

# Why Columbia University Dismantled the Gaza Solidarity Encampment

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**Abstract:** *How should we think about the choice, made last spring by Columbia University's president, to call on the New York Police Department to dismantle the Gaza Solidarity Encampment and arrest its residents? That decision, I argue, can teach us much about the American academy's basic constitution of rule as well as the antieducational end it now serves. Like other universities, public as well as private, Columbia is legally organized as an auto- cratic corporation whose foremost imperative is to guarantee the security of the property held in its name. As the encampment jeop- arded this identity, it had to go.*

**Keywords:** *Encampment, university, protest, Columbia, autocracy, property*

On April 17, 2024, Columbia's president appeared before the House Committee on Education and the Workforce to testify about what the committee's chair labeled the university's inadequate "response to antisemitism and its failure to protect Jewish students."<sup>1</sup> A few hours earlier, several hundred students had pitched nearly fifty tents on Columbia's South Lawn. Hoisting a banner that read "Gaza Solidarity Encampment," the protestors advanced multiple demands, including the university's divestment from companies that profit from Israel's military campaign in Gaza and, foreshadowing what was soon to come, the cessation of "policing on campus."<sup>2</sup> The next day, after students refused an ultimatum to disperse, President Shafik asked the New York Police Department to tear down the camp and remove the protestors, which its officers promptly did.

How are we to make sense of this event? For her part, Shafik insisted that the encampment constituted a "clear and present" danger to the campus community and hence that Columbia's otherwise stead- fast commitment to free expression must be suspended in the name of security.<sup>3</sup> Others have argued that the encampment's demolition shows that the university's commitment to

this principle does not extend to pro-Palestinian speech, which testifies to the persistent virulence of Islamophobia within the United States.<sup>4</sup> Still others have contended that Columbia's response was designed to placate right-wing politicians seeking control over America's universities, in this instance by weaponizing antisemitism without doing anything to combat the root causes of this scourge.<sup>5</sup>

Whatever their merits, none of these accounts includes an adequate analysis of what I call Columbia's constitution, by which I mean the structure of rule that enabled President Shafik to take the actions she did. To elaborate that constitution, as I do here, is neither to offer an exhaustive account of the overdetermined rise and fall of Columbia's encampment, let alone those that sprouted up elsewhere, nor ask why some were permitted to stand while others were quickly demolished. That said, if we are to understand why the encampments proved so threatening to the academy's rulers at Columbia and more than a hundred other universities, private and public, we must first comprehend the order over which they preside as well as that order's foremost imperative.

The American academy is legally constituted as what I have elsewhere called an autocratic property corporation.<sup>6</sup> Although this juridical entity presents itself and usually succeeds in passing as an educational enterprise, its formal structure is better designed to ensure the security of the assets, material and otherwise, over which its governing boards exercise monopolistic jurisdiction. At Columbia and other universities, students named the encampments they constructed "liberated zones,"<sup>7</sup> a declaration that posed a fundamental challenge to the antidemocratic structure of rule that has defined the American academy since the colonial era, as well as the privatized conception of property that has come to inform the exercise of that rule. Predicated on principled commitments to collective self-governance and shared property, these little cities said much more about that academy than their banners proclaimed—and that is why they could not be left standing.

## **THE UNIVERSITY AS AN INCORPORATED AUTOCRACY**

Columbia University is structurally constituted as an autocracy. To see how that is so, we must return to its birth and specifically Columbia's founding charter. Following a decade of fundraising, mostly by means of public lotteries whose proceeds became the source of interest-bearing loans, those legally entrusted with the care of this revenue (minus the fifteen percent extracted by its managers) submitted a petition seeking a royal charter to found a new college on "a very valuable parcel of Ground on the west side of the Broadway."<sup>8</sup>

The charter, issued by King George II in 1754, summoned into being an instance of the unique juridical formation that is a corporation. The charter conferred upon this entity the usual privileges, immunities, and powers that

define all corporations, including but not restricted to the power to sue and be sued; to inherit, own, and dispose of property; to appoint, compensate, and discharge the college's "Inferior" officers, including but not limited to its president and faculty members; and, because this corporation is a college, to discipline but also to confer degrees on its students. Collectively, these powers enabled what was first known as King's College but, after the Revolution, was redubbed Columbia College to enjoy considerable autonomy in regulating its internal affairs absent direct superintendence by the government whose creature it ultimately remains.

Because this juridical entity has no will and thus no capacity for independent agency, Columbia's founding charter also provides for the government that exercises the corporation's powers on behalf of the purpose for which it was formally created: "the Instruction and Education of Youth in the Learned Languages and Liberal Arts and Sciences." That government consists of a board of directors, whose members are the specific persons named in the document as well as any successors the board selects when seats become vacant; and it is to this "body Corporate and politick" that the charter grants final authority "to make and set down in writing, such Laws, ordinances, and orders, for the Better Government of the said College, and Students, and Ministers thereof, as they shall think best for the General Good of the same."<sup>9</sup> The authority to amend these enactments was reserved to this same incorporated body, thereby guaranteeing the board's exclusive prerogative to fashion the basic rules by which Columbia is regulated so long as they do not conflict with laws enacted by local, state, and federal governments.

This constitution of rule was codified more specifically in 1755 when the board adopted the new college's "statutes," which chiefly outlined the duties of those subject to the corporation's jurisdiction. Consisting of the university's students, instructors, and subordinate officers, these are the persons who are not members of its incorporated board and for that reason have no legally recognized title to participate in exercise of the powers it monopolizes. Columbia University's identity as an autocracy, therefore, is not a consequence of wannabe despots on the board or among the senior executives they appoint but, rather, of how this corporation structures the power of rule.

That constitution vests the powers of institutional governance not in those who do the teaching and learning that accomplish the university's declared mission, nor the staff whose labor furnishes the necessary conditions of that work, nor the students who are the beneficiaries of both but instead in a specially authorized, self-replicating, and discrete head that is neither selected by those it rules nor accountable to them. Those who are not members of this governing board are by definition its subjects, whether in their capacity as wage-earning employees or as tuition-paying students. Their official exclusion from the powers of governance explains why, as a rule, they can do no more than articulate their complaints in the form of recommendations, requests, and resolutions directed to those who sit astride the university's pyramid of power. True, should these calls go unanswered, the ruled remain free to engage in more pointed forms of

protest: for example, by adopting statements of no confidence in their rulers, as did Columbia's Faculty of Arts and Sciences after April 18.<sup>10</sup> But these proclamations have no binding authority and hence are best considered so many entreaties tendered by the disenfranchised.

Some might challenge this characterization of Columbia's constitution, I realize, by pointing to the University Senate created in 1969 to counter authoritarian measures taken by its incorporated rulers, chiefly in response to antiwar protests. This entity, which includes student, faculty, and staff representatives, is constituted as "a policy-making body which may consider all matters of University-wide concern" and whose actions, unless board concurrence is required, "shall become final upon passage." This body's capacity to exert power over the university's business, however, is curtailed by its ultimate subordination to those who control the authority to rule. Lest there be any doubt on this score, Columbia's statutes state that any powers exercised by this representative body are "subject to the reserve power of the Trustees"<sup>11</sup> and, moreover, that it is the board that finally determines what actions do or do not require its concurrence. To note this is not to say that Columbia's senate is powerless, but rather that this body's exercise of whatever power it enjoys is ultimately contingent on the acquiescence of others.

Columbia's president holds a special place within this autocratic order. The university's statutes vest this officer with the authority "to exercise jurisdiction over all the affairs of the University." As is true of the senate, however, this sweeping power is delegated by the board and so remains revisable as well as revocable by it. What distinguishes the president's role in governance is the specifically executive character of this officer's authority and hence her obligation to enforce the board's legislative enactments: "It shall be the duty of the President to administer discipline in accordance with the Statutes of the University and the rules promulgated pursuant thereto."<sup>12</sup> Columbia's most visible representative is, in short, the board's top cop.

Not unlike a colonial governor, the president may find it prudent to consult with her subjects, but in the last analysis must do as she is told by the university's absentee rulers. This analogy will mislead, however, unless we also recall that the president's authority includes that of exceeding and even departing from the duties formally stipulated by the board. To justify her call for police intervention, for example, Shafik pointed to §444 of the university's statutes: "If the President, upon consultation with a majority of a panel established by the University Senate's Executive Committee, decides that a demonstration poses a clear and present danger to persons, property, or the substantial functioning of any division of the University, he or she shall take all necessary steps to secure the cooperation of external authorities to bring about the end of the disruption."<sup>13</sup>

A threat that meets this definition qualifies as an emergency, and, in responding to that crisis, whatever restraints the university's statutes impose on

power's executive exercise may and indeed must be cast aside in the name of restoring order. True, this statute's requirement of consultation with the Senate's executive committee may appear to constrain the president's authority to act by unilateral fiat. That it does no such thing was made quite clear when, over the unanimous objection of that body, Shafik issued her call for the NYPD's intervention on April 18. Defending the president's authority to do so, a Columbia spokesperson issued a blunt reminder: "The Senate does not have to approve the decision."<sup>14</sup> The right to be heard, in other words, should never be confused with the authority to conclude.

What we see in §444 is not so much a general rule but, rather, an authorization to contravene all other rules on the basis of the president's discretionary authority to determine whether any given situation does or does not qualify as an exception. Not unlike the USA Patriot Act enacted after 9/11, §444 assumes the formal trappings of a statute but its purpose is to legitimate actions that elude the rule of law: "Nothing," this provision declares, "shall be construed to limit the President's emergency authority to protect persons or property."<sup>15</sup> That said, the board never relinquishes its power to remove its chief lieutenant, and that it may do with or without cause. The one officer granted the right to rule by special decree thereby remains forever subject to a body bound by no one.

## **THE UNIVERSITY AS A PROPERTY CORPORATION**

The website for Columbia's secretary, who serves as a liaison between the president and the board, neatly articulates this university's constitution of rule: "Overall governance of the University lies in the hands of its Board of Trustees. The trustees select the president, oversee all faculty and senior administrative appointments, monitor the budget, supervise the endowment, and protect University property."<sup>16</sup> What this account does not specify, however, is how we are to construe the property the board and its chief enforcement officer must protect.

In their 1754 petition for a charter, Columbia's founders made no bones about the fact that their primary objective in seeking incorporation was to facilitate acquisition of that "valuable parcel of Ground on the west side of the Broadway," as offered by the Church of England. Once granted, the charter stipulated that dominion over the university's "real and personal estate" shall be vested in the university's governing board and, accordingly, that its trustees possess the exclusive power to "grant, bargain, sell, demise, improve and dispose of the same as to them shall see meet."<sup>17</sup> The charter thereby complements the board's autocratic authority over those persons subject to this corporation's jurisdiction by granting it full and final authority over its property as well.

The board, therefore, is not merely Columbia's principal overlord but also its preeminent landlord. We must be careful, though, not to read contemporary conceptions of alienable private property, subject to its owner's exclusive

control, back into an eighteenth-century charter of incorporation. Today, as liberalism's heirs, we are inclined to endorse a sharp bifurcation between public and private spheres and, that done, figure corporations as private entities operating within capitalist markets in pursuit of self-interested gain. However, during the colonial era and well into the nineteenth century, corporations were not understood in terms of a distinction that had yet to be unambiguously articulated. Instead, Anglo-American corporations were "public" in the sense that their creation required formal authorization by a political sovereign but also in the sense that they were established to accomplish goods declared common, including, for example, the provision of education. These same entities were "private," however, insofar as they were granted certain legal powers whose unrestricted enjoyment within the bounds specified by law established their relative autonomy from their creator. At Columbia, the most obvious indicator of this capacity for self-direction is the board's authority to govern the university's affairs in virtue of its constitution as a "body Corporate and politick" and on behalf of ends endorsed by the state but not directly accomplished by it.

We must situate the 1754 charter's grant to the board of plenary authority over Columbia's real estate and other assets within this understanding of corporations; thus it cannot be neatly classified as either public or private. Absent that appreciation, we would be hard pressed to understand why that charter required Columbia's board's members, upon assuming office, to swear an oath "faithfully to execute the trust Reposed in them" by the state. Columbia's organization of rule is surely autocratic, but that does not mean that its board is entitled to do whatever it pleases with the corporation's property. Rather, this body has a legally enforceable obligation to act in accordance with its fiduciary duties; and those duties require that the university's property be employed "for the sole use and benefit of the said college"<sup>18</sup> and so the purpose for which this corporation was granted juridical status. The board's authority to dispose of its holdings is, therefore, not coextensive with the rights of private property possessed by this body's individual members over their personal belongings. Whereas the latter may do whatever they please with their possessions so long as it does not violate the law, whether criminal or civil, the board must subordinate this discretionary capacity to the public good entrusted to this body.

This preliberal and precapitalist construction of a university's incorporated property as well as its rightful employment suffered a pivotal modification when the US Supreme Court in 1819 decided *Trustees of Dartmouth College v. Woodward*. This is arguably the most important case ever decided about the American academy; it is impossible to understand what happened at Columbia on April 18, including the specific offense with which the students were charged, absent an appreciation of Chief Justice Marshall's opinion for the Court.

In *Dartmouth*, Marshall departs from earlier understandings of the relationship between the university's rulers and the assets they regulate by privatizing that property, thereby denying its public purpose and hence the board's accountability to that end. To accomplish this (mis) representation, Marshall

engages in two complementary deviations from received characterizations of the juridical entities that are corporations and by extension the incorporated academy. The first involves his delineation of Dartmouth's charter as a contract, and the second his construction of that contract as the legal instrument that is a trust. Stitched together, these have the effect of transforming the academy chartered as an educational enterprise into a vehicle committed first and foremost to safeguarding the property held in its name.

The specific question before the Court in *Dartmouth* was whether the New Hampshire legislature possessed the authority to amend the 1769 charter granted to the college by King George III, which the state had done in 1816 when it made several changes to the size, composition, and superintendence of its governing board. In ruling that the legislature does not hold the authority to do so, Marshall announces that Dartmouth's charter should not be understood as the legal vehicle by which a sovereign creates an incorporated body politic and, by that act, grants this entity substantial autonomy so that it can better accomplish the end designated in that founding document. Instead, Marshall declares that what King George called a charter is in fact a very different kind of juridical artifact: "It can require no argument to prove that the circumstances of this case constitute a contract."<sup>19</sup>

By means of judicial pronouncement, Marshall thereby makes true what at the time was an essentially contestable proposition. Specifically, he announces that Dartmouth's charter is a transactional agreement between two parties, one public (the state) and the other private (the college), that assumes the form of a bargain binding on both. As is true of all contracts, Marshall continues, neither party can unilaterally modify its terms, and so any modification of Dartmouth's charter requires the consent of both. Because the College's trustees had refused to endorse the modifications enacted by New Hampshire's legislature, it follows that the state cannot lawfully do what it had done in 1816.

The specific nature of the legislature's offense is a function of Marshall's redesignation of the college's charter as a contract. Because the purpose of this contract is to safeguard the property rights of those who agreed to its terms, Dartmouth College is itself now construed as a possession that must be protected against encroachment by those who are not its rightful owners. This guarantee, Marshall declares, is beyond the state legislature's reach, for it is embedded in Article I of the US Constitution, which, among other things, prohibits states from "impairing the obligation of contracts."<sup>20</sup>

If Dartmouth College is in fact something akin to a privatized possession, then those with the right to control its disposition are entitled to defend that property against intruders; should they prove unable to do so on their own, they are legally entitled to appeal to the state and in this instance the judiciary to rectify a violation perpetrated by another branch of government. The College's trustees are thereby transformed from fiduciaries who steward but do not own Dartmouth's corporate assets into proprietors whose inviolable rights, certified by the nation's highest law, must be shielded from those who would trespass against them.

This, though, is not the end of Marshall's jurisprudential ledger- demain. While Marshall's argument anticipates an unvarnished capitalistic construction of property, he does not afford Dartmouth's trustees an entirely unfettered right to alienate college property as they see fit. That is because Marshall construes the College's founding charter as a contract that assumes the form of a legal trust binding its trustees to fulfill in perpetuity the wishes of Dartmouth's original benefactors as well as those who contribute now or in the future. The board's foremost obligation, in other words, is to ensure that donations to Dartmouth, whether in the form of bequests, real estate, stock, or whatever, are used in ways that remain consonant with the will of those who give; and that accomplishment Marshall effectively conflates with fulfillment of the educational mission prescribed in the college's charter.

On this account, to be true to Dartmouth's end is to do right by those who first enabled as well as those who now sustain the college's existence. Daniel Webster made precisely this point when, arguing on behalf of the college, he stated: "The very object sought in obtaining such charter, and in giving property to such a corporation, is to make and keep it private property, and to clothe it with all the security and inviolability of private property."<sup>21</sup> Or, as Marshall explained, the trustees who rule this "body politic and corporate" remain fiduciaries, but their preeminent legal obligation is to "represent the donors for the purpose of executing the trust."<sup>22</sup> Here, the term "trust" refers not to the duty of Dartmouth's rulers to ensure that its resources are exclusively employed to advance the college's educational end, but instead to the contractual vehicle enabling benefactors to ensure that gifted property is forever deployed in accordance with their original stipulation.

Charter thus becomes contract, contract becomes trust, and trustees become agents of this corporation's patrons. Rightly understood, Marshall says of Dartmouth's founders and donors, the "corporation is the assignee of their rights, stands in their place, and distributes their bounty as they would themselves have distributed it had they been immortal."<sup>23</sup> The college's endowment on this account is akin to a trust fund whose beneficiaries remain forever subject to discipline should they (or anyone else) dare to infringe on the hallowed property rights of the living but also the long dead.

Some might contest my representation of the American academy as an autocratic property corporation, I realize, by contending that it is only true of "private" colleges such as Dartmouth and Columbia. Before advancing that criticism, however, consider a sign that was once affixed to a fence on the perimeter of the University of California at Berkeley: "Property of the Regents of University of California. Permission to pass over is revocable at any time."<sup>24</sup> True, as a "public" university, those who hold seats on California's board of regents are appointed by the governor and so its members are not self-selected, as at Dartmouth; and, true, as a state agent, Berkeley must allow its students certain First Amendment freedoms that private universities need not. These

distinctions don't make much difference when it comes to their shared representation of campus as a form of privatized property that its governors may enclose and, like homeowners, exclude from those who are not welcome.

That property, however, remains embedded within a corporate form that, as I indicate later, will complicate President Shafik's decision to summon the NYPD. On the one hand, *Dartmouth* privatizes that property and so encourages representation of the academy's rulers, whether at public or private institutions, as something akin to owners on a liberal capitalist model. On the other hand, because Dartmouth and Berkeley are legally structured as corporations, these "owners" are also officers who, as such, are constrained by obligations that do not apply to those exclusively figured as proprietors. Is Shafik, therefore, better analogized to a private homeowner or as an officer whose duty is to secure a public good? As the latter identity fades into history's dustbin and the former ascends, the achievement of order, which is the sine qua non of property's security, comes to supplant the unruly practice of education.

## THE ENCAMPMENT AS CRITIQUE

Not long after the 2024-25 academic year got underway, the *Chronicle of Higher Education* reported on changes made over the summer by public and private colleges to their policies governing student protests. By far the most common modification made (41 of the 44 policies reviewed) either directly bans campus encampments or, accomplishing the same end, prohibits the erection of tents or "unauthorized structures."<sup>25</sup> Why, we might wonder, did this prove to be the most urgent of the multiple reforms adopted to crack down on dissent?

An encampment made of tents is an ingenious form of political protest that may overlap with but is distinguishable from marching, carrying signs, circulating petitions, and other ways of giving voice to political demands. Like the shantytowns built on US campuses in the 1980s to protest apartheid in South Africa, last spring's encampments drew much of their symbolic force from their replication of the cities made of canvas, wood, and metal sheeting that now provide "homes" to so many displaced Palestinians in Gaza. Via their creation, students expressed not just solidarity with the uprooted but also defiance of the universities they attend. They did so by asserting a claim on university property that is less fixed than that made by residence halls, administrative offices, and classrooms, but also less transient than, for example, demonstrations that come and go. Indeed, it is the very flexibility of an encampment's claim on space and time that renders it so frustrating from the standpoint of campus administrators, as Columbia's enterprising students made clear when, shortly after their first encampment was demolished, their peers quickly assembled another across the way. When those students declared their encampment a "liberated zone," like those at Rutgers University who chanted "Whose campus? Our campus,"<sup>26</sup> they affirmed their power to wrest control over the places they now claim as their right. When the residents of DePaul's encampment

hoisted a sign reading “We Keep Us Safe,”<sup>27</sup> they rejected the patronizing representation of students as so many coddled snowflakes who, whenever a threat to their comfort emerges, plead for administrators to protect them. When students demanded divestment, as they did across the nation, they challenged their exclusion from any role in determining disposition of this corporation’s assets. When, finally, those on multiple campuses affirmed the cause of “academic freedom,”<sup>28</sup> they intended not the professionalized conception defended by the American Association of University Professors but the freedom to learn that defines the university as a specifically educational enterprise.

As these signs intimate, the encampments’ inhabitants quickly latched on to democratic mechanisms of rule, as illustrated at Columbia when its residents voted by secret ballot to remain on South Lawn after they were ordered to leave. How these students governed their collective affairs thereby critiqued Columbia’s autocratic constitution but, ironically, mirrored the way the board conducts its own internal business when its members select their chair, debate proposed policies, and decide questions by majority rule. Much the same democratic impulse was apparent as students fashioned and adopted “community agreements” to regulate their conduct with one another in accordance with principled commitments to consent, nonviolence, mutual accountability, and shared responsibility for removing the trash.<sup>29</sup> Crafting rules analogous to the university statutes that are ultimately the trustees’ prerogative, these students reasserted control over collective matters that, for the most part, are now the depoliticized affairs managed by professional administrators. Blurring the categorical distinction between ruler and ruled, they encouraged a horizontal form of mutual protection that is quite unlike the security provided by those who report up the ladder to Columbia’s chief executive officer and, from there, to its board.

This embrace of procedural democracy was subtended by a struggle to meet mundane needs whose satisfaction is a necessary precondition of the possibility of autonomous self-governance, whether that be eating and defecating, securing protection against the elements, or establishing defense mechanisms in anticipation of an invasion by those who, in principle, should only enter by invitation. That infrastructure took shape as DIY sanitation systems, communal kitchens, and improvised health facilities owned by no one in particular. These materializations of joint labor thereby challenged the privatized conception of property that would soon inform the encampment’s demolition.

Perhaps most noteworthy were the students’ experiments in recreating within these encampments the educational practices from which many were soon to be officially banished. “Welcome to the People’s University of Palestine,”<sup>30</sup> read one sign along the perimeter of Columbia’s makeshift community, and students soon made good on this greeting by establishing a lending library and offering teach-ins, dances, poetry readings, and nightly film

screenings. “With support from faculty and staff,” wrote the University of Pennsylvania’s AAUP chapter, “the encampment hosted educational events that were in desperately short supply this year, as donor pressure and administrative repression undermined the ability of faculty, staff, and students to organize events on the history, culture, and politics of Israel and Palestine.”<sup>31</sup> The university, this chapter’s members might have said, is not education’s home but an obstacle that now frustrates its possibility. The critique of the university that the encampments articulated was three fold: their occupants defied the university’s autocratic rulers; they challenged those rulers’ exclusive jurisdiction over university property; and, most awkwardly, they effectively asked whether the promise of education can in fact be fulfilled within a corporation so constituted. Such criticism, insisted the American Council of Trustees and Alumni, must not go unanswered: “Once an encampment has occupied the campus, the institution has very few options to avoid an ugly spectacle that at best will make the administration look ineffectual and even make the board appear derelict.” To negotiate with or offer concessions to these rebels, as some presidents did, is to “embolden others to employ similar coercive tactics in the future,”<sup>32</sup> and that is to invite the university’s collapse into chaos.

## WHEN EXCEPTIONS BECOME THE RULE

Not long after the NYPD disassembled the Gaza Solidarity Encampment at Columbia, the police force’s deputy commissioner of legal matters, Michael Gerber, addressed the press. Explaining why officers were not deployed until Columbia’s president requested their intervention, Gerber opened by stressing a “key point”: “Columbia University is private property,” and, unless someone is in imminent danger or a crime is in progress, the police must consider the campus “as if it were any private home.”<sup>33</sup> Absent immediate peril, in other words, the New York Police Department cannot intrude upon Columbia’s sanctuary unless and until President Shafik invites them, which she did on April 18, and the detained students were then cited for trespassing.<sup>34</sup>

According to New York State’s penal code, “a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises” absent its owner’s permission.<sup>35</sup> To call these students trespassers, as does Shafik, is in effect to announce that Columbia University, like a personal residence, is not a public good but, rather, something more akin to a form of privatized property whose owner possesses exclusive dominion over its disposition as well as the unilateral right to use force against anyone who contravenes that authority. Here, what on another construction might be considered the university’s common wealth is displaced by what capitalist economists call a rivalrous good, by which they mean an asset whose ownership by any one establishes the right to exclude everyone else. John Marshall, we suspect, would approve.

If, for the law’s purposes, Columbia’s campus is effectively the same as a personal residence, the encampment’s residents are interlopers who need

not be endured any more than I am required to tolerate someone who erects a tent on my front lawn. Indeed, should this troublemaker attempt to use my bathroom without permission, I can appeal to the medieval relic known as the “castle doctrine” to bar that trespass; and in many states even in the absence of an imminent threat, I can invoke the right to “stand my ground” as justification for using deadly force to protect my property in the name of self-defense.<sup>36</sup> After all, as John Locke taught us in his *Second Treatise*, the home I built (or bought) is an extension of my self, and so a threat to it is a threat to me. The law, in sum, grants me considerable discretionary authority in determining how I may protect my home, including the authority to employ violence to do so.

Contra Gerber, however, the university is not a private residence, and its president is not a homeowner. Legally speaking, once again, Columbia is a corporation created by the state to advance a public purpose; its board derives its authority over persons and property from this university’s charter; and its members are duty-bound to do what this founding document prescribes. The chief executive officer appointed by that board is, therefore, not a private person who holds title to a house and the land it occupies but, rather, an office-holder obligated to enforce but also to obey the rules established by the board and codified in its statutes. For that reason, Columbia’s president cannot represent the university as her personal castle any more than its trustees can take up arms to rid the campus of those now labeled trespassers.

On the one hand, if we think of Columbia on the model of a private residence, like any other homeowner, Shafik enjoys virtually unchecked discretionary authority to do whatever she deems necessary to secure the university’s property. On the other hand, as the officer of a corporation, her authority turns on her compliance with the statutes adopted by the board, and in that sense her actions are not her own. To negotiate this tension, Shafik invokes two rules, both of which conform to the form of promulgated laws but, in their substantive content, allow for actions that undo the law’s capacity to check the exercise of arbitrary power. The first, which I discussed earlier, authorizes the president to declare an emergency in response to a “clear and present danger to persons, property, or the substantial functioning of the University”; and the second, which I focus on now, authorizes the president to order suspension of the encampment’s residents. Working in tandem, these provisions enable Shafik to adhere to her statutorily prescribed duties while, at the same time, exercising the discretionary authority that homeowners enjoy in securing their property.

Shafik’s decision to suspend the encampment’s residents is not well-understood on the model furnished by my right to eject those who profane the sanctity of my home. I need not “suspend” an unwelcome intruder as a preface to forcibly removing that person or calling on the police to do so on my behalf. Shafik, however, is obligated to do so, and that is because the Rules of University Conduct

identify these students as “members of our community.”<sup>37</sup> Unlike the expelled who are forever banished, to be suspended is to be “temporarily separated” from this community during which time a student cannot enroll in any courses, participate in any extracurricular activities, or access “University facilities and/or campus property.”<sup>38</sup> Should this latter sanction be imposed, those who flout this prohibition may be charged not only with violations of university statutes but also local trespassing ordinances. Suspension, in short, renders students eligible to be consigned to the state’s law enforcement apparatus, but does not thereby remove them from the university’s disciplinary machinery. Within this liminal space, a purgatory where they await their fate, these students are no longer full members of Columbia’s “community” but neither are they entirely amputated from it.

The suspensions meted out to the encampment’s residents are specifically designated as “interim.” As a rule, the university qua autocratic property corporation hides its authoritarian constitution via adoption of formal policies that take care to observe liberalism’s norms of due process before meting out punishment. Imposing interim suspensions is warranted, however, if an authorized university officer determines that a student poses “a danger to the normal operations of the institution, the safety of themselves, others, or to the property of the University or others.”<sup>39</sup> Because these suspensions take effect immediately, they are imposed prior to and absent the procedural protections that are otherwise guaranteed to others, including a statement of the specific regulations a student has allegedly violated; a particularized finding that the conduct of each does in fact constitute a “clear and present danger” to the university’s “substantial functioning”; an opportunity to respond to the evidence adduced to support that conclusion; etc. Interim suspensions are therefore arbitrary in the sense that they punish first and only later heed the requisites of justice, and in this way they provide a perfect complement to the extra-statutory actions authorized by §444.

Soon after the encampment’s residents were notified of their suspension, Shafik issued her request to the NYPD and the encampment was quickly dismantled by the force’s Strategic Response Group, whose designated purpose is to “respond to citywide mobilizations, civil disorder, and major events.”<sup>40</sup> On the face of it, this response appears grossly disproportionate, especially since the tents had been standing for little more than a day. From the perspective of the autocratic property corporation, however, this action was not unreasonable and, indeed, mandatory.

If, as Gerber maintained, the university is akin to a private home, and if this home’s owner is entitled to exclude those who are unwelcome, and if that owner may rightfully use force to remove those who are unwelcome but nonetheless remain, and, finally, if that homeowner finds it necessary to summon the police to secure the rights of property, then the NYPD has done no more than what it would do were I to call 911 for assistance in expelling several hooligans caught in the act of ransacking my home. Unlike me, however, Shafik can claim

that she “deeply regret(s)” making this call, but that the actions of the protestors effectively left her no choice given her obligations as Columbia’s chief executive officer.<sup>41</sup>

When the NYPD responds to Shafik’s call, we should not construe its officers as alien intruders whose march onto the academy’s pristine turf violates Columbia’s integrity as a specifically educational enterprise. To see why that is so, recall that Columbia’s legal organization as a corporation confounds liberalism’s mutually exclusive division between public and private. Earlier, at Berkeley, we spotted a sign that complicates our understanding of that university as a public entity because its text represents the campus as something over which its regents assert an essential prerogative of private property—specifically, the right of its owners to determine who shall and who shall not be granted access. At Columbia, we see a similar complication, but this time from the vantage point of a university that presents itself as private. Columbia, however, is not a strictly private entity that can be categorically distinguished from the strictly public municipality whose officers Shafik summons. Rather, as a corporation, Columbia is a miniature body politic that enjoys considerable autonomy in the regulation of its own affairs, but is also squarely embedded within the more comprehensive body politic to which it owes its existence and from which the university’s rulers ultimately derive their authority. Each of these governments has its own police force, but we should not locate their officers on opposite sides of the fence liberalism erects between public and private.

This distinction’s confusion was illuminated when, during the waning days of her presidency, Shafik proposed that Columbia’s public safety officers be granted the legal status of “peace officers.” The New York statute concerning those who hold this title provides that they may arrest persons and, under certain circumstances, “use physical force and deadly physical force” when taking suspects into custody.<sup>42</sup> To authorize Columbia’s security officers to exercise these powers, a spokesperson explained, would enable the university to reduce its “reliance on the NYPD,”<sup>43</sup> and it would do that by granting to the former the authority to exercise forms of coercion we ordinarily think are restricted to the latter. Should this proposal in fact be adopted, it would represent not the academy’s perversion but, rather, a clarification of their shared identity as enforcement agents authorized by the state. In the case of the city’s constabulary, that authority derives from the legislature’s adoption of the Municipal Police Act of 1844 whereas, in the case of Columbia’s police, its officers derive their authority from the charter granting this incorporated entity the power to make, adjudicate, and enforce its own statutes. Their difference is not one of kind but, instead, the method by which each is authorized to deploy force in the service of order.

To make this claim is not to contend that Columbia University is an administrative arm of the state, nor that its security officers are so many undercover cops. It is, however, to argue that they are well understood as

affiliates. The city police's primary role on April 18, therefore, was to supplement the university's enforcement agents when Shafik was unsure whether they could get the job done on their own. That accomplished, Columbia can then resume its status as a quasi-autonomous body politic to which the state has ceded a portion of its governance capacity, which includes the authority to deploy force in the defense of property and in the name of security.

If what occurred on April 18 on the Columbia University campus can be characterized as an act of violence, that violence was perpetrated neither by the NYPD, whose officers demonstrated more restraint than the force's history would lead us to anticipate, nor by the encampment's residents: "To put this in perspective," stated the NYPD's chief of patrol, "the students that were arrested were peaceful, offered no resistance whatsoever, and were saying what they wanted to say in a peaceful manner."<sup>44</sup> Not surprisingly, within a few weeks, city prosecutors had dropped the charges filed against most of the arrested students and, by the end of the summer, Columbia had restored virtually all to good standing.<sup>45</sup> Given this anticlimactic conclusion, we cannot help but wonder whether the police were summoned to quell an emergency that satisfied the criteria specified in §444 or, instead, to bolster those whose rule, quite unexpectedly, had come to appear contestable, fragile, and perhaps even illegitimate.

## THE ACADEMY WITHOUT END

The academy constituted as an autocratic property corporation projects an antieducational dystopia that was all but perfectly realized by the end of the 2024 spring semester at Columbia. Harbingers of this accomplishment have been in the works for decades as universities throughout the US have adopted instrumentalities of the securitized state, including but hardly limited to hidden CCTV cameras, email surveillance programs, key card access devices, and militarized security forces, often now equipped with guns and armed with the powers of peace officers. Soon after the encampment's disbandment, Columbia took additional steps toward realizing the terminus these mechanisms anticipate by rendering most classes remote, thereby obviating any need for students and their teachers to come to campus, and by urging staff to work from home unless they performed "essential work functions."<sup>46</sup> So, too, Columbia canceled its main commencement ceremony, thereby eliminating one of the more likely sites of disruption; and it secured the university's perimeter by setting up a system of checkpoints and restricting entry to those whose identity cards, unlike those of the exiled, still worked. Uncertain that these measures sufficed, Shafik then asked the NYPD to "retain a presence on campus through at least May 17, 2024 to maintain order and ensure encampments are not reestablished."<sup>47</sup> To prevent the recurrence of encampments, she might have said, Columbia's campus must assume the form of an armed camp, but one that is now evacuated of those once engaged in

the practice of education.

As the logic of the autocratic property corporation becomes etched into the university's-built environment, the campus becomes a site where the state of exception declared on April 18 becomes unexceptional. Normalization of this state does not mean, however, that it goes unnoted. "I don't like going to campus," observed one Columbia student. "It kind of feels like you're in a panopticon, like every time you go on campus, somebody is always watching you to see what you're doing or see what you're saying." As a result, another explained, students come to believe that they are perceived as perpetual threats, actual or potential, and that "just makes me feel completely unwelcome." The irony is acute: Security measures whose alleged purpose is to ensure that students can engage fully in education's work create "a climate of fear and anxiety on campus,"<sup>48</sup> and that in turn discourages them from speaking words or taking actions that might land them in trouble. Columbia promises students an environment "in which nothing is immune from scrutiny,"<sup>49</sup> but what is most painstakingly scrutinized are those students themselves.

What distinguishes this "university" from that anticipated by Columbia's 1754 charter is a loss of the understandings that once, if only in part, tethered the logic of the autocratic property corporation to purposes beyond its own self-reproduction. Gone, for example, is the university's construction as an incorporated body politic that is only granted authority over its own affairs so that it may better realize a specifically public good; gone is any characterization of the university's trustees as fiduciaries whose foremost duty is to advance the education of its students; and gone is any representation of the university's property as assets that are of value only insofar as they contribute to this purpose. What we find instead is an autocratic corporation whose commitment to amass and secure its privatized property is now a means without end.

## NOTES

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12. “Statutes,” §2 (Duties), in *Charters and Statutes*.
13. “Statutes,” §444 (Enforcement), in *Charters and Statutes*.
14. Maya Stahl, Sarah Huddleston, and Shea Vance, “Shafik Authorizes NYPD to Sweep ‘Gaza Solidarity Encampment,’” *Columbia Spectator*, April 18, 2024, <https://www.columbiaspectator.com/news/2024/04/18/shafik-authorizes-nypd-to-sweep-ga-za-solidarity-encampment-officers-in-riot-gear-arrest-over-100/>.
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- <https://www.youtube.com/watch?v=1X-OufDvSmik>. In the same vein, Columbia’s 2023 annual security report states that the authority of its “public safety officers” to “detain individuals suspected of criminal activity on University property is the same as the authority of any property owner or property owner’s designee” per Columbia University Public Safety, 2023 Annual Security and Fire Safety Report, <https://publicsafety.columbia.edu/sites/default/files/content/SecurityReport2023.pdf>.
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