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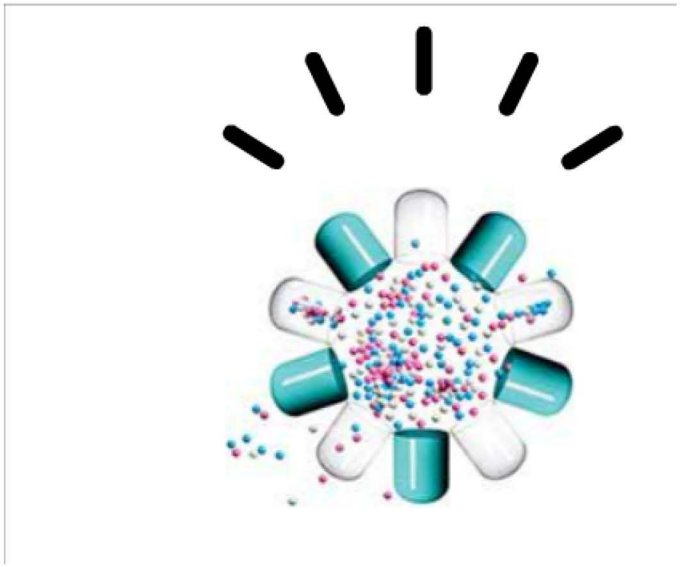

Conformity for diversity's sake

By George F. Will, Published: November 2

Illustrating an intellectual confusion common on campuses, Vanderbilt University says: To ensure "diversity of thought and opinion" we require certain student groups, including five religious ones, to conform to the university's policy that forbids the groups from protecting their characteristics that contribute to diversity.

Last year, after a Christian fraternity allegedly expelled a gay undergraduate because of his sexual practices, Vanderbilt redoubled its efforts to make the more than 300 student organizations comply with its "long-standing nondiscrimination policy." That policy, says a university official, does not allow the Christian Legal Society "to preclude someone from a leadership position based on religious belief." So an organization formed to express religious beliefs, including the belief that homosexual activity is biblically forbidden, is itself effectively forbidden. There is much pertinent history.

In 1995, the Supreme Court upheld the right of the private group that organized Boston's St. Patrick's Day parade to bar participation by a group of Irish American gays, lesbians and bisexuals eager to express pride in their sexual orientations. The court said the parade was an expressive event, so the First Amendment protected it from being compelled by state anti-discrimination law to transmit an ideological message its organizers did not wish to express.

In 2000, the court overturned the New Jersey Supreme Court's ruling that the state law forbidding discrimination on the basis of sexual orientation required the Boy Scouts to accept a gay scoutmaster. The Scouts' First Amendment right of "expressive association" trumped New Jersey's law.

Unfortunately, in 2010 the court held, 5 to 4, that a public law school in California did not abridge First Amendment rights when it denied the privileges associated with official recognition to just one student group — the Christian Legal Society chapter, because it limited voting membership and leadership positions to Christians who disavow "sexual conduct outside of marriage between a man and a woman." Dissenting, Justice Samuel Alito said the court was embracing the principle that the right of expressive association is unprotected if the association departs from officially sanctioned orthodoxy.

In wiser moments, the court has held that "this freedom to gather in association … necessarily presupposes the freedom to identify the people who constitute the association and to limit the association to those people only." In 1984, William Brennan, the court's leading liberal of the last half-century, said:

"There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate."

As professor Michael McConnell of Stanford Law School says, "Not everything the government chooses to call discrimination is invidious; some of it is constitutionally protected First Amendment activity." Whereas it is wrong for government to prefer one religion over another, when private persons and religious groups do so, this is the constitutionally protected free exercise of religion. So, McConnell says, "Preventing private groups from discriminating on the basis of shared beliefs is not only not a compelling governmental interest; it is not even a legitimate governmental interest."

Here, however, is how progressivism limits freedom by abolishing the public-private distinction: First, a human right — to, say, engage in homosexual practices — is deemed so personal that government should have no jurisdiction over it. Next, this right breeds another right, to the support or approval of others. Finally, those who disapprove of it must be coerced.

Sound familiar? It should. First, abortion should be an individual's choice. Then, abortion should be subsidized by government. Next, pro-life pharmacists who object to prescribing abortifacients should lose their licenses. Thus do rights shrink to privileges reserved for those with government-approved opinions.

The question, at Vanderbilt and elsewhere, should not be whether a particular viewpoint is right but whether an expressive association has a right to espouse it. Unfortunately, in the name of tolerance, what is tolerable is being defined ever more narrowly.

Although Vanderbilt is a private institution, its policy is congruent with "progressive" public policy, under which society shall be made to progress up from a multiplicity of viewpoints to a government-supervised harmony. Vanderbilt's policy, formulated in the name of enlarging rights, is another skirmish in the progressives' struggle to deny more and more social entities the right to deviate from government-promoted homogeneity of belief. Such compulsory conformity is, of course, enforced in the name of diversity.

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