

The Imperiled Freedom the Candidates Ignored

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By **Peter Berkowitz** - November 21, 2012



Among the issues neglected in the presidential campaign of 2012 is the deteriorating condition of a basic American right: liberty of thought and discussion. Other matters were also neglected by the candidates, ignored by the press, and overlooked by the electorate. But liberty of thought and discussion is unlike other vital national interests. When the economy and national security worsen, people feel *more* urgently its importance to the daily operation and long-term preservation of a free society.

The Obama administration has aggravated the problem. In April 2011, the Department of Education's Office of Civil Rights instructed colleges and universities to substantially curtail the due process rights of students accused of sexual harassment or sexual assault, or risk losing federal funding.

Beginning in August 2012, President Obama's signature legislative achievement, the Affordable Care Act, required most employer-provided health insurance plans (with the exception of churches and other strictly religious organizations) to cover contraception and morning-after pills, even when such reproductive technologies violated employers' religious convictions.

And in September 2012, in the aftermath of the attacks on the U.S. Embassy in Cairo and on the American consulate in Benghazi, high-level administration officials were quick to denounce a short, stupid film mocking Muhammad. Secretary of State Hillary Clinton described it as “disgusting and reprehensible” and U.N. Ambassador Susan Rice characterized it as “heinous and offensive.”

In the process, the administration squandered a chance to explain to the world, as well as fellow U.S. citizens, that toleration of sophomoric caricature is a price Americans proudly pay for the privilege of thinking their own thoughts, speaking their minds, and dissenting from or adhering to convention and orthodoxy as their consciences counsel.

Conservatives criticized the Obama administration in each of these instances, but the principled defense of liberty of thought and discussion has been difficult to disentangle from the partisanship that characterizes our politics. Partly that is because progressives have generally noticed nothing amiss in the administration’s reduction of due process on campus, infringement of religious liberty in the workplace, and inability or unwillingness to vigorously defend the spirit of the First Amendment when America, abroad and at home, was vilified for permitting blasphemy against Islam.

If any principle should command support across the political divide, it is liberty of thought and discussion -- along with its sister principles of due process and religious freedom. That they do not should be a cause of grave concern to all friends of freedom.

Anyone who doubts the weakening of these principles of freedom in the American mind or the threat that this poses to constitutional self-government in the United States should read attorney Greg Lukianoff’s superb book, “Unlearning Liberty: Campus Censorship and the End of American Debate.” Because conservatives are often the targets of political correctness run amok and therefore have a partisan interest in defending freedom of speech, many will assume that Lukianoff is a conservative. He is not. Indeed, Lukianoff’s passionate and principled defense of liberty of thought and discussion is all the more compelling coming from a self-proclaimed liberal atheist whose book cheerfully evinces a fondness for popular culture, progressive causes, and Buddhism.

Lukianoff argues that our educational system is failing us. The trouble begins with K-12 education, which omits instruction in the basic principles of freedom and self-government. But betrayal of freedom and pedagogical responsibility by colleges and universities, which is the focus of Lukianoff’s book, is egregious.

To be sure, as in K-12 education, higher education has downplayed (where it has not abandoned) serious teaching of the principles of American constitutional government. But beyond that dereliction of duty, since the mid-1980s university professors and

administrators -- in the way they run classrooms and the way they run campus life -- have been aggressively teaching undergraduates and graduate students to scorn free speech and fair process.

The mis-education of American students, Lukianoff argues, has a trickle-up effect. As graduates move into positions of prestige and power in law and business, in the media, in education, and in politics they bring with them the impatience with or contempt for dissent, and indifference to or cynicism about due process that they learn on campus.

Because the free exchange of ideas enables us to see what is flawed in our own opinions and what has merit in the opinions of others, and because due process gives institutional expression to the reality of human fallibility and our justified apprehensions about the tendency of those in power to abuse their power, the unlearning of liberty on university campuses erodes citizens' ability to grasp the nation's interests and undermines the country's capacity to honor its obligation to protect equally the rights of all.

Lukianoff's day job is president of The Foundation for Individual Rights in Education (FIRE), a nonprofit organization founded in 1999 by University of Pennsylvania history professor Alan Charles Kors and Cambridge, Mass.-based criminal defense lawyer and author Harvey Silverglate.

Drawing on the thousands of cases that have come across his desk at FIRE over the last decade, Lukianoff documents how campus censorship in a multitude of guises is alive and well throughout the country, at small colleges and large universities, at private and public institutions of higher education, and certainly at elite schools including Harvard and Yale.

Partisan professors, vindictive administrators, and clueless residential life experts use vague and broad campus speech codes and harassment codes to punish speech they find inconvenient or that expresses values of which they disapprove. Universities erect small, out-of-the-way "free speech zones," which treat liberty of thought and discussion as a pariah-like activity that cannot be outlawed but must be quarantined.

Student disciplinary systems trample on due process to obtain predetermined results. Professors are brought up on charges for mentioning ethnic slurs in class even though their express purpose was to explain the origin and use of such slurs.

There is a better way, and President Obama should take the lead in pursuing it. While vigorous and hard-hitting criticism of political opponents is of the essence of liberal democracy, the president should set a tone that encourages both sides of the aisle to refrain from demonizing their opponents or accusing them of being unpatriotic, or un-American, or leveling any other charge designed not to join issue but to shut down debate. The president should firmly oppose hate crime legislation at home. And his administration should take a strong stand against all efforts at the U.N. and in other international bodies to criminalize blasphemy.

Salutary as the example set by such steps would be, it would be at best a start. The only long-term remedy for the poor condition of liberty of thought and education in the country consists in the reform of our schools and our universities in light of liberal education's enduring promise.

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