

Educating the University

Review of *Restoring Free Speech and Liberty on Campus* by Donald Alexander Downs

By **Peter Berkowitz**

Our universities are ailing. Many, including most of our elite universities, have abandoned the notion that a liberal arts education is constituted by a solid core, that is, a basic knowledge of the humanities, social sciences, and natural sciences that all educated people should possess. Furthermore, for all their earnest words about the beauty and necessity of multicultural education, university administrators and faculty preside over a curriculum that routinely permits students to graduate without acquiring reading, writing, and speaking fluency in any foreign language, let alone competence in Chinese, the language of the most populous country in the world; Hindi, the most widely spoken language in the world's largest democracy; or Arabic, the language of Islam, a religion that commands an estimated 1.4 billion adherents worldwide. And perhaps most alarmingly, those who lead our universities have done little to oppose — often they have caved in to — fellow administrators and faculty who would sacrifice free and open inquiry to tender sensibilities and partisan politics. Unfortunately, an institution that lacks an ideal of an educated person, that fails to teach its students more than platitudes about the world beyond America's shores, and that punishes those who express hypotheses disagreeable to campus majorities makes a mockery of the idea of higher education. Such an institution may confer prestige and ensure handsome incomes after graduation, it may serve as an effective credentialing mechanism for future employers, and it may provide an attractive site for the charitable giving of wealthy alums, but it is hardly worthy of the name university.

Donald Alexander Downs, professor of political science, law, and journalism at the University of Wisconsin at Madison, is particularly concerned about the damage that has been done to American universities over the past 20 years by the universities' own assault, in the name of diversity, on free speech and liberty. Grounded in case studies of Columbia, Berkeley, the University of Pennsylvania, and the University of Wisconsin (where he played a major role in the ultimately successful movement to abolish speech codes), Downs's book is all the more devastating for the measure and scrupulousness with which he makes his case. Proceeding from an exploration of the ideas underlying the new anti-discrimination and harassment codes, Downs exposes rampant administration self-righteousness and faculty fecklessness in the face of university disciplinary proceedings that dispense with or trample on the most basic elements of procedural

fairness. But his tale is also an inspiring one, chronicling the power of a few brave faculty members and students to stand up to the censors, to mobilize support on campus and off, and to defeat the forces that threaten the university from within. Downs's case studies also show that outside our universities free speech sentiment is strong and can serve as a vital resource for those who will continue the struggle in the coming years to teach our disordered universities what our universities should be teaching students and exemplifying for the nation.

Downs is not a First Amendment absolutist or a civil liberties zealot. Nor is he a conservative crusader against the forces of political correctness. He has long studied the question of free speech and has come to his opinions the hard way, by testing them in practice and reflecting on the unexpected and unjust results. As a young scholar in the 1980s, Downs was the author of a book arguing that First Amendment protection should not have covered the right of neo-Nazis to march in Skokie, Illinois, where they were targeting Holocaust survivors and those whose families and friends had been murdered by the Nazis. And initially he was "firmly committed" to the codes governing students and faculty established in the late 1980s at the University of Wisconsin under then-Chancellor Donna Shalala to promote diversity and to combat race and sex discrimination. Although proponents insisted that these codes governed conduct and not speech, students could be punished "[f]or racist or discriminatory comments, epithets, or other expressive behavior directed at an individual or on separate occasions at different individuals" if such "expressive behavior" was intentional. The code governing faculty turned out to be even broader, not restricting its prohibition to harm intentionally inflicted. It did not take Downs long to grow alarmed by the high-handed manner in which both codes were enforced. The university proved willing to prosecute the expression of opinion, to suspend the most basic requirements of fundamental fairness, and to destroy reputations built up over decades by throwing its full weight behind the prosecution of comments that were clearly neither racist nor discriminatory. But it was not just the abuse of the codes that turned Downs against them. Concessions on free speech in situations not involving direct incitement to physical harm or violence, he concluded, were inimical to the university's central mission, the transmission of knowledge and the pursuit of truth.

Educating the University

(continued)

What forces have driven universities to clamp down on the free play of ideas and to collaborate in the vilification of moral and political opinions that depart from campus orthodoxies? One factor involves a transformation in the idea of the university. The last 25 years have witnessed the return of what Downs calls the “proprietary university,” which sees its central mission not as the transmission of knowledge and the pursuit of truth but rather as the inculcation of a specific — in this case ostensibly progressive — moral and political agenda. Another involves a transformation in the progressive sensibility itself. As late as the mid-1960s, the dominant opinion on the left was that free speech and due process were essential to the creation of a more inclusive and just society. But belief in the progressive character of liberal principles has been under intense attack by influential scholars since the glory days of Martin Luther King Jr. Radical feminists such as Catharine MacKinnon argue that the oppression of women is itself a product of liberal commitments to fair process (notwithstanding that never in history have women enjoyed the freedom and equality achieved in contemporary liberal democracies). Critical legal theorists maintain the same about the oppression of the poor, and critical race theorists press the claim concerning the oppression of minorities (notwithstanding the reduction in the number and poverty of the poor and the unprecedented inclusion of minorities in public life in liberal democracies). At the same time, many campus theorists drew inspiration from Algerian social critic Frantz Fanon, whose *The Wretched of the Earth* argued that sympathy with those who suffer is a higher priority than respect for individual rights (even though respect for individual rights has proven over time the most successful means for alleviating suffering). Meanwhile, postmodern critics, believing themselves to be following Nietzsche, argued that individual rights were fictions invented by the strong to control the weak (never mind that Nietzsche decried modern liberalism as an invention of the weak to tyrannize the strong). Taken together, these opinions encouraged the idea of “progressive censorship,” the policing of speech to ensure that it conformed to standards deemed necessary to lift up and liberate the oppressed.

It is not Downs’s task, however, to expose the intellectual deficiencies of the trends in contemporary social and political thought that have informed the progressive repudiation of liberal principles on campus. Rather, it is to provide a blow-by-blow account of the repression that the betrayal of liberal principles on campus has unleashed.

In February 2000, for example, Columbia University enacted a new “Sexual Misconduct Policy.” Proponents had claimed that the university had been covering up an “epidemic of rape” on campus. And they argued that procedural guarantees for the accused — the right to a presumption of innocence, to be present during testimony and to confront one’s accuser, to be accompanied at hearings by an attorney, to an impartial judge and jury that were, among other things, separate from the prosecution — would contribute to the cover-up. Moreover, proponents argued, while procedural protections for the accused may be appropriate in an adversarial process,

the purpose of the Columbia University proceedings would be to “ferret things out,” to “avoid confrontation,” to refrain from an “adversarial posture.”

Students rallied in favor of the policy. Very few faculty members stepped forward to utter the obvious: Allegations of sexual misconduct including rape are inherently grave and irreducibly adversarial, and therefore elemental procedural protections for the accused are indispensable. But for the intervention of a then-new organization, the Foundation for Individual Rights in Education, the policy as enacted would likely still be in place at Columbia. When letters it sent to Columbia’s 20 trustees went unanswered, fire turned to the press. A blistering *Wall Street Journal* op-ed by Dorothy Rabinowitz was followed by a report in the *New York Times* and several hard-hitting front-page pieces in the *Village Voice*. By the fall of 2001, as a result of intense outside pressure and a small number of committed Columbia students, the university issued a revised policy. It recognized the irreducibly adversarial nature of proceedings concerning sexual misconduct and incorporated considerably enhanced protections for the accused — though considerably short of what one might expect, given that the policy covered allegations that could expose the accused to severe criminal liability.

Consider as well the rise of anti-free-speech activism at the University of California at Berkeley. Although he found no particular problems in the classroom (with the exception of the Boalt Hall law school, where he found student hostility to conservative opinions in the classroom) or in initiatives originating in the administration, Downs did find at Berkeley “‘progressive social censorship’ in the public forum — meaning pressure from individuals or groups outside of government or official institutions in the name of progressive causes, such as the shouting down of speakers, intimidation, threats, the theft of publications, and even burglary.” Unfortunately, Downs did not find, especially when the chips were down, the administration or faculty stepping forward to defend free speech.

The most notorious incident involved the publication in February 2001 by the student newspaper, the *Daily Californian*, of a paid advertisement by David Horowitz entitled “Ten Reasons Why Reparations for Blacks is a Bad Idea for Blacks — and Racist Too.” Although the ad was meant to be polemical and did spark outrage on campus, it in no way suggested that blacks were deserving of anything less than freedom and equality under law. The Berkeley chapter of bamn (“By Any Means Necessary,” which comes from the title of a book by Malcolm X) immediately denounced the *Daily Cal* as “racist.” Students in the hundreds gathered in front of the newspaper to demand an apology, and the editorial board swiftly caved, publishing the next day an unsigned apology in which the editors “confessed that the paper had allowed itself ‘to become an inadvertent vehicle for bigotry.’”

Appeasement, however, only inflamed the problem. The *Daily Cal* found itself not only under continuing criticism on campus for racism and insensitivity, but also under enormous criticism from the national media for abandonment of the principle of a free press and cowardly capitulation to the

Educating the University

(continued)

forces of political correctness. “During this episode,” Downs ruefully reports, “no faculty members or administrators spoke up in support of the First Amendment or free speech, either in the press or in public.” At the same time, he quotes a student editor on his real teachers in the crisis: “‘Had we not had that national media backlash, I don’t know that any of us would have thought twice about it being wrong to apologize. I know that I started to self educate myself on the First Amendment afterwards.’”

Recall, finally, the notorious “water buffalo” incident at the University of Pennsylvania. Late one evening in January 1993, a group of African American sorority sisters could be heard reveling outside a student residence hall. Several students shouted out their windows demanding quiet. Some yelled racial epithets. Only one student, however, actually admitted to yelling anything. That was freshman Eden Jacobowitz, an orthodox Jew, who shouted “Shut up, you water buffalo! If you want a party, there’s a zoo a mile from here.” Jacobowitz insisted to the university authorities who questioned him that water buffalo was not a racial epithet but rather a translation of the Hebrew word “behemoth,” which could be used colloquially to mean a rowdy person. He offered to apologize for being rude. But the university would not accept it. Penn’s “Judicial Inquiry Officer” informed Jacobowitz in March that he would be prosecuted under the university’s racial harassment code on the grounds that water buffalo referred to an African animal. At which point the freshman, who in his own words “couldn’t find anyone who was willing to take on the university,” found himself “completely alone.”

Until, that is, he encountered Professor Alan Charles Kors, a gifted teacher and distinguished scholar in the Penn history department (and eventual co-founder of *First Things*). Kors first tried reasoning with then-University of Pennsylvania President Sheldon Hackney and members of his administration, but to no avail. Penn proceeded to make preparations for a late-April hearing to consider the charges against Jacobowitz. Days before the hearing was set to take place, though, the *Forward*, a leading Jewish newspaper in New York, ran a story on the case. This was followed by a Dorothy Rabinowitz *Wall Street Journal* column denouncing Penn’s prosecution. And then the case exploded into the national media, with the vast majority of commentary coming down decisively against Penn and its harassment code.

The university’s response was to dig in its heels. It declared that the hearing must take place in May, despite Jacobowitz’s protest that by that time many of his witnesses would have gone home for the summer, and despite the university’s having lost a police report exonerating him. It was only when Kors and Jacobowitz filed a lawsuit against the principal administrators responsible for the prosecution, including President Hackney, that Penn agreed to change the focus of the hearing from the question of guilt or innocence to that of whether the charges should be dismissed. Ten days after the hearing, but before the panel issued its decision, Hackney — who had in the meantime been nominated by President Clinton to head the NEH and was in Washington preparing

for Senate confirmation hearings — called Kors with a deal in which the complainants would drop all charges (oddly, Hackney seemed to be serving as counsel for the complainants) and, in return, Jacobowitz (as he had initially volunteered to do) would apologize for rudeness. Jacobowitz accepted the deal.

These are just a few of the many abuses of authority and abdications of responsibility chronicled here, often in great detail. Although, according to Downs, his case studies represent only the tip of the iceberg, several large lessons emerge.

First, intolerance of dissent on campus, notwithstanding the language of concern for minorities and women in which it is typically couched, bespeaks a failure of imagination, an inability to appreciate opinions that differ from one’s own. It also reflects a demeaning stereotype according to which minorities and women are not capable of fending for themselves in classroom discussion and wider campus life by responding to utterances they find wrong, irritating, or insulting with better arguments and suppler words.

Second, free speech is not one value among many that a university legitimately pursues, but rather is a principle fundamental to the university’s central mission and so must be curtailed only in extraordinary circumstances, such as direct incitement to physical harm or violence. Collegiality and consensus are of course important, but at universities both should form around the principle of free speech for all, and particularly for those with whom one disagrees.

Third, the administration’s coercive harmonization of opinion on campus and disregard for the essentials of due process cannot succeed without a compliant and thereby complicit faculty.

Fourth, the experience of the past 25 years abundantly demonstrates that universities cannot be trusted to enforce speech codes and administer disciplinary procedures that do away with the essentials of due process. This is not necessarily because administrators and professors are less responsible or virtuous than ordinary citizens but because they plainly are no more responsible or virtuous.

In sum, there will be no cure for what ails our universities, Downs convincingly demonstrates, until they become bastions of free speech and liberty. But that is only the beginning. It will also be necessary to restore respect for, and indeed understanding of, the proper task of a university in a liberal democracy.

Universities can start by reestablishing — or establishing — the teaching of a solid core of learning that defines an educated person. The alternative, which has been widely adopted and involves “distribution requirements,” or special courses that focus on “methods of knowing” or “approaches to knowledge,” does not work and should be replaced. Typically, such programs abound in loopholes, provide watered-down alternatives for students not interested in the subjects, and send the cynical message that the faculty can’t agree on a common curriculum or thinks a core is unimportant or nonexistent. In fact a core is critical. Some works of literature and philosophy are constitutive of Western civilization, and some historical

Educating the University

(continued)

epochs have defined our identities. Some knowledge of economics and political science is crucial to understanding the forces that shape contemporary society. Some knowledge of the natural sciences is necessary to acquire the discipline of the scientific method, to better understand the operation of the remarkable technology with which we have surrounded ourselves, and to appreciate the intricacy of the natural world of which we are a part. By providing a knowledge of the world that has formed us, a solid core serves the Socratic end of self-knowledge.

In addition, a solid core promotes conversation and friendship among students. If in the first two years all students have been introduced to Plato and Mill, Shakespeare and Tolstoy, the American, the French, and the Russian revolutions, and the essentials of biology and physics, then they will have acquired not a shared set of opinions but a common fund of ideas to mull over, to debate, to extend, to correct, to overcome. Of course universities are bound to differ concerning the details of the core. And a certain superficiality is inevitable given the handful of courses into which the core must be fit. But an introduction to the core of a liberal education is better than ignorance of it, providing students with the knowledge, invigorating and humbling, of what they do not know.

Universities should also ensure that students are introduced to a genuinely multicultural education. This involves getting beyond what often today passes for it on campus — ideologically driven courses meant to celebrate “otherness” and “difference” and instill sympathy for and promote empowerment of alleged victims of Western colonialism and imperialism. A genuinely multicultural education would incorporate into the curriculum requirements that reflect the simple and straightforward educational imperative out of which multiculturalism’s legitimate demands flow: We must study other peoples and places because we cannot understand humanity — our own included — without acquainting ourselves with the variety of ways of being human. Here there is no substitute for introducing into the curriculum serious foreign language study. Indeed, every student should be required to gain reading, writing, and speaking proficiency in a foreign language. And students should be required to take companion courses in the history, literature, and politics of a nation

that speaks the language in which they attain proficiency. Such requirements not only immerse students in a particular foreign culture, but also help them appreciate the hard work needed for, and the uncommon pleasure afforded by, acquiring an understanding of other nations.

And universities must cultivate courageous and eloquent leadership. In part this means governing boards and trustees willing to select leaders with guts who would rather lose their jobs than kowtow to campus thought police. In part it means leaders with the confidence and clout to shift resources and implement changes: Institutional frameworks must be revised; new courses must be developed; a new generation of scholars and teachers must be trained. And not least it means leaders who will use their positions as bully pulpits to speak on campus and to the wider public on behalf of the worth of a liberal arts education. Not since A. Bartlett Giamatti stepped down from the presidency of Yale in the mid-1980s has the leader of a major American college or university seen it as part of his or her responsibility to educate students, faculty, and the nation about the true mission of the university. As our understanding of what universities should stand for fades, our need for such leaders to make the case for the university grows more urgent. Liberal democracy depends on citizens who can respect others in their amazing diversity and in their common humanity, who can intelligently question today’s conventional wisdom thanks to what they have learned from the past and been inspired to imagine for the future, and who can use their reason both to distinguish justice from injustice and to recognize the ease with which our passions and interests impel us to confuse the two.

The university contributes its part to forming such citizens by opening students’ eyes to the treasures (and flaws) of Western civilization and to the treasures (and flaws) of non-Western civilizations. Not the least of the lessons of a well-formed liberal arts education is that our universities can play their crucial political role only by staunchly refusing to politicize the transmission of knowledge and the pursuit of truth.

Donald A. Downs is Research Fellow at Independent Institute and author of *Restoring Free Speech and Liberty on Campus*.