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Robert H. Finch

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THE CAMPUS CRISIS

FOREWORD

ROBERT H. FINCH*

Outbreaks of violence and disruption in our nation's colleges and universities represent a new and alarming development in American higher education. The causes of these disturbances are many and complex, and they certainly extend beyond the campus gates to mirror the unresolved problems of our society itself. In part, because of the burdens and expectations we impose on our institutions of higher education, they have become the symbol and focal point of our society's own divisions and clashing values.

To the extent that conflict on the campus makes our society more aware of its divisions and capacity for change, it serves the historic and constitutionally protected functions of lawful dissent. But to the extent that nihilistic violence mars the rational presentation of legitimate and urgent issues, the opportunity for dialogue is destroyed. Protest becomes counter-productive and dangerous.

Tragic as many of these outbreaks unquestionably are, they still must be seen in a balanced perspective. Constructive steps toward institutional and educational reform have been taken and, to a measurable extent, they are an outgrowth of campus tensions.¹

The Editors of the *William and Mary Law Review* are to be commended for assembling the different perspectives contained in this sym-

*B.A., Occidental College, 1946; J.D., University of Southern California, 1951; Lieutenant Governor of California, 1967-69. Presently United States Secretary of Health, Education, and Welfare.

1. See, e.g., AMERICAN BAR ASSOCIATION, LAW STUDENT DIVISION MODEL CODE FOR STUDENT RIGHTS, RESPONSIBILITIES AND CONDUCT (1969); OFFICE OF INSTITUTIONAL RESEARCH, NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES, CONSTRUCTIVE CHANGES TO EASE CAMPUS TENSIONS (1970).

posium. The politicization of the university campus has seemed inexorably to lead to its judicialization. We might question whether either development is, historically considered, wholly welcome either for campus or community. Given these developments, however, it is imperative to come to terms with the meaning of the university in a political society, and to understand emerging legal concepts. This entire process has been accelerated by the onset of mass disciplinary proceedings, the intrusion of the court system into the campus community, and the displacement of traditional *in loco parentis* concepts by an increasing constitutional consciousness. To the recent and burgeoning literature on the subject,² this symposium is a welcome contribution.

The increasing incidence of outbreaks of both violent and nonviolent protest in the last academic year³ sparked both legislative reaction⁴ and long-term studies of university governance, campus tensions, and student dissent.⁵ In the wake of these developments, and in view of deep and continuing public concern over the issues presented by campus disturbances, Congressional attention inevitably has been galvanized. It recently was focused not only on existing federal legislation authorizing, in various forms, the termination of federal financial assistance for students engaging in disruptive behavior,⁶ but also on a spate of proposals for punitive legislation, including federal fund

2. E.g., I T. EMERSON, D. HABER, & N. DORSEN, *POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES* (1967); INSTITUTE OF CONTINUING LEGAL EDUCATION, *STUDENT PROTEST AND THE LAW* (G. Holmes ed. 1969); Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027 (1969); *Symposium—Legal Aspects of Student-Institutional Relationships*, 45 DENVER L. J. 497 (1968); *Symposium—Student Rights and Campus Rules*, 54 CALIF. L. REV. 1175 (1966); *Development in the Law—Academic Freedom*, 81 HARV. L. REV. 1045 (1968).

3. Bayer & Astin, *Campus Disruption During 1968-1969*, 4 AM. COUNCIL ON EDUCATION RESEARCH REP. (1969).

4. E.g., The Council of State Governments, *State Legislation on Campus Disorders*, Information Letter, August 7, 1969. Arnold, *Campus Violence Spurs New Laws Across the Nation*, N.Y. Times, Sept. 1, 1969, at 1, col. 5.

5. E.g., AMERICAN BAR ASSOCIATION, *REPORT OF THE COMMISSION ON CAMPUS GOVERNMENT AND STUDENT DISSENT* (1970); NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, *INTERIM STATEMENT ON CAMPUS DISORDER* (June 9, 1969). At this writing many professional associations are currently considering these topics in depth, including the American Association of University Professors and the American Council on Education, Special Committee on Campus Tensions.

6. Department of State, Justice and Commerce, Judiciary and Related Agencies Appropriation Act of 1970, Pub. L. No. 91-153, tit. VII, § 706, 83 Stat. 427; Departments of Labor, Health, Education and Welfare Appropriation Act of 1969, Pub. L. No. 90-557, tit. IV, § 411, 82 Stat. 995; Higher Education Amendment of 1968, Pub. L. No. 90-575, tit. V, § 504, 82 Stat. 1062.

termination against universities which could not immediately quell disorder.

The latter proposals raise sensitive and alarming questions about the intrusion of the federal presence on campus. It is well worth restating the principles which lay behind the Nixon Administration's successful resistance to legislative proposals which would have increased the federal role in campus disturbances and, to that extent, compromised a traditional and deeply honored relationship with institutions of higher learning. Governmental self-restraint, in this instance, was a bulwark of true academic freedom.

In part, of course, the addition of further federal legislation was unnecessary. In every State adequate legal redress exists to curb disruption and punish violence. Implementation of these laws is a local responsibility, and, if the concept of federalism means anything at all, so it should remain. Even the federal laws now on the books,⁷ which terminate financial assistance under certain specified circumstances, can only be administered by the institutions themselves, and were so designed by Congress. This means that we in HEW have no masterlist of the nearly 1.5 million students who receive some form of federal assistance. Almost every federal dollar is channeled through campus officials.

DeTocqueville once observed that Americans, perhaps because they began with a written Constitution, have always tended to reduce social and political questions to legal issues. But this penchant for always passing laws can also become a barrier to rational and effective response.

Not all our problems are open to a legislative solution. And certainly this is the case with respect to proposals for fund cut-offs to universities that cannot, on command, quell campus disorders. On the basis of hundreds of letters that have crossed my desk, and scores of personal talks, not a single educator favors this approach. It simply does not address the primary causes of unrest.

Furthermore, the technique of institutional cut-offs plays into the hands of the extremists. They frankly confess their desire to see the schools shut down. All that is then needed is the cynicism to create a disruptive situation, at which point someone presumably decides that the quantum of ferment has been exceeded, and the financial squeeze is mandated.

Many institutions would probably be forced to close their doors, which is fair neither to society, nor to the vast majority of students

7. *Id.*

who want an education. I am unalterably opposed to putting such a weapon for extortion into the hands of those who have no respect for the life of the mind or the institutions nourishing that life.

The administrative implications of enforcing such fund cut-offs would, in themselves, raise a further range of unanswerable questions. Enforcement would have to proceed according to some arbitrary thermometer of revolt. How much disruption is too much? Is it to be measured by the institutions' own codes? If so, how good are they, and how effectively do they preserve legitimate dissent?

There is no federal code of student conduct, there can be none, and there never should be. Federal enforcement of state, local, and institutional codes would involve a federal force of campus policemen numbering in the thousands, and would constitute an administrative nightmare.

A final objection is perhaps most fundamental of all. Such techniques of repressive federal intervention into the affairs of each local campus violate the most honored traditions of American education and would, in the end, destroy the university's essential nature.

We want our universities to be centers of diversity and independent components of a vigorous pluralism. We do not want a monolithically imposed unity in which all our educational institutions conform to a federal code of conduct. To advocate such intervention is a form of extremism—fatal, in my view, to the perpetuation of our free and pluralistic society.⁸

To reject a punitive role does not, however, leave the federal government powerless to deal with problems of the campus community. As President Nixon's Message to Congress on Education recently emphasized, a wholly proper role of the federal government is to be in the forefront of educational reform.

The United States Office of Education has searched for methods of easing campus tensions, has investigated alternative models of institution change and conflict resolution, and has endeavored to research more deeply into the causes of the tensions and possible means for their resolution. In assuming this role, the Office of Education has not and should not seek to impose its views on any element of the

8. The importance of educational independence is recognized by and embodied in the Higher Education Act, which explicitly guards against construing any authority in the Act to allow federal direction, supervision, or control over college curricula, instruction, administration, or personnel. Higher Education Act of 1965, Pub. L. No. 89-329, tit. VIII, § 804, 79 Stat. 1270, 20 U.S.C. § 1144 (Supp. III, 1968).

academic community. It is clear that in the case of educational reform, there is no one proper model, and only in the most vigorous experimentation and analysis will answers be found. This task defines for us the proper role of the federal government. And it is down this road that we must continue to point our efforts.