

Can the Federal Government Rescue Campus Free Speech?

RCP realclearpolitics.com/articles/2019/03/31/can_the_federal_government_rescue_campus_free_speech_139916.html

Rasmussen Reports

COMMENTARY



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The well-documented inability of American colleges and universities to reverse the several-decades-long curtailment of free speech on campus is a matter of considerable public interest. Whether the federal government is capable of producing effective reform is another question. President Trump seems to believe Washington is up to the task.

Early this month, at the Conservative Political Action Conference in National Harbor, Md., the president announced that he would soon be “requiring colleges and universities to support free speech if they want federal research dollars.” Less than three weeks later, he fulfilled his promise. His March 21 executive order directs the federal government to “take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive federal research or education grants promote free inquiry.”

The executive order is an imperfect response to an urgent problem. Like any federal initiative, it is subject to abuse by government bureaucrats who would twist its mandate to defeat its purpose. Even if it works as planned, it will leave in disrepair a higher-education establishment that systematically fails to provide students with an education in the ideas and events that formed their nation. Our colleges and universities also often shirk their responsibility to offer diversity of thought about morality and politics. Without these essential elements, students are unable to take advantage of free speech on campus and unlikely to grasp its importance.

The challenge calls for a mixture of care, firmness, and focus on the larger picture.

Trump's executive order places ample discretion in the hands of administration officials to determine the precise terms of its implementation. Soon after the announcement at CPAC, supporters of the idea provided useful suggestions for narrowly tailoring the president's order so that it would accomplish its legitimate goals while minimizing the inevitable dangers.

Former Deputy Assistant Secretary of Education Adam Kissel emphasized the public's interest in ensuring that federal research grants — worth tens of billions of dollars a year — go only to institutions of higher education that protect academic freedom, because asking a wide range of questions, exposing hypotheses to a broad array of challenges, and subjecting results to extensive and uninhibited scrutiny are essential to the scientific enterprise. But Kissel cautioned that the federal government can only do so much without exceeding its competence. It should concentrate on concrete interferences with liberty of thought and discussion on campus by denying federal research funds to colleges and universities that maintain speech codes and practice other forms of explicit censorship. But it should refrain from regulating the “social pressure of ‘political correctness,’” and other “amorphous campus practices.”

Distilling their 2018 National Affairs essay, “Restoring Free Inquiry on Campus,” AEI Resident Scholar Frederick M. Hess and Washington Examiner Deputy Editor Grant Addison also argued, following the president's CPAC speech, that the federal government should reasonably expect that “institutions receiving taxpayer dollars adhere to the tenets of responsible science—including the assurance that research questions, methods and reporting will be guided by an inviolable commitment to free inquiry.” They, too, recommended sharply circumscribing government's power on campus, suggesting that in contrast to research, “teaching and campus culture” fall beyond the scope of federal regulation.

For Hess and Addison as well as for Kissel it is crucial that private universities that wish to police speech and punish the expression of disfavored opinions (public universities are governed by the First Amendment) preserve their right to do so. They simply would render themselves ineligible to receive federal research funding.

In contrast to these attempts to confine prudently the exercise of federal power, University of Chicago President Robert Zimmer, one of the nation's leading champions of free speech on campus, rejected the very idea of federal government involvement in the protection of such freedom. Also responding to Trump's CPAC remarks, Zimmer contended that "any action by the Executive Branch that interferes with the ability of higher education institutions to address" free speech on campus "is misguided and in fact sets a very problematic precedent." Involving government in "defining the very nature of discussion on campus," according to Zimmer, would require establishment of an inevitably politicized federal bureaucracy that would pose "a profound threat to open discourse on campus."

A new bureaucracy is a cause for concern, but Zimmer confuses matters. Yes, defining discussion on campus in terms of free speech represents a form of regulation — one that seeks to reduce regulation of speech to the bare minimum.

Zimmer is nevertheless right about the potential for abuse in giving government a say in how universities govern themselves. Would that the University of Chicago had acted on his principle to forcefully criticize Obama administration overreach that perversely transformed Title IX — which prohibits educational programs that receive federal assistance from discriminating on the basis of sex — into a mandate for depriving, based on sex, male students accused of sexual misconduct of fundamental due process protections.

It is easy to envisage how Trump's executive order could be similarly distorted the next time a progressive is elected president. In an April 2017 New York Times op-ed titled "What 'Snowflakes' Get Right About Free Speech," literature professor Ulrich Baer provided the formula. Drawing on postmodern and progressive arguments that are commonplace in the university world, the vice provost for faculty, arts, humanities, and diversity at New York University turns free speech into its opposite.

The right of free speech "means balancing the inherent value of a given view with the obligation to ensure that other members of a given community can participate in discourse as fully recognized members of that community," Baer wrote. "Free-speech protections — not only but especially in universities, which aim to educate students in how to belong to various communities — should not mean that someone's humanity, or their right to participate in political speech as political agents, can be freely attacked, demeaned or questioned."

Such a reinterpretation of free speech invites barring expression of opinions that persons deems hostile to feelings and thoughts rooted in their identities. In the present era of identity politics, all opinions would be vulnerable to suppression. Such intellectual shenanigans represent a restatement of Herbert Marcuse's 1960s critique of "repressive tolerance" in the name of emancipatory intolerance. They reflect the same illiberal impulse to invest authorities with the power to silence some voices and empower others based on fashionable and evanescent judgments about ethical worth, public policy, and social justice.

Dangers such as these are real and should be taken seriously, acknowledges Ethics & Public Policy Center Senior Fellow Stanley Kurtz. But, he argues, they are not decisive. An astute and energetic proponent of government measures to restore free speech on campus, Kurtz contends that the perils of federal action are greatly outweighed by the catastrophe of inaction.

The extremism, ignorance, bitterness, and tribalism of our politics, according to Kurtz, are the poisonous legacy of the illiberalism promulgated for decades by our colleges and universities. By now, these institutions “are caught in a quicksand of their own creation and are well past the point of self-extraction.” Trump’s executive order, Kurtz maintains, will help public universities uphold their constitutional obligation to protect free speech and assist private institutions in complying with their typical promises to safeguard academic freedom and foster robust debate: “the very existence of the order sets up a dynamic that will make it harder for colleges to stifle free speech, and tougher for regulators to ignore it when they do.”

Let’s hope. And let’s not forget that free speech is the tip of the iceberg.

Unless the skewed and impoverished curriculum is reformed, and unless professors bring the spirit of open and informed inquiry to the classroom and take pains to ensure that students encounter, and wrestle with, the other side of the argument, free speech, even under the most judiciously crafted laws, will be a dead letter.

Peter Berkowitz is the Tad and Dianne Taube senior fellow at the Hoover Institution, Stanford University. His writings are posted at PeterBerkowitz.com and he can be followed on Twitter @BerkowitzPeter. He is also a member of the State Department’s Policy Planning Staff. The views expressed are his own and do not necessarily reflect those of the United States government.