

(As prepared for delivery.)

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Theme:

“Whose University? The Decline of the Commonwealth, and its Meaning for Higher Education”

Draft:

Thank you, Roberta, and thank you, members of the American Law Institute and your guests. It’s an honor for me to be here this evening.

I’m not sure I can compete with the strawberry rhubarb verrine, but I’ll give it my best shot.

Next month marks my third anniversary as President of the University of California. I came here from Texas, excited to serve what is, bar none, the best public university system in the world.

But, you know, I also harbored the same fleeting dreams as most California newcomers. Maybe I’d meet a movie star, or be discovered by Hollywood. Or—at a minimum—be cast as a character actor. I mean, I could play a law school dean in my sleep.

Hope springs eternal in the Golden Land, as Joan Didion definitely did not write, but alas, to date, no producers have called. I did, however, meet a movie star—an action hero best known as The Terminator.

He was the governor.

Fortunately, I was prepared for Arnold Schwarzenegger. While I served at the University of Minnesota, the governor was a former wrestler who performed with a feathered boa around his neck—Jesse “the Body” Ventura.

What is it about me and governors? If Hulk Hogan had ever gotten the political itch and ran for office in his native Georgia, I’d probably be the president of Georgia Tech today.

Now, this is not to suggest that my time here has been uneventful. The Great Recession began within months of my arrival and, at present, for the second time in three years, I am engaged in an effort to bridge what is essentially a billion-dollar hole in my budget.

As a result, I’ve been forced to preside over the furlough of employees, myself included, and a 40% increase in tuition. I’ve faced a variety of demonstrations—a rich cornucopia of folks exercising their free speech rights. It’s certainly given me a new perspective on my First Amendment course.

But the root cause of these experiences is what brings me to the theme of this evening’s address: the chipping away at—if not the outright decline of—the notion of the commonwealth, or the public good.

It was 50 years ago that John F. Kennedy famously called on Americans to “ask not” what their country could do for them, but what they could do for their country. It almost sounds quaint given the current political climate, doesn’t it?

For a news cycle or two, the news media took advantage of the JFK anniversary to reflect on just how far society has travelled downstream from his New Frontier ethic.... But then it got distracted by Charlie Sheen. And so here we are.

Now, during the many demonstrations against fee increases, students and their allies have consistently taken up the chant:

“Whose university? Our University!”. [In my day, the battle cry was “make love, not war”, a call to arms which I personally find more alluring.]

But I do get the point the current students are trying to make—that is, that they have a stake in the administration’s decisions.

Still, the more I ruminate over the question “Whose university?”, the more I realize that this chant actually frames a more profound societal question, one with implications far beyond the University of California, or even public education in general.

It’s a question for American society as a whole – how to distinguish between the “public good” versus the “private good”, and how to strike a balance between the two. A balance that navigates a course between JFK’s noble call, and the rhetorical stance of some politicians that government is never the solution, only the problem.

To begin with, there’s the idea of a commonweal, a somewhat archaic term for what we now call the commonwealth—the notion that individuals and groups come together for the public good, whether it’s to raise a schoolhouse, run a fire station, or win a war.

There are also, in economics terms, “public goods” and “private goods”. “Public goods”, like a public water system, a public fire department, or a public park, are nonrival in consumption, and difficult to exclude in benefit. In other words, we all contribute something, and in return, we all get tap water, protection from fires, and a nice place to walk on Sunday afternoons.

But many goods are actually mixed in nature. They’re hybrids, or public-private goods. For example, private mediators that work within a state court system are hybrids. And they’re hybrids that actually serve the “public good”—a private mediator might save both taxpayers and litigants hundreds of thousands of dollars in litigation costs, and expedite dispute resolution.

These hybrid goods have existed for generations. The transcontinental railroad, which we built with both government bonds and private rail companies, is one example. So is the private aerospace industry that grew in response to Kennedy's call to go to the moon. And historically, these hybrids have maintained a pretty good balance between public and private interests.

But in the last few decades, a clear privatization trend has driven American policy in all segments of our society, and it's tipping the balance of many hybrid goods towards "private". Several factors—efficiency, ideology, distrust of government—determine this trend. But widespread privatization also indicates a shift in our understanding of what the "public good" means.

Many years ago, as a young legal scholar—I won't say exactly how many years ago—I first encountered Social Statics, a book by the British philosopher Herbert Spencer.

[As you probably know, Spencer is the guy whom Justice Holmes famously chastised in the substantive due process case Lochner v. New York.

And I quote:

"The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics".

Holmes, of course, objected to the incorporation of any economic philosophy into the Constitution.]

And I remember reading Social Statics—in which Spencer argued that the postal service, among other institutions, be fully privatized—and feeling incredulous.

I really thought he'd gone too far. A private postal service?

But today, of course, the U.S. postal service no longer receives a direct public subsidy—and it hasn't since 1983. And while the USPS still benefits from a legally protected monopoly on mailbox delivery, many people today *do* use private “postal services”, like UPS and FedEx.

In fact, if the U.S. Postal Service were a private sector company, it would have ranked 28th on the 2009 Fortune 500 list. But that same year, UPS ranked 43rd , and FedEx 59th—and the Fortune 500 has only listed those two companies for the last sixteen years.

And, most ominously for the U.S. Postal Service, its first-class mail volume declines every year. Right now, it's at the same level it was in 1987. Email hurts, but so do the private competitors.

So today Spencer's central thesis sounds less extreme: “That which benefits the community as a whole”, he wrote, “it will [become] the private interest of some part of the community to accomplish”.

If you look around, evidence of a tilting toward Spencer's ideology lies across the American landscape. In Afghanistan, 60% of the Pentagon's forces are private contractors—the highest percentage in the history of US conflict, and a 30% increase since the Korean War. And of those private contractors, only 14% are U.S. citizens.

The landscape of American law enforcement has also changed. In 2008—the latest year for which we have statistics—1 million private security personnel worked directly for U.S. companies. But only about 883,000 sworn law enforcement officers were employed by federal, state, and local agencies.

The shift towards private security has been in the making for several years, too—in the 1980s, about 27% of local governments outsourced at least one service to private police. But by the 1990s, that figure had increased to 45%.

At the same time, in the research world, government funding of R&D as a function of GDP has declined by 60% in the last forty years. In fact, as the national academies reported last year, “U.S. consumers [now] spend significantly more on *potato chips* than the government devotes to energy R&D”.

Similarly, the rest of the world used to envy America’s infrastructure, which was largely financed with public money. But now we invest only 2% of our GDP in it—pennies relative to China’s 9%, and the European Union’s 5%.

Of course, “privatization” doesn’t always equate with “decline”. With regard to infrastructure, the recent financing of our country’s highways actually provides a *good* example of Spencer’s thesis that private companies will step in to benefit the greater community.

In 1992, ISTEA legislation reduced federal restrictions on the tolling of federal-aid highways. From that point on, of the average of 150 centerline miles added per year of expressway-standard highways, between 50 and 75 miles, or one third to one half, were financed based on toll revenues.

And while toll revenues today only constitute 5.4% of total highway revenues, the trend towards privatization is upward.

[As an aside, you might know that years ago Californians decided that their highways would be “free”—thus “freeways”. But we did eventually build a few toll roads.

If you want to beat traffic in Orange County, you hop on the 73 for about \$5. Ironically, however, the 73 leads you right to the campus of UC Irvine, a public university that transformed several lima bean fields into an institution that has benefited Californians for over 40 years.]

So the trend towards privatization is upward across the board—and it’s even upward at NASA. A few minutes ago, I mentioned

JFK's call to go to the moon. In the 1960s, a private aerospace industry grew symbiotically in response to his call.

Today, however, NASA just awarded \$270 million outright to private American companies. And the reason is that once its aging shuttle fleet is relegated to museums later this year, it hopes private rockets and crew capsules will continue taking American astronauts to space.

But let me turn to what I know best, which is the realm of public higher education.

Now, relative to the data I just cited, what we're seeing in public higher education isn't actually so much a turn to privatization, as it is a substantial reduction of public support.

It didn't used to be this way. True, public universities have always been hybrid goods.

There are private returns unique to the individuals who consume this particular good, and who pay a price representing a portion of the total cost.

And there are benefits that flow to the entire polity—in the form of economic growth, cultural transmission, more democratic participation, health care, higher tax revenues, fewer incarcerations, and reduced welfare payments.

Put simply, public universities are hybrid goods that appropriately receive taxpayer support, and tuition support from students.

But the balance between taxpayer support and tuition support has also shifted.

In 1970, the government contribution to public universities' total revenue was nearly 60%, and that of student tuition was only about 15%.

But as of 2009, the most recent year for which we have statistics, the government contribution has fallen to 25% of public universities' total revenue. And while in that same year student tuition—at 19% of that total revenue—remains closer to its 1970 figure, the trend is upward, and will probably continue to climb.

Historically, however, the balance between taxpayer support and tuition support tilted towards the former for some important reasons.

You see, state governments and public research universities developed an extraordinary compact. In return for financial support from taxpayers, universities agreed to keep tuition low, and to provide access for students from a broad range of economic backgrounds. They'd also train graduate and professional students, promote arts and culture, help solve problems in the community, and perform groundbreaking research.

And they made this compact because they understood that a well-educated population is a necessary—but not sufficient—condition for broader economic prosperity, cultural growth, and informed democracy.

We all felt the truly extraordinary nature of this compact after WWII, when the public-private balance of these institutions actually tipped further towards “public”. The GI Bill gave thousands of returning soldiers access to higher education. Big initiatives like Pell Grants and California's Master Plan for Higher Education formalized massive government financial support for public universities.

But that's all changed now. Twenty eight states have already slashed funding for their public universities. And the reason this is happening is because more and more Americans no longer believe the compact is important.

Now, part of this can be explained by demographics. In the early 1960s, 57% of American families had children under the age of eighteen. Today, that number hovers around 46%. Along these same lines, American senior citizens now receive more than seven times the amount of federal benefits that American children do.

You know, 73% of all undergraduate students in the U.S. attend public universities and community colleges. But as the value of a college degree continues to grow, these degrees really look like private goods to those who don't have students in their families.

Of course, many people rightfully observe that public university students only pay a portion of the cost of their education. But there are many cross-subsidies, and it's not always easy to assess who pays for what.

And great research universities like the University of California incur additional expenses. For example, it rightfully costs more to hire, retain, and support faculty who are creators of knowledge—in other words, those who do more than just transmit the accepted wisdom.

As a result, any conversation about the expense of a public education must be framed by the critical link between the university's research and teaching. And that link ultimately inures to the benefit of undergraduates.

Still, at the end of the day, a college graduate's earning potential is greater than that of a high school graduate. And the general perception seems to be: "Why should I, when I'm struggling to make ends meet, subsidize your kid's future Lexus by giving tax dollars to higher ed?"

But the abandonment of state support for public universities creates some big problems, and, ultimately, these problems have an impact on everyone in our society.

First, the privatization that occurs because of this abandonment, as I wrote nearly twenty years ago—when privatization really started to gain traction—can create “a system of haves and have-nots within the same state university”.

For example, private industry, with an eye towards a specialized workforce and strong profits, might fund several engineering chairs, but it rarely earmarks the English department. A prosperous alumna may justifiably donate to the business school that started her career, but the undergraduate library may suffer for funds.

These examples might sound trivial to non-students. But when we compromise the overall quality of a public university, the many functions it performs in the broader community—the hospitals it operates, or the agricultural programs it manages—all suffer too.

Second, privatization has distributional consequences among the consumers of education. Even with scholarships, full pricing limits access for many families. And when students from less affluent families do find ways to attend, their education can suffer from the demands of part-time or full-time work, the pressure to graduate on time, and the strain of growing student loan debt.

And third, privatization further weakens both a public commitment to these universities, and a public understanding of their society-wide value.

In other words, the further we privatize, the less we see public universities as integral to the public good. We believe that only the immediate, direct beneficiaries—students and their families—should pay. If private industry kicks in the difference, then so much the better.

But tuition and private funding cannot and should not constitute their entire funding base. To do so would radically alter the mission of public universities, which is ultimately a service mission.

Let me give you an example. Earl Warren, that remarkable jurist, came from a working-class, immigrant family in Bakersfield, California. His immigrant father joked that he was “too poor to have a middle name”. No one in his family had a college degree.

And yet, because the University of California accepted students from all socioeconomic backgrounds, Warren graduated from Berkeley. For the rest of his life, he credited the university with shaping his incredible career—a career that also transformed American society.

I’ve been out visiting California high schools, and I’ve met the new Earl Warrens of this state. They’re in towns like Watsonville, and Fresno, and Anaheim. Just like Warren, they’re mostly working class, mostly from immigrant families. But their names are more likely to be Ernesto or Elena than Earl. And they’re bent on achieving dreams just as lofty as his—dreams that will ultimately benefit all of us, too. And just like Warren, they know that their ticket is a college education.

You see, California, perhaps better than any other state, lays bare the discrepancy between this country’s vibrant private sector, and its withering public one.

This state has a \$2 trillion dollar economy, the eighth largest in the world. When you drive from LAX to UCLA, or down 101 in Silicon Valley, you pass all these new office complexes and shopping malls. And you’re sharing the potholed road with all these employee shuttle buses for thriving companies like Google, and Apple, and Microsoft.

But California’s state government has a \$26 billion budget deficit. So you see, it’s not the economic part that’s broken—it’s the political part. And that brokenness, which exacerbates the discrepancy between our private and public sectors, ripples out across the state.

The best check against that discrepancy is the University of California. Its service mission is to provide an excellent, affordable education to all qualified students. It educates the future leaders who drive the private sector, and it educates the future leaders who will reform the public one.

As such, the university maintains a critical role in this state's wealth creation. Because if the pie doesn't grow, it's difficult to realize the ambition of bridging the divide between our private and public sectors.

So, in order to preserve these missions, public universities must be able to depend on a three-part funding base—one of student-family contribution, private support, and state funding.

As a result, what I would propose is a new higher education compact, one which I believe is crucial for public universities in the 21st century.

First, these schools should look at their operations with a "private" sensibility. They should establish realistic priorities, eliminate weak programs, adopt money-saving IT services, and aggressively reduce waste.

Second, state governments should rededicate themselves to supporting these universities' core functions, not least because core functions will probably never get enough from private sources. In so doing, state governments demonstrate a public commitment to, and understanding of, the universities' societal value.

You know, at heart, I'm a Philadelphia lawyer. [In fact, like many Philly lawyers worth their salt, I still read the footnotes.]

But I came to this state after years in Texas and in Minnesota. And I stand before you tonight as a University of California president. And so *my* answer to the posed question reflects both

the sum of my experiences, and the future that I see for public universities.

In answer to the question, “Whose university?”, I say...

“Ours”.

And by “ours” I mean all Californians, perhaps all Americans. Old, young, baby boomers, families, students, alumni, faculty, farmers, those in business, and even those who practice law.

With our ownership, of course, comes responsibility. And our responsibility—our moral imperative—is to leave the University of California better than we received it. The Ernestos and Elenas deserve no less than Earl Warren, or the baby boomers, or today’s students.

The University of California gave this state, to quote Wallace Stegner, “a civilization to match its scenery”. It might be a hybrid, but it exists *for* the public good, and that’s a value worth protecting.

Thank you.