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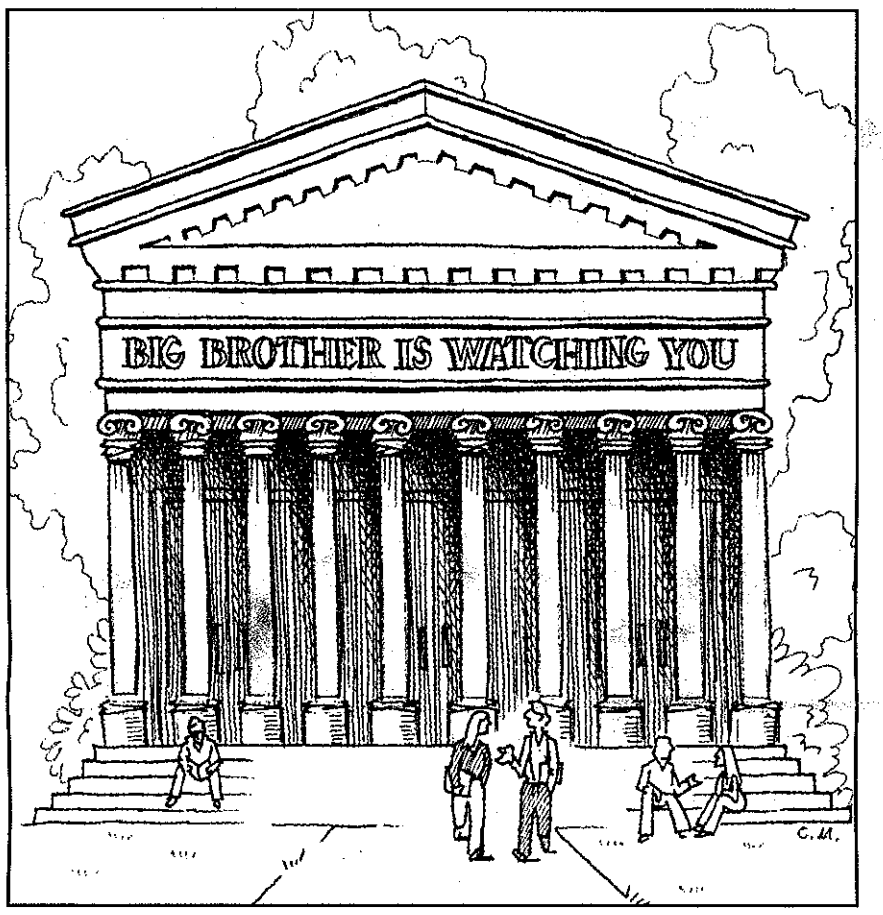
HETERODOXY

ARTICLES AND ANIMADVERSIONS ON POLITICAL CORRECTNESS AND OTHER FOLLIES

BACK TO PC SCHOOL

A tour of the nation's campuses is not encouraging for friends of student rights. Almost all colleges and universities, for example, have "verbal behavior" provisions in their codes, and most have witnessed assaults at various levels on student speech. If we were to visit every landmark of censorship, it would become a numbing encyclopedia of repression. But some snapshots of a few of America's campuses give a sense of the larger landscape.



New England

Sometimes, policies say it all. In New England, "harassment" has included, within recent times, jokes and ways of telling stories "experienced by others as harassing" (Bowdoin College); "verbal behavior" that produces "feelings of impotence," "anger," or "disenfranchisement," whether "intentional or unintentional" (Brown University); speech that causes loss of "self-esteem [or] a vague sense of danger" (Colby College); or even "inappropriately directed laughter," "inconsiderate jokes," and "stereotyping" (University of Connecticut). The student code of the University of Vermont demands that its students not only not offend each other, but that they appreciate each other: "Each of us must assume responsibility for becoming educated about racism, sexism, ageism, homophobia/heterosexism, and other forms of oppression so that we may respond to other community members in an understanding and appreciative manner." Its very "Freedom of Expression and Dissent Policy" warns: "Nothing in these regulations shall be construed as authorizing or condoning unpermitted and unprotected speech, such as fighting words."

Sometimes, however, policies tell us nothing. In 1975, Yale University rejected the call for speech codes and adopted a policy of full protection for free expression. Yale embraced "unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable," and it explicitly rejected the notion that "solidarity," "harmony," "civility," or "mutual respect" could be higher values than "free expression" at a university. Even when individuals "fail to meet their social and ethical responsibilities," Yale guaranteed, "the paramount obligation of the university is to protect their right to free expression."

In 1986, however, Yale sophomore Wayne Dick—a Christian conservative—distributed a handout satirizing Yale's GLAD, Gay and Lesbian Awareness Days. It announced the celebration of "BAD, Bestiality Awareness Days," and listed such lectures as "PAN: the Goat, the God, the Lover" and a discussion of "Rover v. Wade." On May 2, Patricia Pearce, the

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INSIDE

AFTER THE REVOLUTION
UTOPIA'S GRAVE

by Walter Bruno

Best to begin this reminiscence with Cambodia, I suppose—Cambodia and the Khmer Rouge. It could begin with Selma, Cuba, Da Nang or Tet, but the Cambodian story speaks to me loudest.

It was November, 1969. The Khmer Rouge, reported our comrade Bertrand, in his weekly international review, were a promising new trend. They'd deepened the local insurgency. They had, he claimed, even absorbed Trotsky's notion of Permanent Revolution, and were practicing peasant democracy. Finally, they were not puppets of Moscow or Peking.

Branch members listened with rapt optimism. We were a tiny group, about 12 dedicated Trotskyists, holed up in a cellar in east-central Montreal. Every week we assembled there in three dirty chambers on cracked concrete, ceilings under 6', in a tenement at one of the poorest corners of the district. We met weekly to take notes and make plans.

The international revolution was what inspired us most. We were Trotskyists, after all, torchbearers of world socialism, with a red banner that said Fourth International. It wasn't much of an International. (It soon splintered). But we did have comrades in France, Belgium, America, and Ceylon, and we had no connection to the Stalinist bureaucracies

Comrade Bertrand was finishing: "Khmer Rouge thus seem to be avoiding the paths of opportunism and nationalism, and turning to pure socialist perspectives. Perhaps the best hope of this decade lies with the revolutionary potential in Cambodia."

I can almost see the happy smile on my face. It was the end of the Sixties, and the revolution was palpable.

The meeting was actually a day-long conference, the yearly gathering of our small branch of the Canadian Section of the Fourth International. Working from memory, here is what I recall of the agenda:

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COMMUNIQUÉS

ACADEMIC DISSIDENTS

Laura Freburg's "Confessions of a Republican Academic" (May/June, 1998) contains stories that could probably be told about virtually every university in America. Here are a few of my own. In 1988 I held an endowed chair at the University of Tennessee at Chattanooga, where I was hated and despised by the majority of the faculty despite the fact that they had never met me, heard me speak, or read any of my books or articles. In 1989 a privately-funded chair in communications was offered to Thomas Griscom, a Chattanooga native who had just resigned as director of communications in the Reagan White House. Mr. Griscom had previously served as Senator Howard Baker's chief of staff and had worked as a newspaper journalist and was hired to teach communications courses to undergraduates. There was a faculty "riot" over the hiring of Mr. Griscom, ostensibly because he didn't have a Ph.D., even though just a few months earlier the same faculty had sponsored a multi-day visit by Carter administration P.R. flack Jody Powell, who is similarly degreeless. Mr. Griscom left after a short while, and through my influence with the private foundation that funded the chair one of the interviewees for his job was Marvin Olasky, author of *The Tragedy of American Compassion* and, at the time, a tenured professor at the University of Texas at Austin, a much more prestigious institution than UTC. Although Professor Olasky was eminently qualified, his interview was a farce, which greatly embarrassed me. Virtually everyone he spoke to wanted to talk about one line and one line only on his vita—the line listing his forthcoming book on the history of abortion in America. The university provost told him that she could never hire someone who had written such a book because of the reaction to it by the campus feminists. The research was funded by a conservative foundation, and the provost suggested to Professor Olasky that he should have sought funding instead from a non-ideological foundation, such as the Ford Foundation!! Then there's the young history PhD who was hired on a one-year contract and who sent me two resumes—his academic resume and his political one. He asked my assistance in applying for jobs, but implored me not to let anyone know of the political resume because it would most assuredly destroy any chance of getting a tenure-track job at UTC. The strongest case against university tenure is that today's tenured radicals use it very effectively to eliminate any and all dissent on campus.

Despite all the rhetoric of how tenure supposedly protects free speech, exactly the opposite is true.

Thomas J. Lorenzo
Loyola College, MD

POSTMODERNISM AND ITS DISCONTENTS

The following letters were addressed to the attention of Thomas Bertonneau.

I enjoyed reading your article in the May/June 1998 *Heterodoxy*, and as a 78-year-old, thinking back to the days before I had a doctorate, and like you, was under the thumb of some schmuck all the time, I would suggest to you that the word "aporia" was cribbed from a book (*The Superior Person's Book of Words*) written by an Australian, Peter Bowler. It defines "aporia" as "patently insincere professing." Bowler copied his definition from the Oxford English Dictionary, edition 1, I think. If you look it up, you'll note the word is "obsolete, and rare." The references they give for the use of "aporia" are from 1672. (It is in my Random House without such caveats.) You probably have your doctorate by now, so don't have to put up with the same kind of dreck. It is always a good idea to have a few lifemanship or oneupmanship words like this, if you are teaching graduate students, where when you use the word, you can watch their eyes glaze momentarily. As our glorious leader, Stephen Potter said, "When the first muscle tenses, the first victory has been won!" The optimal word for this purpose changes with decades—many years ago, "ecology" was a word like this. Then "paradigm" became good. Algorhythm. Too common now. "Concatination" was one I used to use in the 50's, and either "peripatea," or "enantiosis" are excellent to this day. I think "enantiosis" is better than "peripatea" because people at least get some semasiologic contact with peripatea, knowing about the periapetetics. Hysteris, stoichiometric, maieutic, heuristic, stochastic, zetetic. Years ago, one of my buddies was getting his doctorate in entomology and was a superb student. I finally told him, "Martin, back off and get an M.D., which you can do very easily in 4 years, and then with your M.D., they won't be able to pull all this shit on you." He didn't take my excellent advice, but he later became very well known in the field of entomology, and has now retired, and I think gets the biggest pension of anybody at the University of California. For most committee members, yours, his, or mine, the biggest thing they ever did was get their doctorate. Now they want to stand and Dispute the Passage with you—like Walt Whitman said, or "as" if you prefer. (My mother was an English teacher.) I got my M.D. without any problem, and then at the University of Pennsylvania, completed everything for a doctor of science degree except turning in my thesis. I had the thesis completed, and had it published in the *Archives of Dermatology*, which was a prestigious journal at that time. The head of my faculty committee, thought the sun shone out of the terminal end of my rectum. All I would have had to do is turn in the damn thesis, and I would have had another doctorate (D.Sc.) When I started thinking about temptation—whether I wanted to succumb to be a full-time professor in some university, a department head spending my time worrying about who parked in parking lot A, as contrasted to parking lot B, I said, "Screw it. One doctorate is enough." I was a full professor at USC, and I guess I still am, 30 years later. Emeritus? I am surprised with your political orientation, that you ever managed to get a doctorate! One gal I know, who fortunately had an extremely rich husband, was as right wing as you, and very bright. Also 950 millihelens pretty (as in Helen of Troy) with a 1000 millihelen bod. Her Ph.D. took nine years! She believed in things like the Republican Party, working for a living, that sort of heresy. Of course, she also wore a diamond ring to school, that if you put goal posts up on each end, you could have used for a hockey field. I said to her in my usual exquisite courtesy and tact, "What the hell are you doing showing a thing like that? It cost more than your faculty committee's collective income for two years." I have always suspected that she fornicated judiciously for that degree! If so, I'm sorry I wasn't on her committee. Sometime, when I get over my current nausea, I will try to look up what "binary opposition" is, and "phallocentrism"—phallos is easy enough. There are always things that you can do *pour epater la faculte*. It always got them very upset when I said, "Fuck," at faculty meetings, and when we had formal faculty meetings where we had to wear a tuxedo, I got a pair of red patent leather shoes. Whenever the meeting became dull enough, I would raise one foot and watch the people go into the same kind of color shock they went into on the last cards of a Rorschach. So where does it say you have to wear black patent leather shoes with a tuxedo?? At 78, I am too old for this. You are young—you may get tenure, but department head or dean, you won't be!

Murray C. Zimmerman

I was fortunate to have gone to college in the '50s and to have had the kind of professors whom you praise—one of whom introduced me to a phrase that helped to innoculate me from the DECO-B.S.: "intellectual masturbation." He also used to tell of the maid who quit a rich house-hold, because "there was too much shiftin' of the dishes for the fewness of the vittles" (a devastating line when applied to much of what passes for thought, nowadays.) But you do have one more step to take: Do you realize you became something of a collaborator with these idiots? By selling your books, you enabled some other poor jerk to be poisoned at a discount! Conversely, some years ago, I started reading a children's book to my son—then realized it was such a pernicious piece of redistributionist propaganda, I trashed it, lest it served to soften another young mind. Try it, sometime! It's a glorious sensation!

Roy West
Philadelphia, PA

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EDITORIAL STATEMENTS etc

REDUCTIO AD ABSURDUM

PROFESSOR BULWORTH: In an incident eerily similar to the movie *Bulworth*, an American literature professor at the University of Nebraska has been suspended from his position for repeatedly using racial slurs (but not, apparently, using them as epithets) in e-mails sent to students and faculty. Prof. David Hibler then further angered the politically correct crowd when he called a press conference to explain his actions and rapped—yes, rapped—with his bi-racial son and a South African—to a packed audience of angry students and faculty in an attempt to spread his message, a condemnation of American involvement in the Persian Gulf. The professor, who has taught many radical courses in the past asserted that his epithet-laden postings were part of a course he was teaching on black literature. While observers are either decrying Hibler for his alleged racism or supporting his right to academic freedom, the University of Nebraska now has an embarrassing public relations problem on its hands. The moral seems to be that there are postures too radical even for a tenured radical.

INSULT TO INJURY: What happened after the *Northwestern Chronicle*, a conservative student weekly, had its offices vandalized, its computers stolen, and its issues removed from campus? Did fellow students come to its aid? No, the liberal-dominated Associated Student Government (ASG) instead de-recognized the paper, a move that threatened the *Chronicle*'s existence. But if help was not on its way on campus, outsiders came to the rescue. So far, the *Chronicle*'s travails have gotten coverage in the *Washington Times*, *Chicago Sun-Times*, *Chicago Tribune*, several on-line publications, and on numerous Chicago area radio talk shows—and the support of a lot of powerful alumni. The public spotlight is proving so intense it looks like the University administration—which had previously given student government the green light to make the *Chronicle* a non-paper—will back down and restore all of its privileges. Alumni of the world unite!

A FEW GOOD WOMEN: The dissident Dulles chapter of NOW in Virginia profiled in *Heterdoxy* this past June has done it again. After attacking the national NOW leaders for playing footsie with Clinton, despite the fact that he was playing footsie with women in inferior power positions, the Dulles chapter has now filed an amicus brief in support of Paula Jones' effort to win a new trial and called publicly for Clinton to resign. Its statement ought to be requiring reading for Pat Ireland, Gloria Steinem, and all the other feminist quislings: "This public abuse of women, combined with the callous disregard for sexual harassment laws, has not only harmed the cause of women but also damaged the fabric of the country."

KEEPING IT UP: In the American Civil Liberties Union's ongoingsearch for unlikely heroes, Nadine Strossen, President of the ACLU, recently praised porn stars and adult-film makers for their contribution to free speech and human rights. "I want to thank and applaud you for your fight and contribution for First Amendment freedom and to galvanize you to 'keep it up,' so to speak," she said. Strossen enthused over porn stars' "vital work" in protecting "freedom of sexual expression." Her bizarre statement occurred in a bizarre setting—the World Pornography Conference, sponsored by the Center for Sex Research at California State University (Northridge). In addition to the ACLU, the conference featured academics, lawyers, and pornographers discussing such topics as "Spanking Stories: Straight Theories, Bent Practices," and "A Short History of Sex Toys." The only thing missing was Bill and Monica with their cigars and macadamia nuts.

DON'T KNOW MUCH ABOUT HISTORY: Radical History professor Howard Zinn is up to his old tricks again. He recently penned an article in the August issue of *The Progressive* in which he argues the Boston Massacre is given a disproportionate amount of attention given its significance in American history. Zinn argues that such incidents as the My Lai massacre and the little-known 1906 Moro massacre in the Philippines are worthier of study than the Boston Massacre. He even advocates study of the early 16th century Spanish massacre of the Taino (Arawak) Indians on Hispaniola as of superior impotance. Is anyone listening besides those stellar intellectuals Matt Damon and Ben Affleck?

REVERSE DISCRIMINATION: Pitched battles to end racial and gender preferences such as Proposition 209 in California and I-200 in Washington State get the headlines. But there are also less celebrated victories occurring in the trenches and outside public view. One such contest was fought to a conclusion mid-summer in Los Angeles when Police Lt. Rich Dyer won a reverse discrimination suit in federal court against the Los Angeles Police Department. Dyer sued in '96 after he lost a coveted helicopter pilot's position in the LAPD's air-support unit to an allegedly less-qualified black colleague. Dyer got little support from the LAPD, supposedly a bastion of white male power and privilege. The department's equal employment opportunity office was not interested. He would have had no legal representation at all if not for the nonprofit Individual Rights Foundation. IRF attorneys put together a case that convinced U.S. District Court Judge William Keller that the LAPD did, in fact, discriminate illegally against both Dyer and another white officer. Judge Keller was stunned to find a statement from the LAPD's interim Chief Banyan Lewis about the air-support unit: "We absolutely needed a black sergeant in there because we minority fliers." Keller granted Dyer double the amount of back salary he requested and ordered the LAPD to pay his attorney's fees. As Professor Frederick Lynch, an expert in such cases, noted in *Investor's Business Daily*, "Dyer's win will embolden others to bring reverse discrimination [and] put another crack in the 'spiral of silence' that has long suffocated criticism of ethnic and gender preferences."

COMMUNIST GNP: On a contentious internet site examining questions of history and diplomacy, the subject of Cuba recently came up and why Castro's tropical gulag was impoverished. Some said, of course, that it was the intransigence of the U.S. and its embargo. But Guto Thomas wrote: "Suppose you took a walk at the end of the 1980s around what used to be the Iron Curtain, starting at Korea and looking first to your left and then to your right at the relative levels of economic prosperity. You find, roughly:

(See table at end)

Where the Iron Curtain happened to be was largely a matter of luck and war: before the Iron Curtain regions to its inside and to its outside had very similar economic structures. Yet by the end of the 1980s the countries inside the Iron Curtain had levels of GDP per capita only some 12% of those countries just outside the Iron Curtain. I see no way to read this other than that Communism destroys seven-eighths of a country's potential economic output."

GDP per East Capita		GDP per West Capita		Relative Gap
North Korea	700	South Korea	7660	0.91
China	490	Taiwan	9550	0.95
Vietnam	170	Philippines	850	0.8
Cambodia	150	Thailand	2110	0.93
FSR Georgia	580	Turkey	2970	0.8
Russia	2340	Finland	19300	0.88
Bulgaria	1140	Greece	7390	0.85
Yugoslavia	3240	Italy	19840	0.84
Hungary	3350	Austria	23510	0.86
Czech R.	2710	Germany	23560	0.88
Poland	2260	Sweden	24740	0.91
Cuba	460	Mexico	3610	0.88

Racial Preferences versus Individual Rights

A House Divided

by John H. Hinderaker & Scott W. Johnson

In his famous speech accepting the Republican nomination for the Senate in 1858, Abraham Lincoln asserted that the institution of slavery had made the United States a house divided against itself. Slavery would either be eliminated or become lawful nationwide, Lincoln predicted, provocatively quoting scriptural authority to the effect that "a house divided against itself cannot stand."

Lincoln's Democratic opponent, Stephen Douglas, criticized Lincoln's hostility to slavery and rejected his "house divided" analysis on the ground that it was disrespectful of the fundamental principle of diversity. "Our Government was formed on the principle of diversity in the local institutions and laws," Douglas said. He accused Lincoln of preaching a "doctrine of uniformity" and argued that "uniformity in the local laws and institutions of the different States is neither possible or desirable."

If this first debate ended in tragedy, the contemporary debate over racial preferences has the air of history repeating itself as farce. Like the debate over slavery, it raises a question of first principles with respect to the meaning of the human equality that constitutes the moral foundation of our country and our freedom. Apparently without the slightest awareness of doing so, today's advocates of racial preferences, acting in the name of "diversity," regularly advance arguments that are directly descended from those made by Stephen Douglas—and later by the chief theoretician of the Confederacy, John Calhoun.

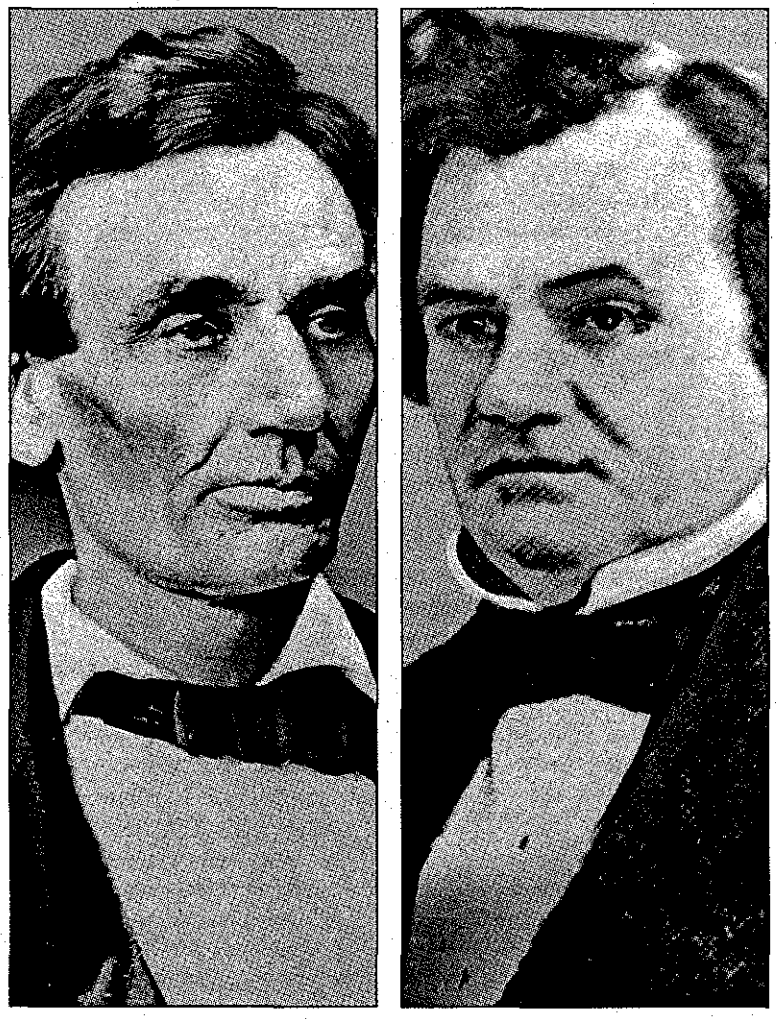
In his 1858 speech, Lincoln also observed, "If we could first know where we are, and whither we are tending, we could better judge what to do and how to do it." In the spirit of Abraham Lincoln, it is worth asking where we are with respect to the policy of sorting students by race that has prevailed in our universities for the past twenty years so that we may better know what to do and how to do it.

The policy called "affirmative action" was originally promulgated by executive order and bureaucratic decrees in the 1960s and early 1970s. It now requires the patient industry of an archaeologist to provide an adequate account of the evolution of that policy. But this much is clear: in the university setting, "affirmative action" is an extremely misleading euphemism for the systematic racial preferences in admissions and financial aid that has become the status quo. Students have been routinely subjected to significantly different treatment depending on whether or not they are members—or describe themselves as members—of designated minority groups based on skin color, ethnic membership, and gender. It is difficult to overstate the pervasiveness of these policies of racial preference or the degree to which they have divided our house against itself.

The University of Minnesota presents a typical example. In 1990, administrators set out to increase the number of "students of color" to 10 percent of the student body on each of the university's five campuses. Given the dearth of "students of color" in four of the areas served by the university's five campuses, this state institution, funded by Minnesota taxpayers, was forced to provide financial incentives for "students of color" from outside the state to meet its self-imposed quota.

At the urging of university administrators, the Regents adopted a program under which non-Minnesota "students of color" who met a minimum academic requirement were automatically granted the benefit of substantially discounted tuition otherwise available only to resident Minnesotans. (The tuition differential between Minnesotans and non-Minnesotans amounts to roughly $4,000 to $8,000 per student per year, depending on the campus or program in which the student is enrolled.) By 1993 this policy accounted for the largest share by far of scholarship aid awarded by the university. Over the years since the policy was adopted, the university has discriminated against thousands of students at the cost of millions of dollars solely on the basis of the color of their skin or their ethnic origin.

Meanwhile the University of Minnesota: the law school faculty voted in 1978 to dedicate 50 percent of the law school's available scholarship funds to affirmative action minority students. This policy has now been in effect for twenty years at a similar economic and psychological cost.



NOT PC PC

These two University of Minnesota policies are blatantly illegal. Indeed, revelations about the discounted tuition policy last September led administrators to transform it into a less blatantly illegal program as of spring 1998. The law school policy has never to our knowledge been formally disclosed to the public. In neither case has the university ever accounted, or apologized, for the illegality of the policy and its human toll.

At the University of Michigan, Professor Carl Cohen's Freedom of Information Act request disclosed a racially bifurcated admissions system for applicants to the undergraduate liberal arts program. Under this system, applicants are screened on the basis of their grade point average and test scores; radically lower admissions standards are applied to "underrepresented or other disadvantaged" students than to "majority" students.

Until recently, as lawsuits and compelled disclosure have unlocked relevant information, the regime of racial preferences has been carefully guarded by secrecy and denial. Typical was University of Michigan Law School Dean Dennis Shields's statement regarding the law school's admissions program following revelations of systematic racial preferences: "We do not have a separate review of files nor do we have a different standard for minority applicants." As Jonathan Chait, a supporter of racial preferences in university admissions, commented in *The New Republic* last December: "Instead of waging a philosophical defense of racial preferences, or coming clean, or at least thinking up a different lie, Michigan's administration is simply wrapping its old lie in a bizarre point of semantics."

As Chait's comment suggests, it is the public exposure of the regime of racial preferences at public universities that now brings forth the need for "a philosophical defense of racial preferences." But such a philosophical defense has not and cannot advance much further than Supreme Court Justice Harry Blackmun's famous Orwellian affirmation in 1978 in *Regents of the University of California v. Bakke*, a case that legitimated a bald racial admissions quota: "To get beyond racism, we must first take account of race." And taking account of race, of course, means treating some students differently from other students on the basis of the color of their skin—in other words, practicing racial discrimination.

Parlaying on Justice Blackmun's logic, a sociology professor at an Ann Arbor rally supporting racial preferences at the University of Michigan was quoted as condemning his opponents as "color-blind racists." All it will take to close this particular Orwellian circle is a student demonstration expressing support of racial preferences by chanting "Freedom is slavery."

Contrary to Justice Blackmun's statement, it should be clear that no system that requires racial classifications can result in a decline in racialist thinking. Indeed, racial consciousness is exacerbated by racial preferences and quotas precisely because they promote the poisonous idea that an individual's status and interest are determined by race. Preferential programs are premised on the notion that rights belong to racial and ethnic groups, that individual rights are conditioned by racial or ethnic status. This idea recapitulates the morality of a caste system based on race and ethnicity that is wholly alien to the principles of the American system.

The impetus for racial preferences is the ardent desire to engineer equal outcomes measured across racial and ethnic groups. Proponents of preferences assume that absent discrimination, success would be randomly distributed among the members of racial and ethnic groups. According to this point of view, the existence of unequal results across racial and ethnic groups is by itself evidence of injustice; to achieve justice is to achieve equal results.

This assertion is both obviously untrue and profoundly destructive of freedom based on the protection of individual rights through the rule of law. When people are free, they never sort themselves out with exact racial proportionality in their efforts, achievements, decisions about whether to go to college, or what jobs to choose.

By its very nature, equal opportunity produces unequal results. Unequal outcomes are as common between minority groups (including the numerous ethnic minorities that comprise the white "majority") as they are between individuals. They have no necessary connection to invidious racial discrimination.

To take only one prominent example, consider the case of Asian Americans. Native-born Asian Americans graduate from college at roughly twice the rate of the population at large and have average family incomes that substantially exceed those of white non-Hispanic Americans. No one can plausibly argue that this disparity in graduation rates and average incomes is a function of discrimination.

Efforts to produce equal outcomes among racial and ethnic groups therefore inevitably lead to the imposition of coercive measures by bureaucracies or courts. Equal outcomes among groups cannot and will not occur without coercion. Recognition of

Continued on page 6

Houston Votes Again on Race Preferences

The summer of '98 was not a good time for journalism in America. *The New Republic* admitted that their wunderkind Stephen Glass, 25, confected dozens of stories, complete with fake web sites, before his bosses noticed. The venerable *Boston Globe* booted columnist Patricia Smith when she admitted to inventing quotes and fellow columnist Mike Barnicle resigned when his own fakery came to light. Meanwhile, *Time* magazine and CNN collaborated on a faux expose of U.S. troops supposedly using nerve gas in Vietnam to eliminate defectors.

While these whoppers got plenty of ink, a journalistic sin of omission slipped by most observers. It had to do with affirmative action, something journalists favor more than journalistic ethics. It also had to do with a vote in Houston city elections and with a man named Edward Blum.

Blum grew up speaking Yiddish as a self-described "pink diaper baby." The U.S. Army used his father's linguistic skills to help resettle holocaust victims. Blum never forgot those stories and, though never himself a victim of discrimination, he became troubled about the tendency of the government to prefer one group over another while claiming to be acting for the greater good. In 1993 Blum became chairman of a group called Campaign for a Color Blind America. The group fought for the redrawing of racially gerrymandered congressional districts, and three times the U.S. Supreme Court upheld the changes.

"The idea that we have 'good' preferences is antithetical to what we believed," he says. Yet preferences prevailed in Houston, the city where he had worked as a stock broker for Paine Webber for more than 15 years. Texas banned racial preference programs but allowed an exception for cities with more than one million residents. Houston jumped at the opportunity to start its racial set-aside program in 1984 and expanded it in 1995 to "goals" of 17 percent of construction contracts, 11 percent of purchasing and 24 percent of professional services. Politicians were comfortable with the situation, but Blum, who was much taken by California's vote in favor of Proposition 209, wasn't. Like those he admired, particularly Ward Connerly, Blum thought Houston voters should, for the first time, have their say on the quota issue.

He headed up Houston Civil Rights Initiative, Proposition A on the 1997 ballot targeting racial preferences. The measure used the same language as Proposition 209, drawn from the 1964 Civil Rights Act and barring Houston from discriminating against, or granting preferential treatment to, any individual group on the basis of race.

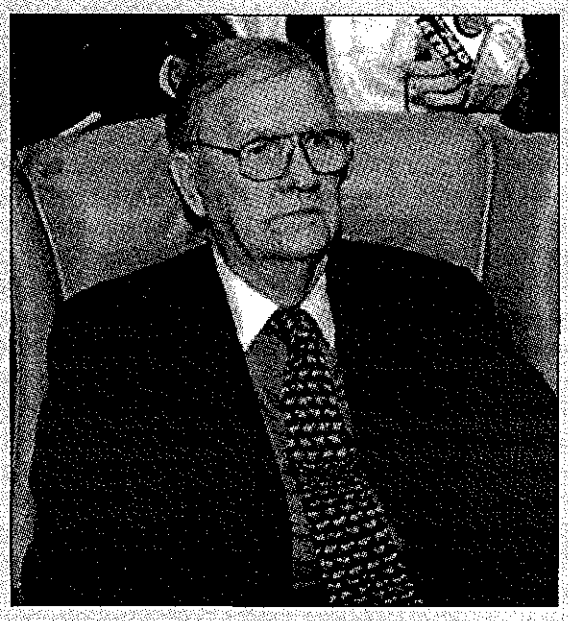
The reaction from the race-preference lobby was swift and shrill. Houston mayor Bob Lanier, an LBJ type and champion of the racial-spoils system, mounted the bully pulpit. Only a "redneck" would vote for proposition A, he said, portraying the measure as a test of whether Houston was an international city or a "redneck city."

"He didn't just play the race card," says Ward Connerly, who supported Houston's anti-preference measure. "He played the whole deck." Lanier, a Democrat, also leveraged companies doing business with the city. If they supported Proposition A, ran the message, they just might have a hard time keeping or getting contracts from the city of Houston. It worked. No companies came out in favor of Proposition A.

Meanwhile, Edward Blum had been busy exercising his First Amendment rights in speeches and opinion pieces in favor of the measure. Mayor Lanier called Paine Webber CEO Donald Marron to complain about Blum's activism and threaten the company with loss of its lucrative contracts to underwrite city bonds. For its part, Paine Webber pressured Blum from speaking out against Houston's preference programs. Company policy only required clearance of investment-related articles, not political speech. In March, without identifying himself as a Paine Webber employee or clearing the piece with them, Blum wrote an article for *Investor's Business Daily* criticizing race quotas in federal highway contracts. For his superiors, it was a thoughtcrime. "You are advised," the company said in a reprimand, "that the firm will not clear for publication articles or other press contracts in which you espouse an anti-affirmative action position such as in the article submitted to the *Wall Street Journal* or published in the *Investor's Business Daily*."

Mayor Lanier, meanwhile, sensed that for all his activism, the anti-preference movement struck a chord with Texans. Imitating foes of California's proposition 209, he criticized the Houston measure for using "preferences," which voters opposed, for "affirmative action," about which they were less certain. The mayor and the city council, especially councilman Jew Don Boney (sic), a former black radical, unilaterally altered the measure to ask voters whether "affirmative action for women and minorities should be ended in employment and contracting."

In November, 1997, Houston voters rejected Proposition A by a 55-45 margin, to the undisguised delight of Jesse Jackson and other members of the



FORMER HOUSTON MAYOR BOB LANIER

preference cartel who had opposed the measure. The vote came one day after the U.S. Supreme court upheld Proposition 209, which had passed by nearly identical numbers. National media, particularly television, gave the story huge play, portraying the vote as a crucial reversal of a dangerous national trend.

"Houston's voters have put a surprising brake on a national movement that has often seemed to have the momentum of an unstoppable freight train," crowed the long page-one story in the *New York Times*. The Houston vote became a huge story in Washington State, itself facing Initiative 200, a vote on racial preferences that will take place this November. The *Seattle Times*, a hardcore proponent of preferences, ran a front-page story under the headline "Houston rejects bid to repeal affirmative action" and four days later the paper said "Thank you, Houston," editorializing that Houston voters "showed the nation an important lesson in how to head off the anti-affirmative-action assault that is sweeping the country. The lesson: Ask the right question."

Ed Blum, whom Ward Connerly describes as "one of the most decent and informed people on this issue that I have ever met, not a bigoted bone in his body," resigned from Paine Webber, an act he describes as "losing" his job. He wonders what the company would have done had he been writing in favor of racial quotas. His former employer issued a statement that Blum was not fired but asked to refrain from publishing articles with a point of view that reflected negatively on the firm's reputation and led to client complaints and a loss of business. The preference lobby saw Blum's troubles as evidence of their power, but they too were in for a surprise.

This past June 26, District Judge Sharolyn Wood threw out the results of the Houston referendum and ordered a new election. Wood, known for fairness but also for opposition to racially gerrymandered voting districts, ruled that opponents of Prop A had used misleading language in changing how the ballot read.

"The petitioners tried to get it on the ballot without saying they wanted to end affirmative action," Lanier said. "To my mind they are the ones who were trying to be deceptive." But others saw it differently. "Let this be an example to all council members that just because the city attorney says something is correct, that doesn't mean that it is," said councilman Rob Todd.

"Clearly the election was stolen," says Ward Connerly, noting that courts have shot down the same language trickery on three occasions: during the Prop 209 campaign, when I-200 got on the Washington ballot, and now in Houston. "Three strikes and you ought to be out," says Connerly. "That is the story that hardly anyone has really played yet."

Indeed, those who were posturing as the conscience of journalism during the epidemic of confabulated news gave scarcely a thought to what had happened in Houston, and, even more importantly, to the way the turn of events in Houston played in their own pages.

The *New York Times*, which hailed the Houston vote on page 1, stuck Judge Wood's decision on page 13 in the last edition of a Saturday paper, giving it a total of six sentences. Other national media which had seen the original vote as a vindication of affirmative action similarly ignored or downplayed the rebuff to Lanier. Only the *Washington Times* featured the story and evaluated the significance of the Wood decision.

More to the point, not a single newspaper in Washington State, which is the next electoral battleground for racial preferences, carried a story about the Houston reversal. *Seattle Times* columnist Michelle Malkin learned about the Houston ruling from friends in California. Ten days later she ripped her own paper for its silence after previously heavy coverage of the Texas election. "Sins of omission can be as aging to the news media's credibility as sins of commission," she said.

Seattle Times executive editor Michael R. Fancher floated a dog-ate-my-homework excuse about how the story had been overlooked in an awkward weekend news cycle. His editors missed the Associated Press report, he said, and the paper only learned of Judge Wood's action a week after the fact, when I-200 supporters took the paper to task for failing to report it. Most readers, Fancher said, would regard this as "sloppy," but he admitted that failure to provide a complete story about the Houston ruling fed a "perception" of bias.

For Connerly, the pro-preference partisanship and bias are obvious. But he has noted a shift in the way these issues are covered.

For Ed Blum, the lesson of Houston is that the courts are no longer a robed politburo the quota lobby can rely on to bail them out. "Whenever a politically arrogant mayor and his allies decide to thwart the will of the voters, sooner or later courts will take them to task," he says. Blum has a new job with a First Amendment-friendly firm that places no restrictions on his writing. He continues to blast corporate cave-ins as a "new McCarthyism" now spreading to Wall Street.

"This has been an eye-opening experience for me, and should serve as a reminder to everyone of the extent to which the defenders of racial preferences will stoop to further their new agenda. I learned this first-hand. What kind of a business community have we developed when corporations like Paine Webber cynically impose doctrines of political correctness on their employees? Why should the quest for 'diversity' in corporate America only apply to skin color—the least important aspect of an individual? Can we no longer tolerate diversity of opinion?"

Lanier has completed his term as mayor. His replacement Lee Brown, a Democrat, is a quota clone and led the charge for an appeal of Judge Wood's decision. A new election in Houston is unlikely this year, but should eventually take place, whatever the result of a ruling by U.S. District Court Judge Lyn N. Hughes on Houston's affirmative-action program. In an echo of the Supreme Court's Adarand decision, contractor Robert Kossman recently claimed that the city denied him contracts, even though he was lowest bidder, solely because he was white. He too has threatened legal action.

At a hearing on August 13, Judge Sharolyn Wood said she lacks authority to tell the city what ballot language to use. But she did say: "It's beyond my concept that a responsible government would once again not use the proper language on the ballot."

Even with the altered language the first vote was close. With the original anti-preference language restored, the result might well be different. Perhaps the next chapter of this what-comes-around-goes-around story will draw the coverage it deserves, even from the *New York Times*.

—Kenneth Lloyd Billingsley

AP/Wide World Photo

A House Divided, Continued from page 4

group rights as a means of achieving equal outcomes requires the abrogation of individual rights.

Sixth Circuit Judge Damon Keith unwittingly (and chillingly) revealed the erosion of fundamental American principles under the impact of racial preferences when he wrote in a 1984 law review article: "Despite the progress of the last two decades, an entrenched belief in the sanctity of individual rights remains. Our courts have time and again explicitly or implicitly shied away from 'intruding' too far into the rights of private individuals." The implication is that individual rights are the prejudice of reactionaries and the enemy of progress. Hear the echo of the heart of Stephen Douglas's argument—the black man had no rights that the white man was bound to respect.

Despite the purported sophistication of the arguments advanced on behalf of racial preferences, these arguments are neither progressive nor compelling. It is the idea of equal treatment under the law without regard to race that represents true progress and that for 125 years constituted the unvarying object of antislavery crusaders and civil rights advocates. The most distinctive legal claim of the civil rights tradition has been the principle of nondiscrimination, above all a claim for equal treatment, especially by the government, without regard to race. The ideals of a color-blind Constitution and of color-blind law have deep historic roots in the first principle of freedom—the proposition, as Lincoln called it—that all men are created equal, and that this equality forms the basis of unalienable individual rights.

It was in recognition of this principle that James Madison, for example, condemned the injustice of slavery in America at the Constitutional Convention: "We have seen the mere distinction of color made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man." It was in recognition of this principle that all eight Northern states, where slavery was universally legal in 1776, themselves abolished slavery within their borders either gradually or immediately following the Declaration of Independence.

From the principle of equality was soon derived the intimately related notion of nondiscrimination on the basis of race. Partly as a result of the abolition of slavery in the Northern states, there were free African American citizens living in Boston in 1847. In the mid-nineteenth century, at a time when our major civil rights problem was still slavery, black and white civil rights activists brought a lawsuit, *Roberts v. City of Boston*, demanding that the system of segregated schools in Boston be declared unconstitutional on the basis of the Massachusetts constitution's provision that "All men are born free and equal." (Incidentally, the lawsuit was brought on behalf of a young woman, four-year-old Sarah Roberts.) Charles Sumner, the great Massachusetts abolitionist, argued that the principle of equality that invalidated slavery likewise invalidated "any institution founded on inequality or caste."

It was to vindicate the principle that all men are created equal that we fought a bloody civil war; ratified the Thirteenth Amendment to abolish slavery and the Fourteenth Amendment to extend "the equal protection of the laws" to all persons, or rather to each person individually.

And it was in the spirit of the same principle that, beginning in the 1930s, NAACP Legal Defense Fund lawyers embarked upon a litigation strategy designed to end segregation in public schools. Thurgood Marshall successfully argued in 1947 that the University of Oklahoma Law School could not deny admission to a black applicant because "classifications and distinctions based on race or color have no moral or legal validity in our society." Two years later, Marshall argued that "racial criteria are irrational, irrelevant, odious to our way of life, and specifically proscribed under the Fourteenth Amendment." This was also the argument that Marshall successfully urged in 1954 in the climactic case of *Brown v. Board of Education*: "that the Constitution is color-blind is our dedicated belief."

The Civil Rights Act of 1964 was the culmination of this long struggle to recognize and codify the principle of nondiscrimination and to fulfill the promise of "equal protection of the laws" embodied in the Fourteenth Amendment. The scope of the act was extensive: Title II prohibited discrimination in public accommodations; Title VI outlawed discrimination in federally funded programs (including colleges and universities); and Title VII prohibited discrimination in employment. The act made it illegal to discriminate against "any individual" on the basis of race, color, ethnicity, or religion. As Professor Edward Erler of California State University has commented, "No more powerful expression of a commitment to equal opportunity can be found in the annals of modern legislation anywhere in the world."

The history of the color-blind ideal in our law is the proper backdrop against which to view the issue of racial preferences in public universities. In the past ten years, constitutional law governing racial preferences has evolved in the direction of the color-blind mandate of the equal protection clause. In *Wygant v. Jackson Board of Education*, *City of Richmond v. Croson*, and *Adarand Constructors v. Pena*, a closely divided Supreme Court invalidated the government's use of racial preferences in contexts other than university admissions. In these nonuniversity cases, the Court held that the government's use of racial preferences was constitutionally prohibited unless it was remedial and there was a substantial basis in evidence for concluding that the particular use of racial preferences was narrowly tailored to eliminate the present consequences of identified past racial discrimination for which the particular government entity itself was responsible.

Most recently, in the Adarand case, the Court emphasized "the basic principle that the Fifth and Fourteenth Amendments to the Constitution protect persons, not groups. It follows from that principle that all governmental action based on race . . . should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed. . . . 'A free people whose institutions are founded upon the doctrine of equality' . . . should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons." To which Justice Antonin Scalia eloquently added, "In the eyes of government, we are just one race here. It is American."

These Supreme Court cases would invalidate virtually every program of racial preferences in public-university admissions. The Fifth Circuit, for example, following the constitutional analysis set out in these cases, specifically held in the Hopwood case that the University of Texas Law School's preferential admissions program for African Americans and Mexican Americans was unconstitutional. The law school had employed a segregated system of evaluation, putting black and Hispanic candidates in separate pools in which they competed only within their own racial or ethnic pool. The Fifth Circuit held that racial diversity in higher education does not by itself constitute a compelling governmental interest. Rather, the only permissible use of racial criteria is strictly remedial. The Fifth Circuit concluded that the law school could not use race as a factor in deciding which applicants to admit, although public universities may reasonably consider a host of factors—some of which may be statistically correlated with race—in making admissions decisions.

The undergraduate program at issue in the University of Michigan lawsuit involves formal written policies that explicitly and systematically discriminate on the basis of race in favor of "American Indians, Black/African Americans, and Hispanic/Latin Americans" for no apparent reason other than that they are deemed to constitute "underrepresented minorities." Such race-based systems designed to advance racial proportionality cannot pass muster under any recognized constitutional doctrine. In due course the University of Michigan will accordingly lose this lawsuit.

Moreover, if Michigan's racial preferences have worked in the way they have at other universities, they have done real harm not only to whites, but also to many of their intended beneficiaries. As social scientist Thomas Sowell has observed for the past twenty-five years, racially preferential admissions programs result in systematic mismatching of students and the institutions they attend, thus leading to dropout rates from 50 to 100 percent higher than those for students admitted without regard to race. On the Twin Cities campus of the University of Minnesota, for example, only 20 percent of minority students entering in 1990 graduated within five years, compared to a 37 percent five-year graduation rate for white students.

The Regents of the University of California abolished racial preferences as a matter of policy in June 1995. California voters followed their lead in November 1996 when they adopted Proposition 209, which prohibits all governmental racial preferences. Abolition of preferences in the University of California system will prevent academic mismatching of students and campuses within the system. Despite much talk about the withdrawl of minority students, Stephan and Abigail Thernstrom did an analysis of data from all the campuses and projected that the number of black and Hispanic students who will actually graduate under the current nondiscriminatory admissions policies will increase by 19 percent and 17 percent, respectively.

Sensational news accounts of the allegedly catastrophic effects of color-blind policies focused on admissions data for only two of the eight campuses: Berkeley and UCLA. University officials did not see fit to release the systemwide admissions numbers until two days after they released the Berkeley and UCLA numbers that generated the disaster stories they obviously desired.

Taking all eight campuses into account, admission of black students was down 17.6 percent (not 57 percent, as reported in the news accounts based on data for Berkeley and UCLA) and admission of Hispanic students was down 6.9 percent (not 40 percent, as reported in the news accounts based on Berkeley and UCLA data). And the actual numbers might actually be even better if one takes into account the fact that 15 percent of admitted students declined to identify themselves by race now that doing so is neither beneficial nor required. It seems likely that at least some of these students are black or Hispanic.

Further, these statistics must be viewed in the context of the extraordinary performance of Asian Americans, who constitute only one-ninth of the California population but account for at least one-third of the students admitted to the University of California system for the fall of 1998. Their success apparently has deprived them of their former status as "students of color" in accounts decrying the consequences of color-blind admissions.

More than the racial composition of a given class of university students is at stake. Those who believe in the ability of black and other minority students must concede that these figures are bound to improve over time. What is at stake is whether our great public universities are to treat the students whom they exist to serve as fellow citizens with equal rights under law, or to treat them differently based on their membership in specified racial and ethnic groups. Like the struggle to dismantle segregation in the South forty years ago, the struggle to eliminate racial preferences on university campuses implicates both the rule of law and the foundation of the law.

Discrimination on the basis of race is wrong. The Civil Rights Act of 1964 codified this moral understanding and fulfilled the promise of the Fourteenth Amendment's guarantee of "the equal protection of the laws" as well as the recognition in the Declaration of Independence of our human equality. As Abraham Lincoln wrote in response to prominent Democrats who urged him to rescind the Emancipation Proclamation, "The promise, being made, must be kept."

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Our panel discussions will touch on:

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No New Years would be complete without a party and a live band—and what a party we have planned.

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Now in its third year, **The Weekend** is an alternative to the Friends of Bill (FOB) love-in held every year in Hilton Head, SC. Originally conceived by attorney Jay Lefkowitz and news analyst and author Laura Ingraham, this popular event is now produced by the Center for the Study of Popular Culture.

For more information contact
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Peter Singer Gets A Chair

Animal Rights Extremism at Princeton

by Wesely J. Smith

Most people know that it is wrong to kill babies. Most people understand that pigs are animals, not persons. Most people view the intentional killing of "medically incompetent" people as murder.

Not Peter Singer. The Australian philosopher, a founder of the animal rights movement, claims that infants have no moral right to live and views infanticide as an ethical act. He believes that medically defenseless people should be killed if it will enhance the happiness of family and society. He seeks to elevate the moral status of animals to that now enjoyed by humans and equates animal farming and ranching with the evils of human slavery.

Strangest of all, Singer is by no means a fringe thinker. Over the last 20 years, his vigorous advocacy of utilitarianism have made him a darling among the bioethics set and with academic philosophers who share his antipathy to the traditional mores and values of Western Civilization. Singer is invited to speak at seminars, symposia, and philosophy association conventions, throughout the world. His 1979 book, *Practical Ethics*, which unabashedly advocates infanticide, euthanasia, and decries "discrimination" based on species (a bizarre notion Singer labels "speciesism"), has become a standard text in many college philosophy departments. Singer is now so mainstream that he even wrote the essay on ethics for the Encyclopedia Britannica.

Those who are fighting a rear guard action to protect the human rights of weak and medically vulnerable people in universities and in debates over public policy in the United States have benefited from the fact that Singer has spoken from the hinterlands—Monash University in Austrialia. But now, even that cold comfort is gone. Next year, Singer will become a permanent member of the Princeton University faculty, where he will be the Ira W. DeCamp Professor of Bioethics, a prestigious, tenured academic chair, at the university's Center for Human Values.

When asked why someone with opinions as odious as Singer's received such a prestigious appointment, a Princeton spokesman demurred. "Appointments to Princeton's faculty are made solely in consideration of a candidate's demonstrated qualities as a scholar and a teacher," said Justin Harmon, Director of Communications for the Center for Human Values. "Appointment does not imply endorsement of a scholar's particular point of view."

Perhaps, but it is hard to believe that Singer's appointment just happened to result from a neutral, dispassionate search for academic talent. It is more likely that the academics who brought Singer to Princeton did so because of his views, not in spite of them. If true, the Singer appointment bodes ill for the future of Western values and ethics.

Singer's ideas are truly crackpot. He is an animal rights radical whose ultimate goal is to elevate the status, moral worth, and legal rights of "nonhuman animals," to use his misanthropic term, to that of human beings. To accomplish this end, Singer denigrates the moral worth of some human beings—e.g., infants and those with cognitive disabilities—by comparing their intellectual capacities to those of animals.

Singer believes that one's membership in the human race should have nothing to do with one's rights and moral worth. So, he proposes to replace the prevailing ethic that promotes the equality of all humans as an objective concept with one based on subjective notions of "quality of life." What counts is not being a human, but a "person." To Singer, all "persons" have equal rights and all persons have greater rights than nonpersons. This would not be a problem if Singer used the term "person" as a synonym for "human." He doesn't. In Singer's wacky world, a person is not necessarily human and a human is not necessarily a person.

In order to be a person, according to Singer, a "being" must exhibit certain "relevant characteristics," primarily rationality and "self awareness over time." Under this definition, most healthy humans are persons—but not all. Infants, even if healthy, are not persons because they allegedly are not yet self aware over time and lack the ability to reason. Nor are humans with significant cognitive disabilities, such as people with advanced Alzheimer's disease, persons. To Singer, their moral status is the same as that of other forms of life he labels nonpersons—e.g. human embryos, human fetuses, chickens and fish. On the other hand, a menagerie of animals are "persons"—pigs, dogs, elephants, monkeys, chimpanzees, gorillas, whales, dolphins, cattle, seals, bears, sheep. This is true, he writes in *Practical Ethics*, "perhaps even to the point where it [personhood] includes all mammals."

In Singer's philosophy, there is a crucial distinction between persons and nonpersons. Only persons have the right to live. Nonpersons can be killed without significant moral concern on the basis that their lives are "interchangeable" and "replaceable."

As one of his chief arguing points, Singer has rationalized the killing of human babies. In *Practical Ethics*, he supports the killing of newborns with hemophilia. As he writes: "When the death of a disabled infant will lead to the birth of another infant with better prospects of a happy life, the total amount of happiness will be greater if the disabled infant is killed. The loss of the happy life for the first infant is outweighed by the gain of a happier life for the second. Therefore, if the killing of the hemophiliac infant has no adverse effect on others it would . . . be right to kill him."

Singer reiterated the point, using a different example, in *Rethinking Life and Death: The Collapse of Our Traditional Ethics*: "To have a child with Down's syndrome is to have a very different experience from having a normal child. . . . We may not want a child to start on life's uncertain voyage if the prospects are clouded. When this can be known at a very early stage of the voyage we may be able to make a fresh start. . . . Instead of going forward and putting all our efforts into making the best of the situation, we can still say no, and start again from the beginning."

His use of passive language does not blunt his meaning: Singer is advocating infanticide as a parental prerogative. In the most extreme form of his argument, he has even suggested that parents have 28 days in which to decide whether to keep or kill their infants.

When Singer gives examples of babies who are appropriate to kill, he usually writes or speaks, as above, of children born with disabilities. But it is important to note that under his thesis, disability has little actual relevance. Utilitarian considerations of maximizing happiness and reducing suffering are what count to Singer. Thus, if a parent is unhappy with the birth of a child, if that child's death will cause them more happiness than keeping it, or if keeping the child will make life less happy for potential future children, then infanticide is an acceptable alternative. (Perhaps Brian Peterson and Amy Grossberg, who recently pled guilty to manslaughter after they wrapped their newborn baby in plastic and then tossed him into a waste receptacle, should have called Singer as a defense witness instead of copping a plea. After all, they were simply maximizing their happiness and ending the life of a replaceable being.)

Singer's attitudes about cognitively disabled people are equally abhorrent. He argues that cognitively disabled people who are incapable of "choosing" to live or die can be killed. This applies to people diagnosed as permanently unconscious (a notoriously misdiagnosed condition) and those who are conscious but not "rational or autonomous." In other words, brain damaged people, those with significant mental retardation, and/or some forms of psychosis, are not persons and do not have a right to life. Singer writes in *Practical Ethics* that, "it is difficult to see the point of keeping such human beings alive, if their life, on the whole, is miserable."

This century has already seen what is possible when it becomes acceptable to kill infants and profoundly disabled people. During the euthanasia program of Germany, between 1939 and 1945, more than 200,000 people—ranging from disabled infants, to people who were mentally incompetent, to adults with physical disabilities—were killed by German doctors, who took the lives of their "patients" willingly, not under menace or duress from the Hitler government. Many Germans and Austrians, with acute memory of that atrocity, are so disturbed by Singer's advocacy of infanticide and involuntary euthanasia of incompetent people, that he is unable to lecture in Germany, Austria, or Switzerland because of angry demonstrations which erupt against him whenever he is invited to speak in those countries.

These protests deeply disturb Singer. As a child of German/Austrian Jews who lost family members in the Holocaust, he resents his philosophy being linked in any way to the Nazis. Indeed, Singer actually sees himself as the victim of totalitarian thinking by protesters. A few years ago when Singer was shouted down at the University of Zurich, with chants of, "Singer raus! Singer raus! (Singer out)," he complained, "I had an overwhelming feeling that this was what it must have been like to attempt to reason against the rising tide of Nazism in the declining days of the Weimar Republic."

But scratch beneath Singer's self righteousness, and an interesting juxtaposition emerges between Singer's thinking and predominate German philosophy circa 1920 - 1945. For example, in a 1991 BBC documentary on the German euthanasia Holocaust, which aired on the program "Four In One," Singer claimed, "Nothing in my ideas gives any support to what the Nazis did. What the Nazis did was a totally different thing. They called their program euthanasia but it was not euthanasia because it was not for the good of the infants involved."

Singer's phrase, "it was not for the good of the infants involved," is telling. Singer does not say it was wrong per se for German doctors to kill disabled infants. He can't do that because he believes it is often right to kill disabled babies. Rather, he decries the German doctors' motives. But a murdered baby, is a murdered baby, is a murdered baby. That Singer does not grasp that basic moral concept speaks volumes about his philosophy.

Singer is also wrong historically when he claims that his bases for promoting infanticide are nothing like those which motivated German doctors. It is true, of course, that a major reason for the German euthanasia program was to promote "racial hygiene," a concept of which Singer does not approve. But Singer's pretense that racial hygiene was the entire basis for German euthanasia is, at best, disingenuous. In fact, the intellectual genesis that led directly to the killing of disabled infants and disabled adults had little to do with racial theories. Rather, it came from a book, *Permission to Destroy Life Unworthy of Life*, published in 1920, long before Hitler took power.

Written by a famous law professor, Karl Binding, in collaboration with a noted physician, Alfred Hoche, and called "the crucial work" by Holocaust historian, Robert Jay Lifton, *Permission to Destroy Life Unworthy of Life*, advocated ideas that are strikingly similar to Singer's. Binding and Hoche were not motivated by hate or the desire to create a master race. Rather, they believed that killing certain categories of people was compassionate, in their words, a "purely healing treatment." Those eligible for "the healing work" of being killed by doctors were terminally ill or mortally wounded individuals, cognitively disabled people, and the unconscious. These are virtually the same categories of people whom Singer says can be killed ethically—those who voluntarily and autonomously decide to die, or those who do not but must face the same end because of their supposed status as "nonpersons," or, in Binding and Hoche's idiom, because they are "empty shells of human beings."

Binding and Hoche also justified the killing of mentally incompetent adults, just as Singer does today. They based their euthanasia advocacy on the alleged misery of the lives of mentally impaired people, as well as a way to end the burden their support caused to families and to society—a concept echoed clearly in Singer's utilitarian premise that it is allowable to kill human nonpersons whose lives are deemed to have little value to them, if it produces the most "total amount of happiness."

The 1920 publication of *Permission to Destroy Life Unworthy of Life* set off a national discussion about euthanasia among the German intelligentsia and eventually among the general public. These dehumanizing ideas deeply influenced German popular attitudes toward medically defenseless people. As reported by British author Michael Burleigh, in his book on the euthanasia movement in Germany, *Death and Deliverance*, a 1925 survey taken among the parents of children with mental disorders disclosed that 74 percent of them would agree to the painless killing of their own children. (One can only imagine the attitude of the nonparents.) Thus, while the Nazis certainly propagandized energetically against the value of the lives of the disabled after they came to power, they were working in a field already made fertile by the general acceptance by doctors and the general populace of the Singer-like notions of Binding and Hoche.

Singer seeks to distance himself from German euthanasia with the claim that the actual killing of disabled infants which would be conducted under his ethical paradigm would be nothing like those which occurred in Germany. To this one must respond: not so fast. One of the first people murdered in the Holocaust, as described in Lifton's, *The Nazi Doctors*, *By Death and Deliverance*, and Hugh Gallagher's book on German euthanasia, *By Trust Betrayed*, was an infant known as Baby Knauer. Baby Knauer was born in late 1938 or early 1939. The child was blind and had a leg and an arm missing. Baby Knauer's father was distraught at having a disabled child. So, he wrote to Hitler requesting permission to have the infant "put to sleep."

Hitler had been receiving many such requests from German parents of disabled babies over several years and had been waiting for just the right opportunity to launch his euthanasia initiative. The Knauer case seemed the perfect test case. He sent one of his personal physicians, Dr. Karl Rudolph Brandt, who would later be hanged for crimes against humanity at Nuremberg, to investigate. Dr. Brandt's instructions were to verify the facts. If the child was disabled as described by the father's letter, Brandt was to assure the infant's doctors that they could kill the child without legal consequence. With the Fuhrer's assurance, doctors willingly murdered Baby Knauer at the request of his father. Brandt witnessed the baby's killing and reported back to Hitler.

The Baby Knauer incident convinced Hitler that his plan to permit doctors to kill disabled infants should go forward.

He signed a secret order permitting infanticide of disabled infants in 1939. Soon thereafter, adult disabled people could also be killed in what came to be known as the "T-4" Program (named after the address of the German Chancellery, Tiergarten 4.)

The euthanasia program did not remain secret for long. Too many people were being killed. Himmler called it "a secret that is not a secret." As a consequence, in 1941, Hitler rescinded the T-4 program which had permitted euthanasia of disabled adults. (He did not order an end the killing of disabled babies, however.) But despite Hitler's partial tactical retreat, euthanasia continued unabated until a few weeks after the end of the war, carried out by doctors who believed they were acting ethically, compassionately, and responsibly in their killing work, based on theories first promulgated by Binding and Hoche more than twenty years before.

The murder of Baby Knauer is precisely the scenario Peter Singer supports when he argues that parents should be permitted to have their unwanted babies killed in order to maximize their own happiness and that of potential future children. Indeed, Baby Knauer's father was quoted in Lifton's book, *The Nazi Doctors*, as stating in 1973 that the family was thankful for the killing: "We wouldn't have to suffer from this terrible misfortune because the Fuhrer had granted us the mercy killing of our son. Later, we could have other children, handsome and healthy . . ." Note, the exact congruence of the father's sentiments supporting the murder of his baby with Singer's philosophy.

The German euthanasia program also took the lives of tens of thousands of disabled adults during its six year reign of medical terror. Most of those killed were people with physical disabilities or relatively mild retardation, people whose killing Singer would not support. But many of the disabled adults butchered in the Holocaust were profoundly retarded or demented. According to Singer, such people are not persons and they can be killed if their deaths end lives of little value to themselves and promote greater happiness. Since those were the very reasons German doctors murdered these helpless people, it is hard to distinguish their actions from those advocated by Singer today.

It is true, of course, that there are many learned men and women who spend their lives promoting pernicious, even evil, ideas, and the world is none the worse for wear. So, why does this particular appointment cause so much alarm?

In a word, Princeton. The holders of elite chairs at elite universities, such as that soon to be inhabited by Singer, exert tremendous influence. That is why these positions are so highly coveted.

Dr. Herbert London, the John M. Olin Professor of Humanities at New York University (NYU), explains how the influence of Peter Singer can spread throughout society because of his Princeton professorship. When a controversial thinker is given an elite academic chair, London points out, a "superstructure" is created which vastly increases the influence of the professor beyond the ivy covered walls of the university. Visualize this superstructure as an inverse pyramid, with Singer the point at the bottom and his influence branching up and out in all directions. His position at Princeton gives him great respectability. What he says and advocates, almost by definition, will now become legitimate topics of public discourse.

"After all," says Professor London, "this is not some small, insignificant university. This is a very significant university. It is a major chair. It is a significant appointment and all those things contribute to the legitimacy of the arguments that emanate from it." Thus, from the mere fact of the appointment itself, Singer's ideas will matter more than they did before he came to Princeton. As London points out, "These elite professors produce new holders of the Ph.D., who look and act and quack just like the professors who conferred the degrees. Then, these young people go out into the world espousing the same views as the professors." Making matters worse, Princeton being Princeton, most of Singer's students-to-be are destined to rise to the top of American life. They are the physicians, health care executives, political office holders, bureaucrat policy makers, foundation decision makers, and university and college professors of tomorrow. That means that Singer's ideas are likely to eventually affect the every day reality of American life.

Singer will also exert influence in the public policy debate over euthanasia and medical ethics beyond the academic setting. "He is likely to become a talking head anytime the electronic or print media discuss euthanasia," says Stephen Drake, an organizer for Not Dead Yet, a group made up of disabled people and their allies who oppose assisted suicide, infanticide, and medical discrimination against disabled people, and who view Singer's appointment as a profoundly bigoted act. "The Princeton prestige factor will impress the audience, adding weight to his ideas. Moreover, he is extremely charming and engaging, and is able to give a rational veneer to what is actually a genocidal agenda."

Perhaps worse, Singer's radicalism is likely to make other bioethicists, who hold similar views, seem moderate because they may not share his extremist animals-are-persons mentality. "Singer will do the same thing to bioethics that Kevorkian did to the debate over assisted suicide," Drake says. "Before Kevorkian, the Hemlock Society was seen widely as a fringe group. Today, in contrast to Kevorkian's radical persona, Hemlock is seen by some as more moderate. The same thing will happen with other bioethicists who differ with Singer about animal rights but hold similar ideas about the acceptability of killing disabled infants. Because they don't go so far as elevating animals to the status of people, they will seem tame by comparison and thus there is great danger that their ideas will be perceived as the acceptable middle-ground compromise."

Human history has surely taught us by now that horror results whenever we attempt to distinguish the moral worth of some people from that of other people, based on allegedly "relevant characteristics," whether race, tribe, nationality, religion, gender or any other human trait. Such culling, however motivated, always leads to injustice, oppression, and too often, to killing. Blind to this lesson, Singer seeks to create a new form of unter menschen—the human being who is not a person—and further states that their killing is of no great moral concern. By appointing Singer to a prestigious academic chair, Princeton has greatly boosted these ideas with its considerable prestige. This is a strange definition of academic freedom.

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Utopia's Grave, Continued from page 1

a) Hugo Blanco Defense
b) Student Union
c) Women's Movement
d) Sexual Minorities
e) Unemployed Coalition
f) Anti-racism

Hugo Blanco was, and, I gather, still is, a Peruvian union leader and member of the international Trotskyists. He was one of "us," and he was in jail. He'd been head of a peasant movement that had begun to occupy land and seize it from the oligarchy. We heard about Blanco from one or another of the comrades. He was in jail and his life was in danger.

The Peruvians might execute him, it was said. We swung into action. We had begun to shape an international campaign for his release. Fidel himself had granted Blanco some lukewarm words of praise.

The real issue was his life. It was said that the oligarchy had passed a death sentence on him. This was what we'd heard—although, today, I have no evidence. But to us, the hand of the Peruvian executioner was nigh, and could only be stayed by international pressure.

Here and there, sympathizers took notice, attracted by the threat of the death sentence. We banked on that. Since Sacco and Vanzetti's time, people had always responded to death-sentence appeals.

One Sunday, we debated the question in the branch. The topic was "Are Bolsheviks in Favor of the Death Sentence?" For the negative, an oldtime comrade who had known members of Trotsky's Mexican guard. For the affirmative, a youthful firebrand from among the students.

The student took the first shot. Death, he argued, was a revolutionary's constant companion and an accessory to revolution. "There is no fundamental change without violence," he yelled, glaring at the audience. "And if we are to promote revolution, who are we to oppose the death sentence?"

His opponent surprised us by agreeing with all the student's points. Violence was, he said, quoting the familiar bromide, "the midwife of revolution." Inevitably, people would die. You could not count on reactionaries to rally, and you might have to execute them. The student beamed.

However, added the veteran, leaning forward for emphasis, "that doesn't mean we have to admit it." Hey, he said, if we supported capital punishment, the bourgeoisie would capitally punish us! That would be no good. That would prevent us from ever reaching the point where we could capitally punish them. So, no: execution was out. We'd rally the broad masses on this point.

Today, I don't think of Sacco-Vanzetti, the Rosenbergs, or other executed radicals. Today, I think of Peru, land of tin miners and peasants. As I write, there is still a movement called Shining Path that—without Blanco, to be sure—has bathed in peasant blood, under the direction of an overweight college prof.

After Peru, we toured the student condition.

Quebec had its share of student activists, and, at the end of the Sixties, quite a mass movement. Two factors were at play. The first was the contemporary revolt against middle-class values, spiked, in Quebec, by the example of the students in France. That movement, the legendary May 68, had almost toppled the Republic. I myself had led marches in support of it.

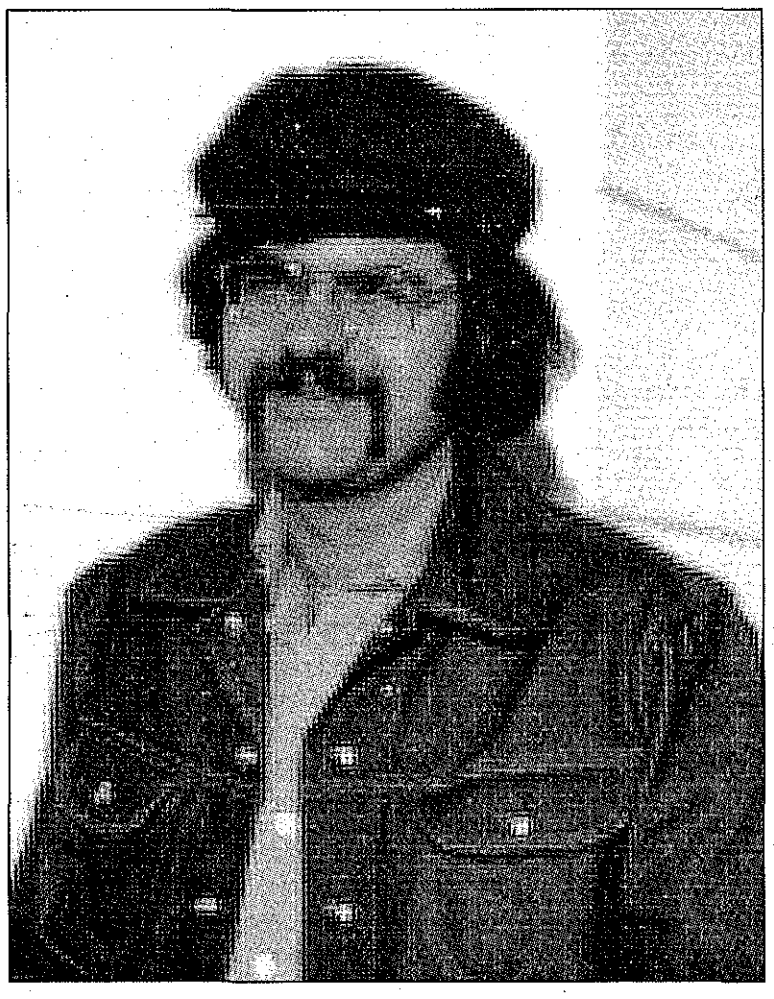
The Quebec revolt, though, was fuelled by the province's emergence from centuries of quiescence and Catholic hegemony. This was the land where male students became notaries and priests, and their sisters became nuns or raised ruinously large families in squalid, unprofitable farms or industrial zones. All that was ending, in a burst of Marcusian energy.

A corollary of this was the new nationalism, where French-Canadians baptized themselves Québécois and wanted independence. Mostly, though, it was about authority—that of parents, priests, and a patronizing, Jansenist elite. From the early Sixties, students fought for secularism; birth control; women's rights; free speech; and modern industry.

In October, 1968, a revolt broke out. I smile now, inspecting news photos of myself in the front ranks of a Montreal demonstration. We shouted many slogans, but mostly we demanded the "student power" that was shaking Berkeley, Columbia, and Harvard.

I'm glad to have kept the clippings. Just last week, I was called into a hearing at the college where I teach. A student—well-known for aggressive feminism—had accused me of "humiliating" her in class. She was demanding an apology and a refund of her tuition.

She'd been asked to book an appointment with me. I'd wanted to talk to her about academic issues, notably the provenance of an assignment, suspiciously inappropriate. All I'd done was ask her to book the appointment; in response, she'd thrown a tantrum.



TROTSKYIST PHASE

Three levels of hearing were accorded this student, and she was allowed to say whatever she wanted to about me, without evidence, witness, or cross-examination. In the end, her complaint went nowhere. But her actions, never criticized, went a long way toward preventing me from functioning.

That was not something I could foresee at the end of the Sixties. Indeed, then, from a woman's point of view, much legitimate change was needed. Quebec women had not voted until 1940, and could not hold a bank account until the Fifties. Religion, combined with male privilege and condescension, were real adversaries.

In the Sixties, then, I became a supporter. We didn't call it "feminism" then. The two sexes of "progressives" didn't have to invent a new "ism." We combated an existing one, male chauvinism, and that was fine, both intellectually and emotionally. It certainly comforted us to erase an evil that had been denounced for decades.

When you talked about women, moreover, you could treat them as a category of "mankind," a lay person's term for homo sapiens, a zoological species. And so, we marched and agitated and denounced and encouraged women to be leaders. To make the point clearer, we went looking for symbols, tokens of male privilege. There were many at hand, but the most visible, in Quebec, was the institution called the taverne.

Tavernes were beer halls, those ubiquitous stations of the ale-drenched Quebec landscape. They were reserved for men. For my women friends, this was worse than discrimination. The taverne was a temple to all that separated men from women.

My comrades had a theory. They hypothesized that cheap beer halls kept the men in one place, pissing their wages into Molson's coffers. At the same time, wives were tending the homefires, changing diapers, answering calls, and whatever.

We planned a protest, and I gladly went along. More than mere sympathizer, I penetrated the media, granting interviews, and causing enough commotion to get us into headlines (difficult, at a time when you had to be more than just a whine group). In the end, we targeted a posh taverne, invaded it, drank beer, and chanted slogans. Within 14 months, we'd changed the drinking laws.

The thought of that march came to me last week. The women on it were sincere, and their indignation profound. Also, they had a sense of humor. They wanted to join the men, not defeat them. They decried the institutions that kept men and women apart.

Today, I'm recalling a more recent report on a demonstration by the Womyn's Collective. The womyn were marching in front of the courthouse, in support of a wife who demanded her children back. The kids were spirited from her 10 years ago. She was an alcoholic and beat them daily. Now, she wanted custody, and the Womyn—but not the children—agreed.

The husband had been charged with kidnapping. Over in my dresser is a letter from a cousin. His dental practice is now dead, victim of an assistant whom he once let go, only to face harassment charges, pursued by the Womyns Legal Defense, costing him a quarter of a million. She lost the case and he's ruined, so I guess they're even.

On the shelf, books by witch-doctors named Dworkin and MacKinnon, describing heterosexual sex as "institutional rape." Over in the next classroom, a militant feminist who once silenced the boys in her class because "we're talking about women and none of you has anything to say."

Where was I with the Khmer? Oh yes, back in 1971, when their guerrillas were teeing up for the Utopia we craved. The war was hot and we craved victory. I craved many other things too, not the least of which was companionship. There was a personal life, and I was young.

On the personal side, I slept with comrades now and then. These women were interested in my body and didn't care much for conversation. In fact, many of them didn't care much about the fact that I really didn't care for them.

To one Red barracuda, in a darkened living room, I once said, "What if I'm not interested? What if I want something else?" Her cocked head showed a grimace: "Like what?" "Like," I wafted towards her, "other men." Her head, in the opposite direction: "So you wanna fuck me or not?" Suddenly, I was gone. The whole shebang--union halls, militant caucuses, Fights for Mass Leadership, the whole red wheelbarrow, I was outta there. There had been, like, Stonewall, and I figured I was gay.

Battles raged inside the Trotskyists regarding the Redness of Gay Lib. The majority, unaware of poststructuralism, spurned gayness as a socialist issue, but were open to gay rights. In retrospect, they were right. There is nothing class-based about sex—and nothing "progressive" about the new "transgressiveness."

However, by 1970, I had located the center of my struggle. It was Gay Lib. Quitting Trotskyism, I read a few books and found the newly-forming caravan. I rose to the top. In my own region, I became the first person to address a street rally for homosexuals. There was a lot of catching up to do. So many men, so many con-

quests to make, and so much convincing to do. In the Seventies, you could double up conquest and conviction. There were a lot of new-left recruits passing through. Many were open to experimentation, and sex was part of it. Gay sex was new and revolutionary.

There was, in short, Utopia! It got better each month, wider in scope, within a grid that exploded. Shadowy neighborhoods turned neon pink. Bars, coffee houses, bath houses, night clubs, vacation spots, restaurants—each dance went to our heads.

The sexual merry-go-round lasted 10 years. Yet no one offered to settle with me into a relationship. More and more, companionship darkened, involving arid trawls in dank bath houses. Too familiar to be desired, I languished. Intellectual companionship became even more harrowing.

After my hundredth ode to gayness and thousandth denunciation of straights, typed into a gay magazine, I stopped. "I mean," said I, to friends in 1980, "what are we, really? We pretend to be superior and more 'creative' than heterosexuals, and stick condescending labels on them like 'breeder'. Yet where do we fit in?"

Mostly, I wondered whether, since gay sex goes nowhere in a hundred directions, we could shake the cruising and swashbuckling, and be a constancy, rather than a transmitter for neural impulses. I was so sick of sex that I stopped screwing.

Sick of sex? Where did that leave Utopia? One wouldn't have Utopia without sex. Or perhaps it was the opposite. Perhaps the grace we sought was lack of desire. Then came the newspaper articles. New Yorkers had invented another novelty, this time, medical. They called it the Gay Disease.

Eight months passed. I stayed at home. I did not even contact the gays I associated with. I reread Vidal's work and was struck by The City and the Pillar, seeing it in a way I hadn't the first time. This time, I was stunned by its brutal despair.

I ventured out a bit. Now, they were talking about a syndrome of diseases to which gay men were susceptible, in New York and around the world. The numbers were rising. I met a friend; he was in a park where gays hung out. He was pale and haggard—he'd lost 30 lbs. His regard was wild when he spotted me.

What was he doing out there? Getting help? What if he had something; what if it was catchable, I thought. Of course it was. How could it be otherwise. How could a disease spread through screwing not be transmitted?

Back among gay writers, I expressed my bewilderment. Maybe we ought to slow down, I ventured; get married; close the bath houses, examine other traditions. The response was furious. How could any thought be more anti-gay!

How could anyone, they asked, be gay without cruising? That was liberation. This was later reinforced by articles penned by Queer ideologues, announcing What the AIDS Challenge Is. Basically, they said, the challenge was to keep the bath houses open.

Bathetic Utopia. Later, I learned that many ideologues had already been diagnosed with AIDS. Their ultimate challenge was to keep themselves in good sexual form—perhaps, even to spread the disease. Other ideologues peddled the theory that AIDS was not catchable.

Old Leftism and Gay Liberation were now losing cohesion. The Trotskyist remnant were chant groups—some full of police agents—or true believers baking in the unforgiving sun. Madame Mao had been judged. The Khmer had taken power and lost it—not without controversy.

I needed work. Now living in Toronto, I looked around for something stable, not door-to-door flogging of widgets. Laboring work, please, and make it industrial! I soon had joined the phone company. Not to sell services, but to install telephones.

I could wear dirty jeans and work boots; drive a truck; don that terrifically macho holster and tools. I could go up the tall poles, and down into conduits; hum *Witchita Lineman* all day.

And meet the working class! Naw, it wasn't the first time. But it certainly felt genuine! I'd drive a pickup, put on country music, and be recognized among the old categories of the Core Industrial Society.

My second or third installation it was, I think, when I went into a housing project. Like many large cities, Toronto was dotted with public housing, some fine, some egregiously bad. This project was as bad as anything I'd seen in Europe or America.

It was filled to cracking with immigrants from countries such as Vietnam, Poland, and Nigeria. By that time, even people from Cambodia were there— people who didn't call themselves "Kampuchean." The smell was pungent.

JUST CAUSES AND MANY ARRESTS

Not from curry or lemon grass, but from urine and excrement in the halls. One day, I couldn't work at all. I was supposed to enter the utilities room—no way! A horrible scent was rising from the stairwell, where they later discovered a dead addict.

Crack, dealers, and physical cracks were everywhere. In the upper floors, terrified seniors huddled behind reinforced steel, not answering to callers—not the postman nor the social worker. Ignoring the postman (we didn't say carrier) was an extreme; if he knocked at your door, watch it, there was something wrong with your check.

Your welfare check, of course. All that collective terror, that fear that drove widows from the brightness of noon, all that dissolved when the checks arrived. On welfare day, people would queue from 9 in the morning to intercept the carrier. Indeed, he didn't bother putting checks in the boxes—he'd just call out the names.

I went to another installation, this time in a northern suburb. Here, poor-white lumpen Canadians were in the majority. Here, the welfare culture was elaborate and deep. Indeed, it was well into its second or third generation.

They did have enough permanent credit to afford telephone service. Since I was the phone installer, I got to prowl the apartments. And here's what I found: single-parent families gathered around the TV set.

Nothing wrong with that, except that it was 11 a.m. on a Monday. Mom was there, and so were the kids— no school? Mom scarfed Fritos and slurped Coke. There was an eerie uniformity to it, from apartment to apartment, as if the moms had been through Central Casting.

Later, social workers told me of women who could not physically rise from their chairs or whose obesity drove them into seclusion. And then, there were the kids.

If I was lucky, I'd enter the apartment on the hour, or half-hour, and catch the singalong: *C'mon Get Happy* or *There Once Was a Bunch Named Brady*. Songs were enhanced by body and hand movements, performed in the chairs as at a party. Astounding permanence of the re-run—however, this was a school morning.

The phone job didn't pan out. Here's where I'll confess to lingering affection for real unions, recalling the slavery I endured with Ma Bell. Her philosophy was Ordeal by Fire. You sent new recruits through the fire of a 70-hour workweek, until those who survived were kept on, and their workload reduced.

I couldn't wait for that to happen—I'd almost crashed my truck from fatigue. I took two weeks off and went job-hunting. What was I looking for? I could scarce turn a lathe or hammer a nail; I couldn't read a blueprint or drive tractors.

I fancied myself a writer. Go figure the employability of a writer. Inevitably, the hungry weeks flew by; I grew desperate; by the time I'd noticed the new month, I hadn't the rent money in hand.

So I, too, went to the Welfare Office. Why not? I was a citizen like everyone else. Besides, there was something Zolaesque about it: all that debt, desperation, and kinship with the world's oppressed masses.

Which I encountered at Welfare. They were oppressed, all right; you could tell from the room they waited in: its flaky paint; plexiglass barriers; teller's cage; and smell of ammonia in the halls. However, through their oppression, these masses had made adaptations.

As I was waiting to be served, a man with the air of a pimp came in. He had rings on all fingers and a felt hat with rainbow plume. His coat was long and real leather. He paced up and down for emphasis.

Soon, he'd rapped the glass and said something to the clerk. She frowned. I understood he wanted his check. Can't you wait? she asked. My taxi's outside! he howled.

Somebody in the office found his money. Four minutes later, he'd joined his girls in the taxi and raced off. I was ushered into the interview room. There, I was greeted by a social worker, doleful and well-scrubbed. She carried herself with caution.

Welfare? She was worried. Impossible. Why not? I stammered. She replied that I'd just left a job to become a "writer." Why had I left?

I explained the circumstances: stress, exhaustion, disillusionment. The careful words sank deeply into her college-trained heart. There was nothing to be done, she sighed. I was considered self-employed; Welfare was for wage earners—erstwhile earners, or potential earners . . .

It was too complicated to argue. By noon the next day, I'd found a loan. A week later, freelancing began in earnest—mostly, ghosting articles for leftist journalists—and I lived that way, together with day-labor, for about a year.

Freelancing turned lucrative, then collapsed entirely. By 1987, I was ready for secretarial work. I got a job at the Multicultural Health Coalition. I was to be their executive assistant. I was fluent in French and Italian and that was a boon for the group, centered in multi-ethnic Toronto.

No sooner had I entered this "coalition" than I seemed to be back in my east-end housing project, distinguishing Viets from Sikhs. There were pamphlets in dozens of languages. That was the Coalition's mission: to bolster the immigrant cultures now pouring into Canada.

Indeed, Canada was the Immigrant Utopia of the Eighties, and Toronto, the world's most polyglot town. More precisely, it was a

checkerboard of fiefdoms, each with its own flag and language. Casablanca in the movie was not more chaotic.

Like a noisy storm, this maelstrom had burst over Toronto, previously a WASP bastion of royalists and Tory bankers. The novelty did not go unnoticed. It seemed so obviously concentrated that the elites decided it was fate.

It was fate that Canada should not only take these immigrants, but, somehow, conform to them, becoming diverse and colorful in the process. It was the new liberal canon and a natural leap for Boomers.

Boomers could now pay their dues to the Third World, importing it wholesale into Ontario. Left intellectuals, for their part, could practice identity politics and invent new words such as inclusive.

Mostly, however, it was the historic antidote to racism, which, went the theory, was a moral condition imposed by history. Racism consisted of white skin and majority status. Its most egregious manifestation was satisfaction. There was nothing to be smug about when you were a majority.

To atone for being a majority, you simply erased the whites. Non-whites might now be 16% of Ontarians, but 60% of TV anchors had to be colored. Similarly, you erased the language. It was reactionary to impose English on people, since it was not listed as a post-colonial idiom.

Thousands were in English schools without English. But teaching them the language held no virtue. Instead, activists ran all over town, remaking the curriculum. While immigrants daily flunked English, they could now enroll in Heritage Languages.

Bear in mind that Canada already had two official languages. What effect would it then have to virtually append the entire world to Canada? Illegal question that no one was allowed to ask, despite the fragility of the Canadian identity.

The Ottawa government weighed in, sanctifying Multiculturalism, and even making it Law. A statute now declared that English and French were "official" but every other language on Earth had status. Activists scurried to found interest groups and apply for funding.

That's where I came in. The Health Coalition did outreach to people who were not yet tailoring immigrant medicine to immigrant culture. To counter this, I put out propaganda. One day, I mailed out a Cambodian version of "How to Get Vitamin C in Your Diet."

It was not entirely without merit, that pamphlet, for even Cambodians needed vitamins. However, it was not set in Canada. It was about going to the market and looking for C-laden Cambodian foods. And if that Kampuchean happened to escape the ghetto, finding herself, say, in the north, sans Cambodia, it was scurvy luck indeed for that vitamin-starved immigrant!

My tasks centered on running conferences, where academics and medicos could tart up their resumes by giving papers on every imaginable whine— save Canadianism. In my first year, we did two assemblies, and I did the typing and listening. Here's what I remember:

The Great Ethnic Winding-Sheet Incident, in which indignation was raised over the fate of a hospitalized granny. Granny was a Greek-Canadian who spoke no English. One day, she went to hospital for a procedure. She took off her clothes. The nurse passed her a hospital gown.

By the time Granny's daughter, an activist, had found her, Granny was hysterical. The gown was all white. White was the Greek color for shrouds!

The Great Non-Italian Hospital Name, wherein a hospital in an Italian neighborhood was named Northwestern. And the locals couldn't pronounce its name, thundered an activist, and nobody would change it!

And finally, The Great Ethnic non-Ethnic Thought Bubble. This happened during a round-table, and featured speakers from many cultures: Finns, Kenyans, Salvadorians, etc. Ethnicity was the universal password. Suddenly, there was a pause. There, among the ethnics, lay original Canadians.

Specifically, one French-Canadian and one Native person from Ontario. The Indian had been defining the group's mandate. She could not go on. She shot a glance at her French-speaking colleague. They searched the room.

It had dawned on them that Ojibway and French-Canadians were being recategorized. They'd relinquished their Canadian status, and been lumped into 120 "ethnic" groups. I approached them later. Why, said I, wicked, did they even participate? They showed me the stubs from their government grants.

Foxy government, this, that could blur 300 years of cultural patterning into a colorless wash. That was the goal of Multicult: to hose the real history of the country into a formless pool.

Which brings me to the end. My end, a sort of burial. There goes the coffin into the hole that was marked for me in the cemetery of the Left. A cemetery full of markers that have been largely bent out of the shapes that were intended for them.

In that box, bones from Cambodia, and from AIDS sufferers, not a few of whom I loved dearly. Could Gay Lib have been more protective of them? The question oppresses me—I, who haven't lived sexually for almost 20 years. I have practiced gay celibacy, and, until recently, that was considered "treasonous."

And finally, other things in the coffin: faded placards, covered in neo-marxist graffiti. Notes from a cultural break-up, of men from women, kids from divorced parents, and teaching from its moral center. May we all find out why in our own, private ways.

Walter Bruno is a writer living in Calgary, Canada.

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associate dean of Yale College, informed Dick by letter that both an administrative member of the dean's office's Racial and Ethnic Harassment Board and a gay activist had "submitted a complaint alleging harassment in the form of a 'BAD week 86' poster." The college's Executive Committee Coordinating Group had decided that the charge that Dick's poster violated a ban on "physical restriction, assault, coercion, or intimidation" had merit, and that it should be submitted to the full committee. According to Dick, as reported in the *Village Voice* in July 1986, when he asked Dean Pearce how his satiric flier could be actionable if Yale's policy guaranteed full freedom of expression and the right to "challenge the unchallengeable," she replied that it did not protect "worthless speech." On May 13, the Executive Committee found Dick guilty of harassment and intimidation. His mother told the *Boston Globe*: "Wayne feels very strongly about things. He expresses himself freely." At Yale, that earned him two years of probation.

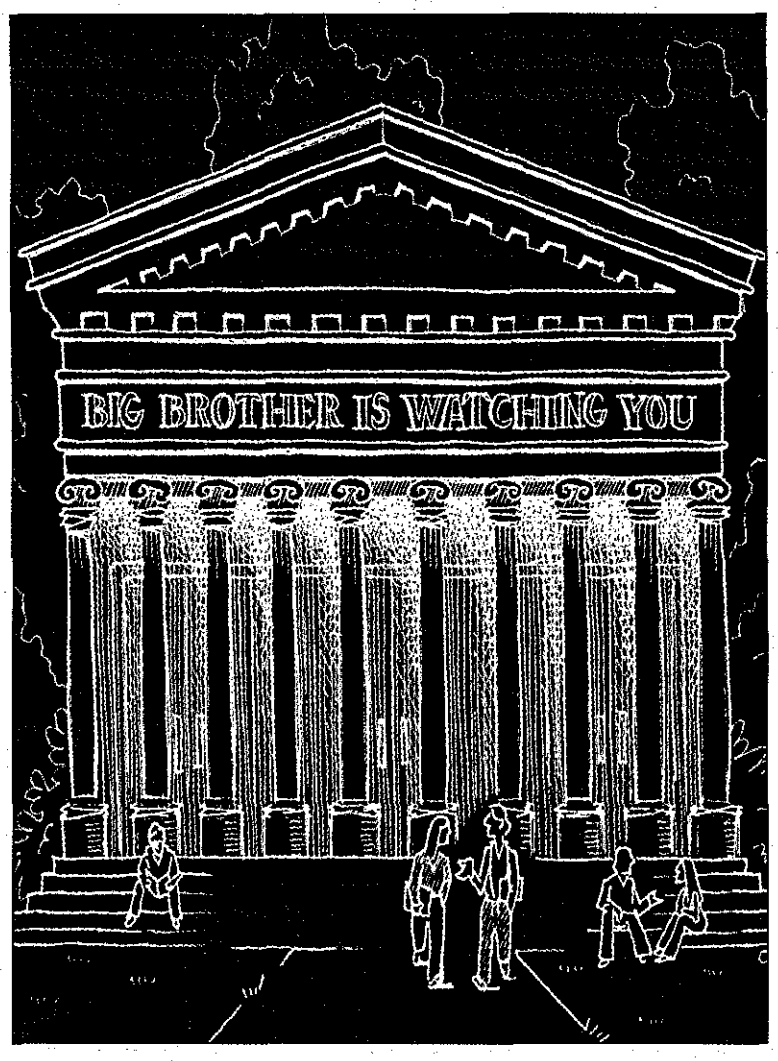
A code, absent a commitment to freedom, will mean whatever power wants it to mean. Assisting a student at Wesleyan University against violations of the speech code in the spring of 1996, Robert Chatelle, of the National Writers Union, wrote to Wesleyan's president and quoted from the university's official policy: "'Harassment and abuse may include verbal harassment and abuse.' You don't need a Ph.D. in logic to notice that verbal harassment is anything [Wesleyan] decides it to be."

Dartmouth College even decided that free expression was, literally, garbage. In 1993, some students repeatedly stole the conservative *Dartmouth Review* from dormitory delivery sites. The dean of students announced that the confiscations did not violate the code of student conduct. As an official Dartmouth spokesman explained, the *Dartmouth Review* was "litter."

Authors of these codes rarely make their full agenda explicit, but sometimes a document sheds real light. In June 1989, the Massachusetts Board of Regents adopted a statewide "Policy Against Racism" for higher education. It "proscribes all conditions and all actions or omissions including all acts of verbal harassment or abuse which deny or have the effects of denying to anyone his or her rights to equality, dignity, and security on the basis of his or her race, color, ethnicity, culture or religion." It mandated both "appreciation for cultural/racial pluralism" and "a unity and cohesion in the diversity which we seek to achieve," outlawing "racism in any form, expressed or implied, intentional or inadvertent, individual or institutional." The regents pledged "to eradicate racism, ethnic and cultural offenses and religious intolerance," and "required," among other things, programs "to enlighten faculty, administrators, staff, and students with regard to ways in which the dominant society manifests and perpetuates racism."

They did not call for any program on political tolerance. At the state's flagship campus, the University of Massachusetts—Amherst, in the spring and summer of 1992, the student newspaper, the *Collegian*, lost all real protection of the rule of law. At an angry rally on the campus after the acquittal of the Los Angeles police officers in the Rodney King affair, protesters turned their hatred against the supposed "racism" of the *Collegian*, which had written of the L.A. "riots," unlike Professor John Bracey, later head of the Faculty Senate, who at the rally termed the rioters "our warriors." Protestors invaded the offices of the *Collegian*, smashing windows, destroying property, and assaulting staff. Northampton police arrested one protester for attacking a *Collegian* photographer with a baseball bat and dragging him to the Student Center (the municipal court sentenced him to counseling). The *Collegian* appealed to the university for protection, but was refused. Editors and staff got a Northampton police escort to another municipality, and published a few editions in hiding, but these were stolen and destroyed. Marc Elliott, editor-in-chief, told the *Boston Globe* that it was "like a Nazi book burning." Undefended by the university, the editors of the *Collegian* surrendered and agreed to an editorial structure of separate editors and sections for every "historically oppressed" minority on campus. Managing editor Daniel Wetzel told the *Daily Hampshire Gazette*, "There's 100 people running scared right now, and 100 people intimidating them. I'm not going to put a student organization above my safety." He told the Associated Press, "We gave up our journalistic integrity for the safety of the students."

When the *Collegian* appealed for protection, UMass's chancellor, Richard O'Brien, replied that there was a conflict between two values that "the university holds dear: protection of free expression and the creation of a multicultural community free of harassment and intimidation." Publicly, he proclaimed neutrality and offered help in solving the "dispute." Privately, according to Marc Elliott, "We were told by the administration that the choice was to give in or let the campus break up in a race riot where people would get killed." Chancellor O'Brien denied that, and told the press, "We were there to facilitate discussion, not to take any side on the issue."



In 1994, in response to an inquiry about the actions taken by the administration in 1992, the new chancellor, David K. Scott, replied, in writing: "*Collegian* takeover of May 1, 1992: charges were not brought; Whitmore occupation of May 1, 1992: no disciplinary action was taken; Theft of copies of *Collegian* May 4, 1992: Individuals who may have taken copies of the *Collegian* were never identified. It is difficult to call the action theft because the paper is distributed to the public free of charge." As for the physical assault and the destruction of the newspapers: "I am not aware of any specific statements by the administration in response to the incident with the *Collegian* photographer or the theft of copies of the *Collegian*."

In 1995, Chancellor Scott proposed a new harassment policy that would outlaw not only "epithets" and "slurs," but, in addition, "negative stereotyping." The policy caught the eye of the media. *New York Times* columnist Anthony Lewis illustrated the gulf between liberal and campus views of freedom. UMass's policy, he wrote, would "create a totalitarian atmosphere in which everyone would have to guard his tongue all the time lest he say something that someone finds offensive." Lewis asked: "Do the drafters have no knowledge of history? No understanding that freedom requires 'freedom for the thought that we hate?' And if not, what are they doing at a university?" He concluded that the "elastic concept of a 'hostile environment'" intolerably menaced "freedom of speech, at universities of all places."

Tell that to Harvard Law School, which in October 1995 adopted, by an overwhelming vote of its faculty, Sexual Harassment Guidelines that ban "speech of a sexual nature that is unwelcome, abusive, and has the effect of creating an intimidating, demeaning, degrading, hostile or otherwise seriously offensive educational environment." Harvard, though a private institution, prides itself on being a citadel of legal education on liberty, but it adopted these rules years after federal district courts had ruled that similar codes violated the First Amendment. Indeed, the guidelines seem to have been enacted precisely in order to suppress speech on the heels of a great campus controversy involving a law student parody of an expletive-filled *Harvard Law Review* article, "A Postmodern Feminist Legal Manifesto," published as a posthumous gesture toward Mary Jo Frug, a radical feminist legal scholar (and the wife of a member of Harvard Law School's faculty) who had been brutally murdered some months earlier. When the parodists bitingly mocked the decision to publish, there were calls from some outraged students and faculty for their discipline or even expulsion. Professor David Kennedy brought formal charges against the students before Harvard Law School's disciplinary body, but those charges were dismissed—not on the basis of academic freedom, but because there was no code of conduct at the law school that would have forbidden the students' words. A year later, the faculty adopted the guidelines that almost certainly would have supplied a basis for punishment of the authors of what was clearly a political parody.

New York

Harvard was far from the first law school to adopt a speech code. In 1989, the faculty of the University of Buffalo Law School voted unanimously in favor of a policy on "Intellectual Freedom, Tolerance, and Political Harassment." As Nat Hentoff reported in *The Progressive*, the law school ruled that student free speech must be limited by "the responsibility to promote equality and justice." Syracuse University, in the fall of 1993, adopted a harassment code whose target was (and is) "offensive remarks," to which it added "sexually suggestive staring, leering, sounds, or gestures," not to mention "sexual, sexist, or heterosexist remarks or jokes [and] sexually suggestive or degrading images or graffiti (such as T-shirts, posters, calendars, mugs, etc.) [or] the use of such images to advertise events." The State University of New York (SUNY)—Binghamton, in March 1991, charged a student, Graham Firestone, with lewd and indecent behavior when he displayed legally non-obscene nude photographs on his dormitory door on an all-male floor. He claimed First Amendment rights, but a representative of the university's Affirmative Action Office, who testified against him, characterized his behavior to the *New York Times* as "degrading and abusive to women." (If only he'd displayed Mapplethorpe's photographs.) In fall 1996, however, that administration did not prosecute students who trashed a press run of the campus's conservative journal.

The reductio ad absurdum in New York occurred in 1993, when Sarah Lawrence College found a student guilty of harassment for "laughing" when one student called another a "faggot." John Boesky, according to witnesses, had his masculinity impugned by a student with whom he had roomed acrimoniously in his freshman year. Boesky called his former roommate a "faggot." Boesky's friend, Marlin Lask, laughed. The student charged Boesky and Lask with harassment.

The college, without letting them even

confront their accuser, convicted them of creating "a hostile and intimidating atmosphere," and sentenced them to one year's social probation and twenty hours of community service. Further, it required them to view the videotape Homophobia, read the text of *Homophobia on Campus*, and write a paper on "homophobia."

Lask was indignant. According to Francis Randall, who was Lask's faculty advocate, Lask took notes of a conversation with Robert Cameron, associate dean of student life, in which he recorded the following judgment: "We know that you are not guilty of any of the items [in the code] 'a' through 'e,' [but] you tried to make an environment that was uncomfortable and demeaning . Laughter is part of demeaning [the student]." Randall's notes of a later conversation with Marilyn Katz, the dean of studies and student life (who requested and confirmed Randall's notes), reflect that she said to him: "I know it makes a good phrase to say he was convicted of laughing, but the laughing was in a context." The closest that the college's administration came to trying to defend itself in what became an increasingly embarrassing situation was when Barbara Kaplan, dean of the college, told the *New York Times* that she disputed Lask's claim that he was punished just for laughing, but then Kaplan refused to elaborate, citing confidentiality rules.

Lask admitted no wrongdoing. He refused to write a paper on homophobia and took a year at Hebrew University in Jerusalem. During that time, Randall worked for reconsideration, and the New York chapter of the ACLU (NYCLU) joined the case, which Randall believed worried the college the most. Norman Siegel, executive director of NYCLU, told the *New York Times* that the case was "another situation of political correctness run amok, of political correctness being extended into the twilight zone." Lask was permitted to return for his senior year without having to demonstrate in writing his successful thought reform, but the conviction remained a part of his official record. When, in January 1995, NYCLU was about to file suit on Lask's behalf, Sarah Lawrence removed the letter from Lask's file, and Lask dropped his case.

Randall (in a memorandum for his colleagues) explained that in 1991, organizations of gay, black, and Asian students secured a speech code after one anonymous person had defaced the campus with bigoted graffiti in one incident. By 1993, however, the code never had been invoked, and he believed that "there was a hope for, a search for, a case." Ironically, in publicizing the code, the Lesbian, Gay, Bisexual Union of Sarah Lawrence had distributed fliers all over the campus that said: "Faggot—Spic—Nigger—Chink. Has anyone ever said this to you? Sarah Lawrence College has a policy against harassment? USE IT." Same word, note well—"faggot"—but that was not harassment. What if someone had laughed?

The Mid-Atlantic

In November 1994, at Montclair State University (New Jersey), an entire fraternity, Delta Kappa Psi, was sentenced by the campus judiciary to 150 hours of community service because one of its members hung a Confederate flag for fifteen minutes in a cafeteria. Georgetown University provides students and faculty with two separate statements about freedom of expression. The first proclaims "free speech" essential to the university, declares that "more is better," asserts that "to forbid or limit discourse contradicts everything the university stands for," and promises that the only permissible restrictions are content-neutral "considerations of time, place, and manner." The second, under which students and faculty may be prosecuted, warns that "expression" that is "grossly offensive on matters such as race, ethnicity, religion, gender, or sexual preference is inappropriate in a university community." Rutgers University had a category of "verbal assault," and a separate "heinous act," harassment, which included "communication" that is "in any manner likely to cause annoyance or alarm."

The speech provisions of the sexual harassment policy at the University of Maryland—College Park, however, go well beyond those of Rutgers. The Maryland policy lists among "unacceptable verbal behaviors idle chatter of a sexual nature," "graphic sexual descriptions, sexual slurs, sexual innuendoes," "comments about a person's clothing, body, and/or sexual activities," "sexual teasing," "suggestive or insulting sounds such as whistling, wolf-calls, or kissing sounds," "sexually provocative compliments about a person's clothes," "comments of a sexual nature about weight, body shape, size, or figure," "comments or questions about the sensuality of a person, or his/her spouse or significant other," "pseudo-medical advice such as 'you might be feeling bad because you didn't get enough' or 'A little Tender Loving Care (TLC) will cure your ailments,'" "telephone calls of a sexual nature," "'staged whispers' or mimicking of a sexual nature about the way a person walks, talks, [or] sits." Further, these verbal behaviors "do not necessarily have to be specifically directed at an individual to constitute sexual harassment."

Even remaining silent about life, sexuality, private views, fashion, or love is no path to safety at Maryland, however, because the policy also prohibits an array of "gestures" and "other nonverbal behaviors." "Gestures" are "movements of the body, head, hands, and fingers, face and eyes that are expressive of an idea, opinion, or emotion." "Non-verbal behaviors," distinguished from "physical behaviors [which involve touching]," are "actions intended for an effect or as a demonstration." The policy offers specific "examples of unacceptable gestures and nonverbal behaviors," including "sexual looks such as leering and ogling with suggestive overtones; licking lips or teeth; holding or eating food provocatively; [and] lewd gestures, such as hand or sign language to denote sexual activity." As if dry lips or American Sign Language were not trouble enough, the policy identifies specific acts of "sexual discrimination" as actionable "sexual harassment," including "gender-biased communications about women or men [and] course materials that ignore or depreciate a group based on their gender."

At Carnegie Mellon University, in Pittsburgh, suppression of speech by charges of harassment, formal censorship, and ever more repressive codes has become a way of life. Fortunately, one of the most outspoken civil libertarians on the Internet, Declan McCullagh, was a student at CMU, so as soon as CMU did it, the world knew it. He also was student body president—demonstrating the deep rift between students and their would-be censors.

McCullagh himself was charged with "harassment" for public criticism of the campaign tactics of a candidate in student government elections (a charge later dropped). His accuser wrote to him that "while this may not be enough to legally win [in court] it is more than enough to win a UCD [University Committee on Discipline] hearing on this campus." That is true of charges of "harassment" on most campuses. The same accuser, Lara Wolfson, when she was president of the Graduate Student Organization, was criticized on the student government newsgroup by a fellow graduate student, Erik Altmann, for trying to create "graduate student ghettos." He called her a "megalomaniac." She accused Altmann of "harassment," and Dean of Students Michael Murphy accepted the charges, initiating a formal hearing. Wolfson argued that calling a woman a megalomaniac constituted sexual harassment, citing a large body of feminist "victim theory" on her behalf. Indeed, Barbara Lazarus, associate provost at CMU, submitted a brief for Wolfson, on March 14, 1994: "I have no doubt that this [political criticism of her role as president of the Graduate Student Organization] has created a hostile environment which impacts Lara's productivity as a student leader and as a graduate student. It must be stopped." Altman was acquitted, but every student knew the risks thereafter of debating feminist political figures.

McCullagh (no conservative—he worked for Friends of the Earth and for Jerry Brown's 1992 presidential campaign) documented a large number of similar efforts at CMU to suppress dissent. Undeterred, CMU in 1994 strengthened its sexual harassment policy, including its restriction on "verbal conduct." The policy created "trained advisors" and "strongly urged and encouraged" not only any student, faculty, or staff member who "feels sexually harassed" to contact these advisors, but, also, anyone who "knows of or suspects the occurrence of sexual harassment." In November of that year, CMU barred Internet access by its students and faculty to "sexually explicit or obscene material"—banning eighty-one Internet newsgroups that either were "sexually explicit" or had the words "sex" or "erotica" in their title. This produced a barrage of outraged criticism from the Electronic Frontier Foundation, the ACLU, and individual civil libertarians. On campus, McCullagh forged an alliance with gay and lesbian activists, because CMU had used examples of homosexual erotica as instances of what should be banned. The censorship was covered prominently by *Time*, CBS News, the *Chronicle of Higher Education*, the Associated Press, and local media. CMU, once a pioneer of electronic communication, was now in the forefront of censoring the Internet.

Virginia

Virginians, of course, had been pioneers of freedom of expression, foremost among whom had been George Mason (1725-92), opponent of slavery, passionate advocate of liberty both at the federal and state levels, and drafter of the Virginia Constitution, perhaps the first formal American statement of inalienable rights, among them freedom of speech. The fate of that freedom at the university named in his honor is sobering.

On April 4, 1991, during a week of fund-raising events, the Sigma Chi fraternity at George Mason University performed an "ugly woman" skit at the university cafeteria. Eighteen fraternity brothers, dressed in women's clothes by sorority friends, paraded before an audience of students who had paid to see the performance. One of the eighteen was in blackface, with a wig in curlers and with pillows attached to his chest and backside (the students appearing as white women were equally "ugly," because looking ridiculous was the very point of the skit).

Anyone, of course, could have criticized the skit or raised the issue of fraternity attitudes for campus discussion. Individuals had the same options, in short, as Christian students would have had if the fraternity had displayed Andres Serrano's "Piss Christ" or if someone had dressed as "white trash." Instead, several students filed a complaint with the dean of student services, Kenneth Bumgarner. The fraternity publicly apologized to the campus, but on April 19, the dean announced that Sigma Chi "had created a hostile environment for women and blacks, incompatible with the University's mission." He sentenced the fraternity to two years' social and athletic suspension, and he ordered them to plan and to implement "an educational program addressing cultural differences, diversity, and the concerns of women." He also suspended, for one year, the Gamma Phi Beta sorority, whose members had dressed their fraternity friends.

George Mason is a public university, and Victor Glasberg, an ACLU attorney in northern Virginia, although he found the skit offensive, was not about to see the First Amendment disappear because of it. He sued the university in U.S. District Court, which overturned the suspension on constitutional grounds on August 27, 1991. George Mason had argued that the skit was not "protected speech," and that even if it were, there were "compelling educational interests" that overrode that consideration. As Judge Claude Hilton ruled, however, "The First Amendment does not recognize exceptions for bigotry, racism, and religious intolerance, or ideas or matters some may deem trivial, vulgar, or profane." The university appealed the ruling to the U.S. Court of Appeals for the Fourth Circuit, which, on May 10, 1993, unanimously upheld the district court's judgment. The court noted that the fraternity had been punished precisely for its "evident message." Sigma Chi's "purposefully nonsensical treatment of sexu-

l and racial themes," the court found, "was ntended to impart a message that the University's oncerns, in the Fraternity's views, should be reated humorously." This, the court concluded, vas "expressive conduct," and the harm was not vhat the fraternity had done, but what George Aason had done, its "punishment of those who coffed at its goals while permitting, even encour-ging, conduct that would further the viewpoint xpressed in the University's goals." In our system f law, the court explained, government may not orbid or punish expressive conduct because it dis-pproves of the ideas expressed by that conduct. It rged the university to pursue its laudable goals hrough means that do not destroy essential free-loms. George Mason himself had understood that erfectly more than two hundred years earlier.

The Border States and the South

West Virginia broke from Virginia over ssues of personal liberty, but West Virginia Jniversity (WVU) possesses (as we write) the nly speech code that makes the University of Aaryland's seem benign. It proscribes a range of ommon expressions and, if applied equally, it vould leave no sex or race safe in its conversa-ions. Sexual harassment includes "insults, humor, okes and/or anecdotes that belittle or demean an ndividual's or a group's sexuality or sex;" "unwel-ome comments or inquiries of a sexual nature bout an individual's or a group's sexuality or sex"; 'inappropriate displays of sexually suggestive bjects or pictures which may include but not lim-ted to [sic] posters, pin-ups, and calendars." WVU even has its own loyalty oath, "The Mountaineer Creed:" "I will practice academic nd personal integrity; value wisdom and culture; oster lifetime learning; practice civic responsibili-y and good stewardship; respect human dignity and cultural diversity."

WVU's policies, however, do not threaten everyone, because only certain groups actually are pecially protected as elements of "cultural diver-ity." WVU's president's "Executive Office for Social Justice" (OSJ) was authorized "to make clear" both the institutional and her own "person-al commitment [to] creating an equitable cam-pus." The OSJ issues policies to establish the appropriate beliefs about two areas above all, "homophobia" and "sexism," and to encourage reports of harassment—from personal experience or from knowledge of "anyone you know."

Thus, WVU prescribes an official, ortho-dox, state definition of homophobia: "Lesbians and gay men are often portrayed as sick, pervert-ed, and immoral or their existence is denied alto-gether." It prohibits "feelings" about gays and les-bians from becoming "attitudes:" "Regardless of how a person feels about others, negative actions or attitudes based on misconceptions and/or igno-rance constitute prejudice, which contradicts everything for which an institution of higher learn-ing stands." Among those prejudices is "hetero-sexism . . . the assumption that everyone is hetero-sexual, or, if they aren't, they should be." Because everyone has the right to be free from harassment, there are specific "behaviors to avoid." These pro-hibitions affect speech and voluntary association based upon beliefs: "DO NOT tolerate 'jokes' which are potentially injurious to gays, lesbians, and bisexuals:" "DO NOT determine whether you will interact with someone by virtue of her or his sexual orientation." Everyone must "value alter-nate lifestyles . . . challenge homophobic remarks . . . [and] use language that is not gender specific." Instead of referring to anyone's romantic partner as "'girlfriend' or 'boyfriend,'" the OSJ instructs, "use positive generic terms such as 'friend,' 'lover,' or 'partner.' Speak of your own romantic partner similarly." Finally, "educate yourself about homo-sexuality."

The policy never specifies which of these homophobic beliefs, attitudes, expressions, or per-sonal choices would lead to charges, but it lists them under a general heading of "harassment, insult, alienation, isolation and physical assault." A WVU student could only refer to the sweeping actionable examples of the harassment policy of which it is a part. Further, the homophobia policy ends precisely with the warning that "harassment" or "discrimination" based on sexual preference is subject to penalties that range "from reprimand to expulsion and termination, and including public service and educational remediation."

At Vanderbilt University, a conservative student group, the Young Americans for Freedom (YAF), rejected affirmative action and believed it wrong to separate its members into categories of race, religion, ethnicity, or gender. On their official campus registration form of 1994-95, asked to "list those steps planned in recruitment to assure that your organization will strive to be inclusive in its membership," YAF replied: "We will not base recruitment on race, culture, or gender." Asked about "exclusivity," they replied: "Anyone who shares the beliefs of YAF and acts accordingly is welcome to join." Asked to indicate the ethnicity of their members, they answered "not applicable." In the fall of 1995, however, campus orthodoxy hardened. In order to re-register as a student orga-nization with Vanderbilt's Campus Student Services, essential to functioning as an on-campus, student group (they were not asking for university funds), YAF was given the same form. Again, when asked to "count or estimate" its membership by Vanderbilt's ethnic categories, it wrote, on that part of the form, "irrelevant."

On October 24, 1995, YAF chairman Erik Johnson received a letter from Michelle Jerome, of Campus Student Services, informing him that "the Community Affairs Board was unable to approve your student organization's request for re-registration because of failure to report demo-graphic information." YAF, declining to speak in ways contrary to its sincere beliefs about America, refused again to supply the information. On December 8, 1995, therefore, Jerome wrote to them that "because your organization has failed to comply with the rules and regulations stipulated by the Community Affairs Board for re-registra-tion effective immediately you will no longer be able to conduct financial transactions or deposit money to this center's number [or] use University facilities or services for meetings [and] events. Any attempts to conduct organization activities will be subject to disciplinary action."

On the whole, though, it's what you do express that gets you in trouble. Emory University has a sweeping Discriminatory Harassment Policy that forbids "speech" that creates "a hostile envi-ronment," but it denies that this is a "speech code." In 1994, however, the University Senate debated a resolution that would have added a clause to the policy specifying that "all judgments under this policy related to freedom of expression should be consistent with First Amendment stan-dards." It voted the proposal down. Vice President and General Counsel Joseph Crooks, speaking for the administration, asked, "Do we want technical legal rules to preempt community judgments?"

At Duke University, Martin Padgett, the student editor of a university humor magazine, *Jabberwocky*, wrote about the incompetence of Duke's food-service employees. Students always complain about food-service employees. At Duke, however, those employees are predominantly black. The Black Student Alliance (and other groups) held rallies calling for Padgett's removal. The administrative University Publications Board first merely urged Padgett to resign, noting his First Amendment rights. When the rallies contin-ued, however, Keith Brodie, president of Duke, wrote an open letter condemning the articles, and the publications board now dismissed Padgett, not, it claimed, for the articles, but for a failure to respond to the criticism. Padgett had, in fact, responded, but he had said: "We did not intend the articles to be racist." As the *New York Times* reported with understatement, "Some students believe Mr. Padgett's removal is tantamount to censorship [of] legitimate if satirical issues [on grounds of] racism."

The will to censor is almost boundless. In February 1996, according to reports from the Associated Press, Winthrop College, in South Carolina, suspended the Internet accounts of two students, one who had solicited money on his homepage, and one who had placed a picture of a naked woman on his. Both students deleted their Webpages and accepted a two-week suspension, soon reduced to one. The fracas led the college to reexamine its whole Internet policy, however, and the administration now restricted Internet use "to official university business" only: "Using E-mail or system-provided mailing lists as a forum for expressing political, religious, or personal opin-ions is inappropriate." Further, it gave the admin-istration the right to invade students'—and facul-ty's—private communications in order to monitor compliance: "No personal or confidential infor-mation should be exchanged and all communica-tions are subject to periodic and/or random audit." Glenn Broach, professor of political science, told the Associated Press, "It could be a violation of the free exchange of ideas at the university." Indeed. A professor e-mailed Declan McCullagh about wanting to share with him the university's defenses of its policy but he noted, "I would have to send them U.S. Mail." Much harm begins by going after nudes.

Students, however, have done particularly well in using the Internet to bring abuses of power to light, which is precisely why individuals who care about public scrutiny and debate must not let the freedom of e-mail and Websites be sacrificed in the name of mere good taste. The assault on student electronic freedom most often arises from the occasional waves of vulgarity that occur in that ocean of free expression. One simply cannot have one without the other, however, because one per-son's vulgarity is another person's protest or art. The ultimate value of electronic freedom is noth-ing less than the critical value of freedom itself.

The Midwest

Here, too, speech codes abound, although midwestern federal courts have been quick to find those of public institutions unconstitutional. At the private University of Chicago, although the Student Information Manual insists that "freedom of expression [is] fundamental," this only pertains to "reasoned debate." "Personal abuse," there-fore, especially when directed to "expression of opinion," is "irrelevant to participation in the free exchange of ideas." Students are warned explicitly that "the University cannot thrive unless each member is treated civilly." At the public University of Illinois at Chicago, the harassment policy criminalizes, among other things "any unwanted sexual gesture or statement which is offensive [or] humiliating;" each case will be tried by the affirmative action officer alone; and sanc-tions "will be imposed in a case-by-case basis."

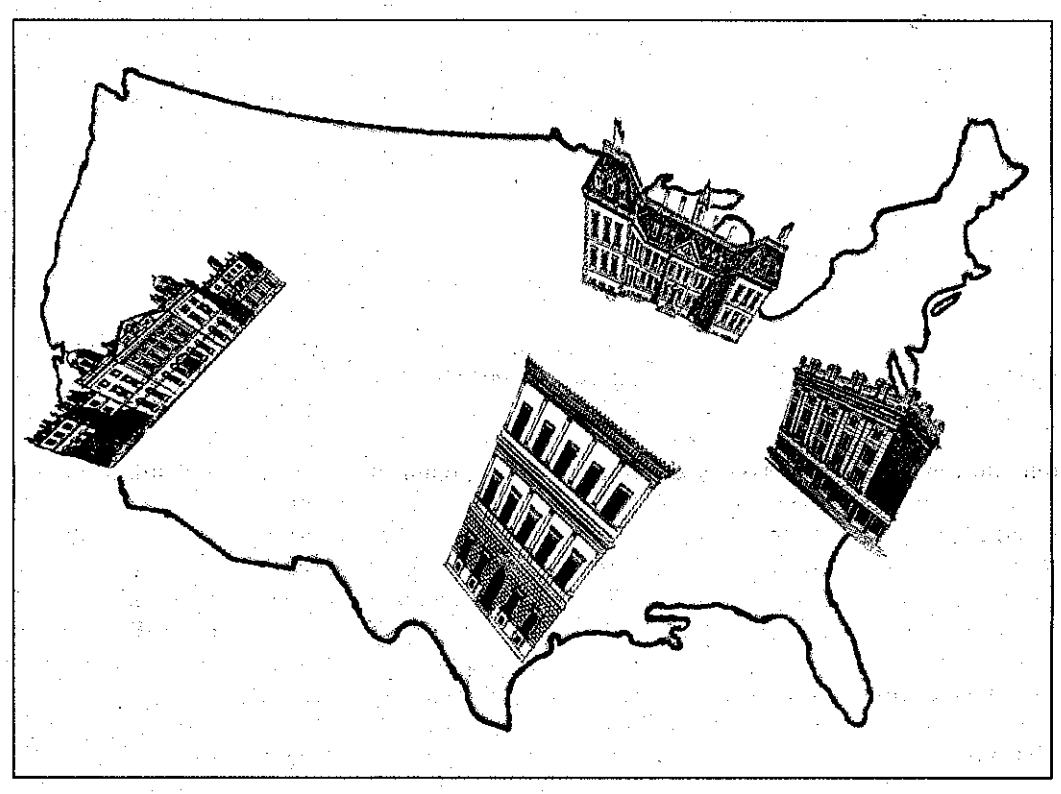
The freedom to criticize is essential, and radical students often use that freedom to con-demn what they see as the "Eurocentric," "racist," or "sexist" bias of specific courses, often in frank and revealing student guides to courses. At Wabash College, however, in spring 1995, a con-servative student journal, *The Wabash Commentary*, criticized an African-American his-tory course for adopting a "feel good pedagogy" and encouraging personal rather than historical exploration. It quoted classroom praise of the course for helping students see their status as vic-tims. In response, Wabash's president, Andrew T. Ford, in the fall of 1995, told incoming students that nothing said in a classroom could be repeated: "What happens in a classroom stays within the classroom. [This culture of] 'candor . . . rigor . . . and the honesty we need to confront issues' requires us to be insiders. We must never break trust with one another."

As the editors of *The Wabash Commentary* told the *Chronicle of Higher Education*, "He's saying that if our magazine con-tinues to publish this investigative kind of story, there's no place for us at Wabash." Morgan Knull, who authored the article, had taken the course and wrote from direct experience. The professor, Peter Frederick, said that he would accept "honest criticism or debate," but not the "nasty misrepre-sentation of other students and of what I was doing as a teacher." Frederick, however, had no problem telling the *Chronicle* that Morgan Knull had discussed "welfare mothers" inappropriately in the course.

The nature of the actual respect for "can-

dor rigor and the honesty to confront issues" that President Ford had nurtured at Wabash was best revealed by the Student Senate's 21 to 7 vote to deny funding to the *Commentary*. Chip Timmons, president of the student government, gladly explained to the *Chronicle* that "people are not very open to what they [the *Commentary*] have to say." One student senator said, "Does the *Commentary* harm the college? Then we must not fund it." Knull's response was: "If the reporting is true, let the chips fall where they may." Wabash, he noted, had succeeded "in silencing the only dissent on campus." The money was reallocated to a new publication, *The Wabash Spectrum*, under the College Democrats.

Revelations about courses, however, can be specifically invited by a university when the goal is "progressive." In September 1985, the Department of Human Relations of Michigan State University (MSU), an administrative unit, issued a set of guidelines for "Bias-Free Communication." These instructed the community to avoid, among other things, "words that reinforce stereotypes, such as 'colorful' [or] 'black mood.'" Where Wabash sought to protect progressive thought by securing the absolute confidentiality of the classroom, MSU invited "systematic feedback" by students to "[hold] instructors accountable," in their "communications, [for] bias, prejudice, and offensive implications." Even at extracurricular meetings, nothing must "stereotype or demean," and all members of the MSU community must avoid "subtle discrimination" such as "eye contact or lack of it, seating patterns, interrupting, dominating the conversation, and verbal cues that discourage some participants from speaking while encouraging others." Indeed, the MSU Office of Human Relations advised: "Tape recording classes can help instructors to identify subtle and overt discrimination."



In the Midwest, contempt for the Constitution by public universities has been an ongoing scandal. The University of Michigan, recall, was the home of a speech policy overturned by an appalled federal district court. An equally repressive policy (also overturned by a federal court) had been imposed on the University of Wisconsin (UW) by its chancellor, Donna Shalala.

In May 1987, a fraternity at UW Madison had displayed a caricature of a dark-skinned Fiji Islander as a theme for a party. In October 1998, another fraternity held a mock "slave auction." There were angry outcries against both. Students and faculty were free to protest, of course, or to use the occasions to bring what they saw as racism, insensitivity, or stupidity to public consciousness and debate. Instead, as tensions rose, Wisconsin chose to enact a speech code. On March 29, 1990, the Wisconsin ACLU joined a suit against the university, announcing that the important moral goals of toleration and equal opportunity "can be accomplished through means other than the creation of rules which infringe upon the fundamental freedom to express ideas."

The speech code was drafted with the help of UW Madison Law School professors Richard Delgado, Gordon Baldwin, and Ted Finman, who expressed confidence that it would withstand constitutional attack. On June 9, 1989, upon recommendation by Chancellor Shalala, it was adopted by the Board of Regents, 22 to 5, for the entire Wisconsin system. It prohibited and promised to discipline "racist or discriminatory comments, epithets or other expressive behavior, [in] non-academic matters," that were "directed at an individual or on separate occasions at different individuals," if these "intentionally demean" their objects "and create an intimidating, hostile or demeaning environment for education, university-related work or activity." The issue of "intent," it explained, "shall be determined by consideration of all relevant circumstances." It gave protection to discussions of group characteristics in the classroom, and it specifically exempted faculty members, stating that the policy "applied only to students."

Twelve student plaintiffs challenged the policy in federal court (only one of whom had been prosecuted under it), arguing that the prohibitions went far beyond the university's stated constitutional justification, the "fighting words" doctrine of *Chaplinsky*. The district court examined the cases of all students who had been sanctioned under it. Every single one related to offenses against nonwhites and women, as if no one in the entire Wisconsin system had said an actionable word about white males. Many of the offenses were already crimes (theft, impersonating an officer, assault, and terroristic threats). Many of the sentences were bizarre, demanding that students take specific courses, and otherwise intruding into matters of private conscience.

The court agreed emphatically with the plaintiffs, noting that no definition of "intimidating" or "demeaning," let alone of "hostile," created the "threat to public peace and tranquility" demanded by *Chaplinsky* although the court refrained from ruling on whether *Chaplinsky* still was viable law. Above all, the court held, the policy was unconstitutional precisely because "the UW rule regulates speech upon its content." It disciplined students "whose comments, epithets or other expressive behavior demeans [sic] their addressees' race, sex, religion, etc. [but] leaves unregulated [all other] comments, epithets and other expressive behavior that affirms [sic] or does [sic] not address [those attributes]." Further, where the university claimed that the speech it prohibited lacked social utility, the court noted that "most students punished under the rule are likely to have employed comments, epithets or other expressive behavior to inform their listeners of their racist or discriminatory views." The university surely could restrain its own official speech to work for the goal of expanded educational opportunity, but the students as students were neither employees nor state actors, and the social goal "is inapplicable to this case."

Further, the court ruled, Wisconsin had ignored the constitutional reality that "the First Amendment protects speech for its emotive function even if it lacks cognitive value." Finally, the policy was "unconstitutionally vague," both in its terms—"discriminatory comments," "epithets," "abusive language," "demean"—and its notion of intent. Three leading lights of Wisconsin's flagship law school may have found the policy constitutional, but the federal court did not, declaring it unconstitutional for being overly broad and vague.

Undeterred, the chancellor recommended a new code to the regents in the spring of 1992, which they adopted in March. Under this code, to satisfy *Chaplinsky*, UW added the requirement that an intentional, demeaning epithet not only creates a hostile environment, but "tends to provoke an immediate violent response when addressed to a person of average sensibility who is a member of the group that the word, phrase, or symbol insults or threatens." Faced with another lawsuit, however, the regents reversed themselves in September and repealed the speech code, 10 to 6. The *Washington Post*, a consistent critic of campus speech codes, editorially observed: "Debate, example, and the social pressure of peers are far more effective tools in creating and upholding civility on campus than quasi-legal procedures that often make martyrs out of fools." America knows that; its universities do not.

When federal courts began striking down codes restricting "verbal behavior" at public universities and colleges, other institutions, even in those jurisdictions, did not seek to abolish their policies. Thus, Central Michigan University, after the University of Michigan code had been declared unconstitutional, maintained a far broader and vaguer policy outlawing "offense" on grounds of race or ethnicity, not to mention "epitaphs [sic, we hope] or slogans that infer [sic] negative connotations about an individual's racial or ethnic affiliation."

In 1993, this policy was challenged, successfully, in U.S. District Court, in a case that reveals much about the current state of American academic life. The court noted that the code applied to "all possible human conduct" and, citing internal university documents, that Central Michigan intended to apply it to speech "which a person 'feels' has affronted either him or some group, predicated on race or ethnicity." Central Michigan had argued to the court that its policy, "benign" on matters of free expression, "was not a 'speech code,'" but the court found that if the policy's words had any meaning, they precisely banned protected speech. If someone's "treatise, term paper or even cafeteria bull session" about the Middle East proposed "some ancient ethnic traditions which give rise to barbarian combativeness or inability to compromise," such speech, the court found, "would seem to be a good fit with the policy language." No claim of sincerity was exculpatory, because the policy itself declared "intent" or "good faith" to be irrelevant. Under the policy, the court concluded, "if the speech gives offense it is prohibited."

On May 4, 1993, after the suit had been filed, the president of Central Michigan assured the university community that the policy was not intended to "interfere impermissibly with individuals' rights to free speech." The court declared itself "emphatically unimpressed" by such a savings clause, and "not willing to entrust the First Amendment to the tender mercies of this institution's discriminatory harassment/affirmative action enforcer."

The origin of the suit was instructive. It had arisen from the plight of Central Michigan's white basketball coach, Keith Dambrot. Most of his players were black and, as several of them testified to the court on Dambrot's behalf when he first (successfully) sought a preliminary injunction, they themselves frequently used the term "nigger" as a positive term on the team, to connote someone who is "fearless, mentally strong, and tough." When Dambrot used the term similarly at a practice, however, and word leaked out, protests erupted. Central Michigan and Dambrot agreed on a summary discipline of five days suspension without pay. Campus activists held demonstrations for harsher punishment, which were publicized by regional and national media. On April 12, 1993, Central Michigan informed Dambrot of his termination at semester's end. After the preliminary injunction and the suit, several blacks now joined the actual suit, claiming that their own constitutional rights were equally threatened, given their use of precisely the same term. At that initial hearing, the court repeatedly

corrected the university's attorney, who kept defending the banning of "epitaphs." It is sad enough that courts have to teach universities the difference between "epitaphs" and "epithets," but it is tragic that courts and courageous student athletes now must teach universities about the "bedrock" principles of freedom and equality.

For all the academic hand-wringing over the NEA, art also is besieged on college campuses. People for the American Way (PAW) noted, in its 1994 report, *Artistic Freedom Under Attack*, that "while self-styled 'conservative' groups still account for a substantial number of the incidents we have documented, many issue-focussed attacks on art now come from the left side of the political spectrum." Although the most egregious academic cases arose from the Midwest, PAW cited a significant number of cases from a range of American campuses. At Dartmouth College, for example, the administration announced a policy of "covering up campus murals that some students feel are derogatory to native Americans." At Colby College, an artist displayed diverse images of the Rodney King beating, with the title "As Exciting As Police Brutality." The artist insisted that the posters were to resensitize the public to police violence, but protestors denounced them (and destroyed some) for "promoting racism," and Colby's president formally condemned the exhibit. The artist removed his art.

At the University of Michigan—Ann Arbor, the school of law and *The Michigan Journal of Gender and Law* sponsored a symposium and mixed-media exhibit on prostitution. According to PAW's 1994 report, the guest curator of the exhibit, artist Carol Jacobsen, installed a videotape of her own interviews with prostitutes and a video by a former prostitute. On the day that the symposium began, organizers removed Jacobsen's videos in response to complaints from guest speakers. Jacobsen argued that if they objected to any part of the exhibit, they would have to censor the entire show. The organizers replied, PAW noted, that "we really didn't think of it as a censorship issue, but as a safety issue." The show was canceled. Law professor Catharine MacKinnon defended the removal of the works and denounced "a witch-hunt by First Amendment fundamentalists who are persecuting and black-listing dissidents as art censors."

At the University of Missouri, PAW reported, an artist hung a painting that deliberately parodied racial stereotypes. The painting was denounced by a group of students and faculty as "racist." The campus Equal Employment Opportunity (EEO) director said that the University had "no place for something that doesn't show African Americans in a positive light." The work was temporarily removed. When it was discovered that the artist himself was black, however, the EEO director decided that there was a place at the university for his work after all.

Even librarians, those perennial defenders of free expression, no longer are immune to political correctness. At Iowa State University, librarians in August 1995 decided to remove an antiabortion newsletter from their shelves. Bob Sickles, himself a librarian there, had been donating the *Right to Life News* to the library for four years. According to the *Chronicle of Higher Education*, Cynthia Dobson, another librarian, informed Sickles that his four-year collection of the newsletter was being removed from the library's shelves because the library did not offer a publication with the opposing viewpoint. Sickles offered to provide the library with the publications of Planned Parenthood, a pro-choice group. This was insufficient. Nancy L. Eason, who heads library services at Iowa State, told the *Chronicle* that the newsletter was being pulled because it was not scholarly enough.

Minnesota really should have its own chapter. There, public universities act like partisan political seminaries and have almost no concern for the most fundamental issues of free speech. In a state once known for protecting dissidents, a sorry pall of orthodoxy now prevails. If these cases had not actually occurred, they could be parodies.

Recall Wabash College's concern that conservative discussion of what occurred in a college course might inhibit the free, spontaneous flow of ideas. Similarly, at Penn, in November 1985, Sheldon Hackney warned the Faculty Senate that the conservative Accuracy in Academia, by encouraging students critical of courses to make their objections public, posed one of the most essential threats to academic freedom, namely "trial by accusation and intimidation."

The University of Minnesota (UM), however, encouraged students (and faculty) to bring the sensitivity police into the classroom itself. On August 30, 1993, Patricia Mullen, the director of the Office of Equal Opportunity and Affirmative Action, and Becky Kroll, the director of the Minnesota's Women's Center, sent all faculty a memorandum entitled "Improving Classroom Experience." The memorandum arose, they wrote, because of a student who believed that "fellow students' crude comments [during] a classroom discussion of a cultural diversity 'hot topic' . . . Columbus [were not] adequately handled by the instructor." In response, the memo announced a pilot program, the "Classroom Climate Adviser" project. Any student who found a "classroom discussion about race or gender was disrespectful and insulting," or any instructor who worried that "some students are having trouble distinguishing between theories I have to teach and my personal beliefs about controversial matters in the area of diversity," could request the presence of a "classroom climate adviser." Prudence might well dictate the use of such advisers, by the way, because one of the University of Minnesota's definitions of sexual harassment is "callous insensitivity to the experience of women."

Campus climate, at Minnesota, is distinctly more important than even the most essential object of First Amendment freedom, political speech. In late August and early September 1993, at the main campus in Minneapolis, the College Republicans were registered to participate as one of forty-six different student organizations in a month-long orientation fair. They distributed fliers that were conservative satires of the Clinton Administration—critical of the president's policies and values—and all drawn from either the nationally published *Slick Times* or a tax-form parody criticizing Clinton's views of gays and lesbians (widely circulated on the Internet), an issue of major national discussion and controversy.

On August 30, the Office of New Student Programs ordered the fliers removed. The story was widely covered in the *Minneapolis Star Tribune*, the *Pioneer Press*, and on Minneapolis radio, and monitored by an appalled Minnesota ACLU. Also, the university was unapologetically candid about its actions. The assistant director of the Office of New Student Programs, Dave Gerbitz, explained to the media that the flyers were offensive to gays and feminists: "One of our guidelines [is] not to allow oppressive material." Michelle Karon, director of the Office of New Student Programs, defended the actions of her office: "They [the College Republicans] have the right to their opinion, but the manner is what we found inappropriate. We feel strongly that it's not appropriate at orientation and registration to mock or make humor at the expense of a group." The College Republicans immediately wrote a letter of protest to President Nils Hasselmo. Two weeks later, on September 15, the administration replied, in a letter from Vice President Marvalene Hughes, vigorously defending the ban. The university strongly supported free speech, she informed the College Republicans, but it required "an atmosphere which is respectful of diversity, [and] some of your group's display materials were not compatible with this purpose." The fliers were not "consistent with the goals of the University" and had violated "the University's non-discrimination policy." They also violated orientation guidelines by which students receive an "appreciation of diversity and multi-culturalism."

The matter would have ended there except for public scrutiny and criticism. The *Minneapolis Star Tribune* acerbically covered the story five times between September 16 and 22, and editorialized about free speech. The ACLU publicly supported the College Republicans. KSTP-AM devoted considerable airtime to the events. The *Pioneer Press* issued periodic "Updates." Liberal columnist Doug Grow, of the *Star Tribune*, denounced Minnesota's position as "hogwash" and ridiculed President Hasselmo.

On September 22, Hasselmo backed down, announced that the administration would no longer censor student handouts and, reincarnated, wrote to the *Star Tribune* that "I must, and will, protect freedom of speech as a fundamental right under rules of academic freedom and under our Constitution." However, Hasselmo wrote, he was permitting the fliers not because he had erred previously—the university's general counsel had reiterated that the ban was perfectly constitutional—but simply because the suppression of the fliers had "the potential for" or "the appearance of" suppression of free speech. He permitted the College Republicans to resume offering their material on September 21, which was also the final day of the orientation fair.

David P. Bryden, professor of law, posed a rhetorical question worth pondering: "Would the General Counsel of the University approve guidelines for orientation that prohibited attacks on 'family values'?" T. Baxter Stephenson, a former chairman of the College Republicans, was interviewed by the *Star Tribune* on September 16. He noted that "the university censored our handouts because they did not promote diversity, [but] what the university is forgetting is—diversity of thought." "If you can't have diversity of thought, so that you can criticize the president of the United States," he concluded, "then . . . you don't have a university where you can develop your mind." Almost everyone used to believe that.

The case had an interesting ending. A law student at Minnesota, Peter Swanson, supported by the Individual Rights Foundation, sued the university and its administrators for violations of students' constitutional rights, citing Hasselmo's insistence that the regulations were constitutional and still in force but, at his discretion, would not be applied. Before the suit went to trial, Minnesota and President Hasselmo settled with Swanson. As reported in the *Chronicle of Higher Education*, the essential terms of the settlement were that top-level administrators would hear a lecture about the protection of free speech by the First Amendment and that the university would issue a new policy. In the words of General Counsel Mark B. Rotenburg, "There will be no review or censorship of student materials." Now, individuals, even administrators, should not be forced to hear a lecture, especially one with which they disagree so forcefully, but, that aside, the policy has been revised consistently with the Constitution.

Censorship, however, is a tide that is always coming in, and freedom of speech knows few periods of safety at Minnesota's public campuses. On April 1, 1996, the student newspaper at UM-Duluth, the *Statesman*, published its satiric April Fool's Day issue. An article about a fictional gay bar joked about gay and lesbian culture (although it was not clear at all whether it was satirizing gays and lesbians or, rather, individuals prejudiced against them). It also included a fake advertisement from the "Duluth White Man's Militia," phone number, "KKK-2435" (and here, it would take a stretch, indeed, to see the parody as attacking nonwhites rather than militias.) Members of both the UM-Duluth gay and lesbian student group and the Black Student Association seized fifty-five hundred copies of the *Statesman* and passed them out at a student protest rally. As reported in the *Chronicle of Higher Education*, the chancellor of UM-Duluth, Kathryn A. Martin, addressed a meeting of five hundred students who were protesting the paper, and she called the edition "a despicable and blatant misuse of the responsibility of free speech." She announced that the publication may have crossed the line into obscenity, and that the administration was investigating the possibility of disciplinary action against the editors.

UM-Duluth had been given, temporarily as matters turned out, a virtual free hand at the time—by a startling ruling of a three-judge panel of the U.S. Eighth Circuit Court of Appeals—to engage in censorship. In the spring of 1991, Sandra

Featherman, newly appointed vice chancellor at UM-Duluth, received several appalling, terroristic threats against her life; these were under investigation by the campus police and the FBI. In the fall semester of 1991, the undergraduate History Club asked its faculty to pose individually for a photo wall, with each professor garbed in the manner of his or her specialty. The teacher of ancient history posed benignly with laurel and a legionnaire's sword. The teacher of the American West posed impishly with a coonskin cap and a .45-caliber pistol resting on his lap.

A group of faculty, calling the photos a threat to Featherman, demanded that they be removed. Then, a few weeks before the long-planned photographic exhibit was unveiled in late March 1992, history professor Judith Trolander also received death threats similar to those against Featherman. In that context, and in response to complaints about the photographs, Judith Karon, UM-Duluth's affirmative action officer, termed the photos "insensitive and inappropriate," and Chancellor Lawrence Ianni ordered the campus police to remove the two offending photographs. The students (and the two professors) successfully sued UM-Duluth in U.S. District Court, which predictably ruled, in April 1995, that the removal of the photographs was a clear, indeed, an "inconceivable" violation of their constitutional rights.

The university appealed to the Court of Appeals, where an initial three-judge panel reversed the district court, ruling 2 to 1 that UM-Duluth's interests as a public agency overrode any First Amendment rights in this case. The court cited the atmosphere of tension, and it reasoned that the "display case" was a constitutionally unprotected "nonpublic forum." In a dissent, Circuit Judge C. Arlen Beam noted that under this reasoning, the students and historians licitly could have "burned an American flag outside the University history department, [but] cannot advance . . . expressive conduct intended to support and publicize areas of teaching expertise and special interest within the department." In Beam's view, "The Court's opinion is not a demonstration of legitimate First Amendment jurisprudence but . . . an example of the triumph of the political correctness agenda." He pointed out that "the opinion would permit even suppression of . . . advocacy of gender and cultural diversity at UM-Duluth if Chancellor Ianni subjectively felt that such speech contributed to an inefficient and negative working and learning environment on the campus because of [either] unlawful or vehement but protected opposition."

Justice Beam's constitutional reasoning was vindicated in July 1997, when the full membership of the Eighth Circuit Court, on further review, threw out the ruling of the three-judge panel. The court decided, by a decisive 8 to 2 margin, that the university had violated the First Amendment of the U.S. Constitution—indeed, that it had not even come close to meeting criteria by which speech could be curtailed by a public institution. Beam's prior dissent now became the majority opinion. The circuit court sent the case back to the trial court to determine damages for the two professors, one of who had already been terminated (the other being tenured.) According to the *Chronicle of Higher Education*, "Mark Rotenberg, General Counsel to the University of Minnesota System, said the university had not decided whether to appeal to the Supreme Court."

The West

The speech code provisions of most western colleges and universities share the same "verbal behavior" restrictions that are becoming ubiquitous in American academic life. Even Berkeley, of all places, adopted them, banning "fighting words," of all things. Nonetheless, there are always opportunities for creative variation. Montana State University, for example, indeed outlaws "sexually explicit or demeaning comments" that create "an intimidating, hostile, or offensive working environment" (the "or" means that just "hostile" or "offensive" will suffice). Examples of the "verbal harassment" include "offensive or derogatory remarks, jokes, or comments," "innuendoes of a sexual nature," "suggestive or insulting sounds such as whistling," and "remarks about clothing, figure, or sexual activities." Examples of "non-verbal harassment" include "displaying posters or photos of a sexual nature." Montana State has created, however, in addition to such "harassment," the actionable offense of "sexual intimidation." Although the term conjures images of illegal physical threats, the university has other things in mind, defining the "crime" as "any unreasonable behavior that is verbal or non-verbal, which subjects members of either sex to humiliation, embarrassment, or discomfort because of their gender." Montana State's examples include "using sexist cartoons to illustrate concepts" and "making stereotypical remarks about the abilities of men or women."

The University of Southern California had one of the broadest definitions of verbal harassment in the nation, until the 1992 adoption of the state's Leonard Law, which extended First Amendment protections to students at nonsectarian private universities. Until very recently, USC included questions or statements about sexual activity, "jokes" and "innuendoes," and "whistling and other sounds, etc." among possible acts of harassment by expression. The Leonard Law might have its limits, however. In April 1997, the Claremont McKenna College suspended a student for a newsletter in response to charges from three female readers that the publication "created a hostile environment," making his return to the college dependent on successful completion of sexual harassment sensitivity training. The Southern California chapter of the ACLU took the case to the Pomona Superior Court, arguing that the newsletter was obviously protected speech. Judge Wendell Mortimer, Jr., however, ruled ingeniously that the newsletter "had the potential to create a hostile environment," so the final verdict is not yet in.

At Washington State University, the student newspaper, *The Daily Evergreen* was repeatedly censored in the summer and fall of 1996. In protest, it published an issue on November 1, 1996, that was empty of news on all pages, printing only advertisements and a front-page editorial that demanded an end to censorship. At a meeting of the Student Publications Board on November 4, Bob Hilliard, general manager of student publications, claimed that he had censored the paper on behalf of the interim provost, Geoff Gamble, and that university policies gave him the right to edit and control the content of the *Daily Evergreen.*

In the West as elsewhere, the struggle for campus First Amendment and academic freedoms requires coalitions across the political spectrum. On May 16, 1989, in Washington, D.C., former Attorney General Edwin Meese stood next to the ACLU's Morton Halperin at a press conference to announce the settlement of a lawsuit between their common object of concern, James Taranto, a conservative former college journalist, and California State University—Northridge. In 1987, the University of California—Los Angeles had suspended a student editor for printing a cartoon that, in the words of the national ACLU, "made fun of affirmative action." That penalty should have been unthinkable, but worse was to happen. In March 1987, Taranto, news editor of the *Daily Sundial*, the student newspaper at Northridge, wrote a column criticizing UCLA officials for that suspension, arguing that "a university exists to promote the search for truth, and censorship is always detrimental to that search." For writing that editorial, Taranto was suspended for two weeks from his position. The ACLU of Southern California joined his case. The settlement, was, above all else, a matter of principle. Taranto received ninety-three dollars in back pay, and the suspension was stricken from his academic transcript. The *Daily Sundial*, which previously had required administrative permission to write on "controversial" matters, won a new policy: "Students working on the *Sundial* are fully protected by the First Amendment of the Constitution."

At the press conference with Meese, the ACLU's Halperin spoke truths that academics still do not want to hear. Conservative students and opinions, he said, were the victims of bias at American campuses: "There is a double standard, and it's a troubling matter." "There are no cases," he observed, "where universities discipline students for views or opinions of the left, or for racist comments against non-minorities."

What did Northridge learn from all this? Not much. In the fall of 1992, a fraternity at the University, Zeta Beta Tau, advertised a party with a south-of-the-border theme by posting fliers referring to a well-known song about a Mexican prostitute. On October 24, Ron Kopita, vice president for student affairs, suspended the fraternity until a hearing could be held to determine if it violated campus policy. (In *Alice in Wonderland*, columnist Linda Seebach noted in the *L.A. Daily News*, "sentence first, verdict after" was considered the mark of monumental irrationality.) On November 9, Vice President Kopita suspended the fraternity for more than two years, finding it guilty of violating the campus code prohibiting expressions that "promote degrading or demeaning social stereotypes based on race, ethnicity, national origin, gender, sexual orientation, religion or disability." Future members wishing re-recognition in 1994 would have to "engage in activities that will educate them in multiculturalism."

By 1994, the atmosphere in California had changed, at least when repression was challenged openly. Scott Smith, however, a student at the University of California—Santa Cruz (UC-SC), a campus celebrated for its tolerance of the cultural Left, was threatened with sanctions for his column, "Smitty on a Hill," in an independent, alternative student publication. In a column entitled "Where's the Women?" he had lamented political correctness and called for a "Miss Nude UC-SC contest" to lighten things up, requesting that all photos be sent to him.

Instead, he received letters from UC-SC officials, warning him that any "actions which produce complaints [seven women had charged sexual harassment by his column] because they are directed at individuals, or, by virtue of their persistent pattern, create a hostile or intimidating climate, could result in sanctions which could range from administrative warning to suspension or dismissal from the University." David Dodson, college administrative officer, wrote to Smith that "your right to state your own views responsibly is certainly not subject to sanction [emphasis added]," but warning him that his column might constitute sexual harassment.

Smith posted news of his plight on the newsgroup alt.censorship, and from there it came to the attention of Robert Chatelle of the National Writers Union. After reading Smith's articles and the administration's warnings, Chatelle wrote to Dodson: Smith's column was "patently not sexual harassment." Over half of the NWU's membership, he explained, were women, many were gays and lesbians, and "we believe that bringing false or frivolous charges of sexual harassment does a great deal of harm." Above all, however, he gave Dodson a lesson on the First Amendment. "We suggest that you re-read the First Amendment to the U.S. Constitution. You will not find the word 'responsibly' within it. Our nation's founders understood that speech generally considered responsible needed no special protection." Smith's article was protected, he concluded, and "you lack any authority to abridge his constitutional rights."

When Chatelle asked if this could be settled without the need for the NWU to proceed formally, Dodson replied promptly that there had been a "misunderstanding," that Scott's column was not sexual harassment, that no one would interfere with his First Amendment rights, and that he now had sent Scott a letter clarifying all of these points. Students are not brave, however, having invested so much of their time, hopes, and funds in their education. For each Scott Smith, how many undergraduates are silenced or choose never to express themselves at all?

This essay was excerpted from The Shadow University:The Betrayal of Liberty on Americas Campuses *by Alan Kors and Harvey Silvergate to be published by The Free Press. Alan Kors is a professor of history at the University of Pennsylvania. Harvey Silvergate is a civil liberities litigator who lives in Cambridge, MA.*

REVIEW

Authoritarian Tendencies

The Dark Side of the Left: Illiberal Egalitarianism in America
University Press of Kansas, 1998
by Richard Ellis

REVIEWED BY JON LAUCK

A meeting of the National Bar Association, the largest organization of black lawyers in the United States, strangely enough, is not a friendly audience for the only black on the United States Supreme Court. Similarly, those who doubt the benefits and premises of affirmative action, perhaps the nation's most important intersection of race relations and public policy, are not allowed to speak to the President's task force on racial issues. How do groups, steeped in notions of equality and fairness, betray themselves by effectively excluding and punishing dissident voices? Such is the question that animates Richard Ellis' long disquisition on egalitarian movements and their penchant for devolving into intolerance and authoritarianism.

The book is not meant as a rallying cry for conservatives—although it serves such an end—but as a warning to the left from one of its members, one fearful of the potential consequences of leftist ideologies and leery of the latitude the left affords the authoritarian tendency. Ellis invokes a reasonable tone, speaking from the political left-of-middle, preferring half-loaf politics to extremism that cannot be squeezed through America's political machinery to produce a plan or proposal or law. A confessed liberal, Ellis' goal is to "toughen the liberal reform tradition, not to discredit or reject it."

Although organized very effectively around the idea of egalitarianism and its dangers, the book also serves as a chronology of the left's failure to persuade in American culture. Egalitarianism becomes dangerous, after all, when its proponents find few supporters and become convinced that only violence can institutionalize a new egalitarian order. Ellis thus indicts his own hopes for reformist liberalism since, as he concedes, "liberalism is unimaginable without a belief in equality." But he seems willing to make deals and concessions and compromises and "tradeoffs" to prevent liberalism—and his faith in its egalitarian leanings—from embracing extremism. He acknowledges the inconsistency between equality and individual rights and urges us to "muddle through," keeping watch for dangerous swings of egalitarianism that could subvert individual rights and liberties.

The middle chapters of the book—strongest due to the wealth of secondary sources—analyzes the egalitarian vision of the New Left, a movement that encapsulates the excesses and abuses Ellis explores in other movements dating back to the 19th century. Ellis traces the origins of the Students for a Democratic Society (SDS) from its non-violent and reformist origins to its embrace of fanaticism and revolution. The point, Ellis maintains, is that organizations and movements committed to an egalitarian ideal too often lapse into authoritarianism and vanguardism, the irony and the lesson that hangs over the book, providing the core thematic question to be addressed: "How did a decade that began with Hayden approvingly quoting Camus on the need 'to insist on plain language so as not to increase the universal falsehood' end up in the obscurantism of impenetrable Marxism, most evident in the ponderous rhetoric of the Weathermen? How did a group that began by decrying 'the institutionalized world-wide dynamic of epithet and counter-epithet [and] the objectifying of human beings and nations into 'enemies' end up so thoroughly immersed in a Manichaean cosmology that divided the world into good and evil, the movement and the system?"

Ellis rejects self serving explanations for the authoritarian turn of the SDS, such as a new generation of radicals transforming the movement or the events of the late 60s—assassinations, rioting, escalation of the war, police crackdowns—externally radicalizing the movement. The explanation is systemic, he says, linked to the core ideology embraced by SDS and its inevitable "sociocultural logic."

SDS' descent into authoritarianism started with its decision to disengage from the mainstream of American society, abandoning any hope of an alliance with liberal groups seeking to make changes through the political system. American institutions were too corrupt and tainted to be used. Staughton Lynd, movement figure and academic historian, saw the move as "reminiscent of the Radical Reformation to 'come out of Babylon.'" Tom Hayden, who now does conventional things like run for Mayor of Los Angeles, called for a new Continental Congress for all those who "feel excluded," "a kind of second government, receiving taxes from its supporters, establishing contact with other nations, holding debates on American foreign and domestic policy, dramatizing the plight of all groups that suffer from the American system," and escaping America's "rotten society."

Whenever the "system" addressed a social issue that the New Left hoped would fan resentment the move's legitimacy was questioned. Thus dramatic political moments like the passage of the civil rights acts were deemed "tokenist." Chapters of SDS had to be patrolled for moderates who might actually support such legislation. The tactic was adopted by some radicals in the women's movement who rejected child-care centers because they "buy women off" and the ERA as "paper offerings" by a "system" bent on "appease[ment]."

The New Left saw those living on the margins as the key to overcoming the system. They invested heavily in organizing the poor with the Economic Research and Action Project (ERAP) because, as Hayden argued, "Students and poor people make each other feel real." Lynd thought that "alienated poor people" shared the views of "alienated intellectuals." Those the SDS saw as "excluded" from the "system," however, were some of its greatest defenders. Ellis explains that "[t]he problem for ERAP was that most ordinary poor people did not want to stay clear of the middle class so much as they wanted to have the things the middle class had." So the organizers abandoned the poor with middle class hopes and turned to organizing the poorest of the poor. When these efforts failed, convincing the ERAP organizers that the system was hopelessly entrenched, a fully conscious revolutionary vanguard became the only alternative. "[A]bsent allies in the larger population," Ellis explains, "the New Left students often found violent confrontation in the streets to be the only way to achieve the social transformation they sought."

As early as the summer of 1964, the Swarthmore chapter of SDS embraced revolution and guerrilla warfare and praised models like Red China. After returning from Vietnam, Lynd and Hayden saw the potential for guerrilla activity emerging from the violence of the inner cities and embraced the revolutionary option: "We felt like they were like us, that their cause was ours as well." (They also pronounced the communist revolutionaries in Vietnam the "gentlest people we had even known.") The New Left also embraced the revolutionaries in Cuba and ignored the authoritarianism of Castro, rejecting the criticism of his regime for its absence of democratic institutions, which were mere "instruments of coercion and repression." When the current academic historian Todd Gitlin visited Cuba in 1967 he marveled at its "spirit of community and common ownership," calling it a "model of what it is [the American] system wants to discredit and destroy."

The fear of being tainted by the system's "structures" by following Robert's Rules of Order or electing officers also contributed to the authoritarian turn of the New Left. The movement avoided the petty machinations of electoral politics by relying on visionaries like Castro, Mao, Che Guevara, and Hayden. But with no person officially in charge, important details of political life were ignored (like answering the mail and making copies and stuffing envelopes) and accountability for foolish decisions was lost. The failures of participatory democracy, according to Ellis, "allowed SDS to be taken over in 1968 by various Marxist-Leninist factions and quasi-military cadres that represented a fundamental perversion of the organization's original participatory, egalitarian goals."

Rampant egalitarian also destroyed the The Feminists, a group which split away from the National Organization for Women in the 1960s. The group abolished elections, forbade married women from joining, punished non-conformity, "developed a religious ritual that involved wine and marijuana as sacraments, 'Momma' as the chant, and a huge anatomically correct, papier-mache man that they would frenetically tear apart," and hoped that someday women would "rule the world." The Feminists' treatment of those who disagreed could be justified because the dissenters suffered from "false consciousness." The solution was a consciousness-raising session, which Ellis sees as "little better than a crude reeducation camp" since "[t]o raise one's consciousness . . . meant thinking like those radical feminists who had organized the consciousness-raising groups."

One of the products of radical feminism is Catherine MacKinnon, once a professor of law at the University of Minnesota. As she sees it, male control in society is so deeply entrenched that women cannot freely choose how to relate to men. Women cannot truly consent to sex in a society dominated by male-controlled institutions and ideologies, and thus all sex becomes forcible. Those who disagree with her are condemned as the Uncle Toms and scabs of the women's movement.

Consciousness raising and intolerance toward dissenters finds institutional form on campus. Ellis notes that the University of Minnesota alone funds a Women's Studies Department, a Center for Advanced Feminist Studies, a Center for Women in International Development, a Center for Continuing Education for Women, and the Humphrey Center on Women and Public Policy. Such institutions provide "safe spaces" for radical feminist thought, free from the questioning of dissenters. The "space" at the Center for Research on Women at Memphis State University is protected by rigid rules requiring that students "acknowledge that oppression exists" and "that one of the mechanisms of oppression is that we are all systematically taught misinformation about our own groups and about members of both dominant and subordinate groups."

Ellis extends his basic narrative—a reformist impulse metamorphosing into zealotry and intolerance toward those fools who dissent or are simply blind to their own predicament and the embrace, ultimately, of authoritarian solutions—to other movements. "Eco-warriors" endorse an "Eco-jihad," for example, and an abandonment of majoritarian rule, which is "inimical to environmental values." Since extreme measures are required to head off an environmental apocalypse, and political institutions have not addressed the crisis, some environmentalists believe that "democracy may simply not be a valid system of politics." Democracy will not function since, as the historian Donald Worster maintains, "the common people have become a herd," "lifelong wards of the state" who do not heed those of "liberated reason."

After such a disturbing litany of authoritarianism, Ellis leaves the reader with no idea how to better the situation, only a warning to be careful. But such warnings have already been given and, for the most part, ignored as the work of the enemy and falsely conscious. At this late date, more than warnings are needed. Perhaps a Congressional inquiry into the state of higher education in America, the stronghold of radical egalitarianism, is warranted. The professors will not like it and the ghost of McCarthy will be projected onto every debate, but the staggering cost of higher education and the pouring forth of books describing an American university system in ruins justifies such an inquiry. Ellis might even agree, given his recognition that university courses too often become indoctrination, not education (he also recognizes that it is on campus "where anticapitalist sentiment runs strong"). Such an inquiry would justify the work and passion Ellis gave his book and might help stabilize our sinking system of higher education. Without action, the book will only serve as another rearrangement of the deck chairs.

In the end, Ellis asks the reader not to forget the social and economic inequalities that animate egalitarian reform movements and urges a "balance" between such concerns and need to maintain individual rights and the democratic process. The point seems reasonable, albeit undeveloped and unspecific. Without elaboration of any reform proposals or designation of any checks on the authoritarian proclivity, the book simply becomes a reminder of the antecedents of political correctness and a justification of efforts to expose and constrain its antidemocratic effects.

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STRANGER THAN FACT

Homeowner Held Liable in Electrocution

by Judith Schumann Weizner

A six-person jury has found Raynes County, New York electrician Andy Blitzer liable for medical and other expenses incurred by Tracie Foudre when Foudre was struck by lightning while sunbathing in Blitzer's back yard in upstate Thunder Gap.

Two summers ago, Foudre and Blitzer were sitting on lounge chairs in Blitzer's yard when Foudre was struck by the proverbial bolt out of the blue. Weather records indicate that although the sky was clear and the sun was shining in Thunder Gap, a line of thunderstorms was moving rapidly across an area some eighteen miles north of the town. Neither Blitzer nor Foudre was aware of the storms, as they were listening to CD's together on a Twin-ear™ portable CD player.

When lightning struck the Twin-Ear, Foudre was knocked unconscious and suffered the loss of most of her hair, including her eyelashes and brows. EMS personnel speculate that Blitzer was not injured because he had unplugged his earphones and had just put on rubber sandals to go to the kitchen for a beer.

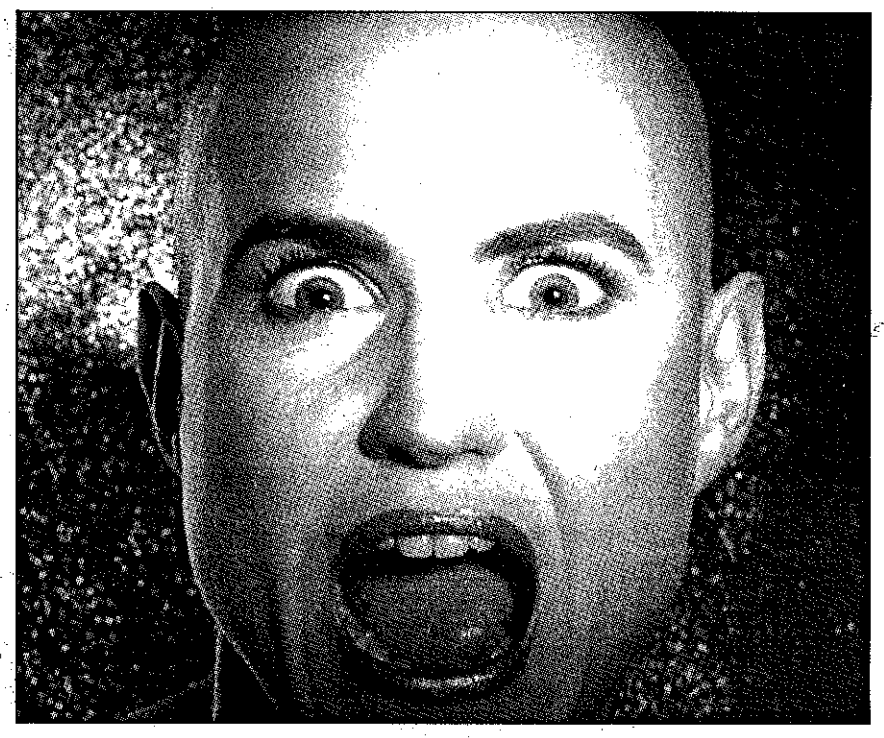
While Foudre's hair grew back within a few months, it was no longer curly; she also found that long after she had recovered physically, she still suffered persistent fear of sunny weather and could no longer enjoy her favorite music on her own portable CD player, as the sight of the apparatus caused her to experience flashbacks of the terrifying event. Additionally, because of her fear of sunny weather, she was unable to return to her former job as an ice cream concessionaire in nearby Thunder Gap State Park, and she began a course of therapy, which is still ongoing.

Her suit against Blitzer charged him with negligence in not encouraging her to remove her earphones when he removed his own, and deliberately setting the scene in which a life-threatening event could occur.

Foudre testified that she had told Blitzer she wanted to watch the Weather Channel before going out into the yard, but that he had ridiculed her, calling her "weather-obsessed." She explained that he had a habit of teasing her about her desire to watch the weather reports, and said this was one of the reasons she had hesitated to accept his proposal of marriage. Finally, she said, once she had agreed to go out despite the fact that she did not know what weather to expect, he had induced her to listen to CDs instead of to a radio program, thus depriving her not only of the opportunity to hear a weather forecast, but also of the possibility of hearing any static that would have given her an indication that there was a storm in the area.

Several neighbors testified that they had heard static on their radios earlier in the day. They stressed that they had not actually heard any thunder and that the static on the radio had been their only indication that storms might be in the region. Each described the bolt that struck Foudre as "deafening" and "shocking."

When Blitzer took the stand, he explained that it was Foudre who had asked him to bring her a beer, thus prompting him to unplug his earphones, as the wire was not long enough to reach into the kitchen; he had not encouraged her to remove her earphones because he had not wanted her to miss the opening bars of her favorite song, which had been about to begin. He acknowledged having teased her about her intense interest in the weather, adding that he had always regarded her curiosity about it as a loveable eccentricity, and swore that he had in no way deliberately attempted to prevent her from acquiring knowledge that would have spared her this terrifying experience.



TRACIE FOUDRE

Nevertheless, the jury found that Blitzer should have known that by constantly teasing Foudre about her desire to stay informed on weather matters, he was providing the background against which it was only a matter of time until she would be negatively affected by the weather.

Blitzer has been ordered to reimburse Foudre's insurance company for her medical treatment and to pay for her ongoing emotional therapy, in addition to her hairdresser's bills. He must also support her until she is able to return to work.

While this marks the first time that an individual has been held liable for personal injuries resulting from an act of God, it is not completely without precedent. In Florida last year, Jerry Orkan, president of Hurricane Construction, Inc., was ordered to rebuild, at his own expense, an entire condominium subdivision that had been leveled by a tornado, because the jury determined that not only his advertising, but also his corporate name, implied that his condos were constructed better than those in a neighboring development, lulling prospective purchasers into a false sense of security.

Orkan argued that he had chosen the name Hurricane to suggest that his condos would be built very quickly, not that they could withstand 200 mile-an-hour winds, and produced tapes of the meetings with his advertising consultant in which his logo and corporate name had been discussed. On one tape, Orkan could clearly be heard to reject the use of a mushroom as the corporate logo because, while he wished to convey the speed with which he could produce finished buildings, he did not want to suggest that they could be built overnight, adding that the mushroom shape had acquired a negative association in 1945. In another taped conversation Orkan vetoed the idea of printing the specifications of his houses side-by-side with the specs of his rival, Builtbetter Corporation, but the jury found that an ad showing the cut-away view of a Hurricane-built home with its heavily reinforced walls strongly suggested that it could withstand intense winds.

The jury stopped short of ordering Orkan to reimburse residents for parked cars that had been damaged by flying debris from the condos, although it did recommend that he pay veterinary expenses incurred by owners of pets found cowering in the wreckage.

Blitzer is planning to appeal because evidence tending to exculpate him was excluded under an unusual application of the New York State Women's Legal Protection Act (NYSWLPA) which shifts the burden of proof to the male in many disputes between people of opposite sexes. (The NYSWLPA was intended to be used in cases involving sexual harassment, and legal scholars are said to be evenly divided as to whether the Court of Appeals will allow its application in a non-harassment case.) The evidence is believed to consist of a page from the *Thunder Gap Weekly Peal* found on Foudre's dresser that indicated a chance of storms somewhere in New York on the day Foudre was struck. Because an ad for a used barometer was reportedly circled at the bottom of that page, Blitzer's attorney could have made a strong case for Foudre's having read the weather forecast as well, given her interest in meteorology, had the page been introduced.

Foudre has also filed a suit against the U.S. Weather Service, and is said to be considering a suit against two of Blitzer's neighbors who admitted that although they had heard that storms might develop in the early afternoon north of Thunder Gap, they had failed to warn her of the possibility.