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Universities and the Police: Force and Freedom on the Campus

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Universities and the Police

In the beginning the student attacks the university. In the end he demands amnesty. He does so because his target, the bureaucratic multiversity, remains underneath it all alma mater—protector as well as enemy; source of rights, privileges and immunities as well as oppressor.

Traditionally, in America, the relation of the university to its students has been in loco parentis. Has its heritage transformed the university into a sanctuary that confers immunities and exemptions, or at least protection from sanctions upon the academic community? Are the students wrong in expecting freedom from police interference? When the police penetrate the campus, are they comparable to an invading army?

A limited right of sanctuary emerged in the medieval universities of Bologna, Paris, and Oxford as a concession wrested from the civil authorities by militant contingents of scholars from many lands, various classes, and divergent cultures. In Bologna, lacking civil rights and consigned to second-class status, they banded together for protection in guilds and “nations.” At last, victors in armed clashes with the townspeople, swift to resort to the threat of a strike or an economic boycott, they acquired substantial power within the university and over the city as well.

With the growth of “student power” came a recognition of student prerogatives. The Privilege of Frederick I in 1158 clearly granted sanctuary status upon the studium at Bologna; it placed them “under the special protection of the Emperor and provided that in any legal proceedings against a scholar, the defendant is to have the option of being cited before his own master or before the bishop.”

In France, the Church granted its primary charter to the University of Paris and accorded clerical status to all the students and masters, who thus obtained the right to be tried in the ecclesiastical courts rather than in courts of civil jurisdiction.

After a series of bloody battles against the police and the citizens, the University of Paris obtained its form of sanctuary status in 1200, the year chosen by the University as the date of its founding. “In that year, after certain students had been killed in a town and gown altercation, King Philip Augustus issued a formal privilege which punished his prévôt and recognized the exemption of the students and their servants from lay jurisdiction . . . .”

In England, the Universities of Oxford and Cambridge enjoyed special privileges almost from the time of their formation. Under a series of royal charters confirmed by the Act of 13 Elizabeth, c. 29 (1571), Oxford was granted “a large measure of exclusive jurisdiction now or formerly expressed in matters (1) ecclesiastical, (2) criminal, (3) civil, when a member of the University is concerned.”

The University had jurisdiction over its students and tried them in its own courts. The apparent amity and respect in the relations between town and gown, however, barely cloaked a seething anger, and violence and rebellion constantly threatened.
Recurrent campus disorders in England ultimately led to the creation in 1825 of a university police force to patrol the cloistered precincts of Oxford and Cambridge. By comparison, it was not until 1829, after years of bitter political struggle, that Sir Robert Peel secured passage of legislation establishing the Metropolitan Police Force, commonly known as Scotland Yard.

American universities have been greatly influenced by these medieval models, but they have never enjoyed the legal protection of sanctuary status. An American college student is actually at a disadvantage: the charters of incorporation or the statutes creating academic institutions usually give control of the government of the college to the president, administration and faculty; and as long as that system of control is reasonable and appropriate the courts will not intervene to restrict it. At the same time, the State Penal Code applies with full force to the campus. The student is thus liable to double jeopardy, subject to the jurisdiction of two separate authorities.

Of course, there are limits beyond which these sanctions cannot be applied, for a student does not give up his constitutional rights upon admission to the university. For example, the First Amendment right to freedom of speech and the Fourth Amendment right to protection from unreasonable searches and seizures remain intact. And the student has a well recognized right to a form of due process of law in any quasi-criminal investigation conducted by the university (at least where the university is run by the state or has state affiliations).

By themselves, these constitutional protections stop far short of according American students the sanctuary privileges of the medieval university. Until recently, nevertheless, the academic community felt secure in the knowledge that the external police power normally stopped at the gates to the campus. The reasons for this pattern of benign neglect are to be found in the ingrained reluctance of the chief instruments of law enforcement—the police—to encroach upon the domain of the university; and in the historical role that the university has forged for itself, a role requiring that its students be given certain prerogatives.

Police avoidance of the campus has a long tradition. A de facto treaty of non-aggression between police and the university is passed on by the older members of the force to the new generation of rookies as part of the conventional wisdom of the job. The normal scope of police jurisdiction is on the public streets from building line to building line. That is where the police officer operates with the most freedom, both personal and legal, and that is where his superior expects him to be. The campus seems a foreign territory, in fact, a forbidden land, to a sergeant supervising a patrolman assigned to the street surrounding the campus. The patrolman, knowing this, feels uncomfortable in proportion as he moves onto the campus and away from the street. (Of course, this does not apply to recent events where policemen are specifically assigned to locations on the campus to keep the peace.)

Further, the police crime prevention effort is directed toward major crimes such as robbery, burglary and assault. In the world of police administration this is called "selective enforcement." Criminality on the campus, however, usually takes another direction; it is more likely to be victimless crime, in which there is no complainant, no obvious injury, and a smaller chance of obtaining a conviction. Therefore, as long as the police see crime prevention as their major function, the university is a dead end. An ambitious patrolman or detective needs a "good pinch" for his promotion. He is smart enough not to waste time looking for it on a college campus.

Neither do the more powerful members of the police bureaucracy relish confrontation with the university. One guiding principle of bureaucracies is that work is accomplished more efficiently when conflict with powerful enemies is avoided. The police certainly do not want to become involved in fierce, long drawn-out battles against the universities. In too many cases, police action on the campus leads to political repercussions and angry debate over jurisdiction, constitutional rights and liberties, and accusations of police brutality. The police are well aware that the First Amendment applies with extraordinary force in the college community, and that its shadow will becloud any dispute over police performance.

In their role as citizens, too, the police are likely to view the campus as a terra incognita. It is wrong to assume that policemen are a strange, alien breed unlike the community from which they come and which they serve. They are the most typical Americans in America, and they share the average citizen's respect, even awe, for the college—that realm of ideas, scholarship and mysterious research. In their eyes there is a touch of the sacred in the groves of academe that ought not to be profaned.

In addition, many policemen have sons and daughters attending college, and there is some reluctance to enter a situation where, behind the facade of a tough cop, an anxious father is thinking, "There but for the grace of God goes . . ."

Finally, most colleges maintain their own private campus police forces to avoid calling on the city police. The supervisors of these agencies are typically former law enforcement officers who have resigned or retired. They sustain close and friendly relations with the municipal police. The relation is one of comity: the city police hesitate to interfere; the campus police discourage such interference because it seems a reflection on their own ability to handle the cases that arise. In fact, the campus police tend to "cool it" and to downgrade the seriousness of a case in order that the city police will not feel compelled to intervene. This, then, is another subtle pressure keeping the police away from the campus.

The other reason for the relative freedom allowed university students in this country is the role which the university has come to play in American society. The university in recent years has been the major, and almost the only, institution which can successfully conduct young people through the ritual passage from adolescence to respected adult status.
"College is an initiation rite . . . for changing the semi-amorphous adolescent into a semi-identified adult."

Given the technological complexity of our society, every young person who hopes to achieve high status must submit to that long period of preparation which can only be completed at the university. Further, our society has a major interest in damming up the explosive force of ever-increasing numbers of young people behind college walls, in the hope that some will develop skills essential to the smooth functioning of the system, and that potential dissidents will be rendered docile or even transformed into supporters of the system. In any case, for the time that they are in college, the students’ threat to the status quo can be diverted, postponed or blunted a little. The result has been an extension of adolescence at the upper as well as the lower age limits.

The university, then, has been the rite de passage for those who attend it. It has been the test, the ordeal, the initiation that “made a man of the student.”

On the one hand, the university is condemned as elitist because it excludes the lower classes and minority groups; on the other hand, open enrollment that would correct this alleged discrimination is to a large segment of the community the swan song of the traditional university. At the same time, the initiates are beginning to take seriously the myths invented by society to justify this period of exclusion from the “real world.” They have been conditioned to believe that college will make them mature, guide them along the path to virtue, prepare them to step into positions of power, and demonstrate to them how to make the world a better place. The students demand that these promises be kept, and they demand control over their destiny. It does not matter what outrage, what ideology, what spirit motivates them. They are tired of waiting. They are on the march. Inevitably, this leads to confrontation with the university, and then the establishment.

This change in the students’ concerns destroys the traditional rationale for insulating them from the consequences of their actions. In effect, they are refusing to be indulged; their “trespasses” reflect not mere youthful exuberance but genuine social and political outrage. Even more important, the role of today’s student has caused the police to overcome their traditional reluctance to invade the campus when disorder occurs. This latter development, more than any other, signals the end of the de facto sanctuary nature of the university.

Consider the action of police in the “busts” at Columbia and Berkeley in 1968 and 1969. What can explain the magnitude of the police reaction to those disturbances?

One theory often set forth is the conflict of generations. While this may apply to the confrontation between students and the administration, it does not convey a true picture of relations between students and the police. If 30 is the cutoff age separating young from old, then thousands of policemen are below that age and belong to the younger generation. In fact, many policemen are younger than the graduate students. Some older police officers may feel bitter toward college students with draft deferments because their own sons were taken by the armed forces for service in Vietnam, but this is hardly a case that fits the conflict of generations theory.

A more compelling explanation attributes police hostility toward students to class conflict. In this view, the police are identified as working-class or at best lower-middle-class people who envy and resent the upper-middle-class college students.

Upon closer examination, however, this theory proves untenable. The latent function of the police is the protection of the upper-middle-class world. On the psychological level, police internalize many of the upper-middle-class values, and on the behavioral level, they are subservient to those whose interests they protect. Furthermore, class divisions have existed for a long time. Why should they suddenly take effect now but not in the past? Far from being antagonistic to college students, the police before the time of the Berkeley uprising were most considerate of them. During the “panty raid” fad several years ago, hundreds of male students invaded the sacred territory of the girls’ dormitories, swarmed up fire escapes, broke down doors, tore open drawers, stole panties and bras, and committed other less figurative crimes as well. These activities could hardly be labeled “good clean fun.” Clearly the crimes of burglary, larceny, malicious mischief, and assault would have to have been spelled out if the police wanted to make arrests. What was the police response to the invasion and occupation of these college buildings? Almost joining in the spirit of revelry, the police usually took just enough action to cool the situation by turning hoses on the “boys” to dampen their enthusiasm. Rarely did the thought of arrest cross the minds of either the police or the demonstrators.

The annual rites of spring vacation provide another opportunity to test the power of the class conflict theory. Thousands of collegians mass at a relatively few popular beaches. There is drinking, dancing, sex, and probably drugs. Certainly this situation should
arouse the latent resentment of the police if class or generational conflict is the key. Generally, however, the police, in spite of their supposedly rigid lower-class ethic, enter good-humoredly into the carnival spirit. Considering the many offenses, there are surprisingly few arrests made.

One other variation on the theme of celebration also seems to nullify the class conflict theory. In the fall of 1968, after Ohio State defeated Michigan for the Big Ten football championship, 6000 celebrants took to the streets, smashed windows, knocked over telephone booths, and, according to reports, were "joyfully escorted" along their way by the police.15

In addition, class divisions that may have existed between police and students are breaking down. With open enrollment spreading, colleges are becoming conglomerate mixtures of all classes.16 Among the police, class mobility is rapidly increasing; a revolution has taken place, and its spirit is professionalization. Suddenly the police are inundating the colleges, not as policemen but as dedicated students working for their degrees. Inevitably, the values of the academic world are narrowing the differences between the perspectives of students and police. This is especially true of the higher ranks in large urban departments, and since they wield the power, they will act as a brake upon the possibility of a mass ideological attack upon the campus.

It is true that the influence of class has indirectly encouraged the police to assume a greater role on the campus. Powerful middle-class pressure groups who once threw their weight behind the sanctuary concept because they did not want their children arrested for youthful peccadillos have changed their views as colleges have gained the reputation of being centers for drug parties and sexual promiscuity. Frightened by this alien life of drugs, hippies, and sexual freedom, parents have come to as an antidote to the apparent permissiveness and lack of supervision.

Retaliation to personal insults is also, obviously, a powerful motivator of action. When a policeman is called a "pig," a "Nazi," a "motherfucker," or other choice epithets, or is physically attacked, he responds viscerally in spite of his training. And often, unfortunately, he may exact a heavy retribution for such abuse.

Whatever the significance of class, generational, or personal conflicts, however, the major explanation for police reaction to student disorders is directly related to the shift in student concerns from traditional forms of collegiate self-expression to political confrontation. Like the new breed of students, the new breed of policemen have themselves developed a political ideology. Over the past decade, police have conquered their sense of isolation and provincialism. Instead of walking his lonely post, the modern policeman takes his position in special squads carefully trained to deal with meetings, sit-ins, and protests in favor of civil rights, against the war in Vietnam, for desegregation, against the schools and the universities. Constantly in the spotlight of the mass media, police have begun to realize their importance and power. Working shoulder to shoulder with masses of other policemen to control political demonstrations, they have become politicized themselves, and have become aware of their common interests across the nation. Such solidarity has convinced them that now, more than ever before, the police are that last thin blue line preventing chaos in America.

For men who believe this deeply, it is only a small step to conceiving of themselves as a domestic army. Their answer to the accusation that they are an army of occupation in the ghetto, or an invading army on the campus, is that they are an army in a war against crime. To the charge that they are prejudiced against minority groups or college students, the police counter, "We are against criminals. They are the enemy." "[The police] speak of the criminal sometimes as an animal, sometimes simply as "the enemy." He is seen as a "rat" or a "vermin"—whatever his position in the animal kingdom, he is something to be exterminated. As an enemy he becomes the target in the "war on crime," and the public pronouncements of law enforcement officials leave no doubt that it is a Holy War.17

Buttressed by the image of themselves as an internal army, police particularly resent college students who protest the draft and the war itself, and are even more virulent toward students who align with black power leaders, who are already viewed as "the enemy." Since the college students are America's future leaders, they are the direct beneficiaries of the police effort to maintain society in its present form. For them to turn against the police who serve them is, according to police logic, a shocking betrayal. When student activities were merely boisterous, police tolerated them with equanimity. But now that the students are making common cause with groups that the police hold in contempt, the university's privileged status has been undermined, and police are prepared to keep the college under strict surveillance if necessary.18

The ambivalence of the police toward the campus amounts to an institutionalized approach-avoidance conflict, magnified by the mixed reception accorded them by the college administration, the faculty, and the student body. In the past, members of the academic community have been adamant in their attitude that policemen, as policemen, are unwelcome intruders, and have been successful in imposing that view of the situation upon the police themselves. Archibald Cox, chairman of the commission that investigated the Columbia University disturbances of 1968, expressed this position very clearly:

There is a strong tradition, not only at Columbia, but in most American universities, that Municipal or State police do not belong on the academic campus. The tradition is recognized by the New York Police Department whose top officials advised us that they would not send policemen onto the campus except at the request of the highest University officials.19
There are signs, however, that this firm line of resistance is giving way. Unable to devise effective strategies for dealing with campus disorders, university administrators have been unwilling to dismiss the option of calling in the police. As Theodore Hesburgh, president of Notre Dame University, expressed it:  

"No one wants the forces of law on this or any other campus, but if some necessitate it, as a last and dismal alternative to anarchy and mob violence tyranny, let them shoulder the blame ...."  

Other authorities have been willing to discard totally the notion that the university should offer special protection for its students. Morris B. Abram, former president of Brandeis University, who successfully faced and conquered student protest, has asserted that, "Educators [have] had a distorted notion that the university is a sanctuary. The university is part of society. The reluctance to use outside force to remove disrupters because they were middle-class was morally wrong and legally indefensible. The American university cannot be a democratic institution if it is to be an educational institution."  

Nor are administrators really adopting a more lenient stance when, under the guise of avoiding hard-core police action, they resort to the remedy of injunction against students. These injunctions are prepared by university legal staffs, and judges routinely sign them without notice or hearing of any kind for the defendants. Realistically, this is a more severe course of action than direct recourse to the police. It has been called a form of judicial overkill. One legal critic has stated: "Just as the use of the injunction against labor raised social problems as well as legal ones, so it does when leveled against students. Public opinion plays an important part in the outcome of student protest activities. The issuance of an injunction broadens and deepens a conflict: it brands as lawless in the public mind not merely the conduct of a few individual leaders or activists who are the nominal defendants but the entire protest movement, however justified, and no matter what its target."  

What trends will emerge from this confrontation? The clamor for law and order will increase. Acutely aware of the barometer of public opinion, the police will probably formulate a policy of more stringent prevention and control of disturbances both on and off the campus. Even more sensitive to the mood of the electorate, political leaders will promote freer use of the police to quell such disorder, and university administrators will be increasingly pressured to allow such interference. 

The ebbing of student protest can hardly be attributed to this threat of more repressive measures, but there is a definite change of direction away from the campus. Enthusiasm has been blunted and solidarity has cracked. Intercampus struggles are splitting off cults and sects from the main body of the movement. Such loss of momentum characteristically converts revolutionary energy into forms of ritualism that strikingly resemble religious rites of purification and revitalization. Thus, each new campus incident brings an automatic and predictable repetition of slogans, chants, and non-negotiable demands. Faced with increasing hostility from without, and decreasing impetus from within, student militants disenchanted by hollow victories that seem to have changed nothing, are likely to drop out of the college world. They will pursue the quest elsewhere—for catharsis of the soul in the psychedelic world of drugs or in the utopian commune; for rectification of society in the cults of violence; and for purification of the total environment in associations that are still amorphous.

This somber transformation must never obscure the need to protect and nurture the students’ right to dissent. It is the singular obligation of the university to encourage new, unorthodox, or radical ideas to the point where they can survive on their own. Unpopular causes are integral parts of this matrix. For the university and for society as a whole to flourish, the protection of diversity and dissent is mandatory, even at the price of disorder. 

Yet the traditional bases for such protection are no longer viable. The student’s new conception of himself destroys, by definition, his claim to immunity, especially as he sallies forth beyond the confines of the campus; and the attitudes of police and university administrators which made that immunity a social and psychological reality have altered drastically as they adjusted to the new developments. It is time, then, for a reappraisal of the needs, rights, and privileges of both the student and the university. Until now, the university’s role in fostering the new and radical has received only accidental protection. Such protection must now become deliberate; the university must struggle to achieve a new sanctuary status. It must also learn to regard the student movement not as an alien sport but as the culmination of a proud tradition of inquiry and dissent. And the movement itself must continue to live up to that tradition, for insofar as it fails to do so, it ceases to function as the conscience of society.
Ages were being violated. This same rule would not apply to a mere witch hunt, and there is a special interpretation of the law. For example, the Fourth Amendment prohibits unreasonable searches and seizures of personal belongings. Therefore, the police entered a student's room legally when they authorized to do so by the administration where there was reasonable cause to believe that important university regulations are obeyed, that the safety of the student body is not endangered, and that enough order is maintained so that the academic intellectual enterprise may flourish. 

7. Ibid., p. 144.
8. And later in the university's own academic courts. Ibid., pp. 290, 417.
10. As I have said, the admirable Encyclopaedia of the Laws of England 439 (1897).
12. Admittedly the peculiar nature of the college-student relation imposes a special interpretation of the law. For example, the Fourth Amendment prohibits unreasonable searches and seizures of persons, houses, papers and effects. The dormitory room is the student's house. It is also the university's responsibility to see that its regulations are obeyed, that the safety of the student body is not threatened, and that enough order is maintained so that the academic intellectual enterprise may flourish. (Goldberg v. Regents of University of California, 244 Cal. App. 2d 867, 57 Cal. Rptr. 463 (1967).) Some cases have recognized these dual claims and have decided that the police entered a student's room legally when they were authorized to do so by the administration where there was reasonable cause to believe that important university regulations were being violated. (People v. Kelly, 195 Cal. App. 2d 72 (1961).)
13. This rule would not apply to a mere witch hunt, and there is reason to believe that in the future, the courts may recognize the paramount right of the student. (People v. Overton, 51 Misc. 2d 140, 273 N.Y.S. 2d 143 (1966); Moore v. Student Affairs Comm. of Troy State Univ., 284 F. Supp. 725 (M.D. Ala. 1968).)
14. This would probably include a right of notice, a right to have counsel present, to present witnesses, to cross-examine, to have records kept, to receive a copy of the findings and to receive appellate consideration upon request. Van Antyne, op. cit., p. 538. See also Arthur H. Sherry, “Governance of the University: Rules, Rights and Responsibilities.” 54 Cal. L. Rev. (March 1966), pp. 23–39.
16. These beneficial effects had been confined primarily to members of the middle class. Children of the upper class really had no need for such assurance, although their parents were willing to allow the best schools (with the most prestige) to polish their scions in upper class manners. The lower class until recently was unable to gain admission to the universities, although exceptions were occasionally made in favor of those young people who were considered good risks to acquire the middle class "virtues." Cf. Riesman, supra, loc. cit.
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