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SEXUAL HARASSMENT – THE FEDS GO WAY TOO FAR

PETER WOOD | June 4, 2013

In a letter dated May 9, the federal government dramatically expanded the definition of sexual harassment on campus. In the 31-page letter, the Civil Rights Division of the U.S. Department of Justice (DOJ) and the Office of Civil Rights (OCR) in the U.S. Department of Education, informed the president of the University of Montana, Royce Engstrom, that they were “pleased to confirm the resolution” of an investigation into how the University had handled allegations of sexual misconduct. The stately bureaucratic prose did not distract much from the main point: via this letter, the executive branch of the federal government was imposing a startling change. Essentially it said that from now on the feds would treat as “sexual harassment” any “unwelcome conduct of a sexual nature.” And it eliminated the requirement that actions or speech had to be “offensive” according to reasonable standards and objective evidence to be deemed actual “harassment.”

The storm of protest against the DOJ and OCR letter covers a wide range of political perspectives. Huffington Post’s Huffpost Live posted a 23-minute conversation hosted by Alyona Minkovski, featuring libertarian Greg Lukianoff, feminist Elizabeth Nolan Brown, and conservative Nathan Harden (from The College Fix), who seemed in ardent agreement over the awfulness of the new regulations. Elizabeth Nolan Brown thinks the OCR’s overreach trivializes the real problems of sexual misbehavior on campus. She said, “It makes the very real concepts of consent and sexual harassment prevention just seem that much more ridiculous.” Lukianoff said the OCR has gone “wildly overboard sending into havoc frankly the state of harassment law on campus.” Harden asks, “Where is the presumption of innocence?”

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KC JOHNSON | JUNE 12, 2013

In the ideal world, academic unions stand as guardians of academic freedom. In the real world, too often they cling to the status quo, resisting needed reforms, opposing meritocracy, and working to stifle campus dissent. Then there's the CUNY faculty union (the Professional Staff Congress), whose leading figures act as if their goal in life is to give all academic unions a bad name.

The PSC's latest gambit has been to rally opposition to Pathways, the CUNY-wide general education program proposed by just-retired chancellor Matthew Goldstein, designed to ease intra-CUNY transfers and enhance students' opportunities to take a diverse array of upper-division electives. Given that the current union leadership opposed every attempt by Goldstein to improve quality at CUNY, it came as little surprise that it opposed Pathways as well. But the disingenuousness of the union's conduct on this issue has been breathtaking nonetheless.

Even though debates over curricular requirements would seem well beyond the purview of a union, the PSC organized a plebiscite to express "no confidence" in Pathways, resulting in a 92 percent triumph for the union's position. (Perhaps a 99 percent tally was perceived as slightly too propagandistic.) Sadly, the results from this ballot—which amounted to little more than a push poll—were uncritically accepted by some in the media, even those who usually cover CUNY matters with rigor.

The rigging of the ballot procedures began from the start: the original ballots identified the professor's name, sending a message to untenured faculty that they could face retaliation if they didn't vote the union's way. The oppressive atmosphere that the PSC leadership has cultivated extended even to the ranks

of the tenured; the most widely circulated critique of the union's position came from a pseudonymous e-mail penned by a senior faculty member, who concluded that "the union's leadership is uninterested in constructive dialogue about anything," but declined to give his name for fear of retaliation.

Such arguments appeared nowhere on the ballot, which included language presenting only the union's arguments against Pathways, with no counter from faculty who supported the initiative. (So much, it seems, for academic dialogue and the importance of robust intellectual exchange.)

Lest adjuncts have a chance to vote their self-interest—Pathways will give them a wider array of courses to teach, thus boosting their CVs and aiding their search for permanent employment—the

The disingenuousness of the union's conduct has been breathtaking.

union excluded adjuncts from voting in the plebiscite. Finally, having narrowed the electorate and presented one-sided ballot language, a PSC "organizer," John Gergely, contacted professors individually to pressure them to vote against the administration. (Faculty dues pay not only Gergely's salary but that of other "organizers" and even an "organizing coordinator"—although what they organize is unclear, since all full-time CUNY professors automatically have dues deducted from their paychecks, regardless of whether they join the union.)

Even then, a small minority voted against the union's position, while almost 40 percent of faculty members simply abstained. So: in a contest rigged in almost every manner, only a bare majority of all professors actually cast ballots in favor of the union's position. The plebiscite campaign was an embarrassment, even by the current union leadership's authoritarian standards, and should have received no weight. That it did, from any quarters in the media, is most unfortunate.

KC Johnson is a history professor at Brooklyn College and the City University of New York Graduate Center.

WHAT HAPPENED TO THE GREAT STATE UNIVERSITIES?

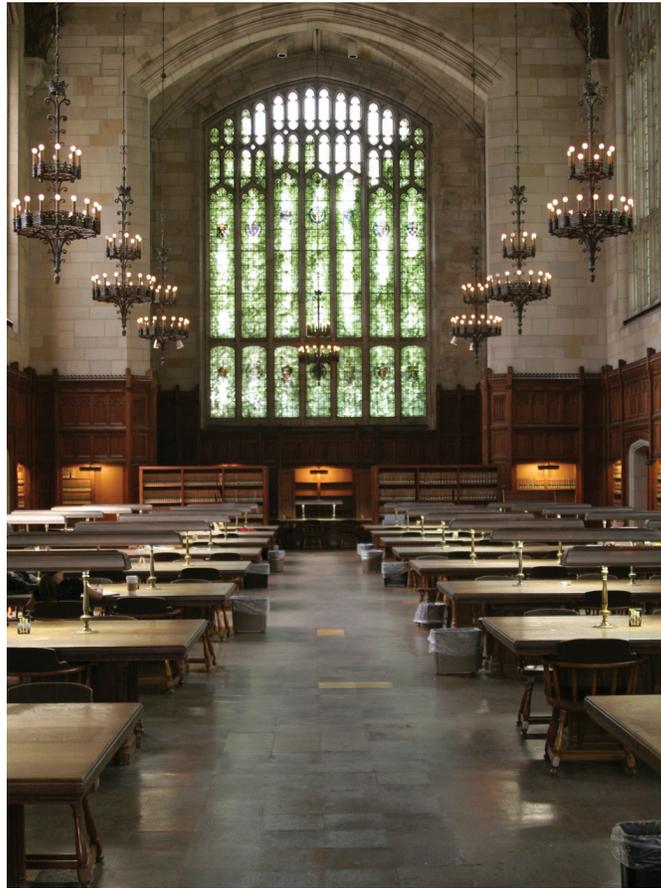
JAMES PIERESON | MAY 15, 2013

Even while the rest of the economy struggles, the last decade has been a flush time for private institutions, with endowments surging an average of 19.2 percent in 2011 and 11.9 percent in 2010, according to the National Association of College and University Business Officers. Meanwhile things have gone steeply downhill for public colleges and universities as legislatures across the country have cut back on appropriations for higher education and, at the same time, have imposed ceilings on tuition increases. The financial squeeze has taken a toll on the quality of instruction offered at some of our best public institutions. Unfortunately, the situation is likely

to get worse in the years ahead, given the condition of state and federal budgets.

But current financial pressures have only brought out into the open a process that has been ongoing for several decades: public institutions—especially the so-called “flagship” institutions—have been losing ground to private colleges and universities since the 1970s.

There was a time not so long ago when elite public institutions, such as the University of California (Berkeley), the University of Michigan, and the University of Wisconsin, more than held their own against competition from Harvard, Yale, Princeton, Stanford, and other elite private institutions. Berkeley’s reputation for academic excellence in the 1950s and 60s was unsurpassed; indeed, in the 1960s, many experts considered Berkeley to be the finest university in the world. Flagship universities in Michigan, Wisconsin, Illinois, Minnesota, North Carolina, and Virginia earned rankings in the top 10 or 20 universities in the country. Admission to these institu-



tions was widely sought after by out-of-state students willing to pay premium tuition for high-quality education. With enrollments in excess of 30,000 students, these institutions dwarfed the privates in scale but delivered a great deal of educational “bang for the buck.”

Today the situation is vastly changed. There is not a single public institution listed among the top 20 schools in the 2012 ranking by *U.S. News and World Report*. Berkeley ranks 21st, while Virginia comes in at 24 and Michigan at 29. The *Forbes* ranking, which takes into account the both cost of the college and the quality of its educational program, does not list a single public institu-

tion in the top 30, and lists just seven in the top 50—certainly an indictment of the quality of instruction offered at the less costly public institutions. In that survey, Berkeley comes in at number 50, while flagship universities in Michigan, Wisconsin, Illinois, and Minnesota do not make the cut at all. For the first time private institutions—and not just the Ivies—dominate the roster of our top colleges and universities.

There are undoubtedly many causes that one might cite to account for this far-reaching development in higher education. Public universities in the Midwest have been forced to cope with population changes and the decline of auto and steel industries in their states. At the same time, private institutions have benefitted disproportionately from the stock-market boom of the last three decades that has provided them with the resources to recruit top faculty and students while expanding their research and educational programs. Public universities, long in the habit of relying upon legislative appropriations, have only recently begun to tap into this expanding spigot of private wealth.

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Yet there is a more fundamental cause behind this reversal of fortunes in higher education. Put simply, big government is killing—has killed—the elite public university.

In the heyday of the flagship universities in the 1950s and 1960s, state governments spent the bulk of their funds on just a few functions—primarily transportation, public safety, welfare, and higher education. During this period, flagship universities had few competitors for state funds and, indeed, with their alumni well represented in the legislatures and the “baby boom” generation headed off to college, they were well positioned to lay claim to a rising share of state budgets. Across the nation, between 15 and 20 percent of state budgets flowed into the public universities at a time when public-employee pensions, health insurance, and K-12 education were still minor items in state budgets. For a brief time, the political environment favored generous investments in elite public education.

That is no longer the case. The expansion of state governmental functions since the 1960s has created a most unfriendly political environment for the flagship universities. According to a report by The National Association of State Budget Officers, Medicaid and K-12 education together accounted for 44 percent of state government spending in 2012, while

public pensions (which claimed less than one percent of state budgets in the 1960s) now account for 11 percent of state expenditures. By contrast, higher education now lays claim to less than 10 percent of state expenditures, or roughly half the share allocated to this sector in the 1960s. In the scramble for public dollars, the flagship universities must now contend with public-employee unions demanding funds to pay for salaries and pensions for their members, court orders and referenda directing ever more public funds to K-12 education, and the lure of federal matching funds for Medicaid, welfare, and other federally subsidized programs.

Big government has killed the elite public university.

Does any of this matter? For all their flaws, flagship public institutions in the post-war era provided hundreds of thousands of working class and middle class Americans with a quality education and an affordable avenue of upward mobility.

They have prepared generations of leaders at the state and national levels. The great state universities are not going to disappear and many will maintain a standard of excellence, but in an age of lumbering and inefficient governments trying to do all things for all groups they will not have the resources to perform at their former level or to compete with high-performing private institutions.

James Piereson is a Manhattan Institute senior fellow.

LOWER-TIER SCHOOLS ARE IN BIG TROUBLE

DEAN BALL | JUNE 5, 2013

Joseph Urgo, the president of St. Mary's College of Maryland, has resigned after a major embarrassment: under his leadership the incoming freshman class is so small—nearly a hundred students fewer than expected—that the school faces a \$3.5 million budget shortfall.

That shortfall comes after St. Mary's, a secular private college, greatly simplified its application and increased its acceptance rate from the year before. Miscalculation and incompetence may be at work here. But so is the predicament of the not-so-prestigious, not-so-famous small colleges.

According to the Bureau of Labor Statistics, overall college enrollment among recent high school graduates fell

in 2012 to 66.2 percent, a low not seen since 2006. St. Mary's has been hit particularly hard: its matriculation rate in 2000 was close to 38 percent, and has dropped steadily ever since, according to the school's Office of Institutional Research. These gradually decreasing matriculation rates force colleges to offer students more incentives to accept offers of admission, often at the expense of the quality of education—such as open curricula, SAT/ACT optional applications, and the like. Yet tuition costs at many schools in St. Mary's tier continue to increase. In the current economic climate it is no shock that growing numbers of families are re-assessing the benefits of college. Apart from miscalculation, the problem at St. Mary's is the problem of all schools in that tier.

Dean Ball attends Hamilton College.

SEXUAL HARASSMENT *Continued from page 1*

David Moshman, a professor of educational psychology writing on the Huffington Post's College section, summed up matters by calling the new policy "an extraordinary threat to academic freedom."

The new definition will apply far beyond the high-range hills of Missoula. The first paragraph of the letter makes that clear: "The Agreement will serve as a blueprint for college and universities throughout the country to protect students from sexual harassment and assault." This isn't a "blueprint" in the sense that colleges and universities are free to say, "No, I don't like the layout of this floor. Can we put the hallway on this side and the sink over there?" It is, rather, a declaration that under Titles IV and IX of the Higher Education Act, the DOJ and the OCR will henceforth require colleges and universities to conform to the new plan, like it or not. The language of the letter is one of "obligations" and "must comply" and "remedies required."

OCR was apparently taken by surprise at the ferocity of the reaction and the dearth of supportive declarations. On May 29, it issued an e-mail answer to those who had written complaints about the new rules. FIRE quickly posted the OCR e-mail (with the name of the particular recipient redacted) and posted as well an analysis ("Facing National Criticism, Feds Attempt to Defend Controversial Campus 'Blueprint'"). OCR did not retract or amend its new definitions and rules but instead offered assurance that they did not mean what so many fear. The regulations "do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights under the First Amendment." The escape hatch that the OCR email conjures—but which is nowhere to be found in the original 31-page letter—is that the sexually offensive speech that OCR is targeting comes under the new rules if and only if it creates a "hostile environment."

Indeed, the doctrine of "hostile environments" is the ledge on which the whole speech-code enterprise of the anti-sexual harassment industry has built its edifice. In that sense, OCR's declaration is simply a restatement of its basic principle. The mischief lies in the definition of "hostile environment." In the letter to the University of Montana, for example, OCR explains, "Indeed, a single instance of rape is sufficiently severe to create

a hostile environment." Few would doubt that a rape creates a "hostile environment" for the victim and other potential victims in the immediate circumstances, but note the lack of guardrails around this declaration. How geographically large and how long-lasting is the "hostile environment" created by a "single instance of rape?" Does a rape at an off-campus fraternity party turn an entire campus of 60,000 students into a "hostile environment?" Does that "hostile environment" endure until the OCR signals years later that it is safe to step outside again?

I presume the answer to these questions, in the minds of OCR regulators, is "no." They have in mind some kind of unexpressed standard of "reasonability." The mystery is why they erased the language of reasonability that already existed and replaced it with the vague and open-ended declarations put forth in the Montana letter. Indeed, that letter explicitly rejected Montana's "reasonable person" standard. OCR now puts itself in the tenuous position of wanting it both ways: to champion its Montana declaration which rejects the reasonability standard, while asking the public to give OCR the benefit of the doubt that the

office really does adhere to some kind of reasonability standard of its own.

Does a rape at an off-campus fraternity party turn an entire campus of 60,000 students into a "hostile environment?"

FIRE makes quick work of OCR wobbling defense. Lukianoff speaks of OCR's "belated lip service to freedom of expression," after

issuing a "blueprint that doesn't once mention the First Amendment or freedom of speech." In any case, OCR's implied-but-denied standard of "reasonability" is small comfort. As Bill Jacobson and Wendy Kaminer among others have pointed out, the impossibly broad rule that OCR has conjured, a rule that potentially turns every word and every gesture into grist for a sexual harassment complaint, is really a writ of arbitrary power for campus administrators who will get to select which cases deserve institutional attention. Does anyone seriously think the choices they will make in this zone of discretion will be fair-minded? Rather, the prospect is that members of favored groups will not be prosecuted for activities that violate the policy and members of disfavored groups will be.

OCR presented its "blueprint" as an authoritative pronouncement. It has no credibility now to say it didn't aim at re-architecting the whole house.

Peter Wood is president of the National Association of Scholars.

CATHY YOUNG | MAY 17, 2013

A few months ago, a post with a shocking claim about misogyny in America began to circulate on Tumblr, the social media site popular with older teens and young adults. It featured a scanned book page section stating that, according to “recent survey data,” when junior high school students in the Midwest were asked what they would do if they woke up “transformed into the opposite sex,” the girls showed mixed emotions but the boys’ reaction was straightforward: “Kill myself” was the most common answer when they contemplated the possibility of life as a girl.” The original poster—whose comment was, “Wow”—identified the source as her “Sex & Gender college textbook,” *The Gendered Society* by Michael Kimmel.



The post quickly caught on with Tumblr’s radical feminist contingent: in less than three months, it was reblogged or “liked” by over 33,000 users. Some appended their own comments, such as, “Yeah, tell me again how misogyny ‘isn’t real’ and men and boys and actually ‘like,’ ‘love’ and ‘respect the female sex’? This is how deep misogynistic propaganda runs... As Germaine Greer said, ‘Women have no idea how much men hate them.’”

Yet, as it turns out, the claim reveals less about men and misogyny than it does about gender studies and academic feminism.

I was sufficiently intrigued to check out Kimmel’s reference: a 1984 book called *The Longest War: Sex Differences in Perspective* by psychologists Carol Tavris and Carole Wade. The publication date was the first tipoff that the study’s description in the excerpt was not entirely accurate: the “recent” data had to be about 30 years old. Still, did American teenage boys in the early 1980s really hold such a dismal view of being female?

When I obtained a copy of *The Longest War*, I was shocked to discover that the claim was not even out of context: it seemed to have no basis at all, other than one comment among examples of negative reactions from younger boys (the survey included third- through twelfth-grade students, not just those in junior high). Published

in 1983 by the Institute for Equality in Education, the study had some real fodder for feminist arguments: girls generally felt they would be better off as males while boys generally saw the switch as a disadvantage, envisioning more social restrictions and fewer career options (many responses seemed based on stereotypes—e.g., husband-hunting as a girl’s main training for adulthood—than 1980s reality). But that’s not nearly as dramatic as “I’d rather kill myself than be a girl.”

Hoping for clarification, I e-mailed Kimmel, a sociology professor at Stony Brook University in New York and a leading scholar in gender studies. Kimmel replied that he had indeed relied on the Tavris and Wade book; he added that he “had intended to remove the reference” as dated and would definitely do it for the next edition. (*The Gendered Society* has gone through five editions since 2000; the fourth, cited in the Tumblr post, appeared in 2011.) When I asked about the mismatch between his account of the study and his source, Kimmel promised to look into it after returning from a lecture tour; two weeks later, he emailed to say that he did not have *The Longest War* at hand and could not explain the discrepancy. He conceded that he might have “misquoted” Tavris and Wade, noting that he felt this did not affect his overall argument and hoping that I could “evaluate the larger value of the book without being distracted by a single error.”

What, then, about the larger value of *The Gendered Society*, described on its back cover as “one of the most balanced gender studies texts available”? Unlike some

conservative critics of feminism, I am sympathetic to Kimmel's professed goal of a society in which women and men are individuals first regardless of gender, and to his argument that the sexes have far more in common than Mars-Venus rhetoric suggests. Unfortunately, these principles coexist with a steady drumbeat of female victimhood and male wrongdoing—often backed by tendentious or downright distorted evidence.

Thus, *The Gendered Society's* discussion of gender in the workplace briefly acknowledges that women's earnings are driven down by family-related work interruptions—but still treats gender gaps in pay and advancement almost entirely as the wages of discrimination, summarily dismissing the factor of sex differences in worker motivation. The narrative is often contradictory. Thus, after citing staggering statistics of how many women are sexually harassed at work, Kimmel claims that the motive for harassment is almost invariably hostile—"to put women back in their place." A paragraph later, he notes that the truth in sexual harassment cases is often elusive because the man may see "an innocent indication of sexual interest or harmless joking" where the woman sees sexual pressure.

The chapter on "The Gendered Classroom" uncritically repeats tales of girls' woes—for instance, that girls' self-esteem "plummets" in junior high school—without mentioning that they have been strongly disputed, not just by critics of feminism but by mainstream psychologists. The assertion that "girls' IQs fall by about 13 points," compared to three for boys, is drawn from a 1935 book.

No scholarly text is ever error-free. But in the case of Kimmel's book, there is a consistent pattern of using selective evidence and even pseudo-facts to stress women's victimization and paint males (particularly American males) in the worst light. The fictitious claim that most boys would choose death over girlhood—which will undoubtedly live on the Internet after it's gone from future editions of the book—fits seamlessly into the big picture.

Internet myths aside, *The Gendered Society* is widely used in college courses. And if it is indeed the most balanced gender studies textbook available—which may well be true—that says a lot about the rest.

Cathy Young, a columnist for Newsday, is a regular contributor to Real Clear Politics and Reason.

WHY "UNSCHOOLING" DOESN'T WORK

RACHELLE DEJONG | JUNE 21, 2013

Quitting school is suddenly popular. The "unschooling movement," which claims that school is too expensive, too disengaged from the job market, and too elitist for smart, independent youth, has become the darling of hipsters, free spirits, and do-it-yourself-ers everywhere.

Take Dale Stephens, the 20 year-old entrepreneur who was homeschooled until age 12 and educated himself using free Internet courses, mentorships, and apprenticeships. Stephens started the self-directed learning organization UnCollege and wrote *Hacking Your Education*, whose subtitle instructs its readers to "ditch the lectures, save tens of thousands, and learn more than your peers ever will." "You don't need to be a genius or especially motivated to succeed outside school," Stephens writes, as long as you have the three key ingredients of grit, curiosity, and confidence.

Of course, unschooling isn't for everyone. Indeed, Stephens calls for "grit," but in our age of diminished self-sufficiency, fortitude is not our most universal quality. The road to knowl-

edge is always strenuous to tread, but even more so when attempted solo. How does one know, when facing such gargantuan tasks, whether the effort is worth the prospect of eventual reward? Moreover, the yet unformed and uneducated student cannot judge what studies best suit his needs, his vocation, or his intellectual development. How can he discern a steep ascent to the mountaintop from a difficult dead-end, when all he knows are the briars, the rocks, and the stitch in his side?

Yale president Noah Porter grappled with the prudence of student autonomy towards the end of the nineteenth century. Porter disputed with Harvard president Charles Eliot over the proposed introduction of electives into a previously rigid curriculum. "Their tastes are either unformed or capricious and prejudiced," Porter wrote of the student body. "If they are decided and strong, they often require correction. The study which is the farthest removed from that which strikes his fancy may be the study which is most needed for the student." We need not return to a one-size-fits-all curriculum, but we'd do well to heed Porter's observation.

Rachelle DeJong is a graduate of The King's College

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Source: *Forbes*
MORE FACTS...

EDUCARE--TO SAVE HIGHER EDUCATION
By Robert Weissberg

How do you end the current disaster where thousands of intellectually mediocre and unprepared kids who should not attend college nevertheless enroll and learn little of value while building crushing debt? And, for good measure, how can we discourage colleges from offering intellectual fluff, e.g., Gender Studies. In other words, return higher education to reasonably affordable higher education.

Glad you asked. Believe it or not, solutions exist and implementation would not be especially difficult. The model is Medicare, yes Medicare. We'll call our plan Educare.

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