

Swarthmore College  
Swarthmore, Pennsylvania

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Draft Report of the Joint Committee on Crisis Principles and Procedures

"Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society." So begins the Joint Statement on Rights and Freedoms of Students drawn up by representatives of the American Association of University Professors, the National Student Association, the Association of American Colleges, and other groups. From this statement of purpose the Statement moves on to emphasize the indispensability of free inquiry and free expression, of freedom to teach and freedom to learn, and to point out that the "responsibility to secure and to respect general conditions conducive to" these freedoms "is shared by all members of the academic community."

With regard to the development of responsible student conduct, the Joint Statement observes that while disciplinary proceedings should play a secondary role to example, guidance, and admonition, "educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the setting of standards of scholarship and of conduct . . . and through the regulation of the use of institutional facilities." For the exceptional cases in which example and admonition prove insufficient and disciplinary proceedings are called for, the Statement sets up various criteria for procedural fair play: the institution should make its behavioral expectations clear; the nature of the judicial system and the disciplinary responsibilities of institutional officials should be public knowledge; proceedings should not be arbitrary; the right of appeal should be safeguarded; pending judicial action "the status of a student should not be altered . . . except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety and well-being of students, faculty, or university property."

This view of the purpose of academic institutions, this attitude toward student rights, and a deep concern for the future of Swarthmore College have underlain the work of this committee in formulating procedures and substantive principles for application in the event of future crisis.

In any discussion of these matters, the first thing that must be said is that freedom of speech, freedom of dissent, freedom to petition for redress of grievances and to demonstrate or picket peacefully and non-obstructively must be maintained. The second is to insist that the life of the institution not be disrupted nor the rights of its members infringed upon by force or violence. With the first of these statements all, it may be presumed, will agree. Those who would question the second should be aware that it derives from the need to protect both the rights of individual members of the community and the future of the College as an educational institution. These needs are closely connected. Membership in any college or university, whether as student, faculty member, or administrator, is a voluntary act, and disorder is discouraging to volunteers. Disorder also brings about the threat of intervention by outside forces which may result in restriction of the most basic of academic freedoms, the freedom to teach and to learn.

To ensure that the concerns of its members receive a thorough hearing and to facilitate constructive action, Swarthmore must demonstrate a high degree of institutional flexibility, adaptability, and receptivity. If, notwithstanding, protest, dissent, or the expression of grievance threaten to become disruptive, the College, while continuing to seek a remedy for all remediable concerns, must rely on three levels of restraint.

The first of these is personal, residing in the commitment of the individual to the welfare of the community of which he has chosen to become and to remain a member. To the extent that all members of the community, understanding the tendency of forcible acts to cause a rising cycle of unreason, reject the tactics of physical disruption, this level of restraint is strengthened.

At the second level, should personal restraints give way, the College's duty and responsibility to protect its members and its educational purpose will require the employment of internal disciplinary procedures to minimize and control disorder.

The third level, all else failing, involves the employment of the sanctions of society at large, through resort to the civil courts (as through the injunctive process), or ultimately to the police.

The undesirability of this last solution needs no emphasis here. The college disciplinary process provides a buffer between the community and the outer world whose value to both institution and individual can hardly be questioned. But it should be noted that this protective function is vulnerable to attack both from within and from without. New regulations with regard to federal scholarship moneys and the numerous punitive proposals before state legislatures suggest the readiness of public authority to assume what have previously been purely institutional responsibilities. As for the individual, it should be pointed out that there is already a good deal of law on the books. Penalties exist for disturbing public assemblies, including lectures (\$200 and/or three months); for unauthorized entrance and occupation of buildings (\$500 and/or one year); for assault and battery (in aggravated cases up to \$2,000 and five years); and for a variety of related offenses (riot, rout, affray, property damage, disorderly conduct, etc.). As can be seen, some of these penalties are severe.

Against the possibility that the first or personal level of restraint is breached, a few principles are in order. The College "has the duty, and the corollary disciplinary power, to protect its educational purpose." Since "all members of the academic community" -- students, faculty, administration, board, alumni -- share in the responsibility for its welfare, all have some obligation to support its purpose, or at least to refrain from disruption of its processes and from infringing on the rights of others. Members of the college community who forcibly obstruct the orderly conduct of college affairs, or who forcibly interfere with the rights of others lawfully present upon college grounds, or who wilfully damage college property render themselves liable to disciplinary action. Where such obstruction, interference or damage is of major dimensions or significant duration, or where it involves violence, the responsible individuals are liable to temporary or permanent separation from the college.



The disciplinary power referred to above rests ultimately with the Board of Managers. More immediately, it is vested in the President, who is charged by the Board with chief responsibility for the operations of the College. But this is a power of last resort, which in practice and by long usage has been delegated in most cases of student discipline to the several committees of the College-judicial system.

It is important to maintain, and indeed to strengthen, the effectiveness of these committees. In all but the most exceptional cases, therefore, or in those in which the student prefers to waive a hearing, violations of standards of conduct should be referred to the appropriate committee and no act affecting the status of a member of the community should be taken until his case has been heard and decided. In emergency, however, where the safety and well-being of members of the college community or the security of college property or the continuity of college operations is threatened, administrative officers may take action to exclude an individual from the College. In any such case, however, the individual so excluded shall have the right of appeal to the College Judicial Committee, which will hear the case and advise the President.

The experience of other institutions suggests the possibility that individuals may seek to obstruct the course of orderly due process, as by refusal to respond to summonses from administrative officers or to appear before the judicial committees. Since the existence of orderly and accepted procedures is essential to justice, and hence to the well-being of the college community, such action (unless excused by sickness or comparable emergency) should result in suspension from the College.

As to the path to be followed in case of crisis, it seems impracticable to lay down detailed guidelines in advance. As a general principle, it is important that the focus be kept steadily on the issues, whatever the distractions of rhetoric or behavior. The rejection of unacceptable means should not automatically prejudice the ends that are sought. Beyond this, a few procedural suggestions may be in order: unhelpful visitors should be identified and their departure from the campus requested; every effort should be made to protect the educational process by continuing normal meetings of classes and laboratories; lines of communication should be kept open and uncluttered; speed of action may be necessary to prevent obfuscation of the issues or polarization of the community. Finally, if things come to a test of strength, it should always be remembered that the most impressive concomitant of power is restraint.

There seems little need to go beyond these general statements and spell out detailed restrictions on behavior. The College should not legislate tedium. The efforts of some institutions to bureaucratize protest by requiring advance filing of detailed plans and the designation of marshals responsible for order, or by setting up advisory procedures to pronounce what is or is not acceptable, or by creating special judicial systems to bypass those already in existence, seem inappropriate to a small college like Swarthmore.

What is appropriate, given the presence of a generation of undergraduates much concerned with institutional processes, is a consistent and continuing effort to maximize cooperation between all parts of the College. Where

students can make useful contributions, their participation should be encouraged; where concerns exist, a prompt and sympathetic hearing must be guaranteed.

If it is important that these conditions exist, it is equally important that their existence be known. There is already undergraduate participation in institutional affairs: students are members of nine faculty standing committees and of the Council on Educational Policy. There are also many channels for the communication of concerns: members of the administration from the President on down, members of the Student Council, department and committee chairmen, faculty and student members of committees, individual members of the faculty are available for discussion of matters of which they have cognizance. Yet ignorance of how the College works appears surprisingly widespread. It is possible that some of the tensions now manifest are due as much to this ignorance as to imperfection of the existing mechanisms.

In dealing with this problem the recent publication of information on the "decision-making process" should prove helpful, as should forthcoming information on questions of procedure and the impending study of college governance. Clearly, however, one-time publication of this kind of material is not enough. In a period in which these matters are of widespread interest, such information should be made available annually, as is information on Shakespeare and Introductory Physics. A student handbook, issued every fall, would provide an obvious vehicle for this purpose. In the preparation of such a handbook, and in broader ways of contributing to understanding, a good deal of responsibility will appropriately fall upon the student members of the various committees, upon the Student Council, and upon the editors of The Phoenix.

It has been noted above that care must be taken not to confuse means with ends, or actions with the issues that underly them. As a final method of averting or of solving crises, the College should establish a referral procedure for the exceptional cases in which a serious concern held by a substantial number of individuals cannot be resolved through normal channels. Such cases could be assigned to the Council on Educational Policy, a small body of elected faculty members and students enjoying ready access to the highest levels of the administration. By its composition, size, and position in the structure of the College, the Council appears well-fitted to act speedily and effectively, while maintaining contact with all sectors of the community. As circumstances might warrant, it could undertake the functions of fact-finding, of negotiation, or of mediation, and after considering the question at issue would refer it with recommendations to the appropriate quarter.

The point to emphasize in all of this is that the best way to deal with trouble is not to have any: prevention is better than cure. To this end it is essential that all constituencies concentrate their best efforts on the furtherance of the College's basic aims and avoid excessive preoccupation with incidentals. The transmission of knowledge, the pursuit of truth, the development of students, and the welfare of society are the central matters; other aspects of institutional life should be judged by their contribution to these ends. If all members of the College can work together for these goals, and if institutional responsibility is matched by individual restraint, the future of Swarthmore will be secure.

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A MINORITY OPINION OF THE DRAFT REPORT OF THE  
COMMITTEE ON CRISIS PRINCIPLES AND PROCEDURES

While we agree with the organizations and procedures set up at least in embryo (here we refer particularly to the committee described on page eight, which we see as the most substantial and worthwhile contribution of this report), we have strong disagreement with the report's motivating principles and the corresponding emphasis they have generated. Our views of what crisis represents and the priorities involved in dealing with them are summed up in the following:

A college is a community of scholars which exists for "the transmission of knowledge, the pursuit of truth, the development of students and the general well-being of society." The proper functioning of the college depends upon the satisfaction of its membership that the institution is a mechanism that as fully as possible incorporates and reflects the community's interpretations of its ends. A college cannot successfully realize its purpose if a significant proportion of its membership is dissatisfied with the institutional means, and if this dissatisfaction gives rise to violations of behavioral expectations. When a legitimate institution is assured, then the college membership has faith in it to implement community ends; and furthermore, this membership takes on the obligation to observe behavioral standards, to rely upon official channels to responsibly determine policy -- and if not, to submit to appropriate procedures. The integrity of the community can only be preserved when its institution speaks with the voice of the members of the community. Such an institution is the best safeguard against the use of extra-institutional procedures, by virtually guaranteeing their unnecessary.

This is the first crisis principle, and it is directly involved with the activities of the Governance Task Force. The legitimacy of the institution of Swarthmore College -- the question of whether it adequately represents involved parties -- should be the first concern of any discussion of crises and their resolution. Although it is not the domain of the "Crisis Principles" committee, governance is crucial to the questions and answers of crisis. The first principle in regard to the resolution of crisis is the prevention of crisis; and prevention hinges on a legitimate institution.

Given the above, a crisis represents the following: first the inability of the institution to resolve a crucial issue to the satisfaction of involved parties; and second, the violation of the institution's expectations of social conduct. The first aspect of crisis gives rise to a concern with dispute-resolution, with arbitration, negotiation, etc. The second gives rise to a concern with disciplinary and judiciary procedures.

We feel that the importance of the special committee to deal with issues (the governance study should tell us whether or not the C.E.P. is the appropriate committee for such a job) has been understated. To us, that committee and the principle that motivated its suggested creation, are most emphatic necessities towards the satisfactory resolution of any crisis. Adjudicatory processes should arise from the complaint of a party in some way upset by the violation of behavioral expectations which crises engender, and it is in the hands of the College Judiciary Committee to determine whether or not the infraction was justified in view of mitigating circumstances. But the crucial concern is with issue-resolution and we fail to see sufficient energy devoted to this area in the draft report.

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## CONCURRING OPINION OF PETER M. ZIMMERMANN

Although I concur with the main body of the report of the Joint Committee on Crisis Principles, I want to stress some basic premises which did not receive adequate attention in the report. The Committee has put great emphasis on what I would call the organic approach, the approach which considers paramount "the institutional purposes of the college," "the responsibility of the institution to protect its educational purpose" by setting standards of curriculum and conduct, the commitment of the individual to the institution which he has chosen to enter. My belief is that even such non-controversial statements as these can be extremely dangerous as premises. They could very easily be the foundation of a conservative, establishment-oriented law and order stand, which it is not the desire of this committee to take. Nevertheless, to state that when the total consensus shows signs of caving in, "... all members of the academic community share in the responsibility for its welfare, all have some obligation to support its purpose, or at least refrain from disruption of its processes," ---I repeat, to state this is to imply that the institution exists over and above its individual members. I disagree strongly with this approach, and prefer what is sometimes called "the radical individualist" premise. A society does not exist over and above its members. All social rights and duties derive from the basic natural right of every individual to be free from interference by others, as long as he equally is not interfering with another. By interference here, we usually mean force and violence, and this will do for our purposes, although the definition can be expanded to other areas (generally with less agreement). The principle of natural individual right and the principle of justice - like situations treated alike - from which we derive due process and fair trial - these are the principles that we should stress as ultimate. With these premises, I then derive the following preamble:

The Swarthmore community faces the classic questions of social life: the governing of men, their rights and duties against and to each other.

It is true that a college differs from a pure society. Faculty and administration naturally have a more permanent and long-term interest in the institution viewed as comprised of members over a number of years, while students are concerned with the here and now. Moreover, certain aspects of the college require the expertise of competent faculty and administration; students then for certain purposes come to college voluntarily, to be guided. It would be ridiculous to overlook the fact that students come to college primarily to learn, and not to dictate to others.

Nevertheless, it would also be ridiculous to think that there are not other principles which, as they apply to all societies, also apply to the university. In a nation where all students who wish advancement must go to college, it would be ludicrous indeed that they should be required to abdicate all claims of directing their own lives simply because others are more competent as regards certain matters of curriculum and administration. In varying aspects of student life, from social life on down to the tedium of administration, the students have varying degrees of competence. Insofar as everything that occurs at the college affects students, almost everything indeed in immediate terms, the students have an interest in all aspects of the college, though their degree of capacity for governing different aspects may vary. With regard to the immediacy of the college's impact on students, we must give due consideration to the principle of government based on the



consent of the governed. In an academic community which idealizes the independent-thinking individual, a variant of the traditional natural-right philosophy of the constitution (free speech, association, etc.), the students must be active in determining policies which affect their lives.

The details of college governance are not at issue here. What is at issue is the use of force or violence to effect changes in the university. Although at Swarthmore, most assume that violence will never be used, the experience of other universities compels us at least to consider the possibility. The belief that certain subjectively chosen ends (whatever they may be) justifies use of force or violence is equivalent to a rejection of the rule of law; it is an invitation to anarchy. Either you have law or no law. If there is no law, there are no protected rights. If there is no law, anything goes. From the point of view of the individual, there is no telling who is going to gain and who is going to be victimized. Lack of law is a serious matter. Any risk of its consequences is *prima facie* unjustified. The only sufficient reason for use of force or violence for political ends is evidence (never precise, to be sure) that the government is desperately corrupt or incapable of progressive change peacefully. These are not charges which can be made lightly. In any society composed of numerous individuals, there will rarely be anyone perfectly satisfied, and usually be some who are greatly dissatisfied, since it would be fortuitous if all interests coincided. Force or violence can only be justified to cure a desperately pathological system.

I am unconvinced that Swarthmore is a pathologically decadent system. I believe it has shown itself capable of responding to demand for increased access to politics by its members. Progress can be made within the system; and if not all members of the society are satisfied totally, the amount of their dissatisfaction most likely could be reduced only at the expense of another. Even assuming some glaring deficiencies of the college, Swarthmore has shown the will to improve its governance; surely, the patience required for change is a small price to pay in comparison with the loss of rights implied by resort to force. Moreover, in such a small community, all members' lives are diverted by resorts to force; the issues are thus more crucial.

The rule of law carries a moral force of its own, the protection of the natural right of each individual not to be interfered with, most emphatically by force or violence.

Rule of law binds all - students, faculty, and administration. It implies freedom to speak, march, demonstrate, or sit-in, wherever no force, direct obstruction, or violence is involved. It implies due process of law. No one is to be disciplined arbitrarily. The judiciary system of the college has predominant power, with the President as check and balance. The President also must have power because of the overlapping or possible confusion between college law and criminal law. This obviously is a delicate matter, balancing the disgusting prospect of police or prison with the somewhat less disturbing but still present fact of the college's vulnerability and lack of experience as a disciplinary agent. The college's very weakness as an agent of law-enforcement, stemming from its consensual, family atmosphere and from its nature as a community of scholars, should not be used as an easy target for those who seek to undermine it. Special care in respecting the rights of other members of the college is needed. Otherwise, the survival of the academic community as such may literally be in question.