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The Patriot Act on Campus

Defending the university post–9/11.

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8 I want to talk this evening[1] about "Defending the Idea of the University in Troubled Times." My guiding premise—in this talk and in my 14 years as provost at Columbia University—is that research universities play an essential role in the social and economic development of our country and are worth defending. They are unique and fragile institutions that are admired around the world—so much so that higher education represents one of the few sectors of the U.S. economy with a favorable balance of trade. The contributions of these universities to the welfare of the nation are understood within the academy but are poorly understood in the larger public.

Since the events of September 11, 2001, and the close-on-its-heels passage of the USA PATRIOT Act and subsequent presidential directives, I have been struck by (and dismayed at) the near-deafening silence of the expected voices of dissent on the great university campuses, and by the absence of a sustained debate over the fundamental issues and tension—the balancing act—between the needs for national security and the protection of basic, individual, constitutional liberties. In looking at the consequences of government policies toward universities since 9/11, we should not forget our own larger history and look to it for guidance. Periodically, in times of actual or perceived national crisis Americans have been asked to consider the appropriate balance between the rights of individuals and the need for national security. The Alien and Sedition Acts of 1798, President Lincoln's suspension of habeas corpus during the Civil War, the Espionage Act of 1917, the internment of Japanese-Americans after Pearl Harbor, and the Smith and McCarren Acts during the McCarthy period all stripped Americans (or some Americans) of some of their most basic civil liberties in the attempt to ensure national security. In each instance the curtailment of freedoms, which may have seemed necessary at the time, became in short order almost universally judged to have been excessive and overreaching, unnecessary if not futile, a subject of national shame and regret.

Universities themselves have certainly succumbed from time to time to these moods of the nation. During the Cold War years of the 1950s some universities dismissed faculty members for their political beliefs, for their

past political affiliations, and for "offensive" speech and publications. Even where such actions were not taken, the possibility that universities would bend to external pressures and make political beliefs a litmus test for academic employment had a chilling effect on discussion and research. Today, at the great research universities we face similar pressures to silence or influence speech by those who are offended or frightened by its content. Why are the tenured faculty at these great universities (who are protected by their tenure) not debating the wisdom of government policies that threaten the fabric of these institutions in the name of national security? Against this backdrop, and without a well-articulated defense of the idea of the research university, conservative organizations such as Campus Watch feel free to attack core values at the most renowned universities. These attacks are followed by demands from political and religious ideologues, as well as uninformed journalists and alumni, that universities fire faculty whose ideas they find repugnant, restrict access to foreign students, and limit or change research agendas.

Universities themselves bear some responsibility for the current situation. As educators we have failed to provide the public with any understanding of our full mission, particularly our research mission. In fact, the overwhelming majority of educated people, perhaps even our own graduates, could not tell us why tolerating opprobrious speech is linked to the conditions that allow us to maintain the vitality and creative energy of university communities. The prevailing views about universities have principally to do with undergraduate education, annual rankings, and intercollegiate athletics—mixed perhaps with some anecdotal knowledge about professional schools. But most Americans have very little idea about the place of research universities in improving the economic, social, political, and cultural life of the country. If these institutions are under threat, then the danger is very great, with enormous consequences for the broader society. Those of us who understand the importance of universities have a great deal of work to do.

In 1967 a group of professors from the University of Chicago wrote what came to be called the Kalven Committee Report—named for Harry Kalven, head of the committee and a distinguished professor of law at Chicago for 30 years. The committee report described the core mission of the University of Chicago and, I daresay, most great research universities, as well as the proper way for universities to address major political issues, particularly in times of great political conflict (like 1967). I would like to quote an excerpt from that brilliantly composed statement and then turn to some specific examples of what is going on at universities today:

> A university has a great and unique role to play in fostering the development of social and political values in society. . . . It is a role for the long term. The mission of the university is the discovery, improvement, and dissemination of knowledge. . . . A university faithful to its mission will provide enduring challenges to social values, policies, practices and institutions.

> By design and by effect, it is the institution which creates discontent with the existing social arrangements and proposes new ones. In brief, a good university, like Socrates, will be upsetting. . . . The neutrality of the university as an institution arises. . . . not from a lack of courage, nor out of indifference and insensitivity. It arises out of respect for free inquiry, and the obligation to cherish a diversity of viewpoints. And this neutrality as an institution has its complement in the fullest freedom for its faculty and students as individuals to participate in political action and social protest. It finds this complement, too, in the obligation of the university to provide a forum for the most searching and candid discussion of public issues.

This wonderful statement enjoins us to understand that in political matters there can be no single "university position" or voice. A university position tends to have a chilling effect on productive discourse within the community. The essence of the university is to enable debate about unconventional or unpopular views, whether they are political or challenges to received wisdom in any field. Today's opprobrious views may turn out to be tomorrow's received wisdom.

The ethos of the university can be represented, at least in part, in the application of four basic principles that are consistent with the fundamental idea contained in the Kalven Report:

1. *Universalism*: people should be rewarded on the basis of merit, not on the basis of any particular ascribed characteristic that they may have.

2. *Organized skepticism*: you should hold skeptical views towards almost anything that is proposed as fact or dogma or whatever.

3. *Disinterestedness*: individuals at universities shouldn't profit from their ideas directly.

4. *Open communication*: the results of research at universities should enter immediately into the public domain for public debate and, as it were, into the free market of ideas.

Since the Kalven Report was written universities have become truly international. We are recruiting extraordinary young students and faculty from all over the world. This global reach is a source of vitality and different perspectives for the major research universities, as it was earlier in the 20th century. American science, in the middle of the past century, was the great beneficiary of Germany's purge of "Jewish science" from their universities. An extraordinary intellectual migration was triggered by the German

abridgment of fundamental norms of free inquiry and meritocracy. American universities welcomed these extraordinary minds and they transformed many fields of inquiry after taking residence at American research universities. At Columbia today more than 30 percent of Arts and Sciences tenured faculty were born in countries other than the United States. So foreign nationals, both students and faculty, remain a critical source of talent for these universities.

American universities are global magnets for both students and faculty in part because the American research university has been preeminent among higher educational institutions in the world for the past 50 to 75 years. In a work called *The University: An Owner's Manual* (1990), Henry Rosovsky—formerly dean of Arts and Sciences at Harvard—estimated that perhaps two-thirds or more of the top 20 or 30 universities in the world were in the United States. I think that the ratio might be higher today. The vast majority of Nobel Prizes go to scientists working at American universities.

We should not forget the accomplishments of these universities. Of the 10 leading industrial sectors of the United States today, 90 percent of what they are achieving results directly from discoveries that are coming out of research universities. (A century ago, that might have been true of two of the most important sectors.) University-based scientific and engineering research has produced the discoveries that are linked directly to the major advances in health care, high technology, and rates of economic growth that we have benefited from over the past half-century. The successful social policy interventions have also grown out of social science and public health research at these universities.

If we succumb to the pressure now put upon us, I believe that the preeminence of American universities may be at risk. And the risks come from a set of policies that have been implemented by the Bush administration and the Republican-controlled Congress in the name of national security. They threaten to undermine some of the core values that universities cannot abandon without significant negative consequences.

I will draw on the Columbia experience, as I know it best, to illustrate threats in a series of dimensions to the core values of the university.

At Columbia we have had a series of incidents over the past year that resulted in alumni, journalists, and others attacking the university for standing behind its faculty and defending the value of free inquiry. One can be sure that any public statement in support of the Palestinian people by the preeminent literary critic Edward Said will illicit hundreds of e-mails, letters, and journalistic accounts that call on us to denounce Said and to either sanction or fire him.

The Said story is familiar. But now it is taking on a new importance as a

harbinger. This year Columbia was hosting a poet—an Oxford don named Tom Paulin. While he was visiting Columbia he was invited to give a lecture at Harvard about his poetry. Before he arrived, it came out that he had previously written poems and made some speeches that took a strong position against Israeli settlements in the West Bank. The revelations provoked a public outcry, in Boston and elsewhere. Harvard rescinded its invitation to Paulin (which was subsequently reinstated) and Columbia received hundreds of letters and e-mails calling for his immediate dismissal. A few trustees raised questions about the role, if any, that political positions had in the hiring process—more as an inquiry than as a request for Paulin's dismissal. In fact, the Columbia trustees have stood fast in supporting the defense of academic freedom against these external attacks. Some alumni withheld donations to the University; others threatened to do so.

In another case we were competing with the University of Chicago for a very distinguished historian of the modern Middle East, Professor Rashid Khalidi. He has taken positions on the Palestinian-Israeli conflict but has also been very active in the peace movement, for example as a representative of the Palestinians at the Oslo peace effort. Most importantly, Khalidi was enormously admired for the quality of his published work on Palestinian identity within the community of historians. But when it became known that we were recruiting Khalidi to Columbia the complaints started flowing in from people who disagreed with the content of his political views. Needless to say, we defended Khalidi and welcomed his acceptance of our offer to join the Columbia faculty.

Recently, when some documentary filmmakers offered a Palestinian film festival at Columbia, sponsored by Columbia faculty members, we received countless protests: "How can you possibly have these supporters of murderers and terrorists on the campus, representing Palestinians?" What they left out (or didn't know) was that the following month the same sponsor, the Department of Middle East Languages and Cultures, was holding an event to celebrate the retirement of an extremely distinguished Columbia historian of Jewish history.

Of course, those who protest these activities at Columbia have a right to do so, and they should be responded to in an appropriate way. But I want to emphasize that the letters, e-mails, and other communications are not simply from individuals who are spontaneously reacting to news of these events. They are coming from websites that are now supplying the text to be used in the protest messages. They are the result of organized efforts to pressure universities to take action against professors whose ideas they find repugnant.

The sources of protest are not limited to members of the public who object to the political views of professors or to activities taking place on the Columbia campus. At a recent antiwar teach-in a Columbia assistant professor of anthropology, Professor Nicholas de Genova, spoke against the U.S. war against Iraq and made a comment that was carried all over the

country. He said that he wanted to see a million Mogadishus. de Genova's remarks were immediately—*immediately*—criticized as totally inappropriate by other distinguished faculty members who took part in the teach-in. Those refutations were largely ignored in the press. If I received a thousand emails over the Palestinian film festival, I must have received five times that many this time. But this case is important, because the type of protest took on a different character than the receipt of irate e-mails from members of the public and alumni. In this case we received a letter—that is to say, Lee Bollinger, Columbia's president, received a letter—from 104 Republican members of the House of Representatives asking that Professor de Genova be fired. de Genova, the letter said, "has brought shame on the great institution that Columbia University is. As an assistant professor, de Genova has not yet earned the promise of lifetime academic employment. We hope that you will take steps immediately to ensure that he never gets it." It is deeply troubling that nearly a quarter of the members of the House of Representatives should have such a profound misunderstanding of the basic principles governing a university—in particular, the process of self-policing through application of organized skepticism that actually worked at Columbia in this case through the criticism of this speech by colleagues.

Troubles, of course, are hardly confined to Columbia. This past winter university officials at the University of California, Berkeley, refused to allow a fundraising appeal for the Emma Goldman Papers Project because the appeal quoted Goldman on the subjects of suppression of free speech and her opposition to war. The university deemed the topics "too political" as the country prepared for possible military action against Iraq. After considerable protest around the country, they rescinded that position.

People who would have us fire or censure professors because of their political opinions and remarks often fail to understand that they are the current beneficiaries of a predominant point of view. But if content and ideology become the basis for hiring and firing decisions at universities, the tables can turn quickly. The moment has rarely failed to arrive when the prosecutors become the prosecuted. People must be able to imagine that their thoughts, beliefs, and speech might make them the victims of the unbridled power of the government of a university or of a nation. And we, in defending the idea of the university, must educate the public about why we defend the faculty whose ideas offend many people.

The troubles that universities face today are not limited to free speech on campus. The Bush administration and Republicans in Congress are intensifying their scrutiny of research projects that focus on sensitive subjects. They are intruding in the long-established practice of peer review, which is used to determine the scientific merit of research proposals. For example, a recently funded NIH project on sex trafficking and the transmission of HIV (with an interest in intervention and prevention) produced an inquiry from a staff member of the House Subcommittee on Criminal Justice, Drug Policy, and Human Resources. Here is an excerpt from the inquiry to the NIH:

> The Subcommittee strongly supports President Bush's efforts and is gravely concerned about the efforts at the National Institutes of Health that contradict the President's mission and instead seek to legitimize the commercial sexual exploitation of women. . . . The behaviors being examined by the NIH are immoral and illegal, as they should be, in the United States. Knowledge of such illegal exploitation should be reported to the appropriate legal authorities for investigation and prosecution. The NIH and its collaborator on this project, are instead, providing legitimacy and financial support to the continuation of the sex trade. . . . Please provide the Subcommittee with the following information: (1) Ethical reviews, if any, that NIH conducted for the San Francisco and Miami studies. (2) The name(s) of the NIH employee(s) who approved funding for the San Francisco and Miami studies, including the names of the individuals on the panels that reviewed the studies' applications. (3) A list of all efforts, if any, by the NIH and collaborators on these studies to notify law enforcement of illegal activities being conducted that were observed or witnessed. . . . (6) A full listing (including funding amounts) of all NIH funded studies over the past decade involving commercially sexually exploited women, including prostitutes or "commercial sex workers."

What I am suggesting is that in Washington there are increasing efforts to compromise the peer-review system and to introduce ideological or political criteria into the selection process determining recipients of federally funded research—a system designed to be meritocratic and free of political influence.

The intrusion of ideology into the federal support for science can also be seen in President Bush's decision that federal funds could be used to support university-based research on human embryonic stem cells *only* for a very limited existing set of cell lines. In effect, for ideological reasons the administration put the brakes on one of the most promising lines of biomedical research. As Gerald D. Fischbach, Columbia's executive vice president for Health Sciences, wrote in a recent *Newsweek* opinion piece:

> The cost in dollars of delaying new stem-cell research is difficult to estimate. It might measure in the hundreds of billions of dollars. . . . A less obvious, but real, cost is the damage to the fabric of America's extraordinary culture of inquiry and technical development in biomedical sciences. . . . A crippled research enterprise might add an unbearable stress with long-lasting effects on the entire system. If revolutionary new therapies are delayed or outlawed, we could be set back for years, if not decades. To steer clear of controversy, some investigators will redirect their research. Others will emigrate

to countries where such research is allowed and encouraged. Some will drop out entirely.

National concerns over potential bioterrorism, as well as apprehension that the government could legislate restrictions on research publication, has led scientific societies and editorial boards of high-impact scientific journals to consider policies of self-censorship. The American Association of Microbiology recently issued a statement indicating that it may self-censor articles with possible bearing on bioterrorism—before publication and despite recommendations for publication from the peer review system.

Perhaps some form of internal policing is worth considering. There was useful discussion of the balancing of scientific publication and national security concerns at a recent meeting at the National Academies of Sciences. But few participated in this debate, the results of which could have very serious consequences for the fundamental value of open communication in science. Who should decide if scientific papers pose problems to national security if they are published? How should such extreme action be organized, and for what expected duration of time? Where should the burden of proof that publication could harm national security lie, and what forms of evidence should be required before restraints on publication are considered? I have heard almost no discussion of these issues among the faculty at Columbia.

Now let me refer to relatively new pieces of federal regulations, presidential directives, and Congressional legislation, including the USA PATRIOT Act, that allow increased surveillance of faculty and students and increased government intrusion into the substance and conduct of research at universities. First, as some of you know, provisions of the Patriot Act hold that, on account of their national origin and without any demonstration that they pose risks to national security, foreign students from about 25 nations must now be denied access to scientific research laboratories that use “select agents” (biological agents and certain toxins)—agents that might be usable for purposes of bioterrorism. The law prohibits these students from even entering these laboratories. The prohibition is based solely on national origin. National security trumps equal protection. And if a faculty member permits a prohibited student to enter a laboratory that is using select agents, that faculty member, too, is open to criminal penalties.

Second, in addition to classified research (which most research universities refuse to accept outside of affiliated laboratories), the federal government has created a new category: “sensitive but unclassified research.” There is significant concern that federally funded research so designated may be subject to government scrutiny, and that publication of research findings obtained under such contracts could be impeded or prevented. A number of research universities, including MIT, have refused to accept government contracts designated as “sensitive but unclassified.” Other universities have accepted these contracts despite the inclusion of provisions for funding-agency review of findings prior to publication. The universities are not

arguing that the government should not conduct classified research for defense purposes, but they are objecting to the creation of ambiguous categories that allows the government to implicate itself into the system of open communication of scientific results.

The Patriot Act also modifies the Family and Educational Rights Privacy Act and requires that educational institutions disclose educational records to federal law enforcement agents without notifying students that they are doing so and without the students' consent. In fact, the government—particularly Attorney General John Ashcroft and his office—has been employing what are known as "national security letters" that authorize the Attorney General or a delegate, with no judicial approval, to compel production of substantial amounts of relevant information. The government at this time refuses to give us information about how extensively these "letters" are being used on university campuses.

Under provisions of these laws the government can now investigate library records (to learn who is taking out books from various libraries) without informing individuals, as well as examine the content of e-mail records. Librarians who are required to release this information may not report on these activities to the people whose records are being identified.

The new legislation places most foreign students under a microscope when they request student visas. Continuing students in good standing at their universities are fearful of returning home for holidays and summer breaks for fear of not being permitted reentry into the United States. The Enhanced Board of Security and Visa Entry Reform Act of 2002 requires that entering students be scrutinized through a system called SEVIS, which is supposed to have been put in place several months ago and which would gather information that would enable the government to track these individuals. But this system is not fully operational and is preventing students from getting visas or delaying them to the point that they either miss their time in school or must cancel their visits. It also is limiting access to universities by scholars who are traveling to the United States to take part in university activities.

I am also hearing about intrusions on privacy, increased surveillance, and personal intimidation in the name of national security. For example, I have now received several calls from Columbia faculty members—some are American citizens of Iraqi or Middle Eastern descent—reporting visits to their homes by FBI agents who are conducting investigations. While there have been no reports that the agents have acted improperly, these faculty members express fear and apprehension—fear about their privacy, apprehension that they may be under surveillance, and concern that they may be subjected to continuing visits from the FBI.

If these new laws and regulations stand up to judicial review, university faculty and students will have lost some of the degrees of personal privacy

and intellectual liberty we now enjoy. Are we prepared to relinquish personal privacy and academic freedom to secure some vaguely articulated increase in national security? Do these new laws and regulations accomplish that? What effect will they have on the growth of knowledge and on the intellectual environment at universities? What, in fact, is the threat to national security that is posed by students and faculty at our universities? What evidence is there that select agents and toxins used in American scientific laboratories for legitimate purposes pose a real threat to national security and require that we deny students access to that research opportunity because of where they were born? Are there students with links to terrorist organizations studying at our universities? What evidence is there to support such a claim and do the probabilities of a vague potential threat warrant the types of measures being taken to limit free inquiry, open communication, and individual privacy? These are questions that must be considered by us as individuals and as members of American research universities. At the least, the academic community should not allow these measures to be put into place in silence.

The mission of a great university in our society is to create and disseminate new knowledge through research and teaching—and to lead debates that have broader implications for peoples' values, ethics, and behavior. Over decades research universities have evolved a value system to optimize their effectiveness in fulfilling their mission. Without freedom of expression, without open communication, without free inquiry, without open access to people of talent (regardless of their personal characteristics), we are doomed to accept received wisdom and current dogma. In our society the high calling of intellectuals and scholars is to challenge received wisdom, political correctness, and intellectual complacency; to be skeptical about claims of "fact" and "truth"; to question presuppositions and biases of others as well as their own. The growth of knowledge, insight, and understanding is better served through the clash of ideas than through the blind acceptance of dominant ideologies and the silencing of criticism. In fact, without free exchange, open communication, and meritocracy we cannot distinguish between truth and falsity. Those who believe they can define what speech or experiment is "good" or "evil," what speech or "fact" is "true" or "false," and what speech or experiment is causally related to specific violent acts in other parts of the world are mistaken about their own enterprise. Truth rests less in product than in process.

I believe it is time for the members of our faculties who believe in the values embedded in the research universities to engage in a debate on the wisdom of the laws that the government is enacting in the name of national security. And if they see these new constraints as deeply problematic, they should question them and try to have them changed. It is now time for members of the tenured faculty in particular to address these issues and to speak out. Silence betrays an acquiescence or indifference to the policies represented in the Patriot Act and subsequent "patriot acts." What is the protection of tenure for, if not to be used to voice one's opinions in these troubled times—to participate in the debate and in the defense of the university? <

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Notes

[1] This article is based on a talk presented as part of "The Futures of Higher Education," held at the University of Chicago's Graham School of General Studies on May 9, 2003. Bart Schultz organized the panel discussion. Geoffrey Stone, who participated in the discussion, has helped me gain an historical perspective on the balancing of individual rights and national security.

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