

A NEW PROBLEM IN ACADEMIC FREEDOM  
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As turmoil and moral outrage have grown at universities in recent years, we have found ourselves dealing with an entirely new set of challenges to our traditional ideas of academic freedom. Those who believe that American society is wrong-headed and corrupt want to challenge it. They do not allow traditional American concepts governing the protection of individual freedoms to divert them from their cause. Hence, today at Michigan and speaking as a representative of Columbia, I want to discuss one of the critical new problems we face because it has deeply affected both of us. It is the difficulty posed by the apparent conflict between affirmative action for removing discrimination, and the criterion of excellence in faculty appointments.

Since the passage of the Civil Rights Act in 1964 and the issuance of a series of Executive Orders to implement the act, contractors who do business with the government must show not only that they do not discriminate but also that they follow a policy of affirmative action in removing discrimination. Federal contractors are required to analyze their employment patterns in order to determine whether there is underrepresentation of certain designated minorities. This implies a comparison of the contractor's employment patterns.

with statistical standards which purport to show the current availability of minority employees, and a determination from such comparisons of whether or not there are fewer minority employees than can be reasonably explained on the basis of such availability. The contractor is then expected to establish employment goals together with timetables for reaching such goals in order to eliminate underrepresentation wherever it is discovered.

Within the last two years the federal government has undertaken a serious examination of universities in matters of affirmative action. Moreover, the government recently added the category of women to its list of designated minorities for whom affirmative action must be demonstrated by federal contractors. Since most universities are federal contractors, the leverage which the government can bring to bear against us is a threat to cut off federal contract funds unless we produce satisfactory programs of affirmative action.

Compliance with federal requirements for affirmative action is an old story in the business world, but until recent years universities had been excluded from careful scrutiny because of their status as institutions operating in the public interest, and not for profit. The new pressure from the federal government against universities has had a powerful impact. We are required to show that we are

pursuing affirmative action in all job categories at universities, not just in those subsumed under the research activities where most of our federal contracting is concentrated. In particular, affirmative action must be demonstrated at faculty levels and it is here that we encounter the conflict between the principles of affirmative action and our traditional standards of excellence.

Federal officials tell us that there is no conflict. Affirmative action is a process operating at the level of groups or classes of university employees. It does not mandate the employment of any particular person or the non-employment of a more qualified person. It simply tells us to get our statistics into line with minority employment goals that we ourselves have determined.

In many respects universities need to concede the necessity for accepting this new idea of non-discrimination. For too long we have been content with appointment practices at faculty level that have produced relatively few women faculty members, fewer blacks, very few orientals and almost no Puerto Ricans and Chicanos. We can take no pride in such a performance. Moreover, it is no longer satisfactory to claim that our standards of excellence preclude the appointment of significant numbers of women or ethnic minorities merely because they are underrepresented in the academic population. If that is true we must begin to turn our attention to eliminating such underrepresentation by concentrating our efforts on graduate

and professional training. This is one of the historic avenues for social mobility provided by American society. We must also recognize that it is a solemn obligation of universities to take the leadership in society in this vital area. Thus we can have no quarrel with the principle of affirmative action, or with its objectives. Women, blacks, and latins are crying out for their full rights in our society and there is no excuse for pious or sanctimonious explanations of why these rights cannot be granted in 1972. We are past all that.

Nevertheless, many of us, my own university included, are experiencing serious problems with the government over issues of affirmative action. In the first place, the statistics describing availability of qualified minorities and women at faculty levels are a morass of confusion. Only in the last few years have professional societies even begun to compile professional listings broken down in such categories so that we can begin to analyze ourselves. The large amount of statistical and analytical help we might have expected from the government has not been forthcoming. We have been forced to do it largely on our own. Moreover, such statistics are contaminated by the question of levels of ability or quality, and this, as you might imagine, is an extraordinarily sensitive issue.

Many universities, for example, have been criticized for turning out a certain fraction of women Ph.D.'s and then employing a much smaller fraction. The discrepancy is interpreted as evidence of a bias against the employment of women and indeed it may be. That is just the conclusion drawn by militant feminists groups pressing for their rights. There is, however, another explanation which may govern at least some of the observed discrepancies. Research by sociologists has confirmed an apparent sex bias favoring males in appointments to academic departments of major universities. However, studies of appointment statistics to science departments also show that when quality and quantity of publications are taken into account, sex status has very little effect on the prestige rank of a scientist's academic affiliation, nor does it influence the professional age at which women are promoted to tenured positions. Accordingly, the observed first order statistics suggesting bias against women at faculty levels, may be due to an artifact caused by an artificial relation between sex and quality in our current production of Ph.D.'s. If such a relation does exist, we need to determine its cause and root it out. The point is that no one knows with any precision what biases exist in our faculty appointment procedures because of the high levels of ability required for appointment at universities such as Michigan and Columbia and because of the wide dispersion in ability between the best and the worst Ph.D.'s. Most

university people recognize that these are matters of the utmost subtlety. They need to be handled with great restraint by government officials seeking to end discrimination at universities.

I believe that most university administrators would agree with me that some government officials have not shown great sensitivity or restraint in dealing with the problems posed by the criterion of excellence in university appointments. The background out of which the government approaches our appointment problem is one of manpower analysis, job titles, and job qualifications. The determination of superior ability and special excellence upon which we rely so heavily is viewed suspiciously by some federal officials as a mask for continuing discrimination. That is why, in the current pattern of compliance enforcement, many universities claim that they are being forced to accept quotas mandating the appointment of numbers or percentages of minorities and women at faculty level in order to retain their federal contracts, whereas the federal government takes the position on the same evidence that universities are resisting setting employment goals at faculty level that will remove discrimination once and for all.

I recall that when the American Legion sought to inject itself into the deliberations of the University of California on the question of whether or not Herbert Marcuse should be reappointed, we argued forcefully that the only points at issue in our deliberations were

Marcuse's competence and intellectual integrity. His political views were held by us to be of no consequence. Similarly, we are trying to express to federal authorities our conviction that competence and integrity are all that can ever count in making a faculty appointment. Sex or race should carry no weight whatever in the determination of either one of these qualities. The government insists that it is not asking us to sacrifice quality but only to change our faculty recruiting practices because they seem to discriminate against minorities and women.

This is a vital new issue in the area of academic freedom and we cannot duck it. The government seeks to coerce us into affirmative action and we seem to resist claiming that the entire process interferes with our standards of excellence and our basic integrity. Both positions are wrong. We should not be resisting. We should be reforming for our own benefit, and without government coercion. We have abundant evidence as to our ineffectuality in producing quality people at faculty level from the ranks of minorities and women. Similarly, the federal government's interest in affirmative action has led it inadvertently into a powerful attack on the appointment processes of a number of important American universities. The effort, if pursued with reason and restraint, might have a salutary effect in tightening up loose and archaic appointment practices in American universities. But if pursued too

vigorously and too coercively at the current level of threat, the government's effort may produce collapse rather than reform.

Affirmative action is certainly an area in which the leaders of American universities should be able to sit down with federal officials and work out guidelines for affirmative action in a climate of mutual cooperation rather than coercion. We all want to eliminate discriminatory employment patterns from university life. We all want a better understanding of the advantages of faculty pluralism in the new society we are trying to build at American universities. We need to develop effective policies which make it possible to achieve affirmative action in practical ways. For example, we really do need special maternity leave policies for women. We must begin to eliminate rigid and discriminatory anti-nepotism rules. We need special programs of graduate and professional study aimed at developing high quality candidates for academic appointments from the ranks of minorities and women. We need widespread acceptability of the concept of part-time tenure for professionals who have child rearing responsibilities.

These ideas are bound to liberalize employment opportunities for minorities and women at many universities including my own. But they are not likely to produce significant increases in employment from such categories unless they are also coupled with federal



incentives which place special resources at the disposal of universities willing to put such policies into effect. Incentives offer the key to government-university cooperation and genuinely effective affirmative action. University leaders should now be meeting regularly with government officials in efforts to channel the government's affirmative action programs at universities away from directions threatening to our academic freedom and toward directions enlisting our innovative talent. We are not now meeting with federal officials on this basis, and I call upon both parties to begin to talk about the large problem of developing new-style programs of affirmative action based on incentives.

Certainly in these times no university wants to be known for its resistance to equal employment opportunity. We have always prided ourselves on our efforts to remove discrimination from the academy. Everyone in this audience knows that American universities were rampant with anti-Semitism before the Second World War. Not only were there quotas limiting the admission of Jews to the best colleges and professional schools, but there was also a vicious form of the same discrimination in appointments at faculty level. By our own devices and in manifestation of our own sense of what is right, we set about eliminating this discrimination. It is perfectly clear that we succeeded without the help of any external agency. We are very proud of that.

We are now beginning to recognize that we are moving to new societal forms very different from what we have regarded as characteristic of American life in the past several decades. This is especially true at the highest levels of graduate and professional training. We want to do it, but we want to do it in a climate of mutual help and cooperation so that in the new society we can manage somehow to retain those ideas of achievement and excellence upon which so much was built in the old society.

This recitation of the difficulties associated with the need to sustain both justice and freedom in the modern university serves to illustrate how complex are the new problems that confront us and how necessary it is to retain our capacity to discriminate fundamental values and directions from the jumble of powerful and conflicting pressures in which these fundamental values and directions are embedded. As previously excluded minorities become incorporated into the fabric of American life, we are now being forced to build pluralistic institutional structures unlike anything we have encountered or even dreamed of before. We are also finding that the nature of modern society and the growth of federal regulatory mechanisms operating in the public interest, mandate an ever-increasing abrasive contact between the federal government and society's traditional institutions. Universities long ago passed the threshold in which

it was possible for them to determine their own future directions. They are caught up in an enormous web of difficulty: student militancy, tight budgets, community pressures, increased dependence on government, and growing complexity in the process of education itself.

All these problems challenge our values. Each powerful group demands that we become an instrument shaped toward meeting its needs. If ever there were a time when universities should concentrate on the advancement of knowledge and the admiration of excellence, that time is now.

Academic freedom is not a right conferred from heaven or guaranteed by the Constitution. It is a form of tolerance exercised by society at large in behalf of those whose profession it is to think and to teach. That tolerance is conditioned upon wide acceptance of the view that thinking and teaching are valuable adjuncts of a civilized society, and must thus be preserved even for those who disagree with the substance and the direction of the society that supports them.

Academic freedom is a form of special privilege. It is therefore always under attack by persons or agencies seeking to enlarge their own authority or popularity by diminishing the independence of universities. Whether it is the American Legion trying to force out an aged

philosopher, or radical students seeking to impose their ideology on unwilling faculty members, or federal officials seeking to represent the public interest in removing job discrimination; all somehow want to change us and to perfect us in ways decreed by their own vision of a better society. It follows that academic freedom must continually diminish under the pressures of external agencies unless we are willing to make the most powerful efforts to sustain it. Freedom is not given; it is sustained and retained by those willing to fight for it.

The problems of our day sometimes seem overwhelming. Accordingly, it is all the more essential for us to remember what a university is. It is the current embodiment of the best that can be contrived from human knowledge and human ideas of excellence. Let us commit ourselves to work for that kind of institution as well as for all the insistent forms of social change that now confront us. Future generations will be unforgiving in their estimate of us if we fail in either respect. We must not fail.