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Comment

COMMENT

By EDWARD SCHWARTZ*

FOR the past two years, many of the people at this conference have been meeting almost bimonthly to rehash a set of familiar issues concerning student rights. We acknowledged at these meetings our general agreement on the nature of due process; we recounted the latest instance of the elimination of a campus speaker ban; we debated whether student political organizing should remain free from administrative control; we took a peek at the rising incidence of spying on the campus; and, in general, we patted ourselves on the back and agreed that higher education is making progress in these areas.

Now we meet again to reenact the same ritual. Judging from the list of panelists and the familiar panoply of faces in the audience, I greatly fear that this is all that we will accomplish. In the fall of 1966, some of us on the drafting commission for the *Joint Statement on Rights and Freedoms of Students* warned that the discussion of educational problems had to encompass much more than questions of rights, and that students had gone far beyond those questions. We were told, "You're right, but not now." We acquiesced, went along with the context in which the *Statement* was framed, and waited for the new discussion. The *Joint Statement* has been ratified by all participating groups; the conversation has not changed.

I am not here primarily to discuss legal rights of students, but to suggest the reasons why the debate over legal rights is a substitute for a consideration of the real issues which we *should* be considering. I have done this before, but I feel a special urgency in doing so now. This will be my last presentation to an educational conference as President of the National Student Association. While I have no doubt that my successor will continue the work which we have started, I feel a special responsibility to make my parting shot an extensive one. I have dealt with you reasonably in the past, but my attempts to be reasonable have not evoked the debate which I had intended. We now have witnessed over 30 major confrontations in the past month — a phenomenon which we predicted. You must understand that these uprisings will continue until, and unless, you begin to face up to the new issues.

New issue number one — student power. Can students control their own affairs, influence curricular decisions, and participate in policy formulation basic to university life? I have yet to hear any *serious* answers to these questions. Contrary to the view that your

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organizations are more "liberal" than their constituencies, the campuses are way ahead of most of you in conducting this discussion.

New issue number two — the shape of the curriculum. This includes grading policies, teacher-student relationships, the state of the disciplines, freshman orientation, and freshman year programs. We skirt these issues in these gatherings, but, again, have rarely dealt with them in other than a perfunctory manner.

New issue number three — the relationship between the university and society. The Students for a Democratic Society have been leading battles in this area during the past year, but you can expect that the National Student Association will join the fray next fall. For whom, and for what reason, should university research be conducted? Where do universities invest their money? What relationships exist between universities and local police forces? I have yet to hear anyone here challenge the political stance of much of higher education. How many disruptions will it take to bring those questions to your attention?

These are the themes which animate student activity in 1968 and which get to the heart of the problems currently facing higher education. These are the themes of the conference that must be held. Yet, conferences which *are* being held ignore them. Even when a new topic bursts to the surface — if only because some of you cannot hold back what is on your minds — it emerges in a useless context. Questions of spy systems on campuses are discussed solely in terms of the right to privacy, rarely in terms of what it means for a university to cooperate with police forces. Students who question university investments in war research are informed of the university's "right" to invest resources in such research, rather than of the rationale of the institution for doing so. Issues involving university ownership of slum tenements in the ghettos are considered in terms of the student's "competence" to pose such questions. Whenever a new area is raised, you try to fit it into an old framework which is entirely inadequate to the problem.

What I must ask is, "Why?" Why are you afraid to engage in an honest discourse of the issues which are exploding on the campus? Why is there a two or three year gap between the introduction of a question on 50 campuses and its serious consideration at the conferences? I want to devote some time to answering my own questions, both in relation to student rights in general, and to student legal rights in particular.

Most of you approach social questions in the framework of what I would call procedural liberalism. Procedural liberalism posits a kind of billiard ball view of society by which individuals are granted the freedom to act autonomously, so long as they do not "destroy the

rights of others." The two critical tasks of procedural liberalism are the construction of definitions of individual freedom and the creation of mechanisms to protect these autonomous beings from one another. As long as we can say that man is "free," then we need not worry about the ways in which he uses his freedom, the ways in which he accepts the "rules of the game" which protect his freedom, or the ways in which his institutions promote his welfare.

The central treatises in defense of mass education spring very much from these premises. Clark Kerr's *The Uses of the University*,¹ for example, exalts the multiversity on grounds that it provides a number of options for individual fulfillment and that its procedures enable an accommodation between the conflicting forces acting upon the institution. If the options remain varied, and the university president remains a skillful mediator, then the multiversity will remain a wholesome environment for growth. The gravest threats to its existence, by these theories, arise when an agency of the public attempts to close an option or restrict a freedom, or when a group within the university no longer accepts the "rules of the game" as being sufficient to guarantee the success of a political objective.

As Kerr learned, and as others should learn as well, guarantees of individual freedom and political order are insufficient. Men may desire an expanding relationship between one another, a sense of community within their environment which transcends questions of freedom and order. Two lovers do not create courts to handle their quarrels — if they worry first about how to protect themselves from one another, they cease to love. The problem in mass life involves the creation of a lover's relationship between people. When such a relationship does not exist, modern man feels atomized, cut off, alone, alienated. No number of options in the supermarket, or procedures for his protection, can compensate for his internal sense of loss.

The three "new issues" which I suggested are directly related to this general problem of mass society and mass universities — the problem of creating community within our institutions. Student power, as a battle cry, asks that students be accepted in an entirely new relationship with administrators and faculty, and that the doctrines which relegate students to a limited "role" be replaced by a framework which shows greater respect for students as people. The drive for educational innovation — particularly that part of the drive which challenges faculty teaching, grading, and the processes of the classroom — is really asking that professors take as much interest in their students as people as they do in their disciplines as subjects. The challenges raised concerning the university's relationship to

¹ C. KERR, *THE USES OF THE UNIVERSITY* (1963).

society subject the institutions to criteria of humaneness: Is the university racist? Is it militarist?

I suspect that an important part of administrative resistance to serious consideration of the questions stems from their failure to grasp the context in which they are raised. After all, communitarian literature is uncommon to the American political experience, even though working class and ghetto community life has been important to its development. College presidents are more schooled in Locke than Rousseau, and in Locke, the man and his work are more important than the relationships between men. To college presidents, students are not subjects, they are objects — beings who must be processed, nurtured, and “prepared” for life. As Buber noted, one does not develop a healthy relationship with an object. The student who tries to move from “I-it” to “I-thou” with other members of the academic community often learns that his elders are not prepared to accept him on that basis, nor prepared to view him in that way.

Similarly, the procedural liberal who fancies himself to be “on the student’s side” often fails to grasp what students are telling him. To be sure, the number of occasions upon which the liberal must defend student freedom does make him an ally, since higher education debases both student liberty and student community. Yet the liberal is equipped with neither the theoretical framework nor, in some cases, the personal resources to cope with student questions about community relationships. He often seems more impressed with the manner in which the student case is argued than in the case itself, and, in recent times, he is more interested in the process and aftermath of a protest than in its substance. I have been asked several times in the past few weeks to state my reactions to building seizures. At no time have I been asked whether universities should engage in secret research for the war in Vietnam. In short, the procedural liberal is trying to construct better rules for an old game, when the students are trying to change the nature of the game itself.

Even in making judgments on the process of the campus as it is, the procedural liberal finds himself ill served by his theories. His “rules of the game” dictate that everyone remain a gentleman, regardless of his real political position. Being “reasonable” may be a luxury which only those who possess power can afford, but the procedural liberal would counsel temperance to the powerless as well. Occasionally, he has a blind faith that administrators will respond to the “reasonable” style, a faith which only occasionally is justified. Even when administrators do not respond, the procedural liberal will contend that preservation of the appropriate process is more important than the attainment of a political goal.

It is this kind of concern, I suspect, which motivated the convocation of this conference. On the surface, of course, it appears that we are assembled here because we have a genuine interest in the university and the law on its own terms. The fact that most of you are either lawyers or procedural liberals in education reinforces this impression. Yet I cannot approach this conference out of the context of the American Council on Education's principal document on students and the law issued thus far — James Perkins' *The University and Due Process*.² The Perkins paper is not a legal document; it is a political statement. It does not deal primarily with due process. It does deal with all the reasons why students should not use the courts to achieve their objectives, why the courts are "inappropriate" to the rules of the educational game.

Having read Perkins' treatise, I can only conclude that your real interest lies in determining "how far students will go" in using the courts, and how far the courts will go in limiting your ability to govern your universities. There was little of this nervous interest in the law ten years ago, when all the decisions seemed to justify administrative hegemony over institutional affairs. It is only now that the courts appear to be in favor of students that this conference has been called. The law becomes important to you only when it limits your power.

Perhaps I exaggerate, but the Perkins paper suggests that I do not. The document itself is a classic example of procedural liberalism — it conjures up a chamber of horrors involving incompetent judges rendering decisions on students' grades, personal behavior, and a multitude of other matters. It pleads for a respect for the autonomy of the university — at a time when universities are willingly embracing the Department of Defense, the Federal Narcotics Bureau, and the neighborhood police force. Its whole tone says — "Gentlemen, please, surely we can handle these matters on our own, in a 'reasonable' fashion." No, I find it difficult to trust your concern for the law when you print treatises urging students not to use the instruments of law as part of their strategy.

The real irony of Perkins' arguments is that they presuppose the existence of a coherent strategy to build student legal rights in the same way that the NAACP developed a strategy of court tests to win civil rights for Negroes. Frankly, there is no such strategy. Most of the significant cases in student rights — *Green v. Howard University*,³ for example — emerged as a result of university dismissal of students for a protest which had nothing to do with "rights."

² J. Perkins, *The University and Due Process*, Dec. 8, 1967 (reprint of address by American Council on Education, Washington, D.C.).

³ 271 F. Supp. 609 (D.D.C. 1967).

The protest may have tested the university's procedures, but its purpose was to ask the administration to refuse to provide class rank to draft boards. Once expelled, the students certainly do go to court — to gain readmittance! Characteristically, the procedural liberals focus upon the court case, questioning whether students should have gone to court, and then, questioning what the court said. The original reasons for the protest are forgotten. The recent conflict at the University of Denver serves as another example of this, since most of us here are familiar with those events. Thirty-nine students staged a sit-in at an administration building. The University chancellor made himself a national hero by expelling them on the spot. Later, he realized that expulsion without a hearing violates due process, so he reversed the expulsions to let the hearing process run its course. The Appeals Committee recommended probation, but the chancellor proceeded with his original decision and expelled the students. Since the entire procedure is open to question, the students will go to court. I am led to believe that the university now awaits this challenge with some eagerness, while all parties to the dispute have become amateur lawyers.

Yet, why did these 39 students sit-in in the first place? What were the conditions on the campus which led them to use that particular form of protest? What were their demands? What had been the administration's response to these demands earlier in the year? What were the kinds of students who sat in? What were the real issues, as opposed to the immediate issues, surrounding the sit-in and expulsions?

I sense the answers to these questions, having been in touch with the leaders of the sit-in at several points during the year. For the past two years, these students have been trying to awaken the apathetic student body of the University of Denver to the existence of a war in Vietnam and a crisis in our cities. They have also been trying to encourage the University administration to increase student power and to reevaluate its curriculum. In both tasks, they have met with resistance. Consequently, the sit-in emerged as a product of frustration, a last ditch attempt to arouse the University before this group of activists graduated.

Of course, the chancellor of the University of Denver is now a hero for expelling the students. From my standpoint, however, the chancellor emerges as a paradigm of the educational villain — the kind of man who worries more about the serenity of his campus than about its intellectual and social vitality. Why wasn't this chancellor as concerned as these student activists that the undergraduate population has capsulated itself against confronting the central social questions of the day? Doesn't he find it somewhat strange that a

university setting should be an excuse to evade issues rather than to explore them? If he does, he gave no sign of his concern to the activists. Yet he *did* show his concern when these students disrupted the process of order.

It is clear that the procedural liberal loses himself in a tangle of irrelevancies. His framework makes it impossible for him to grasp the dimensions of student questions on campus — he tries to put these questions in a context which cannot explain them. When students become frustrated with the lack of response accorded to their protests and demands, then the procedural liberal spends time studying whether the form of the protest was “appropriate.” When the students go to court, the procedural liberal writes treatises explaining why this was a bad move. Finally, he loses a few court cases and convinces himself that he really is interested in the law and the university in its own right — even calls a conference to discuss it. In the end, I suppose, we all become lawyers.

The questions which we are raising are too serious to be obscured in this manner. This year the conference focuses on the university and the law. Next year, I understand that there are several gatherings planned on handling disruptions — conferences which will deal with little more than tactical questions. Will you then try to convince us that you are interested in conflict resolution on the campus as an intellectual issue in its own right, and that commissioning the Rand Corporation to apply techniques of counterinsurgency to universities is a logical extension of that interest? Will you argue, as you argue now on the law, that your appreciation of game theory reflects your immediate priority — maintaining order in your institutions — and that the more basic issues will have to wait upon the resolution of that problem? How long can you deceive yourselves?

The point is that students are protesting the kind of mentality which approaches educational questions in this manner, which views the procedures of the university as overriding its substance, which constructs avenues of freedom without channels for community, which blinds itself to the relationships within the university and between the university and other institutions. Your response merely imitates the conditions which students protest, merely proves the point of their protest — that you are more interested in the protection of yourselves, the efficient functioning of your campuses, and your power to govern them than you are in creating healthier ties between the people of the campus, between yourselves and the students. You laughed when Mario Savio said, “Never trust anyone over thirty.” Yet his comment stemmed from the premises upon which procedural liberalism operates — that people cannot afford to trust one another, they can only afford to shield themselves and keep their distance.

In the coming year, you will be met with a new round of campus protests — no doubt as serious, if not more serious, than those which you faced this spring. Some of you will become skillful counter-insurgents, others of you will learn how to use the police, and a few of you may lose your jobs. Nevertheless, however adept you become in handling tactics, the protests will not end until you become adept at accepting change.

As a first step in that direction, I urge you to revise the ways in which you view change and the ways in which you approach the changes which are being asked of you. I have tried to help by outlining a few of the new concerns. Yet, if my analysis is valid, then your intellectual agreement with my arguments will be insufficient. What will be necessary is almost a psychic shift, by which you begin to view the people and the dynamics of your institutions through different emotional glasses. If and when you do so, you will begin to feel, as well as understand, why I argue now that a conference on the university and the law is irrelevant to what we should be discussing. Until you do so, you will always wonder why these conferences never seem to solve the problems, why they never seem to get at what is on our minds. Yet, once you do so, the bimonthly ritual of student rights' conferences will not continue. I believe you won't stand for them either.