

SCHOLARS DEBATE CLAIM BY POPKIN

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Harvard Colleagues Voice
Doubt on Privilege Issue

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—While nearly all of his colleagues at Harvard support the decision of Prof. Samuel L. Popkin to go to jail rather than disclose his sources, there is considerable disagreement in the academic community over his contention that scholars are entitled to special constitutional protections in their work.

"It raises all sorts of extremely difficult questions," remarked Arthur Maass, a political scientist at Harvard, who expressed misgivings about giving scholars privileges not available to other citizens.

Such is the uncertainty that when Derek C. Bok, the president of Harvard and former dean of its law school, made a special plea for Mr. Popkin in Federal Court yesterday he carefully avoided the constitutional issue. Mr. Bok argued for the release of the scholar on the narrow procedural ground that the Government did not intend to recall the grand jury whose questions he refused to answer.

Balks at 3 Questions

After more than a year of legal skirmishing, Mr. Popkin, a 30-year-old expert on Vietnam, was jailed yesterday for refusing to respond to three questions about how he knew who had helped prepare the Pentagon papers before their general release last year. He contended that to answer would compel him to violate the confidence of sensitive sources on whom he depends for his scholarly research. The papers were a secret Government study on the origins of the Vietnam war.

Mr. Popkin, in making his contention, ventured onto uncharted legal seas. Clergymen and lawyers generally enjoy the right of privileged communication in their work. Journalists in many states are protected by statute from being forced to divulge the names of sources, although the Supreme Court has rejected the notion that this is a basic constitutional right of a free press.

But such protection has never been extended to scholars; indeed the question has seldom arisen before. Legal experts agreed today that Mr. Popkin was probably the first scholar ever jailed for protecting confidential sources.

Scholars today probe into many sensitive areas of life. Some have argued that they would be hampered in their research on such topics as the drug culture, police corruption, prostitution and foreign policy without being able to assure anonymity to their sources and subjects.

Scholars' 'Responsibility'

"It's not an absolute right, but scholars and journalists have a responsibility to keep the flow of information moving," MR. Popkin said in a recent interview. "I am not arguing that I would take the First Amendment on the theft of a nuclear weapon or international espionage."

But it is this very problem of drawing the line and of determining who is a scholar and who is not that has others worried.

"I am very loathe to see a special class of citizens carved out, particularly when I can't see any neat boundaries," said Prof. Martin M. Shapiro, an expert on constitutional law at Harvard. "Who is a scholar? Once you establish this rule, then nearly everybody can claim it."

"I have no sympathy for the proceedings against Popkin," Mr. Maas said. "But if professors continue to claim they are not subject to the normal obligations of citizens, they are going to do more harm to the scholarly enterprise than good."

Prof. James Q. Wilson, chairman of the Harvard government department, has done extensive research on police corruption. He does not contend that he should have an absolute privilege, but agrees it would be extremely difficult for him to interview policemen if forced to testify about his conversations.

He said he would feel obliged to testify if he personally witnessed a bribe, but would object to being asked to disclose the contents of conversations with policemen concerning the extent of corruption in their department. "It's a gray area," he said, adding that it called for a "balancing act" between society's needs and those of scholarship.

Professor Shapiro said he was personally opposed to the use of grand juries to ask the kinds of questions posed to Mr. Popkin. "But there is a difference between good government policy and constitutional rights" he said. "Popkin is not being treated unconstitutionally, but badly."