

Conservatives Need Not Apply

By John O. McGinnis and Matthew Schwartz--*Wall Street Journal*--04/01/03

From the claims of supporters of diversity one might think that law schools are sparing no effort to make sure that campuses ring with contentious voices.

In its upcoming Supreme Court case, the University of Michigan Law School justifies its very substantial preferences for selected racial and ethnic minorities on the ground that a "critical mass" of African-American and Hispanic students is needed to assure that all students have the benefit of a variety of views and experiences. But professors even more than students set the intellectual tone in university life. Generating ideas is their job. These same law schools almost uniformly lack a "critical mass" of conservatives to offer an alternative to the reigning liberal orthodoxy.

We have conducted a study that provides evidence of the ideological imbalance at elite law schools -- of which we have heard no plans to rectify. We reviewed all federal campaign contributions over \$200 by professors at the top 22 law schools from 1994 to 2000. During that time, close to a quarter of these law professors contributed to campaigns -- a proportion far greater than the average citizen. The proof is stark: as the Anglican church was once described as the Tory Party at prayer, the legal academy today is best seen as the Democratic Party at the lectern. America splits evenly between the GOP and Democrats, but 74% of the professors contribute primarily to Democrats. Only 16% do so to Republicans.

These overall percentages substantially understate the effect of the partisan imbalance at most schools. Republican-contributing law professors are very disproportionately concentrated at two schools -- the University of Virginia and Northwestern. In contrast, many other elite schools have few or no politically active Republicans. At Yale, where almost 50% of the faculty donate, almost 95% give predominantly to Democrats. At Michigan itself the ratio is eight to one. Sometimes the amounts donated can be instructive: in the last six years Georgetown law professors have donated approximately \$180,000 to the Democratic Party, \$2,000 to the GOP and \$1,500 to the Green party. Conclusion? Mainstream conservative ideas are no better represented than those on the leftist fringe.

The overall ratio also understates the skewed debate on issues of public concern: our study finds that professors teaching economics-based subjects like antitrust and corporations are more conservative than their public-law counterparts. This leaves such subjects as constitutional law and international law -- the subjects that set the agenda for debate on the hot-button issues of our time -- with scarcely a conservative voice.

The Constitution properly disfavors government classification by race. When the government argues that it has a compelling reason to overcome the strong presumption of racial neutrality, the courts assess the sincerity of the reason by testing whether its policies fit with its justification. When law schools make no progress (and no discernible effort) in correcting the patent absence of diversity in viewpoints, it is fair to assume that their true goal is racial patterning, not educational diversity.

--The race-based "diversity" rationale is even more disturbing for what it shows us about the modern university. In light of its educational mission, a university has a particular obligation to logical argumentation, and a duty to reject subterfuge.

For instance, universities might argue that preferences are needed to make up for egregious past discrimination. That provides a principled rationale for extending preferences to African-Americans and Native Americans while not taking effective action to remedy the gross viewpoint disparities on faculties. In the event the Supreme Court rejects that rationale, private universities could encourage Congress to allow them to engage in race-based affirmative action on the grounds that private institutions should enjoy freedom to admit whom they choose. But by pursuing the diversity rationale, universities have sacrificed their higher calling to truth. Instead, they have become just another political faction, all too willing to dissemble.

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