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CAMPUS FREEDOM AND ORDER

By LOGAN WILSON*

ALTHOUGH the groves of académie have never been as quiet in fact as in fancy, prior to 1964 it is doubtful that anybody would have given a second thought to the prospect of "Legal Aspects of Student-Institutional Relationships" as a topic for a national conference. In mid-1968, just four years later, we find ourselves confronting it as a lively educational concern.

For our opening session, I was first asked to give an overview on "The Nature of Law and Its Involvement in the Educational Process." Not being a jurist, I decided that a more meaningful exercise would be to discuss campus problems of freedom and order. I have lost credibility in some circles, of course, by being too long past 30, but there may be an antiquarian interest in hearing from one whose campus experience includes more than a dozen different colleges and universities, from Austin to Boston, and whose academic career span equals that of about ten successive generations of undergraduates. That experience includes, incidentally, being relieved in person as a student editor during my early years, and being hanged in effigy as a university president during my later years toward the end of a football season when the home team chalked up eight losses and one win!

From my present perspective in the nation's capital I still regard many of our campuses as the choicest of all possible places to be, but I am deeply troubled by what is happening on and to some of them. For this reason, I have chosen to discuss campus freedom and order.

Let me begin with the year 1964. Well do I remember the Council's annual meeting that October in San Francisco. Clark Kerr was to address us on the question, "Toward a Nationwide System of Higher Education?" This he did, but events at Berkeley were so much on his own mind and everybody else's that he gave two talks instead of one, and his impromptu comments received rapt attention. None of us realized at the time, of course, that Kerr's performance was merely one of the first instances of deflected attention from the main business of higher education to a spreading institutional concern with problems of law and order.

Since 1965, dozens of American campuses have been torn by student disquiet, dissension, protest, and even violence. While actual occurrences have often been distorted in television and press report-

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ing, there is no gainsaying a widespread mood of rebelliousness. The National Student Association reports that last year, in a two month period alone, 477 students were arrested and 1,728 faced disciplinary action as a result of demonstrations.¹ Even though less than one percent of the millions of college and university students and only a small fraction of our campuses have displayed extreme conflict, the general situation is serious enough to warrant our careful attention.

In my judgment, some of our difficulties stem from mistaken notions about what a college or university is supposed to be and do. I recently gave an address at Michigan State University entitled, "The Abuses of the University,"² in which I tried to describe and assess four common misconceptions.

The first of these is the erroneous idea that a university is intended to be a microcosm. The notion that the campus should replicate in miniature the larger community ignores the fact that a college or university is a special, rather than a general-purpose, community. Its focus is on gaining, sharing, and using knowledge. To be sure, it cannot be *isolated* from the world around it, but to function properly it must be *insulated*. Members of the academic community are not chosen at random, and the involvements of students, teachers, administrators, trustees, and others must necessarily be complementary — "unequal" if you will — for the advancement of higher learning to be accomplished.

Putting aside rhetoric about academic freedom and institutional autonomy, I expressed the view at an Illinois conference last fall that, to remain viable, an institution of higher learning needs to keep the following checkpoints constantly in view.³

(1) Every academic community must be able to exercise the functionally necessary controls of its membership of faculty, staff, and students. Although public policy may legitimately influence these controls, outside agencies should not be permitted to dictate the entry, retention, or exit of particular individuals.

(2) Consistent with the requirements of accrediting associations and recognized professional groups, each institution should be responsible for maintaining its own academic standards. With regard to other internal standards, to quote a de-

¹ 17 AMERICAN COUNCIL ON EDUCATION, HIGHER EDUCATION AND NATIONAL AFFAIRS pt. 3, at 4 (Jan. 19, 1968).

² Address by Logan Wilson, *The Abuses of the University*, Michigan State University Commencement, Mar. 10, 1968 (published by the President's Office of Michigan State University).

³ Address by Logan Wilson, *Institutional Autonomy and Heteronomy*, Illinois Conference on Higher Education, Monticello, Nov. 1967, in PROCEEDINGS OF ILLINOIS CONFERENCE ON HIGHER EDUCATION (1967).

cision from the California Court of Appeals, "[T]he University, as an academic community, can formulate its own standards, rewards and punishments to achieve its educational objectives. . . . Thus, except for the applicable constitutional limitations, the relationship between appropriate University rules and laws of the outside community is entirely coincidental."⁴

(3) Conceding the right and the power of outside agencies to grant or withhold funds, and to influence their allocation, no institution should be deprived of the kind of discretion required for their most effective internal utilization.

(4) A sufficient degree of autonomy must be maintained for the institution's trustees, administrators, faculty, and students to exercise distinctive rights and discharge shared responsibilities. Such rights and responsibilities should be respected both internally and externally.

(5) In the realm of ideas, colleges and universities must be accorded the functional freedoms necessary for intellectual enterprise.

To this list of checkpoints for the protection of institutional autonomy against outside interference with basic functions, I would add some cautions about the equal importance of safeguarding against inner onslaughts, under whatever banner. For example, mistaken egalitarian notions that would have all collegial decisions made on a one man, one vote basis would effectuate what Whitehead has called "the fallacy of misplaced concreteness."⁵ The collective enterprise of higher learning simply cannot function with students, faculty, administrators, or trustees separately determining their own roles. Even if this were possible, moreover, it is doubtful that the larger society would permit, much less support, such a uniquely privileged institution. As to open interference with the rights of other members of the same presumed partnership, the American Association of University Professors has said, "Action by individuals or groups to prevent speakers invited to the campus from speaking, to disrupt the operations of the institution in the course of demonstrations, or to obstruct and restrain other members of the academic community and campus visitors by physical force is destructive of the pursuit of learning and of a free society. All components of the academic community are under a strong obligation to protect its processes from these tactics."⁶

⁴ *Goldberg v. Regents of Univ. of Cal.*, 248 Cal. App. 2d 867, 57 Cal. Rptr. 463, 476 (1967).

⁵ A. N. WHITEHEAD, *THE AIMS OF EDUCATION* (1929).

⁶ Resolution adopted by Council Meeting of the American Association of University Professors, Oct. 29, 1967.

If college and university communities are to continue to enjoy the freedom and independence historically accorded them, then it should be obvious that their members not only must have high standards of conduct but also must live up to them. When they fail to do so, and the police and the courts are drawn upon to maintain order and settle disputes, then autonomy is already giving way to heteronomy — and the institution is indeed becoming a microcosm of the larger community.

In my Michigan address,⁷ I also dealt with mistaken conceptions of the university as a welfare agency directed primarily toward the solution of all sorts of social problems and of the university as a retreat for persons who would “enjoy life in a kind of secular sanctuary where they have many rights but few duties.” These ideas are not particularly relevant here, and hence I shall pass on to another erroneous notion that is pertinent — namely, the university as an arena.

I believe that an institution of higher education cannot survive being transmogrified into a battleground or an arena. In the past year or so, I have been alarmed to note the intimidation and violence that small minorities of extreme activists have been able to get away with on some of our campuses while the majority of the faculty and student body stood by as passive spectators, either unwilling or unable to join forces with defenders of institutional integrity, who have in some instances themselves been made the main scapegoats or victims of revolutionary endeavor.

Even where there have been no organized disruptions and obstructions, it is disturbing to note that some members of the academic community are lining up as adversaries, seeking to impose their wills on others through collective bargaining, power groupings, denigration of legitimized leadership, flouting of duly constituted authority, and other tactics hitherto alien to the collegiate environment.

Midst all this turmoil, I certainly would not advocate an uncritical defense of the status quo as a countermeasure; few if any of our colleges and universities do not stand in need of some reform. Not only in the United States but also around the world, students are voicing new needs and new demands. Neither a deaf, authoritarian ear nor a crackdown with severe rules and regulations is, in my judgment, a proper response.

I would agree with University of Wisconsin Professor of Psychiatry, Dr. S. L. Halleck, who recently said: “Students can no longer be taken for granted. It does not matter that a great majority of students remain largely content, conservative and apathetic. A determined minority of restless college students have forced us to examine

⁷ Address by Logan Wilson, *supra* note 2.

and sometimes change institutions, rules and values which were once considered inviolate."⁸

Reviewing current commentaries on student unrest, Dr. Halleck goes on to list 15 different explanations. He mentions the critical hypothesis, the permissiveness hypothesis, the responsibility hypothesis, the affluence hypothesis, and the family pathology hypothesis. The 10 others include such matters as the war in Vietnam, deterioration in the quality of life, political hopelessness, civil rights, scientism, and so on.

In view of the variety of disturbed states of mind among young persons on the campus, it is no wonder that the focal point of demonstrations shifts from one concern to another. It should not surprise us either that revolutionaries can readily agitate the discontented and resentful into using the campus as a staging area for attack against what is rather indiscriminately known as "The Establishment." Even the most benign forms of local authority may thus be identified with whatever is disliked about existing circumstances in the outside world, and all sorts of causes are seized upon as excuses to disrupt order on the campus.

While this goes on, a lot of time is wasted, as one academician has wryly noted, in "inexpensive moralizing which condemns institutional realities in the name of high principle, and results in irrelevant prescriptions to imaginary universities with real names."⁹ Even more important, however, is the fact that in an environment where law and order are displaced by anarchy, nobody's conceptions about the ends of higher education can be realized.

Confronting the realities involves taking into account the fact that many institutions today are large and heterogeneous aggregations of human beings with competing and sometimes conflicting purposes. These institutions, like the society that supports them, have moved from what Henry Maine termed *status* to *contract*, and what Ferdinand Toennies has designated as *Gemeinschaft* to *Gesellschaft*. Their size and heterogeneity, their increased outside involvements, their enhanced importance, their enmeshment in processes of rapid social change—these, and other circumstances, give new and enlarged dimensions to the problems of campus freedom and order.

The basic aim of higher education, to be sure, is not to maintain an orderly operation, but to further wisdom. Yet, for learning to advance, continuity must exist alongside change, and due regard for others' rights must counterbalance individual permissiveness in a

⁸ Address by S.L. Halleck, M.D., *Stress and Student Unrest*, 23rd National Conference on Higher Education, Session I, Mar. 4, 1968.

⁹ Statement by Martin Trow, Professor of Sociology, University of California at Berkeley.

context where all members of the academic community are presumed to share some objectives in common.

An Ivy League president noted some years ago that the fewer rules and regulations a college or university has for its students, the better. This observation may have been valid for most places then, and for some places now, but I suspect that many of our institutions must face up to the need for more formalization than they once required. This implies a codification of roles, with more specification of behavior norms, and set procedures for their enforcement. In a society where *contract* rather than *status* has come to establish many of our standards of social behavior, authority and responsibility need to be spelled out, and communication channels made explicit.

All of this is quite familiar to those who are trained in law, and I would anticipate that in the future the governance of higher education will become more legalistic than it has been in the past. Whereas most of our colleges and universities formerly used lawyers and the courts largely in their related business transactions, it looks as if they may become increasingly drawn into other areas of activity. To suggest how far things have already gone in some places, I recently heard the chancellor of a large and troubled state university remark on the possibility of starting a police training school to supply officers specifically prepared to cope with disorder on the campus.

Even though almost any scheme of order may be preferable to growing disorder that verges at times on anarchy, I must express my own preference for a minimum, rather than a maximum, use of established agencies of law to resolve intramural difficulties. I have serious questions, for example, about some of the tactics employed by the American Civil Liberties Union, not because of any opposition to their motives but because of the eroding effects such actions have on the autonomy of colleges and universities. I would agree, however, that if we cannot put our own houses in order and keep them that way, others will move in and do it for us — to the ultimate loss of freedom for students, faculty, administrators, and even trustees.

As President James A. Perkins of Cornell has put it so incisively in a paper, *The University and Due Process*:

If we are not to be legislated into total paralysis, there is nothing for it but that each of us goes to work to put the pieces of the community together again. Students and administrators will have to stop regarding each other as implacable enemies. For students this will mean a recognition that they can't have it both ways: they can't ask for full participation in a community that they are systematically proceeding to destroy. And before students leap too quickly into the arms of civil law, they should be reminded that they will have to live with all the law, not just the parts they like. In such quasi-political matters as the draft, pornography, and discrimination, stu-

dents may be subject to laws they don't like at all. He who appeals to the law for protection must be prepared to obey it.

For administrators it will mean a very hard look at all the rules and procedures by which their institutions live; quite possibly, it will also mean limbering up some very stiff attitudes about the role of students in academic affairs. And for faculty it will mean not only that they take the time to act as arbiters and to provide the balancing force, but that they reorder their work and give campus affairs a higher priority. A community of any kind is strong only to the extent that its members make the effort required to sustain and nourish it. We must all be willing to make the effort.¹⁰

In an unpublished paper,¹¹ my colleague, Otis A. Singletary, has suggested that every institution should have a formal mechanism for making and enforcing regulations concerning student conduct, for continuously examining and reviewing itself as a social system, and for making adjustments and changes in the light of experience. He mentions the strong preference of the academic community for arrangements that bring faculty, students, and administration *together*, and I certainly endorse this preference. I agree with him that, although the adversary proceedings of law courts are not appropriate for the campus setting, there ought to be guarantees of procedural fairness, more thoughtful attention to sanctions and the handling of violations, and an altogether new look at the old concepts of *in loco parentis*, due process, double jeopardy, and some others that have been much discussed of late.

Many of you are more competent than I to discuss the legal aspects of student-institutional relationships, and I await with interest your comments. What you will have to say about applicable legal doctrines, problems of the student as a private citizen and as a resident, private-public legal aspects of institutions of higher education, and other topics will be timely, I know. We should remind ourselves, however, that student-institutional relationships are by no means entirely subsumed under their legal aspects.

A number of leading institutions have already reexamined the relationship between student conduct and the proper atmosphere of a college or university. Cornell and Brown are but two examples. Two years ago an Advisory Committee on Student Conduct was named at the latter institution to look into such matters as: consideration of the present state of student conduct at Brown; examination of existing rules and codes; consideration of procedures by which rules and codes are amended and enforced; consultation with experienced individuals and groups; and to make policy recommendations.

¹⁰ J. Perkins, *The University and Due Process*, at 12, Dec. 8, 1967 (reprint of address by American Council on Education, Washington, D.C.).

¹¹ Unpublished staff paper on file at the American Council on Education, Washington, D. C.

In addition to sending a questionnaire to 4,000 students, parents, alumni, and faculty at Brown, the Committee queried deans and student government officials at 37 other institutions. With regard to the outside responses, I was interested to note that in the largest number of schools, student conduct regulations were already being handled by a joint administration-faculty-student board. Most of these institutions also involve students in decisionmaking and have procedural safeguards and appeals procedures. After 27 formal meetings, the Brown Committee made its report.¹²

The report concluded that the University's common interest can best be identified and pursued through a partnership process, with students participating in a social system which they help to create and enforce. As students mature, negative conduct rules should be diminished, with as much emphasis as possible on counselling and education. The report further affirms, however, that a university community cannot function without at least minimal rules intended to maintain order, and cannot survive without preserving satisfactory relations with the larger community of which it is a part. Minimum rules and regulations should be explicit rather than vague, but they should not be overelaborated or addressed to every conceivable situational nuance. Procedural safeguards are held to be particularly important in the matter of student suspensions and dismissals.

Any institution, the report asserts, must have due regard for the welfare of its students, the prevailing customs of the college or university community consistent with the ordinances and laws of the city, state, and nation, and a commonsense, but not slavish, concern for the institution's outside reputation. The mark of an intelligent institution, as set forth in this document, is that it preserves and renews itself by reform without inviting revolution.

Although it is virtually impossible for anybody to keep abreast of what is happening on the nation's 2,500 campuses, my guess is that appreciable numbers of colleges and universities have gone through processes similar to those at Brown and Cornell, and that others are now engaged in studies. My recommendation would be that student-institutional relationships be kept under continuous study and review everywhere.

Fortunately for their autonomy, most colleges and universities have considerable latitude in promulgating their internal rules and regulations, but they and all their members must also live under the laws of the society that surrounds and supports them. Membership in the academic community carries its special rights and obligations,

¹² Report of the Advisory Committee on Student Conduct, Community and Partnership: Student Conduct at Brown University, May 1967 (mimeographed paper on file at Brown University).

to be sure, but these do not exempt individuals from observance of the legal and moral standards prevailing in the larger community. Our conference will concern itself with the nexus between law and student-institutional relationships, and I am confident that it will be an important step toward eliminating some of the uncertainties and resolving some of the difficulties now troubling American higher education. Members of the legal profession and of the academic profession — not to mention students — should all benefit from what I believe is bound to be a very significant symposium. I merely hope that my remarks here have helped set the stage for the important substantive contributions yet to come.