Federal Court that the enterprise agreement had been breached. In August 2001, the judge ruled

in favor of the union. After the university administration appealed, in March 2002 the full bench of the court affirmed the ruling.

4.3. The second prong was a publicity campaign, with media releases, circulation of information and an on-line petition that was eventually signed by nearly 5000 people, a majority of whom were Australian academics.

4.4. The third prong was lobbying Council, the University of Wollongong's governing body (similar to a U.S. board of trustees). The two elected academics on Council were union members; informal approaches were made to other members. Despite the NTEU position gaining a degree of support on Council, for the most part Council went along with the Vice-Chancellor.

4.5. Each of these prongs can be assessed in terms of how it amplified or inhibited the original boomerang against the administration. The publicity campaign was highly effective in amplifying the boomerang effect. It emphasized the unfairness and disproportionality of the dismissal, generating concern and outrage throughout Australia and well beyond.

4.6. Lobbying Council did little to amplify outrage. It was a classic insider approach, reinforcing the assumption that Council is a genuine ruling body, when in practice most Australian university councils routinely rubber-stamp decisions by their senior executives.

4.7. The court challenge to the administration utilized a set of procedures—the legal system—and thus tended to dampen the boomerang effect. During the long periods between court judgments, media and wider academic interest dwindled. Only when the court ruled in the union's favor did interest pick up, but then only briefly. However, the court challenge was also used for publicity purposes. For example, a protest was held outside the Federal Court on 5 July 2001, the day the initial hearings began, with many participants wearing academic gowns.

4.8. The dampening effect of formal procedures was most obvious following the union's second court victory, after which the union and administration entered negotiations about Steele's future. Nearly all this negotiation was done behind closed doors, aside from some media flare-ups along the way. At a meeting of the Wollongong branch of the NTEU on 18 April 2002, members of the Biological Sciences Department presented a motion calling for a misconduct inquiry into Steele's allegations. Carolyn Allport, national president of the union, told the meeting that the NTEU was negotiating with the administration to obtain a satisfactory outcome regarding Steele; the Biological Sciences members were persuaded to withdraw their motion. The subtext was "trust the union negotiators." Whatever the advantages of this approach, it did little to promote debate about academic freedom at Wollongong or elsewhere.

4.9. A settlement between Steele, the administration and the union was announced on 5 July 2002, stating "All legal and disciplinary procedures have been terminated as a result of the settlement. The details of the settlement remain confidential and all three parties have agreed to make no further public comment" (Sewell, 2002). The tight confidentiality of the settlement drastically reduced media coverage. There was little about the settlement in the *Australian* and the *Sydney Morning Herald*, major newspapers that had regularly covered the Steele case (Lawnham, 2002). Following the Vice-Chancellor's e-mail announcement about the settlement, not a single other person commented on the university's e-mail system. The union's legal and negotiation strategy defused the boomerang effect.

4.10. Soon after the dismissal, union branch presidents in the state of New South Wales were keen to campaign on the grounds of defending intellectual freedom. However, they were hampered by reluctance within the Wollongong branch to support Steele's intellectual freedom. To obtain a unified campaign, the lowest common denominator thus became defending the enterprise agreement, with the consequences

described here. If, instead, the preference of the branch presidents to highlight intellectual freedom had won the day, then the union's campaign might well have promoted a much more powerful boomerang effect.

4.11. In the U.S., free speech issues are often argued in terms of the First Amendment, with legal conflict taking the place of direct engagement with the issues. Australia, in contrast, has no constitutional protection of free speech, so free speech is more frequently defended by collectively organizing to oppose attacks on it. (Interestingly, there is no obvious difference between the two countries in the overall levels of free speech.) In the case of free speech by Australian academics, though, enterprise agreements offer some formal protection. By providing an avenue for legal action to replace direct action, these agreements, like the First Amendment in the U.S., may encourage tactics that dampen a boomerang effect.

### **Steele and Boomerang**

5.1. The actions of individuals, including academic dissidents, can boomerang against themselves. Steele had a long history of making allegations, especially against the university administration. According to Steele, his own "vigorous and vituperative interchanges on the e-mail" covered a range of topics, including "space allocations, library cuts, unethical collegial behaviour, promotional barriers, executive obstacles on overseas/conference travel, funding cuts, parking fines, senseless executive edicts on the pasting of student notices, etc." (e-mail, 23 February 1995). To take another example, in one of his attacks on "Mickey Mouse professors," sent in a 22 December 2000 e-mail to all staff, Steele commented that

The "Professor" title is so associated with derision that it would make that great humanist of good will Walt Disney turn in his grave. It has become so bad, and VC Sutton is so drunk with power, that the place behaves (to those outside the "Wollongong Loop") much like a tin-pot South American dictatorship in a state of academic degradation metaphorically akin to contemporary Russia/Eastern Europe/Cuba.

Although some academics were sympathetic to both the content and style of such contributions, others were repelled. Steele's rude and aggressive style alienated many of those who agreed with some of the points he was making. Sometimes individuals sent Steele personal e-mails commenting on some current issue and were surprised and disgruntled to find their message copied to the entire campus accompanied by a commentary by Steele. This discourteous behavior did not win him many friends.

5.2. Steele was not on good terms with union officers. On one occasion he used the campus-wide e-mail to criticize the union for not supporting him on some matter; the branch president, Mike Morrissey, rebutted Steele's claims in an equally vitriolic e-mail (2 December 1998). Steele was observed to drive through the picket line during strikes and, although a union member most of the time since joining the university in 1985, he was not a member for a couple of years not long before his dismissal.

5.3. By the time he was dismissed, Steele had become notorious on campus for his combative personal style. It should be said, though, that Steele was often quite pleasant, especially on a personal level. In many years of knowing Ted as an acquaintance, I never had anything other than agreeable face-to-face engagements with him. At one point I published a short article on plagiarism issues that favorably reported his position (Martin, 1997). However, a few years after this I was one of a number of targets in some of his "vituperative" e-mails.

5.4. Many of Steele's colleagues in Biological Sciences had had unpleasant encounters with him over the years. What united them in opposition to Steele were his claims at the beginning of 2001 about soft marking. Steele alleged that the marks of two of his own students had been "upgraded." The students in

question were doing "honors," something that has no exact equivalent in the U.S. academic system. Traditionally, honors is an optional year of study at the end of a normal three-year undergraduate degree, typically involving coursework and a thesis. Those who achieve a high enough honors mark can proceed to a PhD, possibly with a scholarship, and no further coursework or examination is required aside from the PhD thesis. (In some newer degrees, honors is built into a four-year degree. A thesis is still part of it.) In Biological Sciences, honors results were calculated as a straight average of coursework marks and the mark on the thesis, itself an average of the marks of three examiners, two from Biological Sciences itself and one external.

5.5. Steele had supervised the theses of the two honors students in question, one in 1997 and the other in 2000. He was reported in the newspaper as claiming that he had been instructed to raise their marks. This didn't make much sense, since Steele himself was not a marker of the students' work. Furthermore, he was acting chair of the department meeting in 1997 that decided the final marks of honors and other students, and made no objection at the time.

5.6. Steele had a different way of viewing the process. He claimed that the mark by the single external thesis examiner—whom he chose and with whom he agreed—should have been definitive and that any other result amounted to "upgrading." However, to support this position would have been to reject the department's formal procedures, yet Steele had made no objection to the procedures when they were reviewed in 1999-2000.

5.7. Steele's colleagues knew of these contradictions in Steele's position and so were outraged when he made allegations of upgrading to the media. They were further aggrieved when, prior to a special departmental meeting (17 January 2001) to address the matters in dispute, Steele threatened to sue them should he be damaged by decisions made at the meeting. They felt vindicated by the Ombudsman's dismissal of Steele's claims as not even warranting investigation.

5.8. Free speech means little unless it applies to those who are disagreeable and who make unsustainable claims. Academic freedom is valueless unless it includes the freedom to make outrageous statements and to be wrong. That is why the dissent of a person like Steele should be defended against attack. (The question then arises of how to respond to those who make incorrect, misleading, derogatory or damaging claims. This is a complex issue. One thing is to ensure the opportunity for others to reply openly and in a timely fashion to such claims.) At the same time as defending Steele's right to dissent, it is possible to observe that his approach often backfired, especially when he was perceived as being abusive, making claims without solid foundation, or refusing to accept correction.

5.9. There are a number of ways that dissidents can reduce the risk that their interventions will backfire.

1. Being polite;
2. Couching comments constructively;
3. Acknowledging inaccuracy or its possibility;
4. Joining others.

Being polite, constructive and acknowledging fallibility are quite compatible with dissent of the most radical sort. There is no guarantee that behaving this way will protect against attack, but it is certainly more likely to win allies than being abusive, negative and obstinate. Joining others provides safety in numbers, with individuals less likely to be attacked than if they are ahead of or outside the crowd. Collective action, whether or not sanctioned by a union or industrial agreement, is usually safer than individual action. But individual dissent is sometimes a felt necessity when others are afraid or unwilling to act, or when they do not have the information or resources to do so.

5.10 Steele did not consistently adopt any of these methods, so it is not surprising that his actions seriously boomeranged. After he was dismissed, he used a different method: he kept quiet. This avoided aggravating his supporters or disturbing the union's legal and negotiation strategy. Being quiet avoids boomerang effects but is hardly a general prescription for being an effective dissident.

5.11. Steele and some of his supporters put great store in a statutory declaration by Bob Blanden of the Australian National University. Blanden, a senior immunologist and collaborator with Steele, was the external examiner for both the students whose marks Steele claimed were upgraded. On 17 May 2002, Steele widely circulated Blanden's declaration. There are obvious gulfs between the perspective of Blanden and Steele and that of the Department of Biological Sciences. For example, Blanden said that he awarded a grade of Third Class Honors to the student in 2000 but did not assign a mark; Steele saw this as proof that procedures had been violated. According to the Department, a mark in the Third Class Honors range was selected in the knowledge that the final grade (Second Class Honors, Division One) would have been the same whichever mark in the range was used. Blanden said that the 1997 student "should never have been admitted to a Tertiary Course." Obviously the student was admitted, and indeed graduated. Blanden's claim raises the question of why Steele agreed to supervise such a student. Blanden said that it was inappropriate "that the marks of two non-immunologists should be averaged with the mark of an external expert in immunology" (himself). Rob Whelan, head of the Department of Biological Sciences, said that the internal examiners were experienced researchers in an appropriate field and, implicitly referring to Blanden, that "External examiners (especially those in very narrow research fields in research only institutions) sometimes misjudge the level at which an Honours student is learning."

5.12. Adjudication of these and other points of dispute is not essential to examining the boomerang effect. I have outlined some points raised in Blanden's declaration in order to suggest the sort of procedural detail that can loom large to participants in disputes. Concentrating on procedural detail, though, is a sure way to discourage outside interest in an issue and to dampen any boomerang effect.

### **Biological Sciences and Boomerang**

6.1. Members of the Department of Biological Sciences for the most part supported or tolerated Steele for years. Some of them had personal confrontations with Steele on occasion, but no formal complaints were pursued by university officials to the level of a formal inquiry, which, given Steele's willingness to go to the media, would have brought much negative publicity to the university.

6.2. In 2001, Steele's claims about upgrading were a direct attack on the department. Initially, these boomeranged against Steele to some extent, though the department's reputation remained damaged, especially among those who lacked awareness of rebuttals to Steele's claims. Then came the dismissal, which backfired against the university generally and, in the eyes of many, made Steele into a martyr. The department, which was not consulted about the dismissal, could do little to resuscitate its reputation. Though Steele's attacks had united department members in opposition, they lacked the skills and confidence to mount a media campaign. But even if they had been prepared to go to the media, they had little leverage. The line that "assessment procedures were properly followed" is not a great story angle compared to "procedures were violated" or "dissident is dismissed." In short, there were few resources by which the department could use a boomerang effect to its own advantage.

6.3. The lesson here is that boomerangs are contingencies that cannot be created at will. A lot of groundwork is required, the conditions have to be right, and the opportunity has to be present. Steele's dismissal boomeranged against the administration because a commitment to free speech had been nurtured by the visible and invisible efforts of untold thousands over the years. Furthermore, the NTEU felt obliged to defend the enterprise agreement at the University of Wollongong because otherwise enterprise

agreements across the country—in particular their procedures against arbitrary dismissal—would have been undermined. But no boomerang worked to the advantage of Biological Sciences.

### Using Boomerangs

7.1. People often assume that, in a conflict, the side that exercises superior force is bound to be the victor. Yet there are many cases, such as the Sharpeville massacre, in which the exercise of overwhelming force actually weakens the attacker and increases support for the opponent. In academia, administrations have much greater formal power than any faculty member, yet for the administration to openly exercise the power of dismissal is to risk triggering a large hostile reaction. Hence it is not surprising that various techniques can be and are used to mitigate the response to dismissals. The Steele dismissal clearly reveals this dynamic.

7.2. This suggests that it can be worthwhile looking at other academic freedom cases in the light of the boomerang effect. Like most organizational struggles, the Steele case is quite complex, and indeed only some of the complications have been canvassed here. Nonetheless, it is possible to generalize from the Steele case. Here is a tentative outline of points to look for.

- An action or statement can boomerang when it seems grossly unfair, seems to violate a widely accepted boundary or appears to be disproportionate compared to actions or statements by others, and when information about this is communicated to significant audiences.
- Academic administrators are often aware, consciously or intuitively, of the potential for boomerang. They can inhibit the effect in various ways, including by hiding actions, disguising actions, stonewalling or following procedures.
- To activate or magnify a boomerang effect, academics need to counter these administration tactics. Possibilities include exposing hidden or disguised actions by documentation and mobilization of support, creating opportunities to expose actions, and avoiding procedures or using them to mobilize support.

Documentation is the foundation of any such effort. "Mobilization of support" means getting support from people, including through conversations, meetings, leaflets, e-mails, media coverage, and many other channels.

7.3. It should be remembered that the boomerang effect is not an end in itself, nor is it the only way to defend academic freedom. The point here is that it can provide a powerful dynamic that can be utilized in defense of dissident academics. The better prepared academics are to counter administration tactics, the less likely administrations are to attack academic freedom in the first place.

7.4. Boomerangs are not just a risk for administrations. Dissidents can generate boomerangs against themselves by seeming to go beyond norms of accuracy and decency.

7.5. Boomerang effects are largely about perception. The better the documentation and the greater a community's commitment to scholarly norms, the greater the chance that participants will share perceptions. But even in the soberest of organizations, there are considerable levels of deception, as the literature on lying attests (Barnes, 1994; Robinson, 1996). It is well known that organizational elites use public relations, spin-doctoring, and cover-ups as a matter of course, with "truth" regularly subordinated to organizational imperatives. A totally honest organization would never hide or disguise actions or stonewall, but these are standard practices in numerous dismissals. To the extent that careerism, commercialism, and managerialism infect higher education, pressures exist to misrepresent what is really going on. This is not likely to change soon.

## Postscript

8.1. In early 2002, while the Steele case was still before the court, I wrote an article analyzing strategies of the administration, Steele, the union, and the Department of Biological Sciences. On 27 January 2002 I sent a draft of this article to all the key players, indicating that I would be submitting the revised version to *Australian Universities' Review* and inviting comment. This led to diverse responses. The Vice-Chancellor replied saying he declined to comment because the matter was the subject of legal proceedings. Members of Biological Sciences were more forthcoming. Six of them responded, ranging from those who saw my treatment as reasonably balanced to one who saw it as grossly biased in favor of Steele. Their comments on specific points led me to make various minor changes.

8.2. I opened the article by comparing Steele's dismissal to the dismissal of Professor Sydney Orr from the University of Tasmania in 1956 (Eddy, 1961; Polya and Solomon, 1996; Pybus, 1993). Ted Steele responded by e-mail in a preliminary fashion saying that "I don't believe my case has any resemblance whatsoever to the Sydney Sparkes Orr case in Tasmania 50 years ago. Indeed what has happened to me, and the damage it has caused me personally and professionally, has no precedent as far as I can see in any advanced western democracy." Although, contrary to Steele's claim, there are many cases where the damage to challengers has been far more serious, including physical assault—a shot fired into Orr's house narrowly missed killing him—his response nonetheless reflected the extremely damaging effect the dismissal had on him.

8.3. After this initial response, I received no further personal communication from Steele. I did obtain, though, an e-mail he sent a few days later addressed to the editors of *Australian Universities' Review*. In it, he claimed that "there is much misrepresentation in the article and facts that are incorrect" but did not specify any of the alleged misrepresentations or inaccuracies. He then said "In normal circumstances I would vigorously rebut or correct in public much of what Martin intends to publish—as I am a great believer in free speech and academic freedom. At present these freedoms do not exist in Australia and Martin's article damages me at a time when I cannot defend myself. In these circumstances I would appreciate that the NTEU does not publish the article."

8.4. This attempt at blocking publication has characteristic features of suppression of dissent (Martin et al., 1986), notably that Steele neither provided evidence nor contacted the author (me) but instead intervened at a higher level (the editors). In exerting pressure to thwart criticism, Steele's attempt to block publication was reminiscent of his threats against colleagues in Biological Sciences. Steele's intervention can be taken as an example of the wider phenomenon that dissidents are not necessarily tolerant of others, including other dissidents. Nevertheless, I believe it is still vital to defend dissent, even of intolerant dissidents.

8.5. I also sent the draft to both University of Wollongong elected NTEU branch officers and to paid officers in the state and national offices of the union. Less than two weeks later I submitted a revised version to *Australian Universities' Review* which, it is important to note, is published by the union at a national level. *Australian Universities' Review* thus could be said to be a union journal, though it has an independent editorial board. I chose this journal because of its circulation to union members nationally.

8.6. I received no response from any union officers. I did hear from the chair of the editorial board, David Burchell, who told me that most members of the board were keen to publish the article. However, there were two obstacles to publishing the article, both raised by senior officers within the union. The first obstacle was a concern about defamation. Defamation law in Australia is harsh (Pullan, 1994) and leads to both censorship and self-censorship. Union figures were worried about Steele suing the union over my article.

8.7. (When my article was eventually published—Martin (2002)—the following sentences were omitted on the insistence of NTEU's legal advisers: "Indeed, because Steele so often made allegations without first checking the facts, and because of his inflammatory style, he had lost credibility in the eyes of many on campus. Within Biological Sciences, some colleagues were outraged by his behaviour on a number of issues, not all of which were known more widely.")

8.8. The second obstacle to publishing my article was that certain senior officers (outside Wollongong) thought it might be prejudicial to the union's court case involving Steele, for example by some of my comments about Steele being used against the union in the case. My view, naturally enough, was different. I thought that publicity would be advantageous to the union's position. I also thought it would be better to present Steele warts and all and then to defend his academic freedom. The worry about material in my article being used in the court case seemed artificial, since I had covered the same basic points in a newspaper article much earlier (Martin, 2001). Finally, concerning the worry about my analysis being in a union journal, it would be a simple matter to include a disclaimer that I was not speaking on behalf of the union. (The published article included such a disclaimer.)

8.9. The response by certain senior union officers to my article has characteristic features of suppression of dissent, notably that those objecting did not contact me but instead intervened at a higher level, namely by putting pressure on the editorial board. This response is compatible with a generalization that academic unions and staff associations are uncertain allies of free speech (Martin et al., 1986, pp. 246-247). Union officers were putting in enormous efforts to defend the enterprise agreement and, by extension, academic freedom across the country, but at the same time attempting to block my article. This can be explained by the priority they placed on the procedural route, namely defending the enterprise agreement through the courts and negotiations, rather than the mobilization route, namely building greater support through participation and publicity. Taking the procedural route implies that anything that might potentially disturb the union's legal and negotiation strategy was to be brushed aside, and that included my article. The irony is that my article highlighted the rhetorical role of academic freedom. In seeking to block my article, these particular union officers were in effect disagreeing with my analysis, instead asserting the primacy of using formal channels. Using formal channels gives those with power and position more control over the course of events but does little to empower the rank and file.

8.10. I am a long-time member and supporter of the union, but that does not mean I have to keep quiet about what I see as inappropriate action. There are many dilemmas of defending dissent, not the least of which is knowing what to do when erstwhile defenders of dissent—union officers in this case—attempt to suppress comment. Due to the settlement of the case, it was possible for my article to be published (Martin, 2002). But if the case were not yet resolved, I like to imagine that the editorial board would have successfully stood up to censorship pressure from within the union.

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### **Key events in the Steele case**

- 1985, Steele appointed to University of Wollongong.
- January 2001, Steele makes claims to media about students having their marks "upgraded."
- January 2001, The Vice-Chancellor and members of Biological Sciences deny Steele's claims.
- 1 February 2001, State Ombudsman declines to investigate Steele's allegations on the basis that there is no evidence of upgrading.
- 26 February 2001, Steele dismissed.
- After 26 February 2001, Massive backlash against the university administration; publicity and lobbying campaign by NTEU (national academics' union).
- May 2001, NTEU launches a case in the Federal Court that the university administration violated the enterprise agreement.
- August 2001, Federal Court judge rules in favor of the NTEU (NTEIU, 2001).
- September 2001, University administration appeals.
- March 2002, Full bench of Federal Court rules in favor of NTEU (University of Wollongong, 2002).
- April-July 2002, Negotiations between NTEU and university administration.
- 22 April 2002, Steele reinstated but remains off campus on study leave.
- 5 July 2002, Settlement announced; details are confidential but Steele does not return to his post.

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