

Universities: Basic Interest and Legitimate Authority

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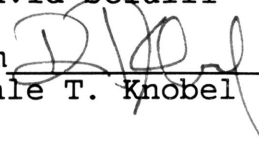
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The purpose of this paper is to explore how universities react to outside pressures that threaten their basic interests. Two issues are central to this paper. First is identifying the basic interests of universities and how they are interrelated. Second is identifying when universities' reactions to outside pressures either increase or decrease their legitimacy as institutions. Two events that brought the issue of university legitimacy to the foreground are analyzed: the McCarthy era and the student movement of the sixties.

In addition to analyzing these events, I present a framework for examining university behavior. While this framework may seem technical and in some instances too abstract to draw significant distinctions, it offers a basis for comparison beyond participants' and observers' opinions. Often those who study the two events have based their analysis on their own opinions. If an observer believes that the McCarthy investigations were evil, for instance, he or she tends to portray every action taken by investigations to comply with McCarthy committees to be illegitimate. By contrast, the framework presented here offers a more neutral way of establishing when universities legitimately exercise their authority. Using this framework, different observers should make similar conclusions regardless of their personal opinions. Indeed, by comparing how universities have reacted to these two different sets of events, I hope to demonstrate that this framework can be applied without personal bias.



## The Framework for the Analysis

The framework consists of two major parts. The first major part is the five basic interests of the university. These basic interests are what the university strives to maintain and increase. They are also what outside groups often challenge in trying to influence universities to compromise. Sometimes the basic interests are their primary target. In other cases outside groups merely threaten basic interest to influence university behavior. The other major part of the framework is identifying legitimate authority in regard to the authority of universities.

### **An Example: The University of Washington <sup>1</sup>**

In order to provide a context for understanding the concepts used in this paper, I begin with an example, namely how the University of Washington, a public institution, responded to McCarthyism. McCarthyism refers to the many public hearings and investigations, from about 1947 to 1955, which were designed to expose Communists in the United States. The movement received its name from United States Senator Joseph McCarthy, who headed the Senate Committee that initiated these investigations.

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<sup>1</sup> The information regarding how the University of Washington responded is gathered from, Robert W. Iverson, *The Communist and the Schools*, New York: Harcourt, Brace and Company, 1959 pp. 272-4; and, Ellen W. Schrecker, *No Ivory Tower*, Oxford University Press, 1986, pp. 94-105.

The University of Washington offers insights into how outside groups can pressure a university because (a) it was one of the first universities to become involved with McCarthyism, (b) many different outside groups became involved, and (c) the case is well documented. Being one of the first universities to become involved with McCarthyism, the University of Washington was placed on a national stage. As a result, its response influenced how many other colleges and universities would respond later. The groups pressuring the University of Washington included the government, alumni, professional organizations, other universities, and the media. Under these pressures, the university dismissed three professors, and yet it also maintained an appearance of protecting Academic Freedom.

Everything began when the Washington State Legislature formed the Canwell Committee for the purpose of searching for Communists in the state. The university was not the first target of these investigations. However, state officials told the university administration that the university would be investigated. The president of the university, Raymond B. Allen, at the outset realized that neither the State of Washington, nor the regents of the university, would tolerate the presence of Communists on the faculty. He also appreciated that if he did not act, then someone else would, thereby bypassing his authority. Finally, he believed that the university must endeavor to protect Academic Freedom.

With these factors in mind, Allen informed the faculty that it could not expect the university to protect Communists. He

asked the professors, therefore, to inform him of their past or present Communist Party activity irrespective of whether it was at the University of Washington or elsewhere. This put many professors in a bind. On the one hand, many believed that they had a right to remain silent, as part of their Academic Freedom. Moreover, if they were truthful about their background, then they might lose their jobs. On the other hand, the university's administration believed that the professors bear a duty to fully disclose their activities. Thus, those professors who withheld information did not merit protection.

In time the Canwell Committee found six former Communists plus three uncooperative witnesses on the university's faculty. The committee gave this information to the university administration without suggesting penalties for the professors. The expectation of state official was that the university administration would act on the information, in its own way, and dismiss the professors.

President Allen created a special faculty committee to explore the charges. This committee did not want to act as prosecutors, but they feared that if they did not act the Regents would carry out their own investigation, excluding the faculty from the process. Therefore, they recommended that the university's Committee on Tenure and Academic Freedom investigate the six professors. This six included three who did not cooperate with the state's investigation, and three of the six that admitted previous Communist membership, but had refused to name others.

The university administration charged the six professors with incompetence, neglect of duty, physical and mental incapacity, dishonesty, and immorality. The eleven member Committee on Tenure and Academic Freedom revealed that two of the uncooperative witnesses were presently members of the Communist party. The university decided to try these two on this charge and dropped the other charges against them.

The Committee on Tenure and Academic Freedom was divided in three ways. Three members wished to dismiss the two current Communist professors. Three other committee members decided that the university should retain these professors because the case was irrelevant. Furthermore, there was no evidence showing these professors were unfit to teach. The remaining five members believed that the two professors should be dismissed for being Communists, but the administrative code of the university did not specifically list membership in the Communist Party as a dismissable offense. Therefore, these five committee members decided that because there were no grounds for dismissal, the two professors should be retained. Thus, the final recommendation of the committee was split between eight supporting retention and three recommending dismissal.

President Allen recommended to the regents that they dismiss the two professors even though the faculty committee favored retention according to the administrative code. His reasoning was that the regents were not technically bound to the administrative code, a justification with serious implications,

which will be discussed momentarily. In accordance with Allen's recommendation, the regents dismissed these two professors.

### I. The Basic Interest of the Universities

Using the example above, I can identify five sets of basic interest: image or status concerns, financial solvency, basic autonomy, responsibility to professional employees, and institutional integrity<sup>2</sup>. They follow here each with a separate discussion.

#### 1. Image or Status Concerns

The status or image concerns of a university revolve around how the university is perceived by the public as a whole or by certain groups. It is possible for a university to be more concerned about how particular groups perceive it, such as the wealthy, than how the general public perceives it. Universities seek a favorable image particularly with groups that provide funding or can otherwise affect university operations. Thus this interest is often, but not necessarily, linked to another basic interest of the university, namely its financial solvency.

The actions taken by the University of Washington were directed in good part to protect its status. Keeping Communists on the faculty would likely have damaged the university's image

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<sup>2</sup> Conflicting interest is mentioned in Paul Lazerfeld and Wagner Thielens. *The Academic Mind*. Illinois: The Free Press of Glencoe, 1958. pp. 37-43. However the discussion there is very different and the separate interest are not clearly defined.

with the state government and the state's public opinion. However, removing professors without just cause would also have damaged the university's image in the academic community. Therefore, the university followed some of the established procedures of Academic Freedom so that it would not be condemned by other universities and the American Association of University Professors (AAUP), an organization formed to protect the rights of professors. Because the outside groups had different concerns, the university had to protect its status in different ways simultaneously.

## **2. Financial Solvency**

The financial solvency of the university is a dominating interest. For the University of Washington, a public institution, this meant that the administration had to remain attentive to keeping the state legislature satisfied so that it would not consider reducing the university's funding. The university was also concerned that alumni who strongly disapproved of Communists on the faculty might withhold gifts.

## **3. Basic Autonomy**

The basic autonomy of the university revolves around its ability to make and carry out its own decisions. Basic autonomy includes independence from the control of external groups. Private universities have a certain degree of autonomy from the government built into their organizational structure, but public institutions are more exposed to governmental interventions.

If the University of Washington did not act on the findings of the state committee, it faced the threat of the state removing the professors regardless. This would challenge the university's authority over whom it employs and by what procedures it dismisses professors. In addition, such interventions could result in restraining the university's authority over the long term. Even though the University of Washington reacted to external expectations, it nevertheless attempted to protect its basic autonomy by preempting a more direct outside control.

#### **4. Responsibility to Professional Employees**

The university's responsibility to its professional employees refers to the relationship between professors and the administration. This responsibility includes the common conception of Academic Freedom as protecting professors from unprofessional treatment by administrations. It also refers to actions taken regarding a professor who violates his or her responsibilities to the university. These actions and responsibilities are often described in the university's bylaws, but in some cases they are unstated or ambiguous.

The University of Washington followed many procedures designed to protect professors, but the treatment of the two current Communists illustrates that a university may subordinate these procedures in the face of an urgent crisis. I show below that much of the failure of the University of Washington to exercise its authority legitimately may be traced to the fact

that it did not follow its own rules, but rather bent the rules in the midst of a crisis.

### **5. Institutional Integrity**

The institutional integrity of a university refers to the university adhering to certain procedural norms of fair or consistent behavior while fulfilling all obligations and purposes of the university such as education and research. These procedural norms are identified after the following discussion on universities' responses to each of these five basic interests.

Education and research are not included among the basic interests of a university. There are two main reasons for this omission. First, these objectives play only a minor part when universities are in the middle of a public or social crisis. Thus, an analysis of them would reveal little for present purposes. Second, a university that did not take education and research seriously would find it difficult to otherwise maintain its status or image. Therefore, these objectives already come into play when explaining how universities endeavor to maintain a favorable image.

## **II. Factors Influencing Universities Response to Basic Interest**

The five basic interests of the university (image or status concerns, financial solvency, basic autonomy, responsibility to professional employees, and institutional integrity) can be threatened in varying degrees according to the situation. Many



factors, therefore, influence how a university is likely to respond in any particular situation. The greater the threat that outside groups pose, the less likely that a university's response will serve its basic interests. In turn, protecting a particular basic interest is more difficult when other basic interests are also being challenged. Therefore, it is often in protecting one basic interest that a university sacrifices another basic interest.

The basic interests of the university often conflicted with one another during the McCarthy era as well as during the student movement of sixties. In particular, universities' traditional responsibilities both to their professional employees and to their own institutional integrity often conflicted with the concerns over the universities' public image, financial solvency, and basic autonomy. The degrees to which any of these basic interests are threatened, and degree of resolve that any individual university exhibits in protecting any interest, influence how universities respond. There are important differences between the basic interests of the university that dictate how a university deals with external challenges. Institutional integrity and responsibility to professional employees are interests of primary concerns to groups within the university, namely the administration and professors. Outside groups are less likely to understand the importance of these interests or to care about them. Status concerns, financial solvency, and basic autonomy are interests whose domains are more directly affected by outside groups on a regular basis. However,

all five basic interests of the university may come into conflict with each other depending on the outside groups involved.

In addition to the pressures of outside groups, the influence and resolve of each university is a factor affecting universities' responses. A university determined to protect its institutional integrity may be able to withstand pressures that threaten its public image or status concerns. However, when the financial solvency of a university is threatened, then its resistance becomes less likely. When the basic autonomy of a university is threatened, then resistance can be futile. Although challenges to a university's status concerns, financial solvency, and basic autonomy are often linked in practice, a separate analysis of each interests can identify variations, the importance of each interest in each case.

One structural difference of universities that affects how they respond to outside pressures is that between public and private universities. In general, private universities are more independent than public universities. This difference does not typically distinguish universities' efforts to maintain their image, but it does distinguish their effort to maintain their financial solvency. Because of the amount of funding that public universities receive from state governments, and because of the relative ease with which this funding can be removed, public universities are particularly susceptible to pressures from state governments. Of course, many private universities also receive governmental funding. Even though a university may receive only a small portion of its money from any one source, the threat of

its removal may be great because universities typically operate with little excess funding. Therefore, any reduction in funds may reduce or eliminate part of a university's operations. This explains why individual alumni and other benefactors can have such a great impact on universities' actions. Anyone that wishes to control a university, therefore, need only donate money on a consistent basis.

The basic autonomy of a university is one basic interest that universities cannot ignore when facing a serious external threat. Yet, this interest is challenged when a potent external force tries to tell university administration what to do. It is also challenged when an external group simply interferes in the normal operation of the university. Public universities are more susceptible to such challenges by the government than are private universities. Yet, the basic autonomy of all universities can be challenged by social movements that threaten university personnel or university property, thereby disrupting normal university operations. This is precisely what happened during the 1960's.

In private universities, where the advancement of learning may take precedence over service to society, there may be less concern with outside opinions. However, private universities still deal with outside groups seeking to influence them. Their public image and much of their financial resources come from external sources, but their relationships with external groups are often simply contractual. If a university's actions comply with these outsiders' expectations, then it receives prestige and funding. If a university decides that certain actions popular

with external groups are not in its own best interest, then it may terminate these relationships fully expecting to lose the external benefits. Thus even a private university may find itself in a situation where it must choose between what it would like to do and what outside groups are expecting it to do. There may be several benefits in making a decision that it otherwise would not. Thus a university could affect some of the variation in its status, funding and autonomy that it received through its dealings with other groups. This idea of give and take works well in the case of status concerns, financial solvency, and basic autonomy because these are basic interests that a university receives in exchange for what it provides. These interests can also be conceived as a continuum, being acquired by degrees. However, a system of give and take with external groups does not work well with a university's responsibilities to its professional employees or with its institutional integrity. These two basic interests cannot be compromised in part without transforming what they mean. If a university compromises its responsibility to a particular professor, then it places all professors in greater jeopardy. This is because the university has shown that in certain situations it will not fulfill its responsibility. In analyzing the legitimacy of universities' actions, I now turn to Lon Fuller's theory of law.

## **II. Fuller's Eight Principles of Legitimate Authority:**

Lon Fuller, in his book *The Morality of Law*<sup>3</sup>, presents a theory about the purpose of laws, how laws are changed, and when the laws lose legitimacy. Fuller is one of the four most important legal theorists that the United States produced in this century, the other three being Oliver Wendall Holmes, Roscoe Pound, and Karl Llewellyn. His theory is applicable to universities because they must maintain some control to advance their interest and must also organize the education and research at the universities. While universities may not be institutions whose primary concern is law making or law enforcing, they, nonetheless, make decisions that affect the lives of faculty, students, and staff. The two concepts from Fuller that are useful in studying universities are (a) the eight ways in which an institution can fail to exercise legitimate social control and (b) the distinction between morality of duty and morality of aspiration.

When pressured by either outside or inside interests, universities have often been unclear in the rules or social controls that they enforce. When presented with a problem, they have often acted in a manner that is not always consistent or in accordance with publicized practices or guidelines. Fuller identifies eight respects in which any institution can fail to enforce its rules or employ its mechanisms of social control in legitimate ways. By extension, in order for universities to exercise authority legitimately:

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<sup>3</sup> Lon L. Fuller, *The Morality of Law*, New Haven: Yale University Press, 1969.

1. Their rules must be generalizable, they must be able to give direction in cases not directly experienced before.
2. Their rules must be publicized making them available to those to whom the rules apply.
3. Their rules must not be enacted retroactively.
4. Their rules must be stated so that they are understandable.
5. Their rules must not contradict each other.
6. Their rules must be capable of being carried out.
7. Their rules must not change so frequently that individuals do not know what the current rules are.
8. Their rules as stated must be congruent with their enforcement.<sup>4</sup>

Using these eight characteristics, we may identify when a particular university's actions lose legitimacy, even when they solve immediate problems. More specifically, we may identify when a university fails to maintain its legitimacy as an institution. On the other hand, it is possible for all eight of these conditions to be kept, and yet for a university to make a decision seen as improper in substance. However, the cases explored in this paper illustrate another trend. Moreover, the institutional integrity of a university is not affected by opinions. A university that conforms to the eight principles above maintains its institutional integrity. A university that violates any of the principles fails to maintain its institutional integrity in this basic sense.

### **1. Reexamining the University of Washington Case**

The University of Washington failed to meet three of the characteristics of legitimate authority but fulfilled three

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<sup>4</sup>See Fuller pp. 38-61 for a more thorough discussion

others. Whether it met or failed to meet the remaining two is unclear. The three characteristics that the university fulfilled are numbers one, five, and six.

Regarding the first characteristic, the University of Washington had generalizable rules. This is precisely what five members of the university's Committee on Tenure and Academic Freedom acted on when they voted to retain the Communist professors. The Administrative code was generalizable giving the professors freedom of political affiliation and did not justify dismissing a faculty member for simply being Communist. Regarding the fifth characteristic, the university's rules were not contradictory, and the expectations of the university authorities were not contradictory. Finally, with the sixth characteristic, the university's requirements were possible to perform. First, it was possible for the university to hold to its administrative code in the situation. Second, it was possible for a professor not to engage in the "immoral" as it was originally meant in the administrative code.

The three characteristics of legitimate authority that the University of Washington violated are two, three, and eight. Regarding the second characteristic, the university's actions were illegitimate because professors had no way of knowing beforehand what was really expected of them. There were no rules enacted previously that informed professors that being a Communist was sufficient grounds for dismissal. Defining a Communist affiliation as a special case during the actual university proceedings violated the third characteristic, namely

that rules must not be enacted retroactively. This point is especially relevant for the sanctions imposed on former Communists. Even in the case of current Communists in tenured positions, this action placed an additional condition on them that was not placed on them originally. A rule could have been enacted fulfilling the characteristics of legitimacy that stated from that point on positions would not be given to Communists. Regarding the eighth characteristic, there was a clear difference between the Regent's final decision and the administrative code upon which the professors could base their conduct. The technicality that allowed the Regents to act despite the lack of basis in the administrative code showed a weakness in the rules of the university. This weakness threatened the legitimacy of the administrative code and the university as a whole.

Finally, it is unclear whether the University of Washington violated either the fourth or the seventh characteristic of legitimate authority. Regarding the fourth characteristic, the rules administered at the University of Washington were understandable, but there was some confusion as to what was really expected. This problem is better addressed by the second characteristic, whether rules are available to those they affect, and the eighth characteristic, whether the stated rules are congruent with how they are applied. Regarding the seventh characteristic, there were some changes in the university's rules, but these changes were not so frequent as to mark a clear violation of legitimacy. The major problem with the changes in



the rules was that they were applied retroactively, thereby violating the third characteristic.

## **2. The Morality of Duty as a Threshold of Legitimate Action**

Fuller's eight characteristics of legitimate authority may seem formal or technical and, as a result, leave out important aspects of authority. It should be emphasized, however, that whether authority is legitimate is a different issue than whether it is effective or efficient. Fuller's threshold of procedural norms does not represent the optimum performance of individuals or institutions. It represents whether individuals can simply recognize and understand those actions that are expected of them. Any actions beyond compliance to this threshold are optional, and pertain to a morality of aspiration. The morality of aspiration focuses on an individual performing to the best of his or her abilities according to how each individual defines it. This morality is based within the individual because it is subjective and cannot be defined generally. One individual's aspirations will differ from what others aspire.<sup>5</sup> Some professors aspire to be great teachers, others to be great researchers.

Fuller places a pointer on a moral scale between the domains of aspiration and duty. The scale varies from actions governed by a basic but general morality, such as common law, to actions that required a loftier but more specific morality.<sup>6</sup> The

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<sup>5</sup>see Fuller pp. 27-33.

<sup>6</sup>see Fuller pp. 13-26.

distinction between moralities of duty and aspiration is important because there are highly moral actions that one may wish everyone exhibited, but to require everyone to conform may be impractical. Since individuals often disagree on what is moral, there is still the problem of collectively identifying behaviors to be expected.

An understanding of the differences between the moralities of duty and aspiration is important for understanding this study. Universities are institutions where it is hoped that the very best in education takes place. This can only take place if universities are directed out of aspiration to be the best they can be. Different individuals, however, would have different ideas about what this means. This is further complicated by the fact that universities have different goals, resources, and purposes that differentiate them from other institutions. By applying Fuller's eight characteristics of legitimate authority to the university, we can at least measure the university according to a morality of duty. This duty imposed by Fuller's eight principles provides only a threshold of what should be expected from all universities. However, it does not include stating the best course of actions. It identifies legitimate authority by providing a threshold. If the legitimacy of the rules is compromised, then even conscientious individuals may have trouble following them, even when the issues involved are not personally repugnant to them. It is conceivable that a university could exercise its authority in a legitimate manner and for its actions to be decried. However the evidence that

follows in this paper indicates that those universities that have exercised their authority legitimately have been the ones more favorably viewed in later years.

### **3. Implications: Three Relationships of the University**

The most important part gained from Fuller is his eight characteristics that identify the legitimacy of a university's authority. However, his distinction between the moralities of duty and aspiration is also important. It reveals important aspects of how universities act in three relationships: to those over whom it exercises formal authority, to itself as an institution, and to outside groups.

The first relationship concerns the university in regard to both students and professors. The university must maintain sufficient control over both in order for learning and research to be effectively carried out. However, the university cannot exercise its control in such a way as to limit learning and the possibilities for creative research.

The second relationship is that of the university to itself as a limited and self-regulating rule-making institution rather than an unlimited, authoritarian rule-making body. While there is some overlap with the first relationship, there is an important distinction. This relationship is more concerned with general procedures and guidelines of the university instead of the individual actions taken by the university and its members. It is concerned with how the university's actions direct activities as opposed to the results of these activities. Thus,

many decisions taken by a university are not aimed directly at the behavior of the students or professors, but are rather aimed at how the university responds to situations as a corporate entity having collective power. Rather than focusing on how professors or students are affected, many other interests are also taken into account. Overemphasizing particular interest may undermine the university's overall responsibility. For example, if a university made research its only goal. While research is promoted at all universities, making it the only goal means that other concerns, such as the quality of education, are not being considered. A proper balance of goals achieved through aspiration, then, is a key to this second relationship.

The third relationship concerns how the university responds to outside authorities and pressure groups that can affect the university, such as the government. If a university is not fulfilling its duty to the outside world, then the government may exert its authority on the university to correct the perceived breach of duty. Fuller's concern would be whether the government acts in procedurally legitimate ways or in authoritarian or arbitrary ways. In deciding what to require of universities, the government too, seeks a balance of requirements. If state universities are given too much leeway, they may pursue publicly unpopular ends. However, if state universities are directly controlled, then they may lose their effectiveness (and status) as sites of higher education and research.

The importance of these three relationships for this analysis of universities varies. The first relationship, with

those over whom the university exercises formal authority, is not the main focus of this paper. My main concern is how decisions are made within universities, instead of how these decisions affect people. Still, the responsibility of universities to professional employees is a basic interest that falls under this relationship. In addition, students and professors may exert pressure on universities as independent groups or at least a constituency of other interest groups. The second relationship, the university as a limited and self-regulated institution of social control, is a primary focus of this study. Fuller's eight criteria of legitimate authority are used to identify increases or decreases of a university's institutional integrity. The third relationship that of the university to external interest groups, is also a major focus of this paper. Status concerns, financial solvency, and basic autonomy are all interests that outside groups can either promote or challenge. This focus is centered on legitimacy of the university's reactions to these external pressures. While the basic interests of the university are directed to, and influenced by, other groups, how the university deals with group pressures is more important for this study than the types of groups that exert pressure. The legitimacy of the universities' actions is more important for this study than the legitimacy of the actions of the groups that exert pressure on the university.

### **III. McCarthyism and the Universities**

McCarthyism presented universities with a dilemma. Appeasing the forces of McCarthyism often meant compromising prevailing ideas about Academic Freedom. Supporters of McCarthyism attacked the public image, financial solvency, and basic autonomy of the universities. Under these attacks many universities declared that Academic Freedom did not protect either Communists or individuals who refused to cooperate with government investigations. However, the institutions that met these external expectations did not completely abandon Academic Freedom. Instead, they redefined Academic Freedom. Typically the revised meaning was not contrary to already existing bylaws of the individual universities. Rather, it stated more explicitly the responsibilities accompanying Academic Freedom. This revised meaning meant that being a Communist was an automatic violation of these responsibilities. Simply changing the rules, in itself, is legitimate. However, applying the rules retroactively is illegitimate. The eventual culmination of the revisions was a shifting of Academic Freedom from an ideal of protecting the individual professor, to an ideal of protecting the university as a corporate entity from outside influences<sup>7</sup>. This is further illustrated by the fact that most of the investigations did not turn up current Communists on the faculty. Instead, most investigations found only professors who had been Communists in the past and others who would not cooperate because they saw the investigations as improper.

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<sup>7</sup>This process first occurred at the University of Washington and is discussed in Schrecker, p. 107.

The University of Washington was very influential in this process of redefining Academic Freedom. In part this was because it was the first university where investigations identified admitted Communists. More important, this university offered others a rationale for getting rid of Communist faculty while keeping procedural Academic Freedom. Thus the way that Washington responded became a model for other universities.

What the University of Washington did was to maintain the appearance of Academic Freedom by defining that a Communist professor was violating the individual's responsibility to the university, thereby excluding the professors from the protections of Academic Freedom that they would otherwise receive. The actual charges against the six professors were framed in terms of neglect of duty, intellectual incompetence, and immorality. These were labels for the supposed actions of any Communist, thus giving validity to the charges in terms of the bylaws of the university. It was thought that anybody that is a Communist surrenders their free will, thus following whatever the Communist Party tells them to do. This lack of objectivity makes them unfit as a professor in a university.

The main evidence in support of this obedience to Communism was that the professors had previously lied to the administration by concealing information. This was taken as proof that they were subversive Communists. Many administrations and faculties believed that it is the duty of a professor to fully disclose his or her past and present activities and affiliations. Thus professors who did not fully cooperate with investigations in

effect incriminated themselves. They were seen as not fulfilling their responsibility as a professor, aside from just being Communists.

A relevant point that Schrecker<sup>8</sup> brings up is that Academic Freedom was redefined so that its focus was shifted from the individual professor to the academic institution. The university initiated investigations to preempt outsiders from controlling the standards of the academic community. Usually these preemptive investigations occurred only after interference from the outside was obviously unavoidable. Because of the power of the anti-Communist movement in the general populace and in the Government, universities had to take outside investigations seriously. A response that focused on just articulating the importance and benefit of Academic Freedom would probably not have stopped most outside investigations. This is because most outside groups did not see Academic Freedom as important, particularly certain groups who were politically active against Communism. While these actions have been criticized in later times, one must remember that during the height of these investigations there was little resistance to them. It was also not guaranteed that the force of the outside pressures would not increase. Therefore many within the universities justified internal investigations as being less severe than an external one would have been. They supported the universities' investigation as preempting external investigations. By doing so universities

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<sup>8</sup>pp. 105-111.



kept control over standards for academic employment and dismissal within the institutions. This might be a mere technicality if the final decisions made were the same decisions that the outside controls would have made. However, it prevented the precedent of direct government interference with the operations of a university. Therefore, this new Academic Freedom was concerned with the basic autonomy of universities as opposed to the universities' responsibilities to their professional employees.

The professors called before investigative committees thought for one reason or another that to speak freely would hurt them. Therefore, many of them invoked the Fifth Amendment. The Fifth Amendment of the Constitution of the United States guarantees that a citizen does not have to incriminate himself. Therefore, by invoking the Fifth Amendment the professors were calling on this protection. However, this right of citizenship was not fully understood by everyone involved and did not apply to all of the actions of the different professors. The following examples illustrate these points.

### **1. Ohio State<sup>9</sup>**

Ohio State in 1953 provides a typical example of how many public universities responded to McCarthyism. The situation arose when Byron Darling, a professor at Ohio State, called on the protection of the Fifth Amendment before the HUAC (House Un-American Activities Committee). The HUAC was particularly

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<sup>9</sup>Facts are taken from Iverson, p. 342, and Schrecker, pp. 207-09.

interested in Darling because he had been in graduate school with Joseph Weinberg. Weinberg had been accused of giving secrets of the atomic bomb to the Soviets. When Darling was asked questions about Weinberg, he invoked the Fifth Amendment. After the HUAC hearings the president of the university, Howard Bevis, suspended Darling immediately because, "refusal to answer the questions of the Committee raises serious doubts as to your (Darling's) fitness to hold the position you occupy."<sup>10</sup> In a statement to the university in response to his dismissal, Darling denied ever being a Communist. He defended his action on the basis that he feared being convicted for perjury because the HUAC had much false evidence at its disposal. The university's committee formed for investigating Darling's case did not ask him if he had been a Communist but kept to other issues that it thought were more relevant. Darling answered all of the questions that the university's committee asked. The response of the administration was that his actions damaged the university, and the trustees dismissed him in order to promote a more favorable public image. According to the university, Darling's refusal to answer questions before the HUAC was a sufficient reason for dismissing him. Normally the university gave a professor a year's notice before his position was terminated, except for immorality or serious cases of insubordination. In Darling's case an exception was made and he was dismissed immediately. Because of the way Ohio State handled the issue, the AAUP (American Association of University Professors) censured the school.

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<sup>10</sup>(Iverson 1959, 342)

At Ohio State, status or image concerns were stated as the reason for dismissing Darling. This rationale was not approved of by AAUP, but it did appease other more influential groups. Financial concerns and basic autonomy were not explicitly at stake, but this may be due in part to the fact the university acted so quickly. Indeed the university may have acted quickly in order to prevent these interests from being threatened.

In contrast to Ohio State's status concerns, the university's responsibility to its professional employees was not protected. However, the university did offer a clear rationale for its actions. It was protecting the university as a corporate body. In spite of the university's justification, the legitimacy of the university's action was compromised. This is because its authority was exercised in a way that was less than legitimate.

Regarding Fuller's eight characteristics of legitimate authority the way Ohio responded was similar to the University of Washington. Where the university failed in legitimacy was on points three, four, and eight. The university violated the standard of retroactivity because it held a professor to rules that applied to his earlier actions, before even becoming a professor. These actions also were not an issue when he became a professor. The university did not state that Darling's actions were inappropriate at the moment he engaged in them but it subsequently labeled these same actions inappropriate when they became a political liability to the university.

The university violated the fourth standard, that rules must be understandable to those affected, because Darling did not

understand what was being expected of him until after the university's final decision. The university was simply not clear in what it was asking him to do. Part of this problem may have been due also to a lack of generalizability of the rules, rules being enacted retroactively, and a difference between the rules as stated and as they were carried out.

The university also violated the eighth standard, that rules must be in congruence with how they are carried out, because the rules applied were different from those set up. The rules were set up to protect the professors yet were exercised to remove a professor who did not violate the university's stated policies.

## **2. Rutgers<sup>11</sup>**

When M. I. Finley, a professor at Rutgers, took the Fifth Amendment before the SISS (Senate Internal Security Subcommittee) there was not much of a reaction against Finley or Rutgers itself. Finley had been accused in August 1951, by two witnesses of being a Communist while he was a graduate student at Columbia. Finley met with the administration and denied all of the accusations. He also told the administration that he would probably be called before an investigation, and that he would refuse to testify by invoking the Fifth Amendment. When he was called before the SISS, Finley denied ever being a Communist but refused to answer whether he knew of anyone who was a Communist. There was little attention given to his case by the media at the

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<sup>11</sup>Schrecker, pp. 172-76.

time. In light of this the university took no action against him.

Later when another professor, Simon Heimlich, also invoked the Fifth Amendment's protection, there was an uproar against the university. Now both Finley and Heimlich became an issue for the university. It is unclear why Heimlich was called before the SISS because no evidence against him was ever presented and there was no indication that he was a Communist. It may well be that someone who wished to hinder Heimlich's career for personal reasons submitted his name to the SISS. The SISS itself usually submitted evidence against the individuals it subpoenaed, but in Heimlich's case none was submitted. The scantiness of the case against Heimlich is relevant to analyzing the university's actions because this was the same evidence that the university had to base its decision on. Heimlich viewed the SISS and similar investigative committees as abridgments of basic American freedoms. Therefore he invoked the Fifth Amendment and refused to answer any questions of the SISS. Heimlich's refusal to testify immediately received attention in the media.

The attention that Heimlich's case received in the media increased the pressure on the university. The president of the university, Lewis Jones, had Heimlich write a statement denying he was a Communist and released it to the press. The pressure of the media concerning Heimlich continued and Finley's case was reopened by the university as his case also began to receive attention. The Board of Trustees appointed a special faculty-alumni-trustee committee to review the issue and to advise the

university as to the best course of action. The university's bylaws had just been revised so that an "appropriate procedure through which academic freedom and freedom of expression for members of the University can be safeguarded, (while the university is protected) against public misunderstanding arising out of the fact that members of the public sometimes interpret the expression of personal opinion by members of the University as expression of the attitude of the University itself."<sup>12</sup> This statement was meant to provide the university with a course of action, but just how the university was to act in this particular situation was not spelled out. In other words, what should the university do when its responsibility to its professional employees comes into conflict with its desired public image? Besides status concerns, financial solvency was also at stake because Rutgers received half of its funding from the State of New Jersey.

The university did not see retaining these professors as an option because this would antagonize state officials. The special faculty-alumni-trustee committee recommended that a committee consisting of the faculty alone should decide the case. This faculty committee, in turn, decided to focus on the fitness of each professor to teach, and it wanted to leave the final decision of whether to retain or dismiss either professor to someone else. However, the faculty committee did examine the issue of why the two professors invoked the Fifth Amendment

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<sup>12</sup>Schrecker, p. 174.

before Congress. It appreciated both the danger for the university's public image of retaining the professors and the danger for the university's academic reputation of dismissing the professors. Gaining an understanding of why the professors invoked the Fifth Amendment, the faculty committee concluded that because invoking the Fifth was a right of citizenship, the two professors be retained. They also found no evidence indicating that the two professors had misused their positions in the university.

The regents disagreed with the decision of the faculty committee and dismissed both men. Their justification was the Cold War. Because the United States was at war with Communism, Communists could not be tolerated in American universities. They used this reason even though there was no such clause in the university's bylaws. In addition, all evidence pointed to the fact that neither man was a Communist, and only that each refused to cooperate with outside investigations. The regents saw the Cold War as a sufficient reason in itself for exploring individuals' personal beliefs in an effort to gage their fitness for university employment. These actions of the regents were completely in line with what the media and the government wanted the university to do.

Rutgers shows that it was due to external pressures that the university reacted, not to principles held by the university independently. The university's dismissal of the professors was carried out to preserve the university's image. Financial solvency was also an issue because Rutgers received funding from

the state and feared it would be reduced. Basic autonomy was not directly threatened in this case, but the university may have acted to prevent it from becoming an issue. If the university had not acted, its basic autonomy probably would have been threatened. To protect these basic interests, the university subordinated its responsibility to professional employees. Moreover, because the university had not sanctioned Finley until after Heimlich's case became a public issue, this inconsistency weakened the university's integrity.

According to Fuller's eight characteristics of legitimate authority, Rutgers violated numbers one, three, and seven. It violates the first condition, that rules be generalizable, because existing rules were not applied to this situation. Instead, the university adjusted its rules and the new rules failed to provide clear direction. The university also violated the third condition, that rules not be enacted retroactively, because actions taken by professors in the past were now being redefined as grounds for dismissal. Finally, the university violated the seventh condition, that rules not change frequently, because after the Finley case was originally dismissed as insignificant, the rules changed. Therefore the university's rules were incapable of giving anyone clear direction as the rules were unstable.

### **3. Harvard University<sup>13</sup>**

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<sup>13</sup>Details are taken from Schrecker, pp. 197-204, and Iverson, pp. 349-50.



Harvard is an example of a university that did not completely comply with the wishes of outside influences during McCarthyism but nonetheless endeavored to placate them. In 1949 Harvard was told by alumni Frank Ober that he would discontinue gifts to the college as long as it had subversives on its faculty. Harvard responded by issuing a statement that said: "Harvard will accept no gift on the condition, expressed or implied, that it will compromise its tradition of freedom."<sup>14</sup> Ober responded that the least Harvard should do was adopt a loyalty program. The university replied that the harm such a program would cause would outweigh any benefits. This outlook changed somewhat by 1953, and yet Harvard still protected its professional employees more than most other universities.

In 1953 the HUAC amassed a great deal of information regarding supposed Communists at Harvard. Wendell Furry, a professor at Harvard, was called before the HUAC and he invoked the Fifth Amendment when asked if he had been a Communist. Later during a hearing before the Harvard Corporation, Furry gave a full account of his activities admitting that he had been a Communist. The Corporation had decided that invoking the Fifth Amendment did not automatically disqualify anyone from university employment. However, Furry also confessed to giving false information to a government investigator in 1944, and the university saw this as grave misconduct. The Harvard Corporation concluded that his teaching was of high quality and that he had

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<sup>14</sup>Iverson p. 349

not tried to indoctrinate students. Because of his deception to the government, however, Furry barely escaped dismissal and was placed on a three-year probation. Harvard decided that in order to dismiss a professor, he or she must be guilty of grave misconduct and neglect of duty.

Six months later Furry was called before the McCarthy Committee and did talk about himself, but invoked the Fifth Amendment when asked to name other Communists. McCarthy decried Harvard's policy of sheltering "Fifth Amendment Communists" and recommended contempt citations against Furry, which came to naught. Furry was retained because he had tenure. Two nontenured professors at Harvard called before the SISS were not reappointed when their contracts expired.

In response to its image concerns, Harvard acted to minimize the damage by not justifying the actions of Furry as being correct. Its basic autonomy was never threatened, due in part to the fact its response addressed the issue well enough that outside pressures could not force further concessions. The financial concerns of Harvard could become an issue because of its initial refusal to investigate the issue when Ober brought it up and by its later decision to retain Furry. Harvard's responsibility to its professional employees was subjugated to a degree, but not entirely. By accepting that Furry's actions in 1944 entailed grave misconduct, Harvard lent validity to outside pressures and punished the professor. However, it did not dismiss Furry. Because this is the only aspect of Harvard's actions that compromised the legitimacy of its authority, its

institutional integrity was not compromised as much as it was at other universities.

According to Fuller's eight characteristics of legitimate authority, the only one Harvard clearly violated was number eight, congruence between the rules as stated and as they are carried out. This is because the penalty imposed on Furry was not included in Harvard's bylaws. Harvard's treatment of the two nontenured professors is not an issue in this case as the rules of the university do not give them the protection that tenured professors received. Under the rules of the university nontenured professors can be dismissed for very arbitrary reasons.

#### **4. University of Chicago<sup>15</sup>**

An example of a school that more fully resisted compromising its basic objectives is the University of Chicago. The original pressure against Chicago came from the media. William Hearst, who owned several newspapers around the country, had previously attacked universities in New York as being filled with Communist. In the Chicago paper, the *Herald-Examiner*, Hearst repeatedly attacked the University of Chicago. The individual that Hearst first attacked was Frederick Schuman of the Department of Political Science. Schuman protested the distorted reports of his speeches that he had given before the Student Union Against

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<sup>15</sup>Details are taken from Iverson pp. 185-99, 278, 280-81, and Schrecker pp. 70, 112-13.

War and Fascism. Subsequently Hearst called for Schuman's replacement. However, the university did not act on the issue.

The real trouble for the University of Chicago started when a friend of Hearst's, Charles Walgreen, who was a benefactor of the university, publicly withdrew his niece from the university. His niece had told him that Communism was being taught at the school. Walgreen felt that this was a subversive Communist attempt to impress Communist values on students. The story was carried in Hearst's papers. Because of the resulting tension, the Illinois State Legislature initiated an investigation. At this point the media, government, and benefactors of the university were all pressuring the university to reappraise its faculty. The public image, financial solvency, and basic autonomy of the university were threatened.

What is unique about the University of Chicago's response to all of these pressures is that the different parts of the university acted together to defend the university from external accusations. During the state legislature's investigations, testimony was heard from the president of the university, Robert Hutchins, Trustee Harold Swift, and Professor Charles Merriam of the Social Science faculty. Their response to the investigation was twofold. First, they affirmed that there were no Communists on the faculty. Second, they stated that the social science program was the best in the country, and therefore, any interference with the program would be detrimental. The state investigation singled out three professors to be investigated for their "Red Records." The actual accusations against them,

however, were seen as frivolous even by most of the individuals involved in the investigation. In spite of this, one investigator, State Senator Charles Broyles, threatened to remove the university's tax-exempt status. Broyles also introduced a bill to protect students from sedition, which in effect threatened the autonomy of the university. Both of Broyles' efforts failed and he was reprimanded for releasing a report to the media before giving it to the State Senate. Broyles was defeated because the university gained support in the State Senate and in the media through its uncompromising response. A paper owned by a rival of Hearst published editorials in support of the university and called for accusations against it to cease. The opposition to the university fizzled and Walgreen, convinced of his error, donated half a million dollars to the university.

While the University of Chicago was able to resist these outside influences and to retain some very liberal professors, the right of a professor to be a Communist was not being defended. The university acted as a whole to deny that any Communists were present on the faculty, not to assume that Communists may well be on the faculty. However, Chicago was very supportive of their professors who were investigated. The university hired lawyers for its professors when they were later called before national congressional committees.

The much publicized charges that there were subversive Communists on the university's faculty threatened the image or status of the University of Chicago. The university defended its image by making two points. First, it insisted that it had an

excellent social science program. Second, the university insisted that there were no Communists on the faculty and that the whole faculty acted in a professional manner. This defense enabled the university to defend its image without sacrificing its other concerns. Financial concerns and basic autonomy were also threatened, particularly in the state senate, but through the university's actions it gained support from others to defend itself here as well. The university's responsibility to its professional employees was maintained. No professors were removed as political liabilities. Likewise, its institutional integrity was preserved. It is not apparent that the University of Chicago violated any of Fuller's eight. Moreover, the university defended itself by presenting an image of a university that not only held to its standards but was centered on its aspiration to greatness in its social science program. Much of the effectiveness of the University of Chicago's response derives from the fact that the university defended itself publicly. This enabled the university to solve the issue externally rather than having to solve it internally in a way that conformed to the external expectations.

##### **5. Sarah Lawrence<sup>16</sup>**

Sarah Lawrence was a college known for its liberalism. The Jenner Committee, a congressional investigative committee, eventually subpoenaed twelve of its seventy faculty members,

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<sup>16</sup>Schrecker pp.213-15.

which indicates how liberal it was. In response to the demand of the local American Legion that the college fire three professors, the university's Board of Trustees released a statement on academic freedom. This statement stated that being a professor carries obligations, and indoctrinating students and taking orders from outside groups are not consistent with these obligations. The statement also stated that professors should not be deprived of their civil rights as citizens. Included in these rights were holding political affiliations. The tone of their response was such that a Communist would not be fired if he held to his or her basic responsibilities as a professor. This response also seemed to suggest that if there were any Communists at Sarah Lawrence, they would have nonetheless fulfilled their responsibilities as professors.

When the twelve professors at Sarah Lawrence were called before the Jenner Committee, the university's advice to former Communists was not to invoke the Fifth Amendment and to speak freely with the exception of naming other individuals. Of the three professors who were former Communists, only one, Irving Goldman, took this advice. Because he did not invoke the Fifth but also did not name names, the Jenner Committee threatened him with a contempt citation. This was not of great concern to Goldman, however, as far as retaining his job at Sarah Lawrence. He was seen as a hero at the college and trustees were also willing to retain the other professors who did not take their advice, and instead invoked the Fifth Amendment. Indeed, the

president of the university intended to give Goldman a sabbatical if he went to jail for refusing to testify.

The response of Sarah Lawrence, then, was to give no credibility to external investigations. It saw the procedures of the investigations as violations of academic freedom, and it saw the goals or ideals of the investigation as suspect in substance. Sarah Lawrence is the best example of a school that did not act on the idea that a professor is unfit to teach simply because he is a Communist. It also should be noted that Sarah Lawrence is hardly a typical school. It is a small, private, women's college noted for liberalism. Its private status means it is relatively isolated from governmental control. Its reputation for liberalism means that the people from whom it receives financial support and public image are likely liberal minded themselves. Moreover, the school most likely may have lost more if it had cooperated with investigators rather than defying them. Its special situation aside, it was able to preserve its responsibility to its professional employees and also its institutional integrity.

Sarah Lawrence did not violate any of Fullers eight principles. The college not only saw the investigation as irrelevant to the college's actions but also saw investigations as unnecessary themselves. Therefore, it did not alter its policy toward its professors and it did not pursue any repercussion to affect the professors who were examined. Thus, there is little else to compare to other colleges and universities.



## 6. McCarthyism Recap

McCarthyism had widespread public support and yet most universities threatened by congressional investigative committees did not act until after outside groups made it an issue. The basic interests of universities, most threatened were image concerns, financial solvency, and responsibility to professional employees. In protecting these interest, particularly those of image and financial solvency, many universities compromised their institutional integrity. Resisting the committees would have been very costly or even futile for most universities. The universities that resisted were in many ways unique and more isolated from these outside pressures. For most universities, if they protected Communists, they could have experienced a substantial decrease in funds. They also could have been taken over by the government to remove Communists.

The three universities that best defended their legitimacy, Harvard, Chicago, and Sarah Lawrence, where all private institutions. Harvard was willing to admit that Communists were not desirable as professors but retained a former Communist when many other universities were dismissing such individuals. The university did this by imposing some penalties on the professor, including probation and declaring some of the professors actions as to be grave misconduct. This discipline, while mild compared to actions in other universities, eased the pressure on Harvard. Chicago acted by aggressively defending itself as an elite institution. The fact that no Communists were identified at the

university helped it to defend itself. Through this line of defense, Chicago was able to protect all of its basic interest. It beat the investigators at their own game by mustering other external support. Sarah Lawrence is an example of a university that defied the investigations. Its actions suggested that professors' political affiliation should not be a public issue. It responded to the investigations as if they were a bigger threat to freedom than Communists on the faculty. These three universities showed that it was possible for some universities to resist acting according to the expectations of supporters of McCarthyism.

The legitimacy of other universities was compromised, however, by the way they dismissed accused Communists. It is conceivable that these universities could have updated their bylaws to state specifically that Communists will not be employed. Yet, the bylaws would still need to offer a generalizable reason for why Communists are unfit to be professors. The bylaws might state, for instance, that certain actions that are subversive to the government and the university cannot be tolerated. However, such bylaws were never applicable in any of the cases examined above.

What was illegitimate at many universities, therefore, was how they applied existing bylaws to dismiss professors. Universities did not have bylaws in place for dismissing Communists and they often cited alternative charges in dismissing them. Their justifications were often hastily put together in response to external pressure. Moreover, while the actual goal

of McCarthyism was to weed out Communists, most of the professors dismissed were former Communists. By applying existing bylaws to former Communists, universities were imposing retroactive standards of conduct on professors. The actual justification used for dismissing professors, however, was that the publicity was embarrassing the universities. The responsibility of professors not to embarrass the university due to charges of others was not clearly stated in universities' bylaws. Therefore, this justification for firing professors lacks legitimacy in itself. This obligation could have been placed in the bylaws and thereby rendered legitimate. Such rules, however, could prove counterproductive for a university's aspiration as an institution of higher learning.

#### **IV. The Student Movements of the 1960's and the Universities**

Student protesters were able to exert a powerful influence on universities. Whenever a sizable portion of the student populace refused to accept certain actions taken by universities, they became a formidable force that many universities had difficulty dealing with. The students' actions of disobedience and violence were not typical of past groups that had exerted pressure on the university. Other groups had exerted their force in a more "civilized" manner, such as through political pressure. Moreover, apart from their unconventional tactics, the very fact that students were exerting pressure on universities was

unconventional. The unusualness of student protest meant most universities were poorly prepared for such crises.

In many ways the students could be considered an outside pressure group when compared with the normal decision making process of universities. Traditionally, students had little say in the policies and operations of universities. They had no formal authority through which to advance or protect their interest. Many universities held a paternal view of students, believing that the university knew best what was appropriate for them. Thus, it is not surprising that students had not been included in the decision making process. When student protests against universities broke out, there was no structure in place with which to deal directly with students' demands. The rules that did apply to students were often very strict and, for one reason or another, many universities were reluctant to enforce them. This often resulted in delays and inconsistencies that made the protests even more difficult to deal with.

The targets of the students' protests at many universities were the rules themselves. The students broke rules intentionally to challenge the authority of the institution as a part of the "American system." Once rules were broken, students were less willing to heed appeals of maintaining order. They also would not accept new decisions of the administration that were not in complete accord with their position.

In presenting their demands, students had little regard for traditional rights reserved for the faculty, such as the faculty's right to approve their own members as well as to

control grades and curriculum. Whenever students protested the firing of a professor, who was dismissed by standard procedures, as well as when they demanded a voice in appointing professors, they infringed on the traditional rights of Academic Freedom. The universities that did not protect professors, when physically threatened by students, provides an extreme, but not uncommon example of how universities react to pressures. When a professor could not conduct his class in his or her own way, because certain students disagreed with certain aspects of his teaching, then students gained power over Academic Freedom. When such conditions were allowed to continue, it had a negative affect on faculty morale.

The actions of students also affected the public image and financial solvency of universities. By embarrassing the university, the image of the university suffered. If benefactors did not approve of the university's reactions to students, or if the benefactor disapproved of the fact that students at the university dared to act in disruptive ways, then donations to the university could suffer. These two interests of public image and financial solvency worked mainly against the students. Most of the American public opposed the students' actions and much outside pressure was placed on the universities not to submit to them. While it might be argued that the media held a more favorable view of students, much of the media coverage was not complimentary toward the students. In addition, most of the people who heard about the protests through the media disapproved of student actions. Since most of the protestors did not have a

favorable view of society, it seems that they were not appealing to the larger society. However, the students did have the benefit of being a very visible presence on campus and most of their tactics could not be ignored as they were willing to embarrass the universities before the general public. Most of the students involved with these protests justified their actions by saying that universities are an important part of a system that had committed many injustices. Their attack on the university was just as much an attack on the whole society.

The students' main source of power was threatening the basic autonomy of the university. The students used varying techniques to intimidate the university and advance their aims. The milder tactics included relatively peaceful means such as student strikes that disrupted the normal flow of university operations. On the more violent side, students burned buildings and threatened lives. Beyond temporarily blocking the flow of university operation, these students attacked the physical structure of the university. These actions of the students could escalate so that continuing operations would be impossible for the universities. Therefore universities were pressured to meet students' demands to prevent the disruption of university operations, whether temporarily or permanently. When confrontations got this intense, it was easy for universities to forget other interests.

Another threat to the university's autonomy, particularly the public institutions, was that the government might step in to resolve conflict. This could happen if the administration was

not able to come to a peaceful conclusion with students, or if the conclusion was not acceptable to the state government. In such a case a change could be made in the administration or structure of the university. This could simply be telling the university what to do, or it could involve replacing a university's officials, as some were. The autonomy of the institution was squeezed between the two irreconcilable forces of the government and the students. Because of this, private institutions would be more capable of complying with student demands while public universities' actions had to be more acceptable to the state.

An extreme example of violent student protest occurred at Kent State<sup>17</sup>. Kent State experienced mass rioting over five days. During this time the students burned the ROTC building and various equipment sheds, and smashed windows on buildings on and off the campus. In addition, firefighters, police, and the Ohio National Guard were taunted, attacked, and injured. Little action was taken against the students, but the university tried to protect the property of the university by calling upon police and guardsmen. The situation culminated with guardsmen firing on students, killing four and wounding nine. After this incident, Kent State closed down for the rest of the semester. In a CNN poll 60% of the American people and 72.2% of the people from Ohio supported the university and the guardsmen as opposed to the students.

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<sup>17</sup>Dwight D. Murphy, "'Kent State' Revisited," *The Journal of Social, Political, and Economic Studies*. Volume 18, Number 2, 1993. pp. 235-55.

Kent State showed how serious student protests could become. Students were not likely to stop protests even if their demands were met, much less if there was a compromise. Students were more than willing to destroy property and to taunt public officials. In such circumstances violence directed toward students became a possibility as those sent to protect the university felt physically threatened. Besides the expediency of stopping violent student demonstrations, universities had other important interests to protect and this complicated universities' responses.

Many universities were subjected to powerful student protests during the sixties. Students did not have the financial resources or formal power to impose their will on the universities in traditional ways. However, by mass demonstrations and violations of university rules, students were able to exert great pressure upon universities. Berkeley, Columbia, Cornell, Harvard, Yale, and Chicago illustrate some of the different ways that universities responded.

### 1. Berkeley<sup>18</sup>

Berkeley is an example of a university that was particularly sensitive to outside pressures while dealing with a strong student movement. As an elite educational institution, Berkeley had to (a) be particularly sensitive to protecting academic freedom, (b) maintain its academic prestige, and (c) keep its

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<sup>18</sup>Diane Ravitch, *The Troubled Crusade*. Basic Books, 1983. pp. 120-36. and Bell and Kristol. *Confrontation*. Pp. 3-12.



faculty satisfied. However, as a public institution it needed to avoid political controversy that could hurt its image in the California State Legislature<sup>19</sup>.

Confrontations between students and administration of the university arose when eighteen student organizations opposed the administration's prohibition of the use of a walkway for promoting off-campus political activity. The student organizations joined to form the Free Speech Movement (FSM). Many students that were involved had experience with the civil rights movement, particularly with SNCC (Student Nonviolent Coordinating Committee). The FSM initiated a policy of mass violations of university rules. It made demands for greater student involvement in the governance of the school and allowance for students to plan illegal off-campus activities while on campus. The Emergency Executive Committee, a committee formed from the faculty to help the university resolve the problem, was willing to make concessions, as were the regents. Nevertheless, the FSM was uncompromising, demanding the elimination of all controls over student activities. The university decided that it should allow advocacy of off-campus political action on campus. However, the university would not agree to allow the university to be used as a place to plan illegal activities, such as stopping trains. The FSM opposed this position as they thought that such laws would be used against civil rights activities,

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<sup>19</sup>Ravitch p. 190.

given that many civil rights activities were in violation of the laws.

The university imposed sanctions on four students for their role on immobilizing a police car. The FSM responded by holding a sit-in in Sproul Hall, the administration building, which involved about 1,500 students. To end the situation, the university called in the police who made 773 arrests. Shocked by this action, about 800 professors met and called for the university to drop all charges against the students. The President of the university Clark Kerr announced to the student body that the university would remain open, no discipline would be taken against those students arrested in the sit-in, and all charges against four FSM leaders would be dropped.

The many concessions by the university caused the FSM to lose the support of more moderate members. However, a radical core remained, and there were almost daily student demonstrations at Berkeley for several years.

One essential point that is important for understanding the situation at Berkeley and at other colleges is that the students causing disruption were organized. It was not until there was an organized core of radicals that any mass demonstrations occurred. It was this radical core that incited students to confront the administration. The vast majority of participants in the demonstrations were not part of the more radical group. However, the university's actions often caused spontaneous reactions among the more moderate students, which were controlled and directed by organized radical students.

One basic interest that was severely threatened at Berkeley was its status or image. By the sit-ins and other act of mass disobedience the students forced the university to act. If the university failed to act with much force, then to many, the university would appear weak and unwilling to defend itself. If the university acted too forcibly, then it would appear authoritarian to many others. Financial solvency was not directly threatened in this case. However, it could have been if the state had decided to pressure the university. Basic autonomy was an issue as students threatened the general operations of the university. Outside authorities, mainly the state, also threatened to intervene to resolve the situation. The university's responsibility to its professional employees was not directly threatened in this case. However, as the students focused on the university's control, institutional integrity was not maintained because the university was not consistent in its use of its authority.

Regarding Fuller's eight principles, Berkeley violated two of them. The first condition, that rules be generalizable, was violated because the university did not apply generalizable rules in dealing with the situation. Instead it showed a hesitancy and uncertainty in its response because it lacked the formal structure to deal with the situation. Next, the university violated the seventh condition, that rules must not change too frequently, because the many changes in policy that the university made during the course of these events made it completely uncertain how long a particular decision of the

university would apply. Therefore the rules of the university could provide little direction in how individuals were expected to behave.

## 2. Columbia<sup>20</sup>

At Columbia the situation became serious when two separate radical student groups combined into one movement. The SDS (Students for a Democratic Society) at Columbia opposed the university's connection with the IDA (Institute of Defense Analysis). It also opposed the suspension of six students for protesting inside the administration building. The SDS had trouble gaining support for these issues until it added to its agenda opposing the construction of a new gym, an issue also opposed by militant black students. To force a confrontation the SDS and the black students occupied Hamilton Hall and took a dean hostage. The white students occupied another building after being told by the black students to leave Hamilton Hall. Eventually five buildings were occupied. Half of the blacks involved came from outside the university and were associated with SNCC (Student Nonviolent Coordinating Committee) or CORE (Congress of Racial Equality). The administration was afraid of taking action against the black students, as blacks might invade from adjacent Harlem in support of the students. The faculty, on its own initiative, formed the Ad Hoc Faculty Group to help the university resolve the issue. This group had no formal authority

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<sup>20</sup>Bell and Kristol, pp. 67-93. Ravitch pp. 200-05. Columbia was also mentioned in, Robert Paul Wolf. *The ideal of the University*. Boston: Beacon Press, 1969. p xi. However, the information in Wolff was of little help for this paper

as it was not formed by an act of the administration. The faculty group recommended that students be given the right to protest, but they condemned coercion either by the students or by the administration. This faculty group also voted against granting amnesty to the students who had broken university rules. It further recommended that a faculty-student-administrative group be formed to deal with disciplinary affairs resulting from the situation. However, the radical students were not willing to accept these terms.

After the attempted compromises failed, police sealed the campus and the administration threatened to use them to forcefully remove the students from the buildings. The Ad Hoc Faculty Group again acted to prevent the use of police and to negotiate a compromise. The faculty threatened to place themselves in front of the police in order to get the university to make concessions. However, again the students rejected all offers of a compromise. Therefore, the administration called the police to clear the buildings.

Police had little trouble clearing the radical students as they allowed themselves to be arrested, however violence broke out as the police began to clear more moderate students. The most embarrassing event for the university occurred when police cleared a field by clubbing students, many of whom had not participated in the demonstrations. The clubbing of these students caused a strong reaction by the faculty and the students against the administration. After further rallies and another student occupation of Hamilton Hall, the administration canceled

examinations, effectively ending the semester. Widespread support for SDS and its objectives faded while the school was not in session and when the school reopened similar confrontations did not occur.

Columbia showed how students promoting a radical position gain support. The organized students consisted of two groups with different demands. However, they joined together in order to organize enough people to incite a formidable student demonstration. The students forced the issue with the administration by not accepting any compromises. Thus, the university was not able to protect its threatened basic interests and still appease the students. The faculty intervention at Columbia prevented the administration from moving earlier and encouraged the demonstrators because the faculty did not fully support the administration thereby questioning its authority. Furthermore the intervention of the faculty failed to accomplish a compromise and made the administration more cautious. Even though the faculty favored a flexible response, the students desired no compromises. This put the administration in a bind: if Columbia University responded harshly it would alienate the faculty in addition to the students; however, if it gave in to student demands the integrity of the university would be violated.

As was the case at Berkeley, the actions of the students at Columbia embarrassed the university's image. The occupation of several buildings was also a threat to the university's basic autonomy. By ending the semester the university regained

control, but the cost was temporarily shutting down. The institutional integrity of the university was not necessarily violated by these events. The university was somewhat inconsistent with what it was going to do regarding the students, but part of this was due to the faculty. The faculty led the initiative to compromise as opposed to the administration. Therefore, this initiative to compromise differs from a normal action by the university.

As a whole Columbia fulfilled Fuller's eight characteristics of legitimate authority. There was some hesitation in that the university's rules were a little weak in providing direction. This was further complicated by the university's attempts to come to a compromise. However, in the end the university held to its rules despite interference from the faculty and other groups.

### **3. Cornell<sup>21</sup>**

The first student demonstrations that Cornell experienced were mild. However the university's response did not resolve the situation until it experienced more severe demonstrations and it conceded to the demands of the students. At one earlier demonstration, where conservative students outnumbered the liberal demonstrators, President Perkins placed himself in front of the liberal students to protect them. The university issued only minor penalties for the disruption resulting from this incident.

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<sup>21</sup>Bell and Kristol, pp. 125-142. Ravitch pp. 213-18.

The first big issue at Cornell occurred when the Students for a Democratic Society (SDS) wished to solicit pledges to burn draft cards at the Student Union. The university refused to give permission for this activity as burning draft cards was illegal. In response the SDS and its sympathizers occupied the Student Union. To clear up the situation the proctor was given emergency powers, by the regents, to suspend students on the spot, as opposed to the normal procedure. However, vacation intervened and student support for this issue defused while the school was not in session.

Later when the District Attorney acted against the radical student publication, the *Trojan Horse*, more than a hundred students surrounded his car, thereby detaining him. Because of this incident, outside authorities left the management of the students up to the university. During these earlier events Cornell did not directly concede to student demands, but it avoided placing severe penalties on the students.

Black students at Cornell presented a more serious problem for the university. It had been argued that many universities during this time were reluctant to act against blacks because of their plight in the United States. Cornell as a university had taken many steps to increase black enrollment. It also had adjusted its policies to meet the demands of the black students including Afro-American studies, separate living quarters, and hiring black faculty. However, black students seized the Student Union in response to disciplinary reprimands given to three black students. The administration promised these students that it



would recommend to the faculty committee reviewing these penalties to nullify them and furthermore grant amnesty to those who seized Willard Hall. The university also was willing to pay for the damage done to the building during the incident. The black students celebrated the favorable response of the administration by waving guns as they came out of Willard Hall. The faculty committee was upset over the fact the students had brought guns on campus and refused to nullify the reprimands. The SDS in support of the black students called for a meeting in the gymnasium. This meeting turned into a sit-in involving 8,000 students. Several student groups, and a faculty group, threatened to seize buildings if the issue was not immediately resolved in favor of the students. The faculty complied under fear of a collapse of civil order. After the disciplinary actions were nullified, President Perkins made a personal appearance at the gymnasium to congratulate the students for their positive influence on the university.

Not everyone was ready to approve of the university's actions. A small group of the faculty accused Perkins of not defending Academic Freedom. As time passed, the whole situation embarrassed the university and the trustees stated that in the future such actions would be met with a firm response. Because of these pressures, President Perkins resigned shortly thereafter.

Cornell had been willing to act against the SDS but avoided confrontation because of a vacation. However, it was unwilling to act when dealing with black students. Allen Bloom in *The*

*Closing of the American Mind*<sup>22</sup> condemned this lack of action by the administration. However the escalation of events including a sit-in of 8,000 students, was a major threat to the university's autonomy. The administration acted out of fear that it was about to lose all control.

Like many other universities, Cornell's status was threatened. The inclusion of black students in the rebelling students added a different aspect that made the university unwilling to act. The university felt that acting against black students was incompatible with what it wanted to achieve. The university did not want to be perceived as an institution that would act against black students. However, these same students threatened the university's autonomy. Because the university was willing to bend to the will of the students, as opposed to following the guidelines of its authority, the university suffered a temporary loss of autonomy to the students.

According to Fullers eight characteristics of legitimate authority, Cornell violated one and eight. Cornell violated the first principle, that rules be generalizable to the situation, because its authority was not exercised in a manner that was generalizable. Cornell did have rules that applied to the students action. However, Cornell was reluctant to apply them. While the university did apply these rules to some white students that disrupted the university, it was unwilling to apply these rules to black students. Cornell failed to make its rules

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<sup>22</sup>Allan Bloom. *The Closing of the American Mind*. New York: Simon & Schuster Inc. 1987.

generalizable first, by not applying them in a consistent manner, and secondly, by making distinctions between students as for when to apply them. The eighth principle, that rules be in congruence in what they say and how they are carried out, addresses the problem between what Cornell originally said, and the later actions of the university. The rules did not support the concession of the university.

#### **4. Harvard<sup>23</sup>**

In contrast to Cornell, Harvard was able to deal with radical students in a legitimate manner, however, in the process it upset students and faculty. In expectation that demonstrations could occur, Harvard had designed guidelines for responding to student protest. These guidelines included: (a) only one person, the president, would speak for the university, (b) the faculty would not be immediately convened, and (c) if police were called in to deal with the situation, they would be called early as opposed to after several days.

When the SDS (Students for a Democratic Society) seized the administration building, the university called in the police who removed the students from the building the next morning. In clearing the building police clubbed and arrested many students. The brutality of this action shocked both the students and faculty. The faculty was upset that it had not been consulted, and it recommended that the charges against students be dropped.

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<sup>23</sup>Ravitch 207-08

The students called for a strike opposing the university's action, but it lasted less than a week. Conversely, the University's Board of Overseers supported the president and declared that the "fundamental issue is whether violence can be allowed to interfere with scholarly inquiry and teaching at a university."<sup>24</sup> The university showed no sign of giving in to student demands and the student protest at Harvard ended.

The importance of this example is that while some of its actions were criticized, it was one of the few universities that had rules in place specifically for such an incident, and actually followed them. While there was not a series of escalating events, this may have been due to the fact the university acted according to a pre-designed procedure. The status concerns and basic autonomy were threatened as they were at many other universities. However, the university gave a consistent response that was based on explicitly stated guidelines. Therefore, the university's actions were completely legitimate according to Fuller's eight characteristics of legitimate authority.

## **5. Yale<sup>25</sup>**

Yale's response was unique and creative in redirecting student outrage away from the institution. Student radicals and black sympathizers called for a student strike on May 1, to

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<sup>24</sup>Ravitch p. 208.

<sup>25</sup>Ravitch pp. 218-24.

oppose the trial of some Black Panthers (members of a radical black political party) accused of murdering another black man. The president of the university, Kingsman Brewster, and the faculty collaborated by placing themselves on the side of student protestors. They did this when Brewster stated that he was skeptical that a black could receive a fair trial in the United States, and the faculty voted to suspend classes, using class time to discuss current issues, primarily civil rights issues. These actions upset some editorialists and politicians, but the students overwhelmingly supported the administration. When the vice-president of the United States, Spiro Agnew, denounced Brewster, the faculty and trustees expressed further support for Brewster. On May 1, a rally took place at the university. The university was not an official sponsor, but supplied food, housing, and medical care. Through its actions, the university avoided becoming a target of the student movement.

Yale kept itself from having to deal directly with pressure against the university by aligning itself to a political position. When a university takes a political position instead of following procedural norms that are neutral it violates the ideal of the university as an independent institution. Because of the university's actions, its image suffered. However, the university avoided becoming the focus of student protest that could have done more severe damage to its autonomy and image. The university also preserved its basic autonomy in that it chose its course of action.

It is extremely questionable whether the university fulfilled the first principle of legitimate authority, that rules be generalizable. If the university were to generalize its actions, its position would be that whenever a sizable portion of the students threatened to disrupt the university, classes would be suspended to set aside a day promoting that issue. It is unlikely that any university would openly approve of such a policy. Therefore, the legitimacy of the university's action is questionable. It could be argued that the professors, regents and president of the university all agreed on this course of action, yet the fact remains that they did not establish a policy where they would offer the same response to all other causes, or one that is by vote or popular opinion, except by precedence. Part of the reason of having defined rules or policies is so that legitimate decisions are made from concise but generalizable rules or policies. This is in contrast with popular or arbitrary decisions. If Yale set up its rules so that it decided when to take such actions, then its actions would be legitimate according to having a procedure, but then it would not provide clear direction in how individual should act. Whether such a policy would be characteristic of a university that aspires to be one of the elite universities in the nation is suspect.

## 6. Chicago<sup>26</sup>

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<sup>26</sup>Ravitch pp. 198-99, 206-07

The University of Chicago was particularly effective in controlling student protest while protecting its other concerns. In 1966, 400 students occupied the administration building, protesting the university's release of class rankings to the draft. The university refused either to call police or to negotiate with protestors. After five days with no recognition by the administration, students canceled the protest. Again in 1969, 300 students occupied the administration building. They were protesting the firing of a radical Sociology professor whom a peer review committee fired. They demanded a student voice in hiring and firing of professors. This demand was a violation of the traditional rights of the faculty under academic freedom. The university administration articulated the position, "no force, no negotiations, speedy discipline." While no direct force was used against the students, eighty-two were suspended for their part in the event and the student initiative quickly died.

These demonstrations at Chicago were not as violent as those at other universities. This may be due in part that the university's response did not allow the students to escalate the situation. By non-forceful opposition the university did not give the students a violent incident to escalate the situation nor did it give any suggestion that the students' actions had any legitimacy in the university. Therefore the university avoided the disruption that severely affected many other institutions.

In addition to minimizing the response of students at the University of Chicago it also protected its image by both acting

quickly and showing authority. It maintained its autonomy by addressing the issue and resolving it according to the university's terms. There is no indication that the university acted in a way that was less than legitimate in that the university fulfilled all of Fuller's eight principles of legitimate authority.

### **7. Student Movement of the 60's Recap:**

The pressure put on universities during the student movement of the sixties required an immediate response from universities. An urgent response during McCarthyism may have encompassed a couple of weeks. However, the students were on the university and if the university did not resolve the issue immediately then the basic operation of the university, such as conducting classes, would be disrupted.

Most universities had rules that applied to the actions of individual students. However, many universities were not willing to enforce these rules on large numbers of students. Thus when penalties were placed on a small number of students, they were later repealed when large protest erupted. One of the most effective means of regaining control, used by Cornell and many other universities, was to shut down. By canceling the remainder of a semester and removing students from the campus, universities were able to end mass student protests. Most of these universities encountered no further mass student protest when they restarted the next semester. Of the universities that did not shut down there were different responses that varied in



effectiveness and legitimacy. One response was to eventually give in to many of the demands of the students, such as at Berkeley and Columbia. While both institutions attempted to resist the demands of the students, at one point or another, they reconsidered when the students continued to escalate the problem. Harvard and Chicago are examples of institutions that had decided courses of action prior to student protest and carried them out. Harvard encountered more resistance in carrying its plan out, as the professors and students voiced much opposition to using police. However, Harvard maintained control and prevented a long string of student reactions and varying decisions that plagued other universities. The University of Chicago showed itself to be very effective in dealing with student protests. Its response was not to negotiate with the students, but discipline them according to the university's rules. The university never suggested that it would be willing to make concessions. Therefore, Chicago was not just effective, but exercised its authority in a legitimate way.

### **Conclusion**

The Framework for examining the universities isolates the differences between different universities. The five basic interests show the distinction between what is threatened and what is protected. While every basic interest that is involved in each case is not always explicitly stated, universities endeavor to protect all five of their basic interests. However,

when a university finds itself under a crisis, these basic interests are sometimes sacrificed. Fuller's eight characteristics of legitimate authority give an indication of when a university has made an incorrect response regarding its authority. While legitimacy is not necessarily synonymous with correctness, it shows what is in sync with the authority as stated by the rules. A faulty system of rules would result in undesirable responses. However, when universities make rules, they are aspiring to put into place those rules that will best serve the needs of the university. Therefore by legitimately following these rules, a university would be showing a sign of excellence in its institutional integrity. Good rules are of no use if they are not followed or enforced. To lay aside these rules in times of crisis threatens the authority of the institution itself.

In comparing McCarthyism and the student movement of the sixties some similarities are apparent. Both events threatened the status or image concerns of universities. Whenever a movement is itself controversial, or it confronts issues that are controversial, then how the university reacts will be seen in context to the controversial issues. It will often be seen this way instead of in relation to generalizable and otherwise legitimate rules. In both movements most of the universities that minimized the damage to their status concerns at the time were later portrayed more critically. Part of this change in regard to McCarthyism was due to an increased tolerance of Communists, and also because most of the charges made under

McCarthyism were exposed as frivolous. In the student movements of the sixties, it was after the urgency was over that universities' actions were reexamined. In both of these movements, the main reason universities were later criticized is that the universities gave into the demands of outside pressures with little regard for the importance of the university as a place of higher learning. Universities were criticized for acting out of political expedience rather than by definite principles. As long as (a) the rules of the university adequately stated what is important, (b) how the university would react to external pressures to change are defined, and (c) the rules were not changed during the issue, then a university that held to its rules would not have fallen under later criticism. However some universities, particularly public universities, may not have survived the short-term consequences of such a response.

This method of analysis could be used to examine other such incidents that pressure universities either in the past or in the present. To respond to these pressures while exercising their authority legitimately, universities need to do two things. First, they need to develop an adequate system of rules that addresses the universities' objectives and responsibilities. Second, universities need to follow these rules. Any other course of action will be viewed as illegitimate, and, as the examples have shown, will most likely cause additional troubles for universities.