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Speech In, For, and By (?) the “Multiversity”: Reflections of a Recovering President

WILLIAM R. GREINER†

PREFACE

On March 13, 2001, the members of the Harvard Corporation announced the appointment of a new president of Harvard University. This announcement was, of course, of great importance to the Harvard community in Cambridge and to the nation-wide and world-wide community of Cantabrigians.

All of higher education, nationally and internationally, took note of the appointment. Harvard is the mother ship of American higher education, partly as a matter of history, but also as a matter of current reality. It is one of a handful of institutions which can make a plausible claim to being the world's best university.

In this instance, the appointment was of special interest because of the pedigree and accomplishments of the new president. Dr. Lawrence Summers was called to Harvard's presidency at the age of forty-eight, but with a résumé that even extraordinary people would work a lifetime—a much longer lifetime—to accomplish. Scion of an academic family, including distinguished parents and two Nobel laureate uncles; graduate of M.I.T. (B.A. Econ.) and Harvard (Ph.D. Econ.); tenured Professor of Economics at Harvard at age twenty-eight; recipient of the John Bates Clark Medal, a recognition bestowed on the most promising and accomplished economists under forty; a member of President Reagan's Council of Economic Advisors prior to his faculty appointment at Harvard; Chief Economist for the World Bank, 1991–1993; Undersecretary of the Treasury, 1993–1995; Deputy Secretary of the

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Treasury, 1995–1999; and Secretary of the Treasury, 1999. At the time of his appointment to the Harvard presidency he was a fellow at the Brookings Institution.

On February 21, 2006, Summers announced that he would resign from his presidency effective June 30, 2006. This produced a muted shock wave. Harvard presidents usually serve long terms, at least a decade, and often more. (Neil Rudenstine 1991–2001; Derek Bok 1971–1991; Nathan M. Pusey 1953–1971; James B. Conant 1933–1953; Abbott Lawrence Lowell 1908–1933; Charles W. Eliot 1867–1908). The shock wave was muted because the announcement came as no great surprise. Harvard is a great institution but it is not immune to problems which beset the less great; and it has special challenges associated with its great stature, great wealth, and associated history and traditions. In Summers' brief (by Harvard standards) incumbency the challenges were many, and they were augmented by President Summers' proclivity to speak his mind—his professorial mind, openly, forcefully and regularly, to the great delight of the media, and to mixed reviews from his faculty colleagues.

Two events “bookend” this story.

Early in his presidency, Professor Summers had a “collegial”—translate, very direct—conversation with a member of the faculty in the Department of African-American Studies. The faculty member was Dr. Cornel West, a widely known and highly regarded scholar, teacher, and charismatic rhetorician whose scholarship and teaching reached a very broad and diverse audience. His ability to reach many audiences within both the academy and the larger public probably was one factor leading to his designation as University Professor. At the time, that recognition had been conferred on only seventeen members of the Harvard faculty. The substance of the conversation between the president and the University Professor is known only to the two of them, but the short and less inflammatory version, pieced together from public statements, is that the president challenged the professor to do even more and better as scholar and teacher, and the professor found the experience to be demeaning and disrespectful.

Such dustups between high-ranking colleagues are not that uncommon in the academy. In this case, however,

these senior faculty both were at the iconic “rock star” level, but one, the president, outranked his colleague. If a University Professor at Harvard is a cardinal of higher education, then Harvard’s president is higher education’s pope. If there was a fight, it would be hard to call it a fair fight.

The matter was widely reported, speculated about, commented upon, and, to some extent, exploited by the media and others. The dénouement came with the resignation of Professor West who returned to Princeton, from whence he had come, some years earlier. He was joined in that move by another very distinguished member of the Department of African-American Studies. The Chair of the Department, Dr. Henry Louis Gates, also considered moving to Princeton, but decided to stay at Harvard after the president made it clear that the West/Summers conversation did not flow from a lack of confidence in, or decision to reduce support for, the Department. The president publicly confirmed his support and backed it up by a substantial resource commitment, all of which persuaded Professor Gates to continue as Chair. This resolution of the matter did not put it to rest. It had a larger significance regarding the style and substance of a president’s interaction with faculty, and cast a cloud on the balance of the Summers presidency.

The other “bookend” event for the Summers presidency came January 14, 2005, at a conference on “diversifying the workforce” in science and engineering, hosted at M.I.T. President Summers attended and was one of the featured speakers. His talk was delivered extemporaneously and clearly was intended to “provoke” and “challenge” the audience to consider possible reasons why women are underrepresented in engineering and sciences at the very best universities. The talk was thoughtfully prepared and presented, though not delivered from a text. It included reminders along the way that it was intended to be “provocative” and “challenging.” It was the kind of talk a professor might deliver to an audience of professors where the objective was to stir up vigorous debate. In it, Dr. Summers offered four possible reasons for underrepresentation of women in academic science.

One reason was the possibility of overt gender discrimination. Dr. Summers’ main case against that rested on rational decision-making, i.e., that in a properly

functioning market for academic talent, it would be irrational to exclude talent solely on the basis of gender. Accordingly, market forces would break down discrimination because some universities and departments would scoop up the talented women and by so doing develop stellar departments which would then overshadow departments which discriminated against that talent.

Another hypothesis was the possibility that women are less willing than men to make the "eighty-hour-week" commitment necessary to succeed in science, or in most higher powered professions.

The third and fourth hypotheses involved variants regarding nature/nurture factors affecting human aptitude and behaviors. The nurture possibility was that girls are socialized away from activities and behaviors that may stir interest in sciences and mathematics, e.g., playing with dolls and doll houses rather than Tinker Toys. The nature argument posited that genetic factors might predispose a higher proportion of men than women to be able to do high level academic science and mathematics. This argument rested on some research and analysis suggesting that in a statistical distribution of men and women tested for mathematical ability, women tended to cluster more tightly around the measures of central tendency (mean/median values) while men had a greater propensity to score both lower *and* higher than women, and with less of their cadre tending toward the center of the distribution. In other words, proportionately more men than women showed either very low or very high aptitudes for mathematics, so that the talent pool of people having the capacity to perform very high level science is skewed towards men, and thus the disproportionate number of men in academic science. The hypothesis was based on scholarly research which was/is the subject of considerable debate. In response to the Summers talk, this became known as the "intrinsic aptitude" hypothesis, that being the term used by Summers in his presentation.

In his talk, Dr. Summers speculated as to the rank order of these hypotheses as they might affect the presence of women at the highest levels of academic science. His speculation was that the eighty-hour-week issue was first on the list, followed by the "intrinsic aptitude" issue, with socialization of and residual discrimination against women last in order.

The talk was not well-received by many in the audience. It prompted one woman, a prominent scientist and academic administrator, to walk out of the conference. Within days, it was a major media issue. One rather extraordinary response came from the presidents of M.I.T., Princeton, and Stanford—all scientists—who wrote a polite but pointed open letter critiquing the Summers talk. This also led to a heated debate in the Harvard faculty—including calls for a vote of no confidence in the president—from the Faculty of Arts and Science, and to public apologies from the president, asserting his good intentions, but accepting that the talk was not sufficiently sensitive to the controversial nature of its several hypotheses.

Like the Cornel West exchange, the “intrinsic aptitude” talk became a “brooding omnipresence” regarding the Summers presidency, and would be one of the major contributors to the faculty unrest which ultimately led to a no confidence vote, which carried 218 to 185 in the Arts and Sciences Faculty on March 15, 2005. As noted above, President Summers’ decision to return to the Harvard faculty with the rank of University Professor was announced on February 21, 2006.

Needless to say, the arc of the Summers presidency was not circumscribed only by two controversial conversations (one private; one public) both of which became media *cause célèbre*. In his years as president, Dr. Summers/Professor Summers had to deal with many complex issues appropriate to, or derived from, the marvelously endowed and intricate nature of “Mother ship Harvard.” But it appears that presidential speeches and rhetorical style were a substantial contributing factor to the outcomes, positive or not, in this presidency. Indeed, in the end game which played out in the press, some commentators and observers contended that the critique of Summers by his colleagues constituted a triumph of “political correctness” by a self-serving faculty, and which amounted to denial of academic freedom and freedom of speech, of presidential free speech. Whether or not there is such a concept will be a subject of the following text.

I. SPEECH IN, FOR, AND BY (?) THE UNIVERSITY

This Essay was not prompted by the Harvard/Summers saga. That series of events does provide, however, a

fortuitous lead into what follows. This Essay is mostly a product of experiences and ruminations of the author, after thirty-eight years as a university faculty member, and some twenty years in senior university administration—seven years as provost and thirteen years as president—at the State University of New York at Buffalo. During those years of service, and especially the last twenty years, questions regarding speech in and for the university, and the ground rules, if any, regarding such speech, have arisen and subsided only to rise again. As the Summers presidency suggests, speech in a university context is very serious business, and the speech of the president is very, very serious business. So with thanks to the editors for this opportunity, let us essay some thoughts and reflections on this set of questions:

Are there ground rules regarding presidential speech? If so, what are they and from whom or what are they derived? What purpose or purposes do they serve?

Who speaks for the university? If so, by what right, and subject to what limits?

Finally, can the university, an artificial being created by law, itself speak, and if so, through what medium, and for what purposes?

If this were intended to be a suspense thriller, the answers to these questions would be teased out over many pages leading to a clever resolution. Sorry to say, this author doesn't have that talent, and this isn't the right forum for that literary formula. So here are my short answers to these first questions.

1. There *are* ground rules regarding presidential speech. Now when I say ground rules, I don't have in mind the formal structures and processes of the law, of our legal system. To be sure, there is law on the subject, and that law is a framework which bears on and provides context for the university ground rules. But those ground rules derive from the institution of the university, from its history, from its ideals, from its many publics and stakeholders, and from its place and role in a free society. And yes, there are special ground rules regarding presidential speech for the university.
2. The ground rules have two primary purposes. First, to protect the rights and privileges of university

citizens—most especially the faculty and students—to freely speak and debate on any and all matters, so as to foster the university's multiple functions, most especially free inquiry and teaching. Second, the ground rules are intended to preserve the role of the university as an open forum. The ground rules related to these purposes may and do impose constraints on speech in and for the university.

3. In the modern American university, only a few officers of the institution, but most particularly the appointed leaders of the institution—the president, chancellor—or the chairman of the governing board, i.e., trustees, regents, may speak definitively for the university.
4. Finally, the university can speak with authority and legitimacy on matters regarding its governance and management and fundamental principles, but beyond that the university has little or no institutional competence to take positions on other matters, even those which may be important, or thought to be so, by its people.

So much for the short answers. That was easy. The harder part lies ahead.

II. THE GROUND RULES: IDEALS AND INSTITUTIONAL CONTEXT

The university about which this Essay is written is the American research intensive university, i.e., places such as the University at Buffalo (UB) and other major state and private universities. These institutions share a common history stretching back over 1000 years, centered mostly in Western Europe but having special ties to the universities and colleges of the United Kingdom and Ireland. That history is framed for me by two sets of lectures, which then became famous when published as books. The first one is John Henry Cardinal Newman's *The Idea of a University*, first published as a book in 1852, and Clark Kerr's *The Uses of the University*, first published in 1963.

Both sets of lectures were written by university leaders who were reflecting upon the institutions they were leading or preparing to lead, and the precursors and peers of those institutions.

Newman addressed his lectures to prospective students and supporters of a university which he was charged to build and lead. Specifically, Newman spoke as he was about to commence the process of building a university in Dublin, Ireland, to take in Irish Catholic young men and to provide for them the type and quality of education provided at Oxford, Cambridge, and other institutions which had been restricted to Protestants or to young Catholics willing to swear commitment to the Church of England, whether they meant it or not. One main goal of Newman's lectures was to persuade an audience of both supporters and doubters regarding the proposition that the new university should be both *catholic* and Catholic; that it should cover the full range of secular learning and encompass both theology and Catholic religious teachings as part of the curriculum. As pure advocacy for that proposition, the lectures (or as Newman called them, discourses) were a rhetorical *tour de force*. But they were much more than that; they laid out first principles about the nature and purposes of a university, and not just Newman's proposed university, but for all places of learning worthy of designation as a university.

In Newman's view, a university had to allow for the teaching of all knowledge, this consistent with his view that knowledge was universal and part of a continuum whose elements all fit together, reinforcing and supplementing each other. For him there were not "two cultures." Science, Art, Music, History, Literature, Philosophy and Theology, and Mathematics, all needed to be part of a university's scholarly repertoire. All needed to be studied for their own sake and without reference to their applications and potential utility. While preparation for the professions—the law, the church, medicine—were appropriate for inclusion in the university, they were incidental to the university's main purpose, namely liberal education derived from the great works of the Greeks and Romans and philosophers and scholars who expanded upon and expounded the knowledge derived from those works, all for the benefit of students who would then become better and more capable men (at that time it was all men).

Newman spoke out of the great scholastic tradition of European universities in which the school men—in the beginning mostly clerics—passed on the ancient learning and their thinking on it. In this tradition, the search for

knowledge was a gradual process of expansion upon ancient texts. The development of new knowledge, especially in mathematics and science, was to be left to other institutions, to research institutes and academies, where there were few, if any, students, but many great scholars and investigators. In other words, Newman's university was about learning and teaching. The extension and expansion of knowledge was to be left to others.

Newman's conception of the university, with its call for acceptance of the universality of knowledge, for the study and preservation of knowledge, and for the transmission of knowledge as preparation for a good and liberated life without regard to "utility" resonates with the purposes of our liberal arts colleges and their faculties, be they located within the modern university, surrounded by professional schools, institutes, centers, graduate programs and students, or be they free standing colleges primarily for undergraduates staffed by faculty whose principal teaching is for undergraduates. The college is the fundamental building block of the modern university, and the ideals of the college—its search for universal knowledge and truth unrestrained by utilitarian urges and demands—are still the bedrock and received ideals of the university. So it is that Newman's lectures remain a primary text underpinning the first principles of the academy and the foundation for ground rules regarding speech in and for the university. In my words, the following is Rule One:

In college and university, scholarship, teaching and learning must be allowed with no restraint on thought and expression other than that which may be imposed by competing, contrasting, or conflicting thought and expression of scholars, students and others. The university is and must be a free and open forum in which its people can engage in an unfettered search for knowledge, wherever that may lead.

This is the core value of the academy, of colleges and the universities, even though the American university of the early twenty-first century has developed in ways not imagined in Newman's idea of the university.

Newman's discourses captured the imagination and attention of generations of university scholars and teachers. For over a century, his idea of the university has been a primary source for defining the ideals and aspirations of

higher education. But even as he delivered his brilliant discourses, the university he described was being displaced by other visions for higher education.

In 1809, Wilhelm von Humboldt commenced to build and lead the University of Berlin. At the start, he conceived of the university much as Newman did, i.e., as a place for teaching and learning of extant knowledge, while discovery and the expansion of knowledge were the province of academies and institutes. But von Humboldt set out to build his university in partnership with academies and institutes. As the German university evolved from this base it became an institution organized around what we now call disciplines. Knowledge was discovered and taught by specialists who took responsibility for teaching and training the next generation of specialists, and for conducting research. The German model was imported to the U.S. first at Johns Hopkins, and then incorporated into the graduate training and disciplinary research missions of the modern university. Closer to home, the Morrill Act of 1862 would open the university to mass education for the sons (and soon daughters) of farmers, craftsmen, and other yeomen workers. Tied to this was the notion of university involvement in service and applied research—perhaps most famously embraced by the “Wisconsin Idea,” as that state’s great public university and other public schools engaged in applied research, public service, and accessible education. The second Morrill Act of 1890 would seek to open doors to students of color, albeit in segregated institutions, and the Hatch Act of 1887 and Smith-Lever Act of 1914 created the agricultural experiment stations and agricultural extension services which put science in service to make America a marvel of agricultural productivity. Two world wars and their aftermaths brought higher education into national service in war related activities and assisting in the adaptation from war time to peace time economies. The GI Bill provided WWII veterans access to higher education and further engaged universities in mass education and Vannevar Bush, a former vice-president of M.I.T., would lead in the wartime efforts of higher education and then lay the foundation for federal support for the enormous university based research enterprise which created the “research intensive university.” All this has been described by many writers but none have done it better, more precisely, or more directly than Clark Kerr.

Kerr's *The Uses of the University* paid homage to Newman, in both its title and text. Newman's college with its focus on undergraduate education was still accepted as the franchise mission of higher education, especially in the major public institutions, but layered on top were the research and service missions, which go with the commitment to graduate and professional education and the federal/university scientific research enterprise. Kerr sought to sum up the many "uses" of the university by invoking a new name for the enterprise: the "multiversity." Though he probably did not coin the phrase, his usage of it brought it into the common parlance of the academy and its many observers and commentators.

The "multiversity," a.k.a. the "research intensive university," has within it the vestigial remains of the British university of Newman's time and of the colonial colleges of the U.S., the graduate training and research missions attributed to von Humboldt and imported via Johns Hopkins, and the service and educational access missions sponsored by Senator Justin Morrill. To all that has been added scientific research and development particularly with government and industry sponsorship, along with assorted sales of services both internal to and outside its four walls, e.g., housing and other auxiliary services for students and faculty, and consulting services for business and government. It is a corporate body owned by the government, or supported by the government, though we still divide the total enterprise into two camps, e.g., public and private. It is an enormous enterprise producing or supporting the production of a substantial portion of our G.D.P.

While Newman paid no attention to the issue of institutional leadership in his *Idea of a University*, Kerr paid considerable attention to that subject, this reflecting both the history of and the vastly expanded engagement of the research university with its society. Kerr saw the developmental history of the university partly as a function of the singular and often dictatorial leadership of the presidents and chancellors who oversaw the evolution of the university out of its several nineteenth century roots. He described as "giants and builders" the presidents/chancellors who led the development of such institutions as Harvard, Yale, Stanford, Berkeley, Wisconsin, Michigan, et al.

At the time he delivered his lectures, Kerr was chancellor of Berkeley. Perhaps due to his Quaker modesty, he assigned himself and his peers to another category of institutional leadership. The following excerpt provides a very smart if also self-deprecating description of the "multiversity" presidency. *Pari passu*, it also catalogues the complexity of the "multiversity" in terms of its many constituencies and stakeholders. The expectations of these constituents frame the role of the university president, and lead to some of the ground rules regarding a president's speech in, by, and for the university.

According to Kerr, the university president in the United States is expected to be:

A friend of the students, a colleague of the faculty, a good fellow with the alumni, a sound administrator with the trustees, a good speaker with the public, an astute bargainer with the foundations and the federal agencies, a politician with the state legislature, a friend of industry, labor, and agriculture, a persuasive diplomat with donors, a champion of education generally, a supporter of the professions (particularly law and medicine), a spokesman to the press, a scholar in his own right, a public servant at the state and national levels, a devotee of opera and football equally, a decent human being, a good husband and father, an active member of a church. Above all he must enjoy traveling in airplanes, eating his meals in public, and attending public ceremonies. No one can be all of these things. Some succeed at being none.

He should be firm, yet gentle; sensitive to others, insensitive to himself; look to the past and the future, yet be firmly planted in the present; both visionary and sound; affable, yet reflective; know the value of a dollar and realize that ideas cannot be bought; inspiring in his visions yet cautious in what he does; a man of principle yet able to make a deal; a man with broad perspective who will follow the details conscientiously; a good American but ready to criticize the *status quo* fearlessly; a seeker of truth where the truth may not hurt too much; a source of public policy pronouncements when they do not reflect on his own institution. He should sound like a mouse at home and look like a lion abroad. He is one of the marginal men in a democratic society—of whom there are many others—on the margin of many groups, many ideas, many endeavors, many characteristics. He is a marginal man but at the very center of the total process.

Who is he really?

Kerr posed a now inappropriately gender-limited question regarding the president: "Who is he?" Kerr's answer was: "The president is primarily a mediator." I

would extend the answer to be that the president is mediator and adjudicator. The mediator role calls for those skills which help contesting parties to make wise choices. The adjudicator role calls for the president to have the wisdom and skills to make choices that are both wise and good, and are seen to be wise and good, by the contesting parties and interested observers.

Kerr's suggestion that presidential leadership is at the heart of a *process* of mediation between and among a very broad array of constituencies and issues seems to me essentially right. The "vision thing" is important, to be sure, however, the ability to persuade others to buy into the vision is also important. In the end, the main power of the presidency is the power to persuade. The main responsibility of the president is to make wise choices among competing constituencies and possibilities. This is the basic framework for setting ground rules about presidential speech.

III. PRESIDENTIAL ROLES + CONSTITUENT EXPECTATIONS = SOME GROUND RULES FOR PRESIDENTIAL SPEECH

A. *The Priestly Role: On Looking Nice in a Blue Suit or a Funny Hat*

A pleasant yet demanding aspect of the president's role is to help set the mood for a wide array of university events. These range from the primarily academic, e.g., scholarly conferences, to meetings of university alumni and friends and supporters, to formal university events such as commencements and convocations.

For each of these the purpose of presidential speech is pretty much the same. Set a proper tone, i.e., the amount of gravitas appropriate to the occasion, and be welcoming to guests, be supportive to the faculty and staff, and volunteers sponsoring the occasion. The event is the event, not the presidential speech. The task is to represent the university well, to speak for the university in a ceremonial yet light handed fashion. In other words, provide the blessing, and show institutional care, concern and support for those in attendance and those who made it possible. Like the celebrant at a wedding, play an important role and duty but do it with a light touch. Rarely is it proper to

lecture or attempt to be profound. That only happens occasionally, anyway. Profound is a very high standard. The university is the host, the setting for the event. The president's presence is important because she or he is the amanuensis through which the university speaks to its guests or constituents.

B. The Priestly Role: Dealing With Tragedy, Disaster, or Trauma

In any community, tragedy occurs inevitably, if infrequently. The representational role here is both very significant and very difficult. For example, two days after 9/11, what to say to a gathering of university faculty, students and staff, many of whom have lost friends or family members? Or what to say to a gathering of family, friends, and co-workers of a staff member killed on campus in a tragic accident. The choice of words on such occasions is important. This quite literally is a priestly role. Beyond the words, the presence of the president brings the university to the gathering and gives a human face to the institution. But the words matter too.

This brief excursus on what I call the "priestly role" of university leadership may seem trivial. Or it may seem to trivialize the leadership roles in the modern "multiversity." I think not. Rather, it reflects the influence of the broad array of constituents of that institution. Those constituencies have many and often conflicting interests in the institution, but all want affirmation that the institution is open and responsive to their concerns and interests. Parents want affirmation that their sons and daughters will be taught well and overseen gently and wisely; alumni want affirmation that the institution they knew and remain loyal to is committed to their values and protection of institutional traditions even though it clearly is a different institution than they attended; donors and sponsors want affirmation that they have invested wisely; taxpayers want affirmation that the public treasure is being well spent. All these affirmations may be quantitatively measured and assessed. But periodically, stakeholders want affirmation from a spokesperson of the university. Many contribute to this effort, but it falls most often to the campus president or chancellor to be the celebrant of the university, its values, its accomplishments, and its mission. The

president/chancellor represents the university in these settings, and in two senses of that term.

The president/chancellor represents the institution in the same sense that lawyers represent and speak for their clients. The president/chancellor represents the institution as spokesperson regarding its values and accomplishments. But in many of these public settings, the president/chancellor represents the institution as a visible symbol. That is most clearly seen on those occasions when we put on the academic vestments, derived from the priestly garb of centuries past, including the funny hats and various signs of office.

The blue suit/funny hat rituals have their conventions regarding presidential speech: be succinct; be positive; be informative; be proud but not excessively so about institutional accomplishments; be humorous—self-deprecating humor is good; be optimistic; be truthful; and do all this in a way that is also pleasing to faculty and colleagues in attendance. They too want affirmation regarding their institution, but they are tough and well informed critics. The ability to perform the priestly role is at the heart of what it is that search consultants seek when they ask their favorite question, i.e., is the candidate “presidential?”

C. *The President as Colleague: Tone and Style*

There is one other limit on presidential speech (and behavior) which deserves special mention. This has to do with the style and tone of presidential interaction with colleagues, especially in the university faculty.

In the main, it behooves a president to see (and behave towards) faculty as colleagues and friends. They are employees of the university, as is the president, but they believe, and I believe rightly so, that theirs is the central role of the university, and indeed, that the university exists to foster and support their work, and especially their work with students. At the same time, they accord the president special respect and deference, partly because they know that from time to time the “buck stops” somewhere, and that is useful and important for scholars who need a decision-making apparatus but have little interest in the apparatus, though having great interest in the outcomes.

The faculty has great respect for the institution of the university. Its primary function is to protect their ability to learn and to teach. Part—a substantial part—of their support and deference to the president is derived from the fact that the president represents that institution, both effectively and symbolically.

While the president is colleague to individual faculty and groups of faculty, the president does not have the full prerogatives of a colleague, particularly the prerogative of acting towards an individual faculty member as he or she might if solely in the faculty role. I had this point brought home to me early in my service as president at UB. I found myself engaged in a lively debate with a colleague of many years whom I knew quite well. As I pressed my point of view, I noticed in him some unusual reticence and an appearance of discomfort. I asked him about it. He allowed that although we had been friends and colleagues for a long time, I now had position and “power” that changed the context of our conversation and made him reluctant to engage in debate as we once had. For me nothing had changed, or so I thought, but for others it had. Thereafter, I tried mightily to avoid taking advantage of the trappings that go with the presidency. To do otherwise would have deprived me of the pleasure of lively debate with my colleagues, and the learning that comes from that. But in debate it became especially important to keep the tone light and give my colleague or colleagues ample room to maneuver, so that they too could enjoy the debate while not intruding on the dignity they ascribed to my office and to my role as representative of the university. At the same time, however, I had to work hard not to get involved too much in topics in which my personal views on hotly contested social and political issues could be drawn out or tested or used to “provoke” or “challenge.” Words spoken with that professorial intention could be ascribed to the “president” not the professor, and by extension to the university.

To say the least, the difficulty of separating the personal and professorial from the presidential is, for most presidents, a major limitation on the topics presidents address during their tenure in office and even thereafter. More on this shortly.

The above described rhetorical conventions shape the public image of both institution and administration, and

they constitute relatively benign but nonetheless limiting expectations regarding the speech of presidents and chancellors. And those limitations are in effect 24/7 because once in the priestly role, always in that role until resignation or removal. There is nothing said that is “off the record,” or nothing said that is personal and not said as president.

For some presidents, this is very constraining. Others find a way to be pretty much “themselves,” but that requires a certain risk-taking temperament and seeming eccentricity that becomes part of the on-the-job persona. Kerr had that capacity. His lectures were brutally frank about the weaknesses and foibles of the “multiversity” and its faculty, yet very positive and affirming about the value and values of the institution. But faculty colleagues and other critics made him pay for his frankness. To some extent he regretted it and apologized for it in various addenda to his original lectures, published periodically in the years after he left office and went on to other endeavors.

IV. SPEECH “FOR” THE UNIVERSITY: LIMITS FOR PRESIDENTS, CHANCELLORS, AND OTHER OFFICERS

Move now to the heart of the topic. How is it and why is it that speech of presidents/chancellors, and other representatives of the university is constrained in the interests of protecting free speech in the university? And how is it and why is it that the university itself is constrained not to take institutional positions on matters of great interest to some, or many, or even all of its people—of its faculty, students and staff.

In order to address these questions we will use some examples. Let’s start with a now familiar case, which we have already seen in the introduction to this Essay.

A. *President/Professor Summers’ Conversation with Professor West*

It is alleged by Professor West that in his interview with Dr. Summers, his scholarly work was critiqued and found wanting on various dimensions; the scholarly rigor of his most popular course (enrollment about 600 students) was questioned, as was grading practice in the course; and the wisdom of Professor West’s participation in electoral

politics—specifically his participation in Reverend Al Sharpton's campaign for U.S. Presidency—was also criticized.

Assuming *arguendo* that all this was true, what is the issue, or issues?

There were several, I think. Such a conversation may have been entirely appropriate assuming that university professors at Harvard report directly to the president. But if that were so, then to whom should the professor appeal for redress should he or she disagree with the criticisms offered by the president? In most universities, the peer review process regarding a faculty member's progress and performance would be conducted at the faculty, department, or school level, and finished at the level of the chief academic officer. The president would be the final reviewing authority should there be any formal process regarding such matters beyond the provost.

The final arbiter, appellate role, mediator or adjudicator role of the president is not usually first on the list of presidential *desiderata*. Words like leadership, vision, energy, come first in the list of presidential characteristics. They fit well with the "giant builder" conception of being presidential. Those characteristics are indeed important aspects of presidencies. But the executive model and temperament are not adequate to the task. Words like careful, wise, and judicious also are high on the list in the descriptions of the modern mediator/leader president. Just as judges are not expected to commence a prosecution, neither is a president expected to lead the critique of a professor, a program, a department, a course. There is a whole array of people and offices for those tasks, led by people appointed by and overseen by the president, but from a distance and judiciously.

But if the direct president to University Professor critique was bureaucratically permissible, is there a problem still? I think so.

The president is more than a leader/adjudicator/mediator. Presidents are the representatives, spokesmen and symbolic officers of the university, afforded deference and respect as president because of what they represent, i.e., the university, and not necessarily because of who they are as professors or public figures. Even university professors are expected to acknowledge this and in return they expect

to be accorded collegial treatment. If that is not accorded, what are their remedies? Going toe to toe with the president is not a fair or seemly fight. Both sides will be bruised and the reputation of the university will be tarnished, and where it's not a fair fight, no one wins. In sum, the power imbalance between university president and University Professor, calls for the president to exercise judicious restraint even when exercising prerogatives which might be entirely appropriate in a peer to peer setting.

Some last comments on this example. Even if the president thinks that the evaluative comments made to a senior colleague are entirely private and confidential, they are still ill considered. The job is 24/7; there is no easy way to separate the person and the office, i.e., the president and the professor, or to speak off the record. What is said in private will more than likely be in the public domain, and very soon, because publicity may be the best and only effective defense available to the aggrieved professor. The normal court of last resort—the president—has been disqualified by having already spoken on the matter.

B. *Provocative and Challenging Speech*

With apologies to Dr. Summers for the appearance that this may be “piling on,” the “bookends” with which this Essay began provide another and even more interesting case study regarding presidential speech. In this instance, the actual words spoken at the M.I.T. conference are in the public domain since Dr. Summers released to the press the transcript of his remarks and the ensuing “Q and A.”

The transcript displays the thinking and rhetorical style of a very smart and very provocative teacher and scholar. I have tried to read it in two ways: as the words of a very accomplished and distinguished University Professor, and, alternatively, as the words of a very smart university president. Read from the first perspective, the remarks seem to me as advertised and obviously intended by Dr. Summers. These were ruminations and speculations regarding possible alternative reasons for the relatively small representation of women in the highest echelons of academic mathematics and science. The remarks were intended to challenge assumptions and provoke thought and responses which might advance the debate about and search for solutions regarding this important issue.

Why then all the fuss? The answer to that question turns on the answer to this question: Can a university president, even a most distinguished professor president, put aside the office and speak only as professor and expect to have his or her remarks judged and responded to solely in terms of that role? I think not. I do believe that the presidential role is a 24/7 obligation and cannot be shed in order to allow the professorial role to be exercised according to professorial standards, except, perhaps, with students in a classroom. The provocative and challenging hypotheses and conjectures provoked anger and challenges, but most of that was directed at the wisdom, or perceived lack thereof, of a president making such remarks in a public setting. But still, why the fuss? Because, in my view, making such remarks in so public a setting—or probably at all—is seen as highly acollegial. The “colleague” making the remarks is not just any colleague. By virtue of the presidential mantle and role, the speaker is an “uber-colleague” whose other job calls for deference from the listener out of respect for the office and the institution represented, 24/7, by the speaker. That hypothesis seems to me to be borne out by the transcript of the proceedings. Clearly the remarks provoked anger and resentment from many who heard them. But the “Q and A” showed little of that. Cordial softballs, albeit learned softballs, were the order of the day. Perhaps that was just normal collegial behavior, but it is also consistent with the norms of deference to the “uber-colleague” making the presentation.

Beyond that lies a second set of considerations and these are more perverse and harder to deal with. When a colleague poses provocative and challenging questions, indeed when anyone poses such questions, there always is an unspoken concern that the provocateur may believe that the answer to the question or questions is an answer or answers the listener doesn't want to hear. When it's just a colleague or peer posing the ambiguous propositions, which we call questions, it may not be a cause for concern. The power balance between colleagues is not always equal, but it isn't often so disparate as to be a matter of concern. When a powerful leader poses the ambiguous proposition, the stakes are much higher. What if he or she actually believes in an answer that resolves the ambiguous proposition in a way that I and others don't like or believe?

That then leads to another level of concern. The “uber-colleague”/president may make choices with institutional policy and resources, or may make judgments, when in the adjudicating/mediating mode, that reflect an undesired point of view which may underlie those challenging hypotheses. And in some matters of great import, such as the possibility of gender-bias, the ambiguity regarding the provocative and challenging question may be chilling and threatening. This is the mine field which any president must negotiate when she or he wants to be challenging and provocative.

Finally, but not entirely inconsequential, if a president chooses to be provocative and challenging, it’s probably best to do that within the framework of one’s own discipline. Speculation outside that boundary is also likely to be seen as acollegial behavior.

Is all this fair to presidents? Possibly not. But only if it is not clear that there are ground rules that go with the job. Perhaps we are still mapping these ground rules. If so, the Harvard experience most assuredly has advanced our understanding of the limits on presidential free speech. To be sure, a costly experience both for President Summers and for Harvard. Both, however, have more than enough strength to weather this squall.

C. Another Priestly Role: Defender of the Faith and the Faithful

Moving on. What limits on speech *for* the university derive from the fundamental premises regarding free speech in the university?

To refresh recollection, here is my earlier assertion as to the basic premise:

In college and university, scholarship, teaching and learning must be allowed with no restraint on thought and expression other than that which may be imposed by competing, contrasting, or conflicting thought and expression of scholars, students, and others. The university is and must be a free and open forum in which its people can engage in an unfettered search for knowledge, wherever that may lead.

In my view, adherence to this standard, and protecting and preserving it is the first job of the president and other

university officers. Without this there can be no university as we know it. Preserving the standard is preserving the very existence of the institution.

The presidential role in this regard is also a kind of priestly role, that of defender of the faith and the faithful. In order to perform that role effectively it may be necessary for the president to limit or restrain his or her speech in the interest of protecting and preserving the speech rights of the university's people, and to preserve the university role as open forum for debate and discussion, and its role as social critic, commentator, and advisor. The university, the artificial being, the corporate body, can speak and advise only through the medium of others, so it is essential that its open forum nature be preserved. It is in that forum and out of that forum that knowledge is advanced, and social criticism offered. But why might this constrain speech of the president and other university officers? Herein another example, drawn from recent experience, and aided and abetted by the advantage of 20/20 hindsight.

Some years ago the State University of New York experienced a well publicized event regarding free speech in the university, and in which the role of the campus president came front and center. In this instance, the events occurred at one of the system's liberal arts colleges. What I will say about these events, later in the Essay, may appear to be critical of the campus and its president. Herein my disclaimer on that: I wasn't there; I didn't witness the events; I have never presided over a liberal arts college and therefore have no direct knowledge of what norms govern the role of a college president in the type of events described. In point of fact, I admired then, and now, the courage and integrity that president displayed. So what follows is my attempt to transport the facts of the matter to a "multiversity" setting, and use them to illustrate a point about defending the faculty in that setting.

In the actual case, a department in the field of gender studies had for many years conducted a summer symposium on topics appropriate to the field. At the time, and perhaps to this day, this quite good department and its associated colleagues were noted for "pushing the envelope," seeking to expand the discourse in a field where many, both inside and outside the academy, may feel uncomfortable with the general subject matter and really uncomfortable about expanding the discourse. That, of

course, is not an acceptable reason for constraining the discourse.

The agenda proposed for the symposium consisted mostly of talks by experts in the field, both in panels and workshops. But the program included some elements which might now be described as “edgy.” One was a lecture/panel entitled “Safe and Consensual Sadomasochism.” Another was a workshop on sex toys for women. This was accompanied by displays of sex toys and apparatus from a store in New York City. Another special element of the conference was the appearance of a “performance artist” whose specialty was “autobiographical dramatic sketches” with sexual content. All this was announced and publicized, as was normally done, well in advance of the conference.

The sponsors of the conference made all the arrangements, e.g., space reservations and required permissions, as had been done customarily. In this case, however, the appropriate college dean brought the matter to the attention of the president in such a way that there was at least the appearance of presidential approval or acquiescence regarding the proposed program. Beyond that, the president agreed to provide remarks at the opening plenary session. That priestly role again.

At this point you may be saying, “so?” It gets better. The publicity regarding this impending event came to the attention of a system trustee, a very well educated and very bright trustee, holder of a Ph.D. in the humanities, whose views on the role and scope of college education were more in the classical great books tradition of Newman, and less attuned to the kind of experimentation on display in the conference program. She came to the conference bringing with her the partner (spouse) of the system head. Among other events, they attended the session involving the performance artist, who, upon learning of their presence in the audience, is alleged to have added special embellishments to her program. The chairman of the college council also attended the performance. According to newspaper accounts, the performance artist went out of her way to specially acknowledge his presence.

Soon thereafter the trustee registered her critique of the events. In particular she called in question the leadership and good judgment of the president in approving and endorsing this event and, more specifically, for allowing

public funds/resources to be deployed in support of the event. The governor of New York expressed similar concerns and asked system officers to investigate and report. The president mounted a very spirited and cogent defense of the rights of the institution to host the conference, and of the conference faculty sponsors choice of subject matter. (His defense was found so laudable by some that he received at least one award for defense of academic freedom.) But the matter became very much a public debate between president and trustee, played out in the press. In the end, the system chancellor appointed a panel of system officers and representatives to study the matter and make recommendations for appropriate action. They came back with a ringing endorsement of the academic freedom rights of the faculty, and supporting the president and college regarding the appropriateness of allowing and supporting the conference. The chancellor received the report and then proceeded to publicly criticize the president's judgment and performance in the matter.

At the time I, like many other presidents, admired the courage of the president in defending his colleagues and institution. He did his best, and that was very good, once the fat was in the fire. There was and is little to be gained by second guessing such events. Stuff happens. But after that, I thought long and hard about how my campus could avoid such consequences and yet not constrain its academic freedoms and role as open forum and if such an event occurred, how to minimize the damage? How to deal with such matters in the "multiversity?"

In order to be an effective protector of the faith, the president has to be out of the business of approving or appearing to approve events or appearances, or speeches, or demonstrations. All of that apparatus should be in place for ministerial purposes, i.e., public safety, to control costs and assign costs as appropriate, to schedule as appropriate, to assure that institutional resources are appropriately used and not abused etc. But the institution has no business deciding who speaks and on what subject. Time, place, logistics are subject to regulation, but not content, and all this ministerial stuff should be delegated to appropriate officers.

Second, the president should not perform the priestly role at all university events. If department X, or student group Y, wants to invite speaker Z, the president should not

be obligated to appear and bless the occasion. Nor is there an obligation for any event to be blessed by any university officer. That bit of etiquette should be discretionary. Neither the university nor its officers *need* give the appearance of approval of the event or the speaker. That is not the nature of an open forum.

What is important is that the university and its officers preserve the reality and the appearance that the university provides a place and an atmosphere open to all points of view, theories, hypotheses, and conjectures. More important still, the atmosphere and setting must encourage and support debate in which the points of view, theories, hypotheses, and conjectures are tested and critiqued in the search for the truth. If those who speak for the university, and especially if the president, as an authoritative speaker for the university, appears to have chosen sides in the debate, then the forum is less open or may appear to be less open, and is more vulnerable to attack should the content of an event disturb or offend others.

Put another way, the president must guard against becoming the issue. The president must be seen as defender of the forum, not as a partisan in the debate. In that event the university and its people are disarmed, and must look elsewhere for their defenders. Regrettably there are few, if any, defenders of the faith and faithful who have the prestige and power and respect held by the university. The president as the authoritative voice of and for the university is uniquely capable of squandering that institutional power by speaking or acting in such way as to make it appear that the university has chosen a side on debatable issues, and thus cannot be a fair mediator regarding the debate.

These are very serious limitations on the free speech of presidents. It explains why presidents speak infrequently or guardedly on matters of great moment, or do so only in books or essays after their retirement from office. The guardian must be restrained regarding his or her speech in order to be capable of mounting the defense for others. What those others—the people of the university—have to say on matters of great moment is the speech which the university is uniquely suited to and charged to protect.

D. *Can the University Speak? If So, How? And When? And About What?*

I don't think these are frivolous questions, even though I know that the university *qua* institution and corporate body has no power of speech in the anthropomorphic sense of that term. Moreover, I think it is important to distinguish between speech for the university—that being one of the roles of university officers—and speech by the university, even though it has no power of speech.

What I have in mind is the capacity for the university to make signs and signals which speak powerfully on an array of issues. Like the Sphinx, the university is a mute artifact of the civilizations which discovered and continue to discover all of knowledge. But the university has perpetual life and intelligence through its people, through whose agency the university can by action, by taking positions on various issues, send powerful signs on those issues. Students have known this for generations, and have acted on that knowledge. This phenomenon was prominent in the Vietnam War era, and it reverberates in this age. Student- and faculty-activists know that they can speak in and from the university as a base of operations, but that their voices, as important as they are, are still only their voices. The jackpot for them is to figure out how to activate the university voice on their side of the issue or issues of the day. They know, I think, that getting the president or other officers to speak on their side is hard to do. The officers are not activists on most social issues, having been conditioned to caution, in part for the reasons discussed and described in the first parts of this Essay. How then to get the institution of the university to speak on the issues of the day? Answer: By sign and signal; by getting the institution to act on some matter in a fashion that suggests support for a particular point of view.

For these purposes, an example may help. With the readers' indulgence, herein an example based on recent past experience at UB.

Over the past few years a group known as Students Against Sweatshops (SAS) has worked diligently and often effectively to engage the university on their side of a complex set of issues involving the manufacture and sale of merchandise, mostly clothing, bearing the university logo,

and other copyrighted markers and symbols signifying the university, and for which use the university earns royalties. The simple statement of the student objective here is to find some way for the university to assure, or at least appear to assure, that all such products are manufactured under fair labor standards of worker health and safety, and where the workers are paid a fair or “living” wage, and where the manufacturing process is conducted consistent with sound environmental protection practices. Implementation of such institutional goals is accomplished by boycotting the products of offending manufacturers and vendors, and by not contracting with offending manufacturers regarding use of the university name and logos. By so doing, the university sends a powerful signal regarding the “immorality” of low wages, mostly in third world countries.

Attempts by the university to support these laudable goals pose serious issues.

1. Does the university have the competence in the technical sense of that term, to implement these standards? For example, how does a university determine that a factory in Thailand, Cambodia, etc. is a “sweatshop”? What are the standards? Determined by whom?
2. Does the institution have competence, in the jurisdictional sense of that term, to develop and impose such standards? By what right does the institution decide what is a “fair” or “living wage”? By what right does it seek to impose such standards? In a democracy, such decisions are made by elected representatives of the people and the judiciary, and by delegates of the executive. The university and its officers have no such delegated powers.

As for the technical issues, there are potentially reasonable means to resolve them. In fact two separate consortia of universities and colleges have been incorporated to serve as agents for their members. The one, Fair Labor Association, has both universities and manufacturers as members. The other, Worker Rights Consortium, formed by SAS and aided by others, includes universities and colleges and representatives of organized labor. Both consortia are supposed to certify manufacturers’ compliance with their standards regarding safety, wages, working conditions, etc.

Student groups favor membership in the second consortium, acting on the belief that this grouping will be more objective in its assessments. Campuses which join in these ventures tend to join both, attempting to satisfy all constituents.

When this issue was first posed at UB the administration chose not to join either consortium. That was a principled stand based on the concern that the institution is on shaky ground, juridically, if it attempts to "speak" on these issues.

When the matter came up, it was in the context of a fairly bitter labor dispute involving a very successful manufacturer of sports apparel, which then had, and still has, manufacturing facilities in Western New York, and in other states. The manufacturer's employees at one of its local factories were engaged in a prolonged strike. The university declined to engage in that dispute. We noted that:

1. University officers are appointed, not elected, and are charged to manage an institution of learning, and not to make or implement state or national labor policy.
2. Exercising our managerial capacity so as to join in consortia which might lead to the boycott of manufacturers who are subject to domestic labor and environmental laws would exceed the authority (competence) of the institution. Moreover, it could be seen as an improper delegation of authority of the school to an external agency.
3. It would be particularly inappropriate for the school to take a position on wages and working conditions in a Western New York factory which is under the jurisdiction of the New York State Department of Labor and the National Labor Relations Board.
4. It would be especially inappropriate for the school to engage in activity intended to benefit one side in an ongoing dispute.

In other words, at least as to the domestic issues, the institution would exceed its competence by "speaking" to

them, no matter how well intentioned the efforts of our students.

The case also raised additional issues. The company in question, like most manufacturers or vendors of sports apparel, also imported apparel from Asia and Latin America, where wages, labor standards, and environmental protection standards, may not/probably do not, come up to or are even close to domestic standards.

As to the international concerns, a parity of reasoning applies, as in the case of the domestic issues. Neither the university nor its officers have standing to intervene or cause the university to intervene—to speak—regarding these issues. The foreign policy of the U.S. on international trade is not university business, unless expressly delegated by appropriate executive or legislative action.

Note, however, that any and all of these matters can be the business of faculty, students, staff, alumni and others who come together in the university or under its aegis to debate and discuss and to prepare to act on these matters. But the business of the university is to protect that speech, and not to take an active part in it or to take a position on it.

So much for the technical reasoning. Move to the larger issues, which this vignette is intended to display and underscore. If the university is to be preserved as an open forum, if it is to be respected as a place where all points of view are to be freely explored, and where all knowledge can be challenged in the creative/destructive process of developing new knowledge, and if it is to be preserved as a primary source of social criticism, and new ideas regarding social progress or the preservation of social conventions, then, isn't it incumbent on university officers to restrict their own participation in the debate? Isn't it the duty of university officers not to appear to side with one point of view in order to guard against loss of public confidence in the openness and even handedness of the institution regarding free speech and thought of faculty, students, staff, visitors, stakeholders, and citizens, who are the real owners of the enterprise? When I was in a position to affectuate those restraints, it seemed to me that my silence and that of other university officers was a small price to pay for preservation of the larger objectives.

More important, the silence of the university on the issue was a necessary condition of maintaining the open forum. In the absence of authority delegated by due legal process, it should not fall to the university to use its prestige and power to suggest resolution of a contested issue. To do so compromises the ability of the university to protect the rights of its people to speak on such matters.

Dealing with the manifestations of student activism on such issues also raises some puzzling issues regarding official interaction with student groups, especially those which choose aggressive behavior and rhetoric as a principal tactic. That approach coupled with insistence that the moral high ground lies only with the student position chills discussion. In my case, conversation with student activists would end rather abruptly with their first insult or aggressive action. In retrospect, did I act too hastily? Did I let preservation of the "dignity" of my office end an opportunity for me to learn and possibly to teach? I recall, for example, a significant teaching moment when the senior senator from New York, Daniel Patrick Moynihan, gave a strong and cogent lecture on the foreign "sweatshops" issue to a meeting of the presidents of the Association of American Universities. Recalling his service as ambassador to India, he urged the presidents to walk very lightly and carefully around the issue, warning that a desire to do the right thing might deprive poor Indian workers, mostly women, of their livelihood. He also urged caution regarding potential conflict of interest of the American labor movement regarding their participation in the creation of the oversight consortia. In sum, it was a very practical application of the political question doctrine to university engagement in this matter. It was vintage Moynihan. As I think back, should I have emulated "himself" and attempted to engage our students in that conversation? Could I have helped our students to contemplate the possibility that assisting in capital formation in developing economies might be a more appropriate goal in aid of better wages and working conditions in those economies? Could I have at least helped them to engage in a less moralistic and more reasoned dialogue? I think I may have let my blue suit get in the way. Fortunately our vice president for student affairs is a superb and patient listener and teacher. His admirable patience with activist students served both them

and the institution well. But I still wonder what I missed, and did I let the blue suit get in the way?

A footnote to this vignette. In August 2002, the New York State Legislature passed, and the governor approved, the New York State Apparel Workers Fair Labor Conditions and Procurement Act allowing public universities and colleges to set standards for contractors supplying goods and services to the institution. Pursuant to that authority, UB has joined the two consortia and requires vendors of apparel bearing university signs and symbols to abide by consortial standards.

V. RESTRAINT ON PRESIDENTIAL SPEECH: WHAT COST, IF ANY?

To this point, this Essay has come down on the side of presidential/official and institutional restraint regarding speech in, for, or by the university. The overarching goal is to promote an environment in which members of the university, and the general public can be assured that the university supports unfettered speech and debate, with no institutional or official bias regarding the debate. A related goal is to assure critics of the university that the institution acts as a fair and evenhanded forum and supporter of free and open discourse, without any institutional bias or predisposition except the search for the truth.

But does the pursuit of these goals exact too high a price? Does it deprive society of the advice and wisdom of highly talented and knowledgeable people? Does it deprive university officials unfairly and inappropriately of their rights to speak? That depends on several factors. For example, at one point in the Essay, I argued that the power and prestige of the university extended to and through its officers may attach to their speech more deference than would otherwise be deserved. Recall the wisdom of Tevye in "Fiddler on the Roof," i.e., "When you're rich (or a president) they (the people) think you really know." If that is so, then simple modesty requires personal restraint.

Beyond that, it is also the case that a doctrine of official restraint is not a blanket prohibition or caution. The restraint extends only to speech or behavior which might skew or chill debate in the university forum, or do harm to the institutional reputation, e.g., thoughtless, ill-informed,

or misguided speech (a possibility for any of us, but one not much explored in this Essay lest its author be a total nag and scold.) Outside these limits there is a broad array of topics on which university officials are fully entitled to speak. For example:

1. Anything to do with the well being of the institution, e.g., the whole area of public policy towards higher education.
2. Reports and critiques regarding institutional performance, e.g., research and scholarly activity, great discoveries, student performance, etc. and future opportunities and possible threats.
3. Public policy regarding such matters as health care, and K-12 education and other matters regarding which our schools of medicine, education, other professional schools, and college of arts and sciences provide knowledge and wisdom regarding matters of great moment, and in which the university has a direct interest.
4. And, of course, insights and analyses of issues from the president's disciplinary perspectives and scholarly work, on many subjects (some peril here, caution required, but not an absolute bar).

Beyond such examples, however, there is one area on which regular expressions of presidential and official wisdom should be offered. I have in mind the values of the university and the rationale for our commitment to academic freedom. Such remarks need be addressed to both general audiences and critics of the university.

VI. THE "VALUES" WAR AND THE "MULTIVERSITY"

The media tells daily, hourly, by the minute, that we are a nation divided over basic "values," described alternatively as liberal/left/progressive or conservative/right/reactionary. In this divided national debate on any and all matters of politics and policy, research universities, and many other universities and colleges, are often assumed to be firmly on the left. For example, it is alleged, that a preponderance of university faculty are registered Democrats, and therefore are presumed to be on the liberal/left/progressive side in the values debate/culture wars. This assumption is or was

buttressed by reported behaviors regarding speech—“politically correct” speech—widely debated only a few years ago. The concerns of the “right” regarding the alleged “left” leanings of universities, their faculties, and their activist students have given rise to a movement to impose, by law, an “academic bill of rights” intended by legal means to assure that teachers and students are subject to rules of debate to “balance” the discourse between left and right, and at least assure equal time for both.

Academic leaders and most faculties have recoiled at this notion, as have the majority of the general public, at least according to pollsters. In my view, this movement needs to be taken very seriously; that it should be seen as one response to real concerns of decent people, and it should not be dismissed out of hand, but should be responded to carefully and cogently, and honestly in spite of the strong feelings of many in the academy that proponents of this agenda are engaged in an odious and nefarious enterprise. In this debate the university must be a “no-spin” zone.

Where to start a dialogue on the university’s commitment to free discourse for all its people, young and old, right or left?

Some suggestions:

1. Do an inventory—an assessment—as to how well the university commitment to academic freedom embraces and permits value loaded debates? Is the floor really freely open to all? Is there a tendency or bias toward one side of the conversation? Is the floor freely open to our youngest members, our students, or are they constrained in their participation because of policy biases in the institution?
2. For example, in the “political correctness” era did universities slip into a kind of prior restraint on some points of view? Did the “speech codes” of that era cause institutions to subvert, even if only slightly, bedrock values regarding speech? Did that however well intentioned effort have a chilling effect even if such codes are no longer in vogue?
3. In the sixties the academy discovered, or perhaps only finally acknowledged that faculty and other intellectual leaders have political points of view which influence their teaching and scholarship. This was especially significant in the humanities, and in

law schools, where the legal realism of the "great depression years" re-emerged as "critical legal studies." Letting that genie out of the bottle was a great achievement in intellectual honesty and it enabled a great deal of creative thought and scholarship. But did it also require the exercise of faculty restraint so that although the teacher acknowledges his/her intellectual/social theory apparatus, it does not have a chilling effect on discourse in the classroom?

Honest exploration of such questions would be a great start at clearing the air. "Physician heal thyself" is a great maxim. We should check on the health of the open forum as a first strike counter measure against externally imposed restraints on academic freedom. Presidents should lead on this subject, both in the institution and in the public debate. This is a great challenge and opportunity for the defenders of faith and faithful.

VII. ON SOME SPECIAL UNIVERSITY VALUES

Herein, one last item about which presidents should speak and universities show signs and signals loud and clear. I have in mind that which we label as "diversity," this is a remainder of our social history regarding race, gender, religion, and socioeconomic status. When Newman wrote about his idea of a university, he wrote for an all male audience of Catholics for whom he hoped to provide educational opportunity. Across the water, higher education was similarly limited for people of color and women. In many institutions, religion and socioeconomic status imposed significant limitations upon access to education. When Kerr described his uses of the university, it was against a background of much more open access, but the detritus of racial, religious, socioeconomic, and gender bias was still substantial. This was, and I believe still is, a major embarrassment for American higher education.

As the "multiversity" evolved from its nineteenth century roots, it became a meritocratic institution in which excellence of accomplishment became a core value. The notion of equality of opportunity, a major societal value, even if oft honored in the breach during the first half of the twentieth century, reinforced this meritocratic value of the university. The dissonance of societal values and actual

practice began to dissolve when Harry S. Truman integrated the armed services and the Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954). These executive and judicial actions unleashed the conscience of higher education. Equality of access became a university goal and “affirmative action” became the remedial response to the prior history of discriminatory behavior. Given the societal history in the matter of race and higher education’s complicity in that history, the idea of tipping the scales towards persons of color came to be widely accepted in the university, even by those who doubted its efficacy. Affirmative action to redress gender discrimination was less readily accepted, perhaps because it was harder for senior faculty to own up to that issue. In this environment, presidents readily accepted the responsibility to exhort their institutions to embrace “affirmative action” to redress past inequities and to assure equality of opportunity for “underrepresented” groups. For about thirty years post *Brown*, campus presidents were preachers exercising their priestly role on behalf of a just cause. Indeed, presidents pretty much asserted the proposition that, like academic freedom, affirmative action should be a university practice and value largely immune from criticism or regulation by those, like the courts, not possessed of the special knowledge and expertise of universities and their leadership. By and large the courts sustained that position by practicing deference to higher education even while expressing reservations and giving signals of concern. Preferences given to categories of people in order to advance the goal of access for some had the effect, or at least the appearance, of disadvantaging others because of extraneous characteristics, e.g., race, gender, and this was duly noted but side stepped early on. Even in the most recent decisions in this area, the courts still carve out a special status for higher education in the matter of diversity, access and equality of opportunity while indicating even more concern and impatience with the inherent contradictions posed by affirmative action. As a mantra and rhetorical shield, “affirmative action” is dead or dying, probably to be interred over the next two decades, as Justice O’Connor hinted in her opinion in *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003).

Nevertheless, I suspect most presidents will still insist on rigorous institutional attention to the diversity issue,

fearing that the academy could slip back, not because of bias or discrimination, but because socioeconomic status unevenly distributes those attributes which are associated with "excellence" as measured by standardized tests and other indicators of accomplishment. Especially in the most selective institutions, wealth and social standing could re-emerge as the means to restrict access.

Under current circumstances and evolving law and policy, it will fall to presidents to preach, and exhort, and lead, both within higher education and as social commentators with regard to such topics as the state of elementary and secondary education, and its impact, and of socioeconomic status, on access to education. This is a matter as to which universities and their faculties have competence to speak, and presidents need to preserve the independence of the university as a forum from which faculty and students can speak on these issues. But it also may be necessary for presidents to speak for the university on such issues, this in aid of both the university's meritocratic values and the social goal of equality of opportunity.

This can't be done solely rhetorically. The society needs the university to deploy its intellectual capabilities to develop means to assure access for the underrepresented while avoiding the appearance of unfairness associated with quotas, or the use of intellectually indefensible formulae. It's a fine line to walk, but it goes with the blue suit and the funny hat, and the idea of and uses of the university. More important, this requires intellectual leadership if only in the form of challenges to faculty and staff to deploy their professional expertise in finding fair and appropriate means to keep the university accessible to all regardless of wealth or status. Lest we forget, it also may be necessary for presidents to refresh their recollection, and that of their colleagues, regarding our social history vis-à-vis race, religion and gender.

VIII. WHAT IF WE GAVE A PARTY AND NO ONE CAME? SOME CLOSING COMMENTS

This Essay rests on several assertions regarding fundamental ideas and uses of the university: commitment to unfettered speech on any and all issues, rooted in reasoned discourse and civil debate, in an environment—an

open forum—which fosters and protects that debate. These values have emerged out of trial and error over the thousand year history of the Western university. They came to be fully rooted in the university over the past century or so. In particular, the last century saw the full formation of these values as a matter of bitter experience and firsthand observation. The two world wars, their causes, and their aftermaths gave the strongest impetus for the university commitment to free speech and reasoned discourse. Those of us born and raised in that era saw the results of irrational nationalism, which produced unspeakable horror. Closer to home, we had our own examples of official excess supported by public fear and complacency. Between the wars there were the Red Scares and Palmer raids. In WWII's wake came HUAC and McCarthyism; “blacklisting” of actors, artists, and other public figures; and loyalty oaths for public employees, including university faculty. Then came the sixties and early seventies, which started with the great promise of the civil rights movement and the beginnings of the end of racial segregation enforced by law, but ended in excesses on campuses as our students tried to cope with the Vietnam War, and we failed to teach them how to petition their government without violating the conditions essential to reasoned discourse.

Those memories are vivid and palpable for those who were university students and young faculty during that period. Experience is a great teacher. That, abetted and supported by some knowledge of recent history translates—at least in my case—to fear that past experience can be repeated unless there really is eternal vigilance. And so the commitment to free and protected speech and to the preservation of the university as open forum.

Not to be paranoid, but there are some ominous signs that aspects of these bad old days could come back under the guise of homeland security issues, or restrictions on immigration, or a so-called academic bill of rights.

And then there is the tragicomic case of Professor Ward Churchill and the University of Colorado. In that case, a colossally inappropriate and distasteful analogy thrown off by the professor in an otherwise unremarkable article became a *cause célèbre*. A first effect was to deny the professor a speaking engagement at a fine liberal arts college. The invitation to speak was withdrawn at the urging of alumni and others, offended—and properly so—by

the colossally bad analogy. But if the forum is truly open, the standard for allowing speech is not the degree to which it meets audience approval. Justice Holmes said it best: "not free thought for those who agree with us but freedom for the thought that we hate." *United States v. Schwimmer*, 279 U.S. 644, 654-55 (1929) (dissenting). The brouhaha at Colorado ultimately prompted an internet search of all the Professor Churchill's writings in order to determine his fitness to continue in his tenured position at the university. In both instances, the president's handling of the issue threatened their employment. At Colorado, the president actually resigned, that due primarily to the handling of an athletics scandal, but compounded by the president's defense of the professor's freedom to speak, even if offensively so. At the college, the president escaped but not unscathed. Ironically, the university coach who was in charge of the scandal plagued program was finally dismissed. Not because of the scandal, but because of failure to win, compounded by some losses in late season games of brobdingnagian proportions. His consolation was a seven figure contract settlement.

Oh yes, how presidents handle free speech issues is risky business. We do not yet have an entirely clear field regarding the university's right and duty to protect "the thought that we hate."

But even if there is still pressing need for protection of speech and thought in the university forum, is there a strong commitment to these values among the younger members of our community? Without first hand knowledge and experience, do they find the extreme valuing of free expression, and its concomitant conditions and ground rules fusty and no longer very relevant? I have no answer to that question, other than to note that, at least in my observation of my own campus, and what I read about other campuses, it appears to me that the early twenty-first century "multiversity" is a pretty quiet forum. To be sure there are lusty debates among colleagues, but mostly about work within their disciplines and professions. At one level, that is a very good thing, but is that all that is required for the university to pay its dues to society?

Students of this generation seem to be equally dedicated to professionalism. They work hard, but say relatively little, even in the classroom. The voting statistics for undergraduates suggest little interest in civic matters.

And for those students who do take an activist position, there is too often, for my taste at least, adoption of strategies and tactics which mimic, if pallidly, the excesses of the late sixties and early seventies, and with the same lack of success beyond very short term and relatively insignificant concessions. By not engaging much in lively reasoned debate and discussion, are we and they missing an important teaching and learning moment?

Why is it so tame and quiet on campuses in the midst of wars in the Middle East, genocide in Darfur, pending environmental disasters, and possible public policy disasters at home? What will we do about health care, social security, global warming, and the “values divide” now infecting our policies and politics? Surely the universities will provide knowledge on all these topics, but will we effectively disseminate that knowledge? Why is the forum so quiet?

One possibility—perhaps the university has lost its forum, in whole or substantial part, to a new medium, to a new venue? Has the internet, the “blogosphere,” become the new forum through which university people—faculty, staff, and students—share ideas and conduct the lively debate?

If this is the new open forum, does that change the ground rules for the priestly role? For the defenders of faith and faithful? Instinctively, I say not. But it may mean that the practitioners of those roles will have fewer occasions and opportunities to perform. Hard for me to imagine a stirring address delivered on the internet.

Never mind. Even if the forum moves to new media, the university will continue to communicate and speak through its people or by symbol or sign. And it will fall to the protectors of faith and faithful to protect those university people who engage in the debate even through these new mediums. But even in this electronically extended forum, the protectors will still be subject to limits on the extent of their own free speech.

EPILOGUE

This Essay was introduced by recounting, briefly, some Harvard stories. Herein a follow-on story.

Two of my colleagues are the proud parents of a Harvard graduate, B.A., 2006. They attended

commencement, including the baccalaureate service, a Harvard tradition. The service is conducted in the Memorial Church, and is presided over by the university chaplain. By equally long tradition, the baccalaureate address is delivered by the university president, in this case by President and Professor, Dr. Lawrence Summers.

My colleagues were both charmed and moved by his address. They found it to be a virtuoso performance of the priestly role (almost literally so, given the setting). To them, his remarks were smart, witty, and full of good advice and wisdom. They featured some self-deprecating humor: The president called the attention of the undergraduate audience to the fact that after the next day's commencement both they and he would be moving to new employment. The address and the student response to it displayed, in my colleagues' opinion, shared warmth and affection between the president and the graduates. To them it was clear that, for the graduates, Summers was a popular president.

A faculty footnote to the Summers presidency was delivered at the university commencement, the next day, where two women scientists were awarded Harvard doctoral degrees, *honoris causa*.

Dr. Summers has taken up his appointment as University Professor at Harvard. Those who, like me, admire his intellect and achievements and are fascinated by his bravura style, look forward to what he will have to say on matters of great moment, now that he occupies a really bully pulpit from which to freely speak.