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EXTERNAL FORCES AFFECTING HIGHER EDUCATION

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Speeches, published articles and discussions detailing external forces affecting higher education are almost as numerous these days as the regulations emanating from Washington -- almost. Indeed the flurry of charges and countercharges add credence to those who point to a rapidly developing adversary relationship between higher education and government. But as President Harold Enarson noted in his address to the Western College Association in March, "the partnership between government and higher education remains strong and viable; but it does suffer a contemporary malaise due to a lack of focus, an absence of balance, and a want of mutual understanding and accommodation." My challenge is to give you, who deal constantly with the reality and detail of external influences, a useful perspective from which to view this phenomena.

The day-to-day problems we all face seem sometimes to take the form of a perpetual crisis -- the "Custer at the Little Big Horn" syndrome if you will -- as we cope with external influences and demands upon our time, energy and resources; yet, few of us could long survive without continuing aid from those very external agencies we regard as most meddlesome. President William McGill of Columbia University pointedly reminded us, in a recent speech, that: "The Partnership [between higher education and the federal

government] has fostered standards of excellence in colleges and universities across the nation unmatched elsewhere in the world. It has generated an almost unbroken sequence of American accomplishments in science and in the arts since the Second World War. These achievements have projected our country and our educational system into positions of world leadership . . ."

I am one who wishes to preserve this highly productive partnership, to strengthen those elements which have made it productive, and to recognize where changes are necessary and can be usefully made.

Many of the initiatives for change emanating from the federal government today, such as the elimination of discrimination and arbitrary barriers to full educational and occupational opportunities, reflect legitimate concerns the effective resolution of which will contribute to the viability of our colleges and universities and to the strength of our national fabric.

In addition, many of the nongovernmental forces affecting higher education are positive in the sense that they contribute to the continuing evolution and adaptive innovations that characterize any viable institution in our society. Shifting demographic and occupational trends, for example, are causing institutions of higher education to evaluate the individual learning needs of older, nontraditional student populations. Major advances in educational technology, another external force with positive implications for higher education, may aid us in dealing with these emerging needs. Technology will undoubtedly have a profound influence on the traditional time, location, and age requirements of the conventional learning process

as well as traditional research and administrative arrangements.

My intent in this address is to draw distinctions between those external forces which seek to deal with the legitimate concerns of government and society -- and which, if properly and reasonably administered, will have a positive impact on institutions of higher education and our nation as a whole -- and those forces which may well have an insidious influence upon what we as a people wish to preserve in our colleges and universities. Ambrose Bierce, the 19th Century American humorist, once defined "influence" in politics as "a visionary quo given in exchange for a substantial quid." Hopefully in the case of the higher education-government partnership, the quo will be substantive rather than visionary and the quid will be the result of a balanced and rationally ordered process -- grounded in mutual goodwill, understanding and respect for the proper roles of both government and education.

FEDERAL INFLUENCES

As you are already painfully aware, there are real and substantial costs associated with implementing most federal regulations. The recent special report on this subject by the American Council on Education, which included only a sample of federally mandated programs and institutions, indicates that these implementation costs may range from 1 to 4% of an institution's budget. Yet, to fire an undifferentiated barrage of shotgun criticism against these mandated and annoying burdens would, in my view, be irresponsible; a carefully targeted rifle analysis, however, may be useful.

The federal government has increasingly required colleges and universities

to perform police power duties and to absorb the burdens associated with that function. Recent changes in the Veterans Administration rules, for example, impose a measure of liability upon the university for student violations of VA regulations. Sensitive to any accusations of misuse of its funds, the VA has attempted to construct "fail-safe" regulations designed to protect against the least probable case. While fail-safe regulations tend to be cumbersome, costly and oppressive, it must also be acknowledged that the drive to establish such regulations is not a response to imaginary wrongs, but reflects very real inadequacies in the ways in which the educational establishment has discharged its responsibilities. The problem is a real one; the issue is whether the proposed solution has not created an even worse problem.

Legal costs for colleges and universities have risen dramatically in recent years. Many of these costs can certainly be justified as the necessary price of investigation and resolution of justifiable claims of unfair treatment. Some of them are a reflection of the increasingly complex society in which we live, and its tendency to judicialize the decision-making processes of government. But some cannot be justified. For example, I know of no satisfactory explanation for the multiple forums in which institutions must sometimes redundantly litigate the same issues over and over. My own university, for example, is currently the defendant in a tenure denial case in the federal courts. But, at the very time that this case has been moving to trial, we have been required to defend our position in four other forums -- HEW's Office

of Civil Rights, the Equal Employment Opportunity Commission, the Department of Labor's Office of Federal Contract Compliance, and the state's Anti-Discrimination Division. Needless to say, all of these administrative investigations followed, and were largely duplications of, exhaustive internal committee reviews and grievance proceedings made available under established university policies, all of which had absolved the university of any improper discrimination.

Another cost problem that is particularly troublesome to research universities relates to current efforts on the part of the federal government to reduce the cost of federally sponsored research. Concerned that funds authorized for research are in increasing proportion being spent for overhead costs, a 1976 Congressional conference report urged that HEW act "to bring the spiraling indirect cost rates under control." My concern is that, unlike private research contractors, universities have never been able to charge the federal government for the full costs of doing research and a decision to take on more research means the academic program dollar must be stretched even further.

NACUBO's subcommittee on government costing policies reports that -- based on data collected at seven large research universities -- institutions participating in federal programs are currently required to contribute around \$350 million per year to the costs of federal research through the indirect costs they incur but cannot share with the government. That figure does not include indirect costs voluntarily assumed by the institutions, or the cost-

sharing required of institutions by some federal agencies.

While these monetary costs are real and have serious consequences for the financial viability of our academic programs, they have perhaps received disproportionate attention in the current debate. Significant nonmonetary costs are also being incurred. I mention two. The first, to borrow a phrase from Lyman Glenny, is "the anonymous leaders of higher education" that have emerged on the federal level as a result of the translation into rules and regulations of broad social goals enacted by Congress. I do not challenge these social goals, as embodied in such legislation as the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Equal Employment Opportunity Act of 1972, or Title IX of the Education Amendments of 1972, as either inappropriate or illegitimate. My concern is that Congress has only partially met its responsibilities in having failed to provide the federal enforcement agencies with sufficiently precise standards and guidelines for implementing these broad social goals. Indeed, as Martin H. Gerry of the Office of Civil Rights noted recently, the law-making function that the Constitution assigned to the Legislative Branch is being steadily eroded by transfer to the Executive Branch. By enacting broad and generalized pronouncements condemning discrimination, but neglecting to prescribe sufficiently precise indications of legislative intent to guide federal agencies, Congress is not only abdicating its constitutional role but also placing an inappropriate law-making function on appointive federal officials.

Legislation as broad and far-reaching as those mentioned should be

preceded by full legislative hearings, including detailed consideration of their practical impact on groups being regulated, and should be accompanied by clear and detailed statements of legislative intent. Legislation that is nothing more than a sweeping expression of general goodwill or intent, as Mr. Gerry termed it, ought to be vetoed by the President on the basis that it fails to provide the Executive Branch with what it needs faithfully to execute the law.

Much of the blame for detailed regulations and for enforcements resulting from these has therefore fallen on middle-level federal officials. In the absence of policy guidelines from Congress, the bureaucracy pursues what it perceives to be the best interests of the nation. But, as Solicitor General Robert Bork has recently noted, it is ". . . the nature of a bureaucratic agency, concerned with one single issue such as health, or sex discrimination, to make demands in the name of that value beyond the point where it begins to conflict with other values." Balancing conflicting values lies at the heart of our legislative system and is a function more objectively performed by Congress than by appointed mission-oriented compliance officials.

Another important aspect of change in the higher education-government partnership is the increasing intrusion by the courts and federal agencies into the right of institutions to establish their own academic, admissions, and employment standards. For example, in a recent article in Change, Malcolm Sherman notes that the Equal Employment Opportunity Commission and several recent court decisions have required criterion-related validation of employment and promotion tests, meaning that precise, functionally justified, and

statistically verified criteria directly related to job performance must be used. Such empirical validation poses critical problems for higher education since educational requirements rest on broad policy considerations and value preferences, as opposed to the more obvious day-to-day necessities of particular jobs. Yet courts and government bureaucracies seem to be interpreting civil rights laws to require job qualification validation by a process that effectively excludes nonquantifiable values which, in the academic world, are widely believed to be essential to sound and nondiscriminatory personnel selection.

Sherman argues, "If teaching is merely the transmittal from instructor to student of a standard curriculum, then a Ph.D. may not be essential for teachers of undergraduates. But if teaching is conceived of as a process of discovery within a flexible framework, then it becomes both more natural to expect teachers to have demonstrated their abilities as scholars and more difficult to establish the criterion validity of any standards. Intellectual values and standards and the internal policies of institutions have been labeled as civil rights issues over which courts and government agencies have acquired significant jurisdiction."

The examples to which I have alluded illustrate a more pervasive concern of particular interest to public colleges and universities. That larger issue of the imposition of uniform federal standards on states and their agencies is, however, receiving encouraging attention by the courts. Last June, the Supreme Court appears to have given new life to the theory of state sovereignty

in the federal system, by holding that Congress may not, in the exercise of its power to regulate commerce, interfere with state autonomy in structuring personnel relationships relating to the performance of traditional governmental functions, including education. Moreover, earlier this year, the high Court reaffirmed the rule that unconstitutional discrimination exists only when disparate effects experienced by minorities are shown to have been purposefully contrived by public officials. Reverse discrimination, which was held last June to be illegal when practiced by private employers, is now under full-fledged review in the Supreme Court.

These developments hopefully suggest an increasing judicial sensitivity to the need to develop a more viable balance between the competing demands of state and national power, aspiration and practicality. They should, however, not impair the commitment of higher education in providing leadership, training and example -- not as a matter of legal compulsion but as a point of principle -- for the solution of the great social dilemmas of our time.

STATE FORCES

I would like to shift briefly now to state-level forces affecting higher education. As higher education has received an increasing proportion of state appropriations, and as attitudes in state capitols have shifted from one of optimism and trust to suspicion and regulation, various state agencies have taken a greater interest in the internal affairs of universities.

Studies by Berkeley's Center for Research and Development in Higher Education, the Carnegie Commission, and others, as well as our own

experiences, have shown a growing tendency for state-level staffs to probe deeper into the management of institutions of higher education. Legislative intent has become more extensive and detailed. Traditional fiscal audits have been expanded to include "performance" audits. Multiple requests for information in different formats come from staffs of various legislative committees, state executive agencies, and state governing boards. All are familiar trends to this group.

Two aspects of these trends disturb me. The first is what one might call the myopic and microscopic view being taken -- peering deeper and deeper into the detailed operational practices of institutions of higher education without understanding either the context of the data examined or the consequences of such an in-depth involvement. State level staffs, often hungry for information -- any information -- sometimes demand masses of detailed and frequently inappropriate information. These informational fishing expeditions are not only costly and generally ineffective, but perhaps more importantly they represent a mode of governmental oversight that undermines effective institutional administration and independence.

A second trend is the increasing interest of the state house in controlling all funds flowing to state agencies -- specifically federal funds. A case pending in the Pennsylvania Supreme Court highlights the issue of the state role in overseeing federal grants. This case raises the question of whether the legislature, through its historic power of the purse, can control the expenditure of federal grant funds available to state agencies.

Those opposing such controls argue that complete state legislative control of all federal funds would "totally hamstring" the state's ability to utilize and acquire federal funds. University researchers and others seeking federal funding must often act very quickly to obtain federal funds. Having to wait for proposals to clear legislative committees would introduce intolerable delays and would introduce an unnecessary political element into an already lengthy review process.

The Pennsylvania General Assembly has, on the other hand, advanced the not insignificant argument that the legislature must exercise control over the federal portion of the state budget. Legis 50, formerly the Citizens Conference on State Legislatures, has entered the case as *amicus curiae* to support ". . . the responsibility of the legislature to determine how and where the state raises and spends its money." In an August 1976 report, the Advisory Commission on Intergovernmental Relations noted that legislatures have abdicated their traditional power of the purse and responsibility for program oversight, and concluded that a strengthened state role in the approval process for federal grants is needed to enable the states to establish their own spending priorities.

I view the desire of states to control all funding sources with alarm, in part for the reasons cited above, but more importantly because such control would fundamentally alter the higher education-federal government partnership. The federal grant system, to a large degree based upon the principle of peer-review, responds in a positive way to national research

and training needs. A state level, essentially political, review seems to me to be inappropriate and run counter to the best interests of society as well as to the continuing viability and freedom that have characterized our nation, colleges and universities.

TOWARDS A PERSPECTIVE

Before discussing possible courses of action, let me pause to assess some of the underlying philosophical concerns I have regarding the external forces to which I have referred. The first deals with the nature of colleges and universities and the academic freedom that undergirds them.

Freedom of choice is the essence of freedom itself and is the reason why western civilization has both valued education and secured it within institutions protected against the vagaries and potentially unfriendly influences of the political and governmental systems. This protection is especially crucial for universities because they are society's chief instrument for the discovery, organization, analysis, and transmission of knowledge. As we all know, ideas and knowledge are the most powerful influences in our world, and are, therefore, as much a threat to the established order as they are essential to the functioning of any civilization committed to individual liberty and personal freedom.

Thus, it is with particular discomfort, that one notes in the land today a tempting heresy, fashionable and appealing to a good many, and yet, if fully realized, destructive of free-standing, self-directing, intellectually autonomous institutions of higher learning. It is, simply put, the proposition

that universities are just one more agency of government subject to essentially the same bureaucratic controls, measures, expectations, and efficiencies as any other. Universities, especially state-supported ones, are becoming what Clark Kerr calls "regulated public utilities" with bureaucracies at both the federal and state levels rising up to do the job of regulating them.

A university is an especially vulnerable place, as fragile as truth itself, and as subject to compromise from within as from without, as the decade just past made amply clear. "The University is an intensely human enterprise," as President Harold Enarson of Ohio State recently said, and "it is not so much managed as it is led."

Similar bureaucratic influences, if not regulations, are at work at the state level as well, especially as the nation's colleges and universities are gathered together into state systems of higher education in contrast to their being governed as single institutions. Such systems tend to standardize course offerings for lower division work, mandate uniform teaching loads, fix common salary schedules, adopt common space standards and criteria for library acquisitions -- as though there were no distinctions to be made among and between colleges and universities in the quality of their work, in the respective missions, in their learning environment, in the desires and abilities of their student bodies, in their basic character and inner selves.

The budgetary, bureaucratic, and political processes tend invariably to favor a more ordered, rational and quantifiable environment and to disfavor variations from the norm, qualitative differences, and dissimilarities in

style and institutional character. "We talk a lot about pluralism," President Richard Lyman of Stanford recently noted, "but we are in fact in danger of becoming standardized, and on a basis that would make the survival of great universities impossible." High aspirations, intense effort and rigorous standards are all under attack today, to a degree that would have been unthinkable fifteen years ago. We must recommit ourselves to excellence and do so within the purpose of our respective missions. We must also develop a greater willingness to change and to challenge familiar and comfortable patterns of work.

The second area of assessment deals with the nature of the higher education-government partnership. The problems to which I have referred are not new -- they are in fact as old as the university and the state. Contemporary governmental intrusions into the prerogatives of autonomous academic institutions are not significantly different from attempts by Medieval bishops and princes to run the University of Paris in the 13th Century. In this historical sense we can reasonably expect that attempts to control or influence colleges and universities will never cease. What this perspective can teach us, however, is that efforts can and must be made to strike a "reasonable" balance of interests that will be conducive to both legitimate societal concerns and to the long-term viability and autonomy of academic institutions.

What then characterizes a "reasonable" balance of interests? Certainly any determination of reasonableness requires a process -- an opportunity

to "reason together" and to explore in a spirit of mutual respect the nature of commonalities and differences at various levels of policy making. Secondly, to expect results from such a process requires attitudes of trust and confidence and a willingness to arrive at mutual accommodations characteristic of a partnership rather than parties engaged in adversary proceedings.

These procedural and attitudinal prerequisites are necessary but not sufficient conditions to a determination of reasonableness. I would add to these self-restraint and responsiveness. Self-government requires self-restraint and a belief that a decentralized system composed of many people believing in and committed to certain common ideals will act positively in adaptative and responsive ways to achieve those ideals. Justice Brandeis' admonition that ". . . the greatest dangers to liberty lurk in insidious encroachment of men of zeal, well meaning but without understanding" is particularly meaningful in the context of current higher education-governmental relationships.

Equally dangerous to self-government, however, is the possibility of essentially self-regulating institutions, such as our colleges and universities, not responding to legitimate, broadly perceived social demand. Failure to respond will in the short run induce governmental intrusion and will in the long run destroy our free-standing, self-regulating institutions of higher learning.

DIRECTIONS

As a prelude to future directions of the current debate over the higher education-government partnership, let us first recognize that progress is

being made. At the federal level, the recent report of the Interagency Task Force on Higher Education Burden Reduction contains many useful recommendations, such as the pretesting and clearance of forms, measurement of their burden, greater use of sampling in surveys, and other proposals which institutions of higher education should welcome and hopefully will press for implementation. As Charles Saunders of the American Council on Education has recently noted, the task force report reflects a genuine sensitivity by agency representatives for the effect of federal regulations on the campus. A continuation and broadening of this type of dialogue is essential.

A second direction is for Congress to give more substance in the form of adequate legislative guidelines to flesh out the sweeping bare-bones legislation it has enacted. To expect federal bureaucrats to proceed with implementation in the absence of such guidelines is totally inappropriate if not a subversion of constitutional allocations of power.

Thirdly, we as college and university administrators need to improve our response to legitimate areas of federal and state concern, to increase our visible willingness to be fully accountable to our relevant constituencies. Some of our accounting controls, for example, may well need tightening, despite the added expense, both for purposes of internal management and external oversight.

Finally, I firmly believe that we must be sensitive to and seek to oppose firmly inappropriate intrusions upon institutional autonomy from state, federal and other external forces. We must retain that which has made American

higher education what it is -- the most adaptive, productive system of higher education in the world. We must develop and maintain a perspective that preserves a high standard of excellence at all levels of higher education, while at the same time recognizing those changes and embracing those reforms that promise to contribute in a positive way to this standard.

I would like to close by quoting the pertinent remarks of former HEW Secretary F. David Mathews, in his address last fall to the Association of Governing Boards:

"I have come to the conclusion, that no amount of accounting, no refinement of statistics, no system of accountability will ever save or preserve or perpetuate higher education. If, in the process of trying to account for what we do in such a detailed way, we make universities places that are more hospitable for people who are more facile with forms than they are with ideas, we will have corrupted the character of universities in such a way that they have little hope of doing what society asked them to do in the first place."