

June 12, 1991

WHAT WASHINGTON CAN DO TO PROTECT CAMPUS FREE SPEECH

INTRODUCTION

When George Bush told the University of Michigan graduating class in May that “we find free speech under assault throughout the United States, including on some college campuses,”¹ he was highlighting what has become a national issue: discrimination on college campuses against ideas and views that are judged to be not what is called “politically correct.” Known widely by the abbreviation “PC,” political correctness is being institutionalized by a series of policies aimed at stifling opposition. These include:

- ◆ anti-speech codes;
- ◆ discriminatory faculty hiring and retention;
- ◆ discriminatory admissions criteria;
- ◆ withholding accreditation of some colleges on political grounds;
- ◆ bans on non-PC speakers;
- ◆ curricula revision.

At public universities, the First Amendment to the U.S. Constitution provides a basis for challenging the validity of anti-speech codes. In effect on nearly two-thirds of America’s college campuses, the codes call for discipline

1 Quoted in Carol Innerst, “Political Correctness’ Gets a Presidential Chastising,” *The Washington Times*, May 6, 1991, p. A1.

against students for uttering what the codes decree is politically incorrect speech. As the most concrete weapon in the PC arsenal, the codes should be assailed by federal officials as infringements on free speech and honest scholarship.

Ronald Reagan and his Secretary of Education, William J. Bennett, effectively used the "bully pulpit" to focus public attention on timely and fundamental education issues. Bush along with his new Secretary of Education, Lamar Alexander, and other national leaders are beginning to do the same. The President used his May 4, 1991, commencement address at Michigan to denounce the assault against free speech on America's college campuses. Federal officials should continue to speak out against the indoctrination that has been replacing education in the halls of higher learning. Similarly, the Bush Administration should examine critically the federal legislative and regulatory role to determine whether "political correctness" indoctrination is funded and encouraged by the federal government. If it is, as even a cursory review of the matter suggests, then the Bush Administration carefully should craft a plan for getting the federal government out of this indoctrination business. The Department of Education should schedule public hearings and regular briefings on the state of freedom on the nation's campuses. Federal officials must decide, before it is too late, whether to retain America's hard-won tradition of individual liberty or surrender to intellectual bullies in the ivory tower.

THE FEDERAL ROLE

Government at all levels has an enormous role in American higher education, extending far beyond the actual provision of public colleges. Taxpayers spend more than \$70 billion annually on higher education.² Secretary of Education Alexander said in March that the federal government this year will pay out \$18 billion alone in student grants and guaranteed student loans.³ In addition, the Defense Department and other federal agencies annually award hundreds of millions of dollars in research grants to colleges and universities, a practice now under scrutiny because of reported abuses at Stanford University and other campuses.

The federal government's role in higher education is not limited to federal financial assistance. Even before a college can participate in federal assistance programs, it must be credentialed by a nationally recognized accrediting agency. The Secretary of Education, with the assistance of the National

2 Dinesh D'Souza, "The Visigoths in Tweed," *Forbes*, April 1, 1991, p. 81.

3 U.S. Department of Education, *Statement by Lamar Alexander, U.S. Secretary of Education*, March 20, 1991, p. 1.

Advisory Committee on Accreditation and Institutional Eligibility, does the recognizing, or the accrediting, of these agencies.⁴

The criteria and standards imposed as conditions of accreditation can affect enormously the kind of schools and the educational environment in which Americans are trained. Example: the Middle States Association of Colleges and Schools has begun denying accreditation unless an institution has "appropriate" diversity in its student body, faculty, and governing board with regard to race, ethnicity, gender, and age.⁵

Speaking Out. The federal government also increasingly influences education through commentary by federal officials and through federal publications. The National Endowment for the Humanities recently released a major report "on educational practices gone wrong and our best hopes for setting them right."⁶ When he was Education Secretary, Bennett often spoke out about higher education. Stanford University's 1988 decision, Bennett said, "to alter its Western Culture program was not a product of enlightened debate, but rather an unfortunate capitulation to a campaign of pressure politics and intimidation."⁷ Secretary Alexander recently appointed Columbia University historian Diane Ravitch as Assistant Secretary for educational research and improvement. According to a *Washington Post* article, Ravitch will "function as the department's 'resident intellectual,' generating ideas on how to improve the nation's schools."⁸

The massive and multi-faceted federal role in higher education creates an obligation for wise decisions about how this influence should be wielded. The federal government need not take sides in the contentious debates on campus. It is appropriate, however, for the federal government to ensure that no side in the debate is gagged. This pits the federal government against the practitioners of political correctness. The challenge now is for Washington to find the appropriate means of combatting PC.

4 The Committee is authorized by Section 1205 of the Higher Education Act, as amended. See Pub.L. 96-374, as amended; 20 U.S.C. section 1145.

5 See Stephen Weiner, "Accrediting Bodies Must Require a Commitment to Diversity When Measuring a College's Quality," *Chronicle of Higher Education*, October 10, 1990, p. B1; Ed Wiley, "More Institutions May Be Held Accountable for Diversity Through New Accrediting Emphasis," *Black Issues in Higher Education*, May 10, 1990, p. 1.

6 Lynne V. Cheney, *Tyrannical Machines* (Washington, D.C.: National Endowment for the Humanities, 1990).

7 U.S. Department of Education, *William J. Bennett, U.S. Secretary of Education, Why the West?*, April 18, 1988, p. 1.

8 See Kenneth Cooper, "Columbia Professor in Line to Be Education Deputy," *Washington Post*, March 30, 1991, p. A6. For a brief expression of Ravitch's views, see her article "What's at Stake With Multicultural Education?" in the February 15, 1990, issue of *Clipboard*, a publication of the Center for Educational Innovation.

ANTI-SPEECH POLICIES

Regulations now ban some form of speech at a majority of American colleges and universities. According to the Carnegie Foundation for the Advancement of Teaching, at least 60 percent of American colleges and universities already have adopted such policies and another 11 percent are considering doing so.⁹ Public and private institutions that establish educational policy trends already have their codes in place. These include the Universities of California, Michigan, and Wisconsin and private schools like Brown, Dartmouth, and Stanford.

Anti-speech codes are typically classified as “anti-harassment” policies, ostensibly designed to shield designated groups from undesirable or “insensitive” words. Writes George Mason University economist Walter Williams: “The ban isn’t just on racial, sexual and sex-choice slurs, but anything smacking of criticism of a protected group.”¹⁰

Nadine Strossen, president of the American Civil Liberties Union (ACLU), criticizes the rationale supporting anti-speech policies as “nothing less immodest than the abrogation of the traditional distinctions between speech and conduct and between state action and private action.”¹¹

The codes typically take one of three forms:

- 1) **General prohibitions against speech** that contributes to what is called a “hostile educational environment.”
- 2) **Prohibitions of categories of speech**, such as anything that can be construed as “racist” or “sexist.”
- 3) **Banning of words** that fit the Supreme Court’s category of “fighting words,” those *ad hominem* invectives intended or likely to provoke violence on the spot.

Violations of these regulations can bring a range of punishments, from administrative penalties to forced attendance at “sensitivity” seminars or even expulsion.

Such attacks on freedom of speech are as old as history and tyranny. As through history, today’s anti-speech codes use criteria and terms whose meaning keeps changing. Example: The principle of non-discrimination, enshrined in the Civil Rights Act of 1964, was once considered progressive and its opponents racist; today, public policies that require discrimination on the basis

9 Carnegie Foundation for the Advancement of Teaching, *A Special Report: Campus Life in Search of Community* (Princeton: Princeton University Press, 1990).

10 Walter Williams, “All the Vogue on Campus,” *The Washington Times*, January 14, 1991, p. D4.

11 Nadine Strossen, “Regulating Racist Speech on Campus: A Modest Proposal?” 1990 *Duke Law Journal*, p. 492.

of race are considered progressive. Example: In the 1960s, support for racially segregated educational facilities was considered racist; today, opposition to minority-instigated segregation is racist.

Beliefs that do not fit into currently popular views of human relations or human nature are likewise prohibited. For example, the belief that children are best served by being raised in a heterosexual family is branded “sexist” or even “homophobic.”

Some commentators, even while criticizing censorship policies, implicitly defend the codes by calling them regulations of “hate speech”¹² or “racist speech.”¹³ But many codes across America are written to advance a broader agenda.

Typical of the censorship policies are these examples:

◆ ◆ The University of Connecticut’s anti-speech code at one time prohibited “inappropriately directed laughter,” anonymous notes, “inconsiderate jokes,” and “conspicuous exclusion of students from conversations.” A panel of administrators at the university found a female student guilty of posting a sign on her dormroom door that was allegedly offensive to homosexuals and ordered her to move off campus. After she threatened a federal lawsuit, the university revised its code. Now the University of Connecticut claims to limit only “face-to-face use of ‘fighting words’” but defines this phrase far more broadly than has the Supreme Court to include “terms widely recognized to be derogatory references to...personal characteristics.”¹⁴

◆ ◆ The State University of New York at Buffalo law faculty unanimously approved a policy in 1987 warning that “racist, sexist, homophobic and anti-lesbian, ageist and ethnically derogatory statements, as well as other remarks based on prejudice and group stereotype, will generate...swift, open condemnation by the faculty, wherever and however they occur.”¹⁵ The statement, typically, fails to define these open-ended and subjective labels. Instead, the policy says that “[b]y entering law school...each student’s absolute right to liberty of speech must also become tempered...by the responsibility to promote equality and justice.” Says University of Massachusetts sociologist Paul Hollander of this Buffalo policy: “It would be interesting to know who will be authorized to define what constitutes equality and justice and just how

12 Strossen, *op. cit.*, pp. 484, 488.

13 *Op. cit.*, p. 492.

14 University of Connecticut, *Student Handbook* (1990), p. 62.

15 State University of New York at Buffalo, Faculty of Law and Jurisprudence, *Faculty Statement Regarding Intellectual Freedom, Tolerance, and Prohibited Harassment*, October 1, 1987.

they are to be promoted. In any event, no totalitarian could have put it better."¹⁶ Left-libertarian columnist Nat Hentoff writes that this policy means that "[t]he First Amendment has been suspended by the law school faculty of a public university."¹⁷

◆ ◆ The University of Michigan also used a laundry list approach in 1988 in its *Policy on Discrimination and Discriminatory Harassment*. This bans speech "that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status" or that "[c]reates an intimidating, hostile, or demeaning environment for educational pursuits."¹⁸ It remains unclear why only Vietnam veterans merit special protection. In September 1988, a complaint was filed against a graduate student at Michigan's School of Business Administration who read an allegedly "homophobic" limerick during a scheduled public-speaking exercise. The University's policy administrator compelled the student to apologize to that class, apologize to the university community through the campus newspaper, and attend a homosexual sensitivity class.¹⁹ That December, a complaint was filed against a graduate student in the School of Social Work claiming that he had, in a research class, expressed the opinion that homosexuality was an abnormality that could be psychologically treated. A panel of university administrators unanimously convicted him of sexual harassment.²⁰

In 1989, a psychology graduate student challenged the constitutionality of Michigan's code. A federal district court ruled in favor of the student and struck down the code as unconstitutionally vague. Wrote Judge Avern Cohn: "...the free and unfettered interplay of competing views is essential to the institution's educational mission."²¹ The university replaced its unconstitutional code with the *Interim Policy on Discriminatory Conduct*. This seems to bow to the court by stating that "the frank and open discussion of social, cultural, artistic, religious, scientific and political issues may be disturbing and even hurtful for some individuals. The principle of free exchange and inquiry takes precedence as it is so fundamental to the educational enterprise." Yet the new policy, in what is a rebuff to the court, also prohibits "verbal slurs, invectives or epithets, referring to an individual's race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, or handicap, made with the purpose of injuring the person to whom the words or actions are

16 Quoted in Charles Sykes, *The Hollow Men: Politics and Corruption in American Higher Education* (Washington, D.C.: Regnery Gateway, 1990), p. 54.

17 Nat Hentoff, "A Law School Flunks the First Amendment," *Washington Post*, April 9, 1988, p. A25.

18 See *Doe v. University of Michigan*, 721 F.Supp. 852,856 (E.D. Mich. 1989).

19 *Op. cit.* p. 865.

20 *Op. cit.*

21 *Op. cit.* p. 863.

directed and that are not made as a part of a discussion or exchange of an idea, ideology or philosophy.”

◆ ◆ Emory University defines “discriminatory harassment” as including speech “directed against any person or group of persons because of their race, color, national origin, religion, sex, sexual orientation, age, handicap, or veteran’s status and that has the purpose or reasonably foreseeable effect of creating an offensive, demeaning, intimidating, or hostile environment for that person or group of persons.”²² This very general approach fails to indicate how the purpose or effect of speech on the environment will be measured.

◆ ◆ Brown University bans “harassment on the basis of such characteristics as race, religion, gender, handicap, economic status, sexual orientation, ethnicity, national origin, or on the basis of position or function.” It defines as harassment “the subjection of another person, group or class of persons to inappropriate, abusive, threatening, or demeaning actions” which may include “inappropriate verbal attention” or name calling. The Brown policy goes beyond many other anti-speech codes by including this warning: “If the purpose of your...language...is to harass, harm, cause psychological stress or make someone the focus of your joke, you are engaged in a harassing manner. It may be intentional or unintentional and still constitute harassment.”²³ In March, Brown became what may be the first university in America to expel a student for breaching a speech code. The student had yelled epithets while intoxicated.

◆ ◆ Catholic University of America’s Undergraduate Student Government amended the undergraduate code of student conduct last November to prohibit even “carelessly directing demeaning... expressions...based on race, gender, religion, sexual orientation, ethnicity, nationality, disability or age toward an individual or group.” The code’s proponents in the university’s student legislature do not indicate how to measure carelessness.

◆ ◆ Stanford University’s “Fundamental Standard,” the basic code of conduct for students, states that students “are expected to show both within and without the University such respect for order, morality, personal honor and the rights of others as is demanded of good citizens.” The school interprets this as prohibiting “discriminatory harassment” such as “personal vilification” on the basis of listed characteristics “intended to insult or stigmatize an individual or a small group of individuals.”

22 Emory University, *Campus Life Handbook* (1990-91), p. 112.

23 Brown University Office of Student Life, *Racism at Brown*, August 1990.

◆ ◆ The University of Texas at Austin bans racial harassment, defined as “communications that are intended to harass, intimidate, or humiliate a student or students on account of race, color, or national origin and that cause them to suffer severe emotional distress.”²⁴

◆ ◆ Smith College’s Office of Student Affairs condemns a long list of verbal taboos that grows “[a]s groups of people begin the process of realizing that they are oppressed.”²⁵ This list includes discrimination against the handicapped, defined as “ableism,” or the “oppression of the differently abled, by the temporarily abled”; “lookism,” or the “construction of a standard for beauty/attractiveness”; and “heterosexism,” or the “oppression of those of sexual orientation other than heterosexual” which “can take place by not acknowledging their existence.”

Many Questions. The examples above include no fewer than nineteen categories of forbidden speech, and raise many questions. For example, what is the difference between race, ethnicity, national origin, ancestry, color, and nationality? How can one know another person’s position or function or their marital, economic, or veteran’s status so as to avoid any potentially insensitive remarks, especially when some schools condemn even careless or unintentional speech?

The spreading practice of universities censoring free speech has attracted the attention of the American Civil Liberties Union (ACLU), which wisely has taken a strong position against it. Out of step with the national organization, however, is the California affiliate of the ACLU, which has drafted a model anti-speech code. It would punish a student whose speech “creates a hostile and intimidating environment which the speaker knows or reasonably should know will seriously and directly impede the educational opportunities of the individual or individuals to whom it is addressed.”²⁶

Free inquiry and the exchange of ideas were once the very essence of higher education. The spirit, if not the formal letter, of the First Amendment is respect for the expression of different opinions. Even those who support codes of academic censorship admit that unpopular speech and ideas should be allowed. In the *Duke Law Journal*, law professor Charles R. Laurence III writes that “it reinforces our society’s commitment to the value of tolerance.”²⁷ But anti-speech codes institutionalize intolerance.

24 University of Texas at Austin, *Policy Memorandum 4.120*, August 1, 1990, p. 1.

25 See John Taylor, "Are You Politically Correct," *New York*, January 21, 1991, p. 34.

26 See Nat Hentoff, "Battling the Speech Police," *Washington Post*, October 27, 1990, p. A25.

27 Charles R. Laurence, III, "If He Hollers Let Him Go: Regulating Racist Speech on Campus," *Duke Law Journal*, June 1990, pp. 431, 435-36.

PART OF A LARGER PROBLEM

The “politically correct” or PC movement punishes dissent many ways besides speech codes. These include:

- ◆ Selecting “correct” speakers for campus events or dis-inviting the incorrect speakers;
- ◆ Rigging admissions standards to create a “correct” statistical distribution of racial minorities in the student body;
- ◆ Changing accreditation standards to force schools to adopt the “correct” quota policies for students and faculty;
- ◆ Replacing traditional study of Western culture with the “correct” study of non-Western and even anti-Western cultures and revolutionary movements.

Each campus in the University of Massachusetts system, for example, must have “a program of educational activities designed to enlighten faculty, administrators, staff and students with regard to...ways in which the dominant society manifests and perpetuates racism.”²⁸ Pennsylvania State University’s disciplinary manual condemns America as “a society deeply ingrained with bias and prejudice.”²⁹ The New York State Commissioner of Education’s Task Force on Minorities began a report by noting “the intellectual and educational oppression that has characterized the culture and institutions of the United States and the European American world for centuries.” This oppression has led to “the miseducation of all young people through a systematic bias toward European culture and its derivatives.”³⁰

This theme finds concrete expression in a remarkable array of contexts.

In spring 1990, the University of Northern Colorado invited Linda Chavez, the former staff director of the U.S. Civil Rights Commission and later a senior official in the Reagan White House, to deliver its commencement address. Chavez was later disinvited after it was discovered that, according to columnist John Leo: “Chavez’s views on two key issues were entirely too diverse for much of the student body: She opposes affirmative action and thinks Hispanic immigrants should learn English as quickly as possible. These

28 Chester E. Finn Jr., “The Campus: An Island of Repression in a Sea of Freedom,” *Commentary*, September 1989, pp. 17,19.

29 Pennsylvania State University, *Disciplinary System Manual*, March 1990, p. 49.

30 *A Curriculum of Inclusion*, Report of the Commissioner’s Task Force on Minorities: Equity and Excellence, July 1989, p. iii.

are politically incorrect views on campus.”³¹ It made no difference, apparently, that Chavez is Hispanic.

Forbidden List. At Wellesley College last year, a group of PC students tried to get Barbara Bush disinvented as commencement speaker. “She was convicted,” writes Boston University President John Silber, “of being a loyal wife and loving mother, activities on the forbidden list for modern women, and a bad example for the members of the graduating class of Wellesley.”³² In this case the PC students were not successful. Usually, however, they are.

PC proponents also manipulate admissions standards to favor groups deemed “underrepresented.” At the University of California at Berkeley, “black and Hispanic student applicants are up to twenty times as likely to be accepted for admission as Asian-American and white applicants who have the same academic test scores.”³³

The PC attack on the curriculum seeks to replace the traditional study of what is called “oppressive” Western culture with a study of non-Western culture. At Mount Holyoke, the University of Wisconsin, Berkeley, Dartmouth, Cleveland State, and other schools, students are required to study non-Western cultures or to take ethnic-studies courses. They are not required to study Western civilization.³⁴

Imposing “Diversity.” The PC movement now affects even decisions about accreditation. The Middle States Association of Colleges and Schools is the accrediting agency for educational institutions in New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia. It has begun withholding accreditation unless an institution has “appropriate” diversity in its student body, faculty, and governing board with regard to race, ethnicity, gender, and age.³⁵ The Middle States Association has told Westminster Theological Seminary in Philadelphia, for example, to appoint a woman trustee or lose its accreditation. Westminster believes, on theological grounds, that only men should be ordained and its constitution restricts trustee membership to the ordained. Middle States, in effect, is demanding that a private school choose between accreditation or free exercise of religion. To his credit, Education Secretary Alexander has criticized Middle States and is delaying reauthorization of the agency until it drops its “diversity” requirement.

31 John Leo, “The Academy’s New Ayatollahs,” *U.S. News and World Report*, December 10, 1990, p. 22.

32 John Silber, “Free Speech and the Academy,” *The Intercollegiate Review*, Fall 1990, p. 34.

33 D’Souza, *op. cit.*, p. 54.

34 *Op. cit.*, p. 53.

35 See Stephen Weiner, “Accrediting Bodies Must Require a Commitment to Diversity When Measuring a College’s Quality,” *Chronicle of Higher Education*, October 10, 1990, p. B1; Wiley, “More Institutions May Be Held Accountable for Diversity Through New Accrediting Emphasis,” *Black Issues in Higher Education*, May 10, 1990, p. 1.

CONCLUSION: THE FEDERAL RESPONSE

There is only so much the federal government can or should do to affect policies on college campuses, particularly at private institutions. The federal government, of course, should investigate possible misuse of federal funds; but this should be limited to the programs for which the money is targeted. The federal government also should tighten discipline over its grant-making.

One well-intentioned legislative effort to reign in PC, the "Collegiate Speech Protection Act of 1991" (H.R. 1330) was introduced in the House of Representatives on March 12, 1991, by Henry Hyde, the Illinois Republican. It would amend Title VI of the Civil Rights Act of 1964 to "give students at private universities the right to challenge in federal court codes that punish speech."³⁶ The Hyde bill would abolish the crucial distinction between public and private jurisdictions by providing a cause of action for students to sue private schools with restrictive speech policies. It proceeds from the view that the problem is a violation of individuals' legal rights. The bill is unlikely to have much effect, as evidenced by the fact that only one anti-speech code has been eliminated through litigation even though students at public schools can already sue under the Constitution. Its greatest fault is that it could spawn other lawsuits against private schools.

There are other, more appropriate ways that federal officials and the federal government can attack PC. Among them:

- ◆ The Department of Education should schedule regional hearings to highlight the debate over PC on campuses. An effective way to keep campuses from falling into ideologically-imposed conformity is to publicize current policies.

- ◆ President Bush and Secretary Alexander should use their bully pulpits, much as former Secretary Bennett did in the Reagan Administration. By calling Chicago's schools "the worst in the nation" during the 1980s, Bennett ignited debate and reforms that are shaking up that city's school system as well as countless other school districts anxious to avoid similar publicity. Bush and Alexander can educate the American public about the dangers of political correctness gagging free speech and the competition of ideas.

- ◆ Alexander can create a "dirty dozen" list of campuses that are the worst offenders in suppressing honest scholarship and freedom of speech. The chart listing the dozen should hang prominently in his office and be updated periodically.

36 Press Release, "Hyde Criticizes Trend on College Campuses to Restrict Speech, Introduced Speech Protection Act," March 12, 1991.

◆ Department of Education officials should give monthly briefings on the state of freedom on the nation's campuses.

◆ The Department of Education should examine its own policies and programs to determine which are fostering violations of freedom of speech on campus, as some of them most surely are. These programs then must be changed to tilt in favor of free speech.

Choosing a Path. Federal officials must decide which kind of educational environment the American people are subsidizing — one of “authoritative selection” or the “marketplace of ideas.” Each path will have dramatically different effects on the young people spending several formative years of their lives there and, as a result, will have dramatically different results for the nation. America should have a greater commitment to its children than to provide those who can afford it a chance to sue after the damage has been done. America should have an educational environment that is as open and vital as possible.

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This is the fifth in a series of studies analyzing the impact of federal policies on American culture and cultural values.

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