Doctoral Education and the Faculty of the Future

EDITED BY
Ronald G. Ehrenberg and Charlotte V. Kuh
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What the “War on Terror” Has Meant for U.S. Colleges and Universities

Michael A. Olivas

A number of the chapters in this volume have directly addressed the perceived decline in the attractiveness of graduate professional education in the United States, offering a multitude of observations and proposing a number of solutions. As is the case with so many complex problems, virtually all of the diagnoses and prescriptions are correct in their own ways, and completely wrongheaded in others. In the crowded Chinese city, a young girl only vaguely senses her possibilities as a chemist, medical researcher, or legal scholar; the young boy in the Mexican milpa (field) only understands the study of physics or the poetry of Pablo Neruda in the most ethereal sense. As social scientists like to study the “pathways” to degree completion, most of us remember our own paths as accidental, idiosyncratic, and unlikely. Take, for example, the tales of Ronald Ehrenberg’s winding road to his own field of study and how it morphed over time (Ehrenberg 1999, 2000), or this author’s false starts before finding niches in higher education law and immigration studies (Olivas 2000)—most people’s studies and arcs of professional exploration often defy description or prediction.

Regardless of how scholars come to the United States, the real question is where they land and do their work, and what conditions drive the Paul Chus, Jill Kerr Conways, Albert Einsteins, Henry Kissingers, and Mario Molinas to devote their lives to research agendas in U.S. labs
and higher education institutions. This chapter addresses these issues in three ways, in an attempt to triangulate how the United States regulates entry into college for international students, how antiterrorism laws have affected these practices, and how the changed ground rules since September 11, 2001, have affected the place of U.S. higher education in the world.

**FOREIGN STUDY IN THE UNITED STATES**

Foreign students apply to U.S. institutions of higher education in the same manner that anyone else does—and then some. The “then some” is largely an overlay of international student requirements on top of the admissions process and additional paperwork—both of which involve the immigration process. Conceptually, the steps are quite simple and transparent, but they mask the complexities that underpin international student admissions (Berger and Borene 2005). The purpose of this chapter is not to parse these immigration requirements, which feed a large industry practice and support network. For example, NAFSA, the Association of International Educators (formerly the National Association for Foreign Student Advisers) represents these students’ interests in the United States, organizes the process, and has professionalized the international student adviser network (Bollag 2006c).¹ A number of NAFSA studies have clearly documented the extent to which there are structural problems in student application processing, consular delays (including evidence in 2001 that over one-fourth of consular visa applications for students intending to study here were denied), and flaws in the immigration requirements, especially in the domiciliary requirements of those intending to study here (NAFSA 2003, 2006). Another network, the Institute of International Education, fosters exchange programs, evaluates transcripts, and provides technical assistance among world higher education systems (Institute of International Education 2006).² Other allied organizations, governmental agencies, and nongovernmental organizations also coordinate these functions. As a result, millions of students and scholars travel outside their countries and interact with colleges on a formal basis (Institute of International Education 2006). The truth is that the system works well, and not that it hogs down and fails its participants (although failures are more evident since 2001).

In the United States, international students travel for the most part on F-1 visas (traditional college attendance) or M-1 visas (short-term college attendance or language study), while exchange scholars and researchers travel on F-1 visas. Their families and dependents are allowed to follow in related visa categories. (There are a number of other immigration
categories that allow study, but those mentioned here are the major vehicles.) Students must be admitted for study and submit timely paperwork that shows requisite financial support, insurance coverage, security clearances, and other eligibility for study (McMurtie 1999). These required documents have grown more complex and time-consuming to process, and it is not unusual that delays in processing will affect timing for admission and travel to the United States (Kapoor 2005). And, while most international students will have permission to remain in the United States for the duration of their studies (assuming satisfactory academic progress and no disqualifying behavior), this is not an easy task.

In my twenty-five years observing immigration and higher education, I have seen students deported for failure to register properly in summer transfer work, for “dropping” a class that was not offered, for working required overtime in a permitted summer program, and for other minor transgressions that were not properly documented or approved. I had to seek senior political intervention (name omitted for political purposes, in case I need another favor) for a student of mine who returned to his home country during the semester break and who missed his flight, rendering him technically ineligible for return. In the usual case, students can extend their studies for many years, can go on for additional studies, and can “work” in limited circumstances. Once they complete their studies, they can often apply for and be eligible for employment in the United States. Many do so, especially in academic appointments for which they are qualified (Berger and Borene 2005; Steiner-Long 2005).

This sketch covers many circumstances and does not refer to the many horrible situations that can occur. But most of these horrible implicate immigration status and its structural apparatus, and this overlay, with its many technical details, is quite unforgiving and punitive—more so in the post-9/11 world. There is still too much discretion accorded overseas consular officials, whose judgments concerning intending sojourners is virtually unreviewable (McMurtie 1999). Additionally, there has been a surprising amount of litigation involving international students and scholars, ranging from financial aid eligibility (in the case of Nyquist v. Maucler, 1977)\(^1\); employment issues; the ability to travel to the United States—and its converse, the ability of U.S. citizens to travel on scholarly exchanges to such places as Cuba (Bollag 2006b, 2006d, 2006e); insurance requirements (the legal case Ahmed v. University of Toledo, 1986)\(^4\); discrimination allegations (Gott 2005); retaliation for diplomatic reasons (Bollag 2006b, 2006c; Bollag and Canevole 2006); and many other dimensions (Cooper and Shanker 2006; Guterman 2006; Jordan 2006). Suffice it to say that this is a rich legal literature and substantial practice area (see, e.g., Toll v. Moreno, 1982).\(^3\) And the results reveal that international students prevail as well as lose in these cases, particularly when the
college actions are thinly veiled instances of prejudice, as in the example of the actions by New Mexico State University trustees to punish enrolled Iranian NMSU students for militants' takeover of the U.S. embassy in Tehran in the late 1970s (see Teyyari v. NMSU, 1980) (concerns punitive actions taken by trustees against enrolled students who were from a country whose residents have taken U.S. hostages). Moreover, under shifting norms of national security, there is a long-standing practice in the United States of restricting the travel of controversial figures, including intellectuals and scholars. The 2006 American Academy of Religion v. Chertoff decision, which forced the U.S. government to either issue a visa to Tariq Ramadan, a Muslim scholar from Switzerland, or articulate reasons for not doing so (he had an offer to assume a tenured position at the University of Notre Dame; see Bollag 2006f), gives cause for cheer, only to be offset by the government's refusal to allow U.S. citizens to reenter the country from Pakistan (Bulwa 2006). After the initial good news about Ramadan's fate, the U.S. government refused him entry on different grounds (Shuppy 2006). Such accomplished people who want to work in this country, as well as many who simply wish to interact in scholarly forums, have many options and will find refuge elsewhere (Archibald 2006). Ramadan, after being refused entry to the United States, was appointed by then British prime minister Tony Blair to a working group to advise him on terrorism in Britain (Blair 2006; Labí 2006). We have forgotten the lessons of World War II, when the "brain drain" from Europe brought our country extraordinary academic, humanitarian, and political talents as they escaped Nazi persecution. Accomplished people will find regimes willing to allow them to ply their trade, and U.S. colleges and corporations will read about their achievements from abroad and see them recorded in patent offices elsewhere (Bollag and Neelakantan 2006).

U.S. Higher Education Responses after September 11, 2001

Of course, the events of September 11, 2001, changed everything—and, predictably, changed them for the worse. Dozens of statutes have been enacted or amended by the U.S. Congress to address terrorism since the 9/11 attacks against the United States, and several of these either directly implicate higher education institutions or affect them in substantial fashion. In addition, new legislative proposals have arisen in areas that will affect colleges and universities should they become law. Regulations to implement this legislation have cascaded, and many more are in process. Like an elaborate billiard game, these new statutes
cross-reference, compound, and alter existing statutes, including well-established laws.

The primary statutes enacted by Congress to combat terrorism since the 9/11 attacks include the October 26, 2001, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA-PATRIOT Act, P.L. 107–56), major omnibus antiterrorism legislation that amends many statutes; the November 19, 2001, Aviation and Transportation Security Act (P.L. 107–71), which affects flight training schools; the May 13, 2002, Enhanced Border Security and Visa Entry Reform Act (Border Security Act, P.L. 107–173), which mandates data collection on international students and scholars; and the June 12, 2002, Public Health Security and Bioterrorism Preparedness and Response Act (P.L. 107–188), which controls the use and distribution of toxins and other biological agents used in scientific research and instruction.

Other relevant legal initiatives include the Student and Exchange Visitor Information System (SEVIS), a comprehensive computerized system designed to track international students and exchange scholars; the U.S. Department of State’s Technology Alert List, an enhanced consular official review process for detecting terrorists who seek to study sensitive technologies; the Visas Mantis, a program intended to reduce security clearances for certain students and scholars in the science and engineering fields; the Interagency Panel on Advanced Science Security, designed to screen foreign scholars in security-sensitive scientific areas; the Consumer Lookout and Support System, a file-sharing program that incorporates crime data into immigration-screening records; the Interim Student and Exchange Authentication System, a transitional program in effect until the SEVIS is fully operational, and replacing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which was itself the major overhaul of the core Immigration and Nationality Act of 1952. In addition, there are many presidential directives and other federal statutory and regulatory matters that govern the intersection of immigration, national security, and higher education (“U.S. Citizens” 2006).

As one careful immigration scholar has commented in this area,

Let us be clear: Immigration law does not revolve around national security or terrorism. As you will see, national security is merely one of many policy ingredients in the mix. Moreover, only the most minute proportion of actual immigration cases present any national security issues at all. Conversely, while many of the policy responses to September 11 have been immigration-specific, most have been generic national security strategies. A full chapter devoted solely to national security runs the risk, therefore, of lending that subject undue prominence. This must be acknowledged. For two reasons, separate treatment of this
material is useful nonetheless. First, in the aftermath of September 11, the inevitable preoccupation with terrorism and war has utterly dominated the public discourse on immigration. Welcome or not, that reality cannot be ignored. Second, Congress and the executive branch have responded with a wave of counterterrorism initiatives. Many of them specifically target either noncitizens or particular classes of noncitizens. Synthesizing these measures makes it easier to describe, digest, and evaluate them in context. (Legomsky 2005, 843)

After the planes crashed on 9/11, some of these changes would have been enacted, even if some of the hijackers had never been students enrolled in U.S. flight schools (Kobach 2005). The resultant revisions have been accelerated, and have breathed life into dormant statutes. For example, the SEVIS initiative had been mandated by the IIRIRA in 1996 but had never been implemented. Concerned generally about foreigners overstaying their visas, Congress had ordered that an automated entry-exit system be developed, and when it was not developed, enacted two additional statutes in 1998 and 2000 to deal with this issue. Following 9/11, the USA-PATRIOT Act was signed into law, including Section 414, which lent additional urgency. In 2002, Congress once again acted on this subject, enacting the Enhanced Border Security and Visa Entry Reform Act of 2002. In June 2002 the Department of Justice announced the creation of the National Security Entry-Exit Registration System (NSEERS). The postsecondary corollary is the SEVIS, a web-based student tracking system that has been delayed and is vexing for colleges required to use it. Both the NSEERS and the SEVIS will be rolled into a more comprehensive database called the U.S. Visitor and Immigration Status Indication Technology System once technical, legal, and system problems have been resolved. In the meantime, campus officials have had to spend countless hours tracking and identifying international students and scholars through an immigration regime that is extraordinarily complex and detailed (Berger and Borene 2005). The delays have been responsible for disrupting the flow of international students and researchers into U.S. institutions, and lags in processing the paperwork and technical requirements can require a year's time in advance of enrollment.

One area that mixes domestic and international issues has been the rise of residency statutes and regulations for undocumented college students, or those whose parents brought them into the country by evading. With regard to residency, the most important development has been the introduction and consideration of federal legislation to deal with the confusion of Section 505 of the IIRIRA—the Development, Relief, and Education for Alien Minors (DREAM) Act. Senators Orrin Hatch (R-UT) and Richard Durbin (D-IL) reintroduced the DREAM Act, Section 1545, on July 31, 2003. By the autumn of 2003, it had thirty-five
U.S. Senate cosponsors, including a majority of the membership of the Senate Judiciary Committee, and in November 2003, was passed out of committee. In the House of Representatives, Chris Cannon (R-UT), Lucille Roybal-Allard (D-CA), and Howard Berman (D-CA) reintroduced the Student Adjustment Act (H.R. 1684) on April 9, 2003, which mirrors the DREAM Act but has different provisions (National Immigration Law Center 2006). In early 2006, an essentially-similar bill was reintroduced into Congress, where it died in fall 2007. If the DREAM Act were passed in its present form, it would have the following effects: (1) it would repeal Section 505 of the IIRIRA, which has come to discourage some states from offering in-state, resident tuition to all students who graduate from their high schools (the repeal would be retroactive, as if Section 505 never existed); and (2) it would allow eligible undocumented students to begin the path toward legalization through a two-step process. In addition, there are special protections inherent in the DREAM Act, including protection from deportation and work authorization for certain young students (over the age of twelve) who have not yet graduated from high school. Once the students complete high school, the first step of the process would give them conditional status lasting between six and eight years. In the second step, upon completion of college, military service, or community service, immigrants would apply to remove the conditional status and receive permanent resident status. They could immediately begin the process of naturalization, because the time under conditional status and permanent status would be credited toward the five-year wait for citizenship. However, this legislation has stalled, and while state legislation has been enacted in a number of key states, only federal relief can comprehensively address this immigration/higher-education issue (Olivas 2004).

Developments in Other Countries

While terrorism is by definition a worldwide phenomenon, other countries have benefited from the excessive legalization that has resulted in the U.S. response to terrorism. While higher education remains a U.S. success story, a number of other countries and regions have capitalized upon the U.S. responses and have moved aggressively to attract international students and scholars (Hebel 2006). Britain’s former prime minister Tony Blair made increasing the number of foreign students a centerpiece of his administration, targeting 100,000 more in five years. (This was a reasonable target, as the number increased by almost 125,00 from 1999 to 2005, beating his estimates of 75,000; see Blair 2006; Ramsden 2006.) The European Union (EU) has eased mobility restrictions and
created mechanisms to improve the ability of member-nation residents to attend colleges within the union and transfer social benefits; there will be winners and losers in this scheme, and there have been several European Court of Justice decisions addressing benefits issues, including those of college students and scholars (Davies 2005; Dougan 2005; Kochenov 2003; Lambert and Butler 2006; Landler 2006; Van der Mei 2003a, 2003b). Australia has been a major beneficiary of increased U.S. restrictions, and has targeted Southeast Asian students in particular (Cohen 2006). Singapore and Hong Kong have actively recruited biomedical and stem cell researchers from all over the world—especially the United States, where federal restrictions on (and religious reservations about) developing stem cell lines have slowed the progress of such basic research—and have developed deep infrastructural mechanisms to develop these fields of study and their resulting commercial applications. Promising subnational state efforts in the U.S. to fund these efforts have not been entirely successful in countering competing countries’ initiatives, although Korean and Taiwanese progress has been stalled by national humiliation over fraud and deception in highly publicized scientific results. To be sure, all these efforts will ebb and flow, and the advantage held by the United States and Western Europe will not be conceded, even in the face of terrorism. Of course, the interaction of science and terrorism is most evident in the issues surrounding Pakistani nuclear science and Iranian nuclear initiatives, which also reveal the interplay of European industry and import laws (Coll 2006; Cooper and Shanker 2006; Langeliesche 2005). Fraud killed a Philippine prepaid college tuition program, showing the extent to which corporate perfidy exists (Overland 2006).

U.S. and other countries’ institutions—collegiate and corporate alike—have also sought to increase their enrollments and influence by migrating to other countries. Texas A&M University has a major development in Qatar, as does Cornell University and three other major U.S. universities; the World Bank has tracked more than seven hundred foreign colleges operating programs in China (the late Kermit L. Hall characterized this development as “clearly the Klondike of higher education”); Mooney 2006b, A46); and companies and colleges have bought existing colleges (Laureate Education, Inc. purchased Anhembi Morumbi University in Sao Paulo) and built new ones (Rochester Institute of Technology’s new American University in Kosovo). Given these developments, and the fragility of some countries (various programs in China, Israel, Lebanon, and elsewhere have closed due to political instability), one cannot be certain of what to make of this phenomenon (McClure 2006). It is surprising how many of these enterprises have been undertaken by public institutions, which are traditionally either
bound by legislatures or by local and/or state politics to serve more narrow state interests. For example, one cannot help but wonder how much (or even if) state legislators know about the Texas A&M campus in Qatar, given enrollment pressures at home in College Station, Texas. (If one were a cynic it would be tempting to say that as long as the Texas A&M football team goes to a college bowl game in the United States, and they can procure tickets to local games at Kyle Field, alumni and legislators will be satisfied and will not concern themselves with Qatar.) One can understand the presence of Troy University, a public Alabama college that has a dozen foreign branch campuses, as it has a longstanding mission of serving U.S. military personnel overseas, but exactly why is Oklahoma City University operating a campus in Canada, and why is the University of Texas—Arlington operating a program in China? State institutions in particular should have very clear justifications for operating outside of the country, especially when there are underserved populations—notably, low-income and minority communities—in the United States. For example, an underenrolled public college in Kansas has found virtual students in rural China, and offers extensive distance-learning in conjunction with a private college in Xinzheng (Bollag 2006a; Mooney 2006a).

This author directed and taught for seven years in the University of Houston Law Center’s Mexican Legal Studies Program, a summer program in Guadalajara and then Mexico City; this program was the first American Bar Association–approved study abroad program, and it lasted over thirty years until it simply ran out of steam. I did not want to spend four to six weeks in Mexico every summer, and four or five others on my faculty who also were involved eventually felt the same way, so we closed it. But what will the staying power of these programs be, and what infrastructure will be built in the host countries when the inevitable enrollment fluctuations occur or local conditions change? For-profit, proprietary institutions have stockholders and balance sheets, unlike public and private colleges. What will their endurance be? Even law schools in the United States now include proprietary members, and I have seen their leadership and corporate ownership controls change rapidly, implicating accreditation standards and threatening stability (see, e.g., the legal case Western State University v. ABA, 2004).8

**Final Reflections**

There is no doubt that the United States was the prime beneficiary of worldwide scientific and academic mobility in the twentieth century, and that it remains so. But just as the United States—which developed
basketball and presided over its worldwide popularity (and benefits from
the National Basketball Association’s prominence and its attractiveness to
superb athletes from all over the world)—can lose at the Olympic Games,
so too can the country lose in international academic competition. Other
countries have not only organized themselves to attract worldwide en-
rollments, but a number have strategically targeted higher education and
scientific research as important diplomatic, nation-building initiatives.
To be sure, any reasonable assessment of this industry will reveal that
the United States still retains the natural advantages it has developed
over many years—including the preeminence of English as the language
of academic discourse. But these are not carved in stone and certainly
not permanent, especially as China and other Asian countries hit their
stride and find their own places in the sun. The confederated EU could
become greater than the sum of its parts, especially in those fields where
European scholars have historically left their home countries to come
to the United States. If this country continues its most recent trends
of isolating critical ideas, enacting geographic restrictions, and erecting
ideological barriers, impressionable students and scholars will seek their
places of study elsewhere.

This country has both cultivated its advantages and built upon those
that exist, such as the clear advantage that speaking English provides in
academic discourse. But these investments will not renew themselves
if the world views the United States as an undesirable place to engage
in discourse and study, and if we continue to restrict fields of study on
the basis of residence and make it more difficult and time-consuming
for international students to navigate the admissions and immigration
processes. In a “flattened” world, the more international students who
interact with our institutions, students, and faculty, the more likely they
are to appreciate the academic and civic virtues of U.S. society. The
Jesuits understood this, and the Soviets did so as well, however imper-
fectly. As the Spanish-born George Santayana (educated at Harvard
University and employed there for many years) once suggested, “the
American Will inhabits the sky-scraper; the American Intellect inhabits
the colonial mansion” (Santayana 1937, 129). Both the American will
and the American intellect thrive because of the many Santayanas who
take root in this soil and bloom here. As with any other garden, left to
their own they will wither, not bloom.
CHAPTER 17. WHAT THE "WAR ON TERROR" HAS MEANT FOR U.S. COLLEGES AND UNIVERSITIES

1. For more on NAFSA, see http://www.nafsa.org.
2. For more on the Institute of International Education, see http://www.IIE.org.
5. Toll v. Moreno, 458 U.S. 1 (1982) states that nonresident visa holders are entitled to establish residency for tuition purposes.
6. Tayyari v. New Mexico State University, 495 F. Supp. 1365 (D. N.M. 1980) cites additional requirements for enrolled students who are from a country whose residents have taken U.S. hostages.
7. This section is drawn from Olivas 2004, and due to length considerations I have not reproduced all of the notes that appeared in the original version. Other treatments of this intersection of higher education and terrorism include Coutur and Giroux 2006 and Gott 2005.

LOOKING TO THE FUTURE

1. See the National Science Foundation's Integrative Graduate Education and Research Training website, http://www.igert.org.
5. See, for example, Borjas 2000, which presents evidence that foreign-born teaching assistants adversely affect students' academic performance in introductory economics classes; and Fleisher, Hashimoto, and Weinberg 2002, which finds that when foreign teaching assistants are properly screened and trained in spoken English and in teaching skills, they are at least as effective in undergraduate economics classes as American teaching assistants.