Two papers delivered at a symposium, "The Response of Society to Unusual and Extreme Pressure Groups," presented at Indiana University School of Law

Sidney Hook
Michael I. Sovern
*Columbia Law School, msovern@law.columbia.edu*

Follow this and additional works at: https://www.repository.law.indiana.edu/iustitia

Part of the Curriculum and Social Inquiry Commons, Educational Leadership Commons, First Amendment Commons, Higher Education Administration Commons, Law and Politics Commons, and the Law and Society Commons

**Recommended Citation**
Available at: https://www.repository.law.indiana.edu/iustitia/vol1/iss1/1
The following articles by Professor Hook and Dean Sovern are derived from talks delivered at a symposium, “The Response of Society to Unusual and Extreme Pressure Groups,” presented at Indiana University School of Law on November 6, 1970.

While the door has apparently closed upon the period of ghetto and campus riots of the late sixties and early seventies, the fundamental issues of human rights which they raised remain unresolved. The symposium attempted to assess the origins, consequences, and remedies for these conflicts. The recent confrontation between American Indians and federal troops at Wounded Knee, South Dakota, raises again the question of the appropriate response of society to unusual and extreme pressure groups and provides a new factual situation within which to appraise the conclusions upon these issues drawn in the following two articles.
At no time in the history of American education would our topic, "Inquiry into the Response of Society to Extreme Pressure Groups" have been considered even remotely relevant to the nature and functioning of institutions of higher education. The reasons are obvious. When we speak of the behavior of unusual and extreme pressure groups in the context of education today, this is a euphemism for disruption, confrontation, violence, and other forms of planned disorder. In my own point of view, any other kind of intellectual pressure or dissent is legitimate and permissible so long as it avoids disruption, confrontation, or violence and remains within the amenities of rational discourse. We assume behavior that breaks out of these rational bounds is characteristic of groups who no longer accept the rules, conventions, or traditions that mediate the ordinary conflicts and pressures of social life. It marks, rather, the strategy of the desperate, the fanatical, the hopelessly alienated, and, when sustained and supported by an ideology, those committed to a revolutionary perspective.

The university, on the other hand, is traditionally conceived as a community in which knowledge and truth are sought and taught, not as an arena in which pressure groups contend for power and mastery over each other. The application of the model of a "conflict situation" to a university seems wildly inappropriate to the process of teaching and learning. For in the first instance, the relation of teaching and learning, of research and publication in all its forms, is not an adversary relationship. There are, to be sure, all sorts of differences and disagreements among members of the academy, but these are completely subordinate to its recognized primary function. The pursuit of enlightenment and insight, the transmission of skills and powers of appreciation, the delights of discovery, the joys of intellectual growth, the ends and products of learning—all of these are shared values. As distinct from the goods that are produced in the marketplace, the services that are bought and sold for profit, the powers of command for which people struggle in the political area of life, indeed, as distinct from all values over whose distribution pressure groups outside the academic community fiercely contend, the values of the academy are not diminished by being shared. The presence of the shared values of the educational process makes the whole conflict model irrelevant.
In view of this contrast between the behavior pattern of conflicting pressure groups and the function of the university, it should come as no surprise to anyone that the eruption of violence and threats of violence or even deliberate nonviolent lawlessness on campuses should have found administrators and faculty bodies completely unprepared to cope with them. Until quite recently the typical discipline problems of the university grew out of violation of rules regulating examination procedures, or the honor or dormitory system. At any given time they involved very few students. These discipline problems did not develop out of any ideologically or educationally motivated defiance of curricular practices in the university or out of concern with its governance or the complex of educational relationships between university and society.

This is all the more significant because the history of American higher education, despite uninformed statements to the contrary, has been a history of change, of profound change observable even in the history of legal education. In the course of these profound changes, whatever we may think of their wisdom (I am not now discussing educational philosophy), violence has played no substantial role. When you hear someone say that disruption or violence is necessary to achieve educational change, a careful glance at the record will reveal that he is talking tommyrot.

How then explain the relatively sudden emergence on university campuses of activist groups prepared to employ the destructive, and sometimes terroristic, strategies of extreme pressure groups, to challenge the structure of the university, its curriculum, its governance, its investment policy, and—gravest of all—the very principles of academic freedom that were so painfully won in the course of the last century? And how explain—as a second question—the ineptitude, the irresoluteness, the confusion and delusion, to use the mildest terms, of faculties and of administrative bodies in meeting these many-faceted challenges sometimes couched as non-negotiable demands? Finally, what can be done to devise a rational and effective mode of procedure to restore to the campuses of the nation the kind of atmosphere that will permit the educational process to function without periodic disruption, that will allow students to exercise those legitimate freedoms that are prerequisite to the intelligent gratification of their educational needs?

The first question: What caused campus confrontation, disruption, and violence? Like the answer to most questions of causation, the answer to this one is tangled and complex. But the most important factor, in my view, was the emergence of a set of ideas that redefined the function and role of the university. The primary educational mission of the university to serve as a center of learning and teaching, as an intellectual court, laboratory, and sustained colloquium for the analysis, exploration, and criticism of ideas in all fields, was subordinated to the view that the university was now to become an agency of social and political change. The leaders of extremist groups among the students, the SDS and kindred sects, originally manifested a commendable idealism in their concern with social and political problems. With reference to concern with social and political problems they could not fault the universities of this country, for the study of these problems constituted a major part of the curriculum of almost all institutions of higher education. In fact, many of these students were themselves educated to an awareness of these problems by their studies.

However, what this point of view (which I regard as chiefly responsible for campus change) demanded was that the universities as evidence of their sincerity, of their freedom
from establishment bias, transcribe these problems from the agenda of study to the agenda of action. They seized upon the issues of the Vietnam War, the draft, the urban crisis, issues and problems that had developed outside the university (and for whose emergence the university was in no way responsible), and sought to relate them by all sorts of manoeuvres to campus grievances, real or fancied. They demanded that the university as a corporate body take a stand on these questions, a stand that had to meet with the approval of the leaders of these extremist groups. They went further. They demanded that the curriculum, the research programs, the expansion and recruitment policies of colleges and universities, be revised and purged of all elements, materials, and personnel that were not functioning to remove the evils of war, of racism, of poverty, of pollution—indeed, of any social action that seemed oppressive in the eyes of ideological fanatics. How far-reaching and arrogant some of these demands were is evidenced in the ultimata delivered on many campuses that the universities abandon forthwith all defense-oriented research, that they call for the release of Bobby Seale and other so-called political prisoners, and that the universities contribute to the bail fund of the Black Panthers (think of that as a great educational project)—or else have the university torn apart. At my own institution, New York University, the computer at the Courant Institute was seized, and the threat made to blow it up unless $100,000 was paid over in a short period of time.

Some of the leaders of the extremist groups were under no illusion that the university could do anything about these demands or that the university could, for long, provide a sanctuary for hit-and-run guerrilla raids against the society on whose support the university depended. Nonetheless, they persisted on this course of conduct in hopes of provoking action that would radicalize the campus, swell the ranks of their adherents, and ultimately shut down the university. The astonishing thing is that this strategy began to affect certain faculty groups and even some administrators, who although they disapproved of the radical behavior of these students, began to extenuate it and explain it away with phrases like “We don’t condone what they do, but we must understand why they do, what they do.” And what was to be understood? This—that so long as the major social and foreign policy problems of our society are unresolved, the campus will necessarily be in turmoil. Since responsibility for solving these problems rested primarily with the government, it was, in the last analysis, the government that was provoking the extremist students to violence. The arsonists, the bomb throwers, the vandals and trashers among the students were really victims, not malefactors.

I have not the time adequately to explode this preposterous premise that until the major social and foreign policy problems of our culture are solved the campus naturally will be a place of turmoil and disruption. As preposterous as it is, it is extremely influential; elsewhere I have called it the “poisoned premise” of the whole extremist ideology. It runs counter to common sense, to the principle of institutional objectivity and neutrality, to the principles of academic freedom, and to all intelligent conceptions of the democratic process.

It violates common sense, because, in this view, since there will always be major social and foreign policy problems in an uncoerced society, there will never be a surcease from campus tumult and turmoil. It violates the principle of objectivity and institutional neutrality, because it commits the university as such, as distinct from its individual members (students and professors as individuals can take any stand they please), to partisan political positions. It violates academic freedom because decisions
that emerge from a cockpit of political controversy ultimately determine the allocation of
time and resources, distract from the basic tasks of education, scholarship, and teaching,
and culminate in substituting political standards for criteria of professional competence.
Finally, it violates the ethos of democracy by demanding that the community, instead
of leaving the settlement of political issues to its representative legislative bodies, take
positions on controversial issues under the threat of violent disruption. It also exhibits
the most arrogant kind of elitism. Society must solve its problems to the satisfaction of
a minority group of social “idealists,” really fanatics, who know the answers to our com-
plex problems better than the vast majority of citizens and legislators.

If a group of farmers or trade unionists were to proclaim that unless the country
solved its problems to their satisfaction, violence would result, we would recognize this
as an overt threat, a fascist threat, to our democracy. Extremist students have made de-
mands of precisely that sort.

This brings me to the second question: What explains the inappropriateness and the
inexpertise of the universities’ response to student disruption? Here, too, although com-
plex, it is easier to answer once provision is made for specific cases. All generalizations
here have to be qualified in the light of local conditions; but undoubtedly some factors
are common.

First of all, there was the element of surprise, of bewilderment, of initial incredulity
that any group of students would deliberately tear the fabric of academic life violently
apart. Up to a point, this bewilderment was understandable, but the bewilderment
prevented both administrators and faculties from grasping the seriousness of the
situation they confronted. They hoped the unpleasantness would die down like the
exuberant student panty raids of the past. They ignored the ideas and strategy behind
the disruption partly because of the “idealism” of the student extremists. And of
course no one can contest the “idealism” and sincerity; but idealism, sincerity, and
youth are never sufficient to justify excesses. There was also a certain sympathy with
the causes that agitated the young. To a considerable extent wish-thinking entered into
the expectation that an indulgent and forgiving attitude toward the first manifestations
of lawlessness would restore the status-quo: the troubles would go away, as the lesser
troubles in the past always had. In consequence, existing rules that governed student
lawlessness were not enforced, with the natural result that student activists were em-
boldened into escalating their demands. Some of the demands were called non-negotiable.

They often were accompanied by something that was really unusual in the history not
only of the university but of all other institutions—the demand and insistence upon
amnesty for past derelictions and impunity for further ones. In many institutions
there were no provisions for bringing the faculty as a body into the formulation and
implementation of decisions on basic disciplinary issues, because most faculties had
not anticipated such situations. They left such matters to the administration. The
occasional weaknesses of administrators, their errors in judgment in the eyes of some
members of the faculty, and their failure, in the eyes of other members of the faculty,
to quench lawlessness by the vigorous actions of suspension and expulsion, generated
a distrust between faculties and administrations and often an outright split. With
unerring instinct the student activist moved in to exploit the split, and usually capi-
tulation to their demands resulted. It is to be expected, and experience confirms it,
that whenever there is a split between the faculty and administration, the students
invariably will get their way. On the other hand, against a unified and courageous faculty and administration, disrupting students can never win.

Despite all this accommodation by administrators and faculties, the troubles did not go away. They mounted. Three other responses on the part of the university should be noted. Faculties as well as administrators seemed unable to learn from experience. Professor Searle of the University of California wrote an article in the New York Times Sunday Magazine, in which he compared the behavior of institutions of higher learning to a herd of buffaloes watching, with a mild curiosity, its individual members being shot down one by one, without realizing that they would successively be next in the sights of the rifles of the hunters. What happened in various parts of the country was viewed as happening elsewhere in a far-off land. It was met with the quiet and comforting assurance that “It can’t happen here.” The initial failure to act vigorously could not be retrieved by subsequent vigorous, even police, action.

Secondly, the faculties suddenly began to interpret every action of lawlessness by students as a consequence of their own failure to communicate with the students. By their sit-ins, their trashings, their arson, their bomb-throwing, said some, the students were trying to tell us something. What they are trying to tell us, among other things, is that their education is not relevant. Thereupon the faculties set to work to reorganize curriculums in order to make them more acceptable to students. Actually, there was no evidence at the beginning of the trouble that the causes of student disruption arose originally or mainly from student dissatisfaction with the educational process. A poll conducted among student activists at Berkeley, University of California, at the height of the disturbances in 1964, showed that an overwhelming majority of them professed satisfaction with the educational experience they had enjoyed at Berkeley. Later on all sorts of rationalizations were offered by students to extenuate their violence. For these and other reasons there took place a gradual erosion in faculty esprit de corps, or unity—under any circumstances a very fragile thing, as those of us know who have lived in the academy for any length of time. It turned out—and this may be called the third response—that university faculties behaved as if they were constituted of singularly unheroic persons. On crucial occasions, fear, sheer unadulterated physical fear, fear of personal abuse, fear of assault, fear of the destruction of their laboratories, of their libraries, their offices, sometimes fear of threat to their homes and families, spurred them on to accept what had formerly appeared altogether unacceptable, to swallow what had previously been characterized as an indignity. Always the most persuasive reason offered for reversing course, for capitulating to yesterday’s impossible demands, was not the educational reasonableness of the demand but that continued refusal would result in the extremist students’ “tearing the campus apart.”

A considerable number of faculty members made common cause with student extremists, some out of conviction, most out of opportunism. Other members of the faculty dug their heels in and protested the calling of the police on campus under any circumstances. To be sure, they deplored student violence. But they deplored even more the violence necessary to restrain student violence. Imagine grown, adult men introducing resolutions at faculty meetings declaring that under no circumstances should the police ever be called to the campus. “Even when there was danger to life and limb?”—I would ask. And although the question shamed some into silence, there were others who would reply: “Even then!”
I have no time to explore adequately the educational consequences of hasty and panicky reactions by faculties to extremist pressure group activity. Even when faculties refused to yield to overt disruption that was designed to put the university on a controversial political course, there occurred a kind of compensatory adjustment, a process I have called "internal politicalization." Under the slogans of relevance, participatory democracy, and student involvement, curricular changes were hastily introduced, requirements were waived, standards of admission and achievement lowered, and in many places the entire quality of the educational experience was debased. Some of the revisions on some campuses were beneficial and long overdue. They could have been properly justified on strictly educational grounds. (Curriculums should always be periodically reevaluated.) But in most places they were adopted not because of the weight of argument and evidence in their favor but under the weight of force and the threat of force.

Some actions taken clearly breached established principles of academic freedom, as when, for example, courses on race and related themes were dropped because of student objections to the race of the instructor; or, when his race was satisfactory—to his point of view!—he was not sufficiently nationalistic; or he was white inside despite the fact that he looked black. And all this usually because his point of view disagreed with the view of a handful of extremist and violence-prone students who dominated those enrolled for the course. In some institutions the very concept of objectivity has come under attack as a class or establishment prejudice. Courses have been offered that were frankly characterized as a staging ground not only for social change but for social revolutionary transformation. The most charitable interpretation of what happened at Yale, when the university went on strike in a show of support for the Black Panthers who were on trial for the murder of one of their members, is that many feared mass violence and bloodshed would result if the university did not take this action—an action completely unrelated to any legitimate educational objective, and which constituted an unjustified attack and exercise of pressure upon the independence of the judiciary so essential to due process. A blood bath was narrowly averted "by sheer good luck" or "a miracle" (these were the expressions used by Professor Kenniston and other individuals who approved of the action).

The measures taken on many campuses in 1970, together with the adoption at that time, or shortly after, of the so-called Princeton Plan, which has proved to be an educationally costly fiasco, showed how pervasive were the processes of internal politicalization. They did not come into existence only with the Cambodian incursion. For example, early spring, 1970, when Professor Edward Teller, at the invitation of the Princeton Department of Physics, began a lecture on a purely scientific issue, his lecture room was invaded by extremists waving placards denouncing him as a "war criminal." Naturally, like any self-respecting scholar and scientist, Professor Teller refused to lecture under such circumstances. The privacy of the classroom and lecture hall have always been recognized as essential to the exercise of academic freedom, and the Physics Department sustained him in his decision. It recognized the invasion of the lecture hall as a violation of academic freedom. But the president of Princeton, who is long on the holiday rhetoric of academic freedom but short on the moral courage to defend it, ruled that so long as the placard-waving disrupters did not physically prevent
Professor Teller from speaking, there was no breach of academic freedom. It is not surprising to find out that Dr. Goheen is not only a staunch supporter of the Princeton Plan, but, together with Dr. Kingman Brewster of Yale, is convinced today that the chief threats to academic freedom come not from the barbarians within the university, but from the barbarians without.

In the last analysis there is a greater danger to the integrity of the educational process from what universities may do to themselves to avoid violence than from the overt violence itself. The violence may destroy buildings; they can be replaced. Sooner or later the vandals will be checked, if not by the faculties fed up to the teeth by youths who are not interested in learning but in shoving and pushing them around, then by an outraged citizenry whose ministrations, you can be sure, will misfire, and hurt the innocent as well as the guilty, because wise decisions on academic matters require some first-hand familiarity with the complexities of the educational process. They should not be made by outside agencies. And if unchecked by citizens, ultimately the majority of students will defend their right to an education by isolating those who are responsible for preventing their education. The main danger to the universities comes from what the faculties do in the future. If they yield to pressures to politicalize themselves further, the universities will go the way of many universities in Asia and South America, countries where, if you really want a good higher education, you go elsewhere.

The third question I want to address myself to is what the universities or academic communities should themselves do to forestall violence or to contain it if and when it breaks out. I shall indicate very briefly some of the steps I think should be undertaken by universities where they have not already been done. They may have to be modified by different institutions in different parts of the country.

I suggest that the first thing to do is to convocate a representative assembly of the constituent parts of the university community: faculty, students, and administrators. Its chief business should be to draft the principles which would serve as guidelines affecting the expression of dissent on any matter of interest to the academy, whether great or small. The drafting of such principles should be followed by the drafting of specific rules of implementation that spell out clearly, among other things, the kinds of conduct and behavior that constitute prima facie violations of the limits of action in behalf of legitimate dissent. At the beginning of each academic year, the principles and rules established in this way should be examined and either reaffirmed or modified in the light of experience. Pains should be taken to make this reappraisal an intellectually meaningful experience and not a mechanical ritual of academic piety. Academic due process should link up with rational process, and mutatis mutandis with due process, generally, so that the conclusions will not only be fair, but will be seen to be fair.

Secondly, the rules implementing the principles should make provision for the establishment of representative faculty-student discipline committees. The procedures for conducting hearings and rules of behavior for defendants, complainants, and witnesses should be explicitly endorsed by the academic community or its representatives. The rules should clearly set forth sanctions to be invoked against members of the academic community, whether students, teachers, or administrators, who disrupt the judicial proceedings of the discipline committee. It would be a great piece of foolishness to transplant entirely the whole system of judicial procedure followed when a man's life or freedom is at stake to these disciplinary hearings whose penalties vary from a tap
on the wrist to, at worst, expulsion. If you do that, you rarely can settle any disciplinary issues. The university is tied up by appeal after appeal as some of our courts are. Common sense—not the mindless, mechanical imitation of legal technicalities—should be our guide to proper procedures. Violations of rules should be promptly punished by the appropriate, agreed-upon sanctions.

Thirdly, in the event of forcible disruption of the academic process, faculty and student marshalls equipped with cameras should be empowered by the academic community to maintain order, report participants, and remain in liaison with the responsible officers of the university.

Fourth, when the situation acquires a gravity beyond the power of faculty and student marshalls to cope with it, the administrative authorities, after consultation with the executive or other appropriate committees of the academic community as a whole, should apply to the courts for injunctive relief without suspending their own sanctions.

Fifth, if the courts injunction is disregarded, its enforcement should be left to the civil authorities.

Sixth, if matters reach an extreme pass, and hazards to life and limb, caused by arson, assault, vandalism, or whatever, can be contained only by employment of police power, faculty and student marshalls should accompany law enforcement officers so that their mission may more probably be accomplished without force where resistance is not offered and with a minimum of force where it is.

Seventh, where the scale of violence, for example, because of intervention by large outside non-student forces, takes on a magnitude that makes these steps inadequate or creates an atmosphere where teaching and learning are impossible, the university may have to shut down for a limited period, and the preservation of life and academic property entrusted to the civil authorities. In such a case, before reopening the university, sanctions against those found guilty of violence or of instigating violence should be strictly enforced. Amnesty for crimes of academic genocide can only invite their repetition.

Although these steps may be formulated differently, I think they constitute a reasonable procedure to which no one can object. It permits all legitimate grievance, all protests, to be heard without interfering with the educational process. The autonomy and integrity of the university must be preserved. Educators recognize that the solution of social and political problems, as urgent as they are, to a large extent depends upon continued freedom of inquiry, which must and should characterize university life. Even those who are burningly eager to solve these social and economic problems should recognize the contributions the universities may make if they are permitted to function as genuinely critical and creative educational institutions in our society, without violence or the threat of violence.
The thesis of this paper is a simple generalization: To the extent that social protest draws attention to its form rather than to the grievance it seeks to redress, it is likely to be unproductive. I add a quick qualification. In offering this generalization, I am assuming that the protester is genuine in seeking to redress one or more grievances and that he is not using the grievance as a subterfuge to pick a fight. If the purpose of the protest is in fact to provoke a repressive response, then, of course, my generalization is inapplicable.

We obviously have a "more-or-less" proposition before us. A protest may succeed even though there is some objection to its form. But when concern over the mode of protest blots out concern over the condition protested against, the protester has obviously failed.

When does that happen? No one knows, but we can identify at least two relevant factors: One is the degree to which the protesters' grievance seems just to others. And the second is the degree to which the form of protest threatens others. Thus, if a militant group's perception of a particular social condition as unfair or inequitable is widely shared, and if their form of protest does not seem threatening to most Americans, then the grievance, not the form of the protest, will be the center of attention. In those circumstances, even if the protesters break the law, they are not likely to be punished severely, and their purposes are likely to be advanced. The southern lunch-counter sit-ins of the early sixties are the best example. Conversely, if the militants have so peculiar a vision of the world that relatively few share their perception of a particular state of affairs as evil, and if their conduct is highly threatening, they will accomplish nothing and be punished severely, e.g., the Weathermen.

I should emphasize that what may seem unthreatening in one context may take on a different aura in another. The current fear of bombings, kidnappings, and assassinations has a corona that lights up other less extreme modes of dissent. Sit-ins are far more threatening to some than they once were. Even picket signs on campuses are regarded as intimidating in some quarters.

The congruence of a militant group's views with those of the Silent Majority is also highly variable. When black students were sitting in at lunch counters and Sheriff Clark was sicking dogs on civil-rights marchers, racial discrimination was perceived by large numbers of Americans as bestial. The movement of civil-rights pressures to the north
and the adoption of more militant tactics by some groups have produced a very different climate today. Contrast the status of the environmentalists: once regarded as kooks, they are now joined by almost everyone as we find it difficult to breathe, drink, and swim.

The speculations I have put before you so far suggest at least three others. First, as long as the primary effect of the illegal activities of militants is to focus attention on their grievances rather than their transgressions, the programs of like-minded moderates are advanced. Second, public attention may shift quite easily from grievance to form of protest, and then the programs of moderates may suffer as a result of militant activity. Third, the point at which that shift will occur is not readily identifiable, and moderates who condone illegal activity when it helps their cause are quite literally playing with fire.

We have many examples of the first of these three propositions—that up to a certain point the programs of moderates are advanced by the activities of militants. The wave of urban riots of several years ago—Watts is the outstanding example—did, in fact, focus attention on ghetto problems. Plans for economic aid to the ghettos proliferated, and some government money probably was actually spent for this purpose. These are, of course, highly speculative inferences: it can always be argued that the money would have been spent anyway; it can even be argued that more money would have been spent if the voters and their representatives had not been repelled by the rioters. But I ask you to remember the public mood of a few years ago. Though almost everyone deplored burning and looting, the dominant response was not “shoot to kill” but, rather, “eliminate the causes.” Training programs, civil-rights legislation, and promises of more were what we heard. Or consider the university scene. When radicals seize buildings, moderate students commonly receive a larger say in the governance of their institutions. As Dick Gregory put it several years ago, “When a ghetto black throws a brick through a window, Thurgood Marshall gets appointed to the Supreme Court.” But these are not all-or-nothing affairs. While many were moved by Watts to formulate programs of urban repair, others preferred fantasies in which looters were machine-gunned in the streets. And these are highly volatile alignments, subject to large shifts in response to fortuitous events. If a white girl had been raped and lynched as part of the Watts flare-up, would the reaction have been the same?

And so I turn to the proposition that after a certain point the programs of moderates may suffer as a result of militant activity. For an example, we need look no further than the May (1971) demonstrations in Washington, D.C. Does anyone suppose the cause of peace was served by that episode? However, it is not immediately apparent why the throwing of rocks by a small number of young people committed to a particular cause supported by millions of others who do not throw rocks should tend to discredit that cause. But it undeniably does. And sophisticated observers expect it to. I suggest to you that this phenomenon is a function of our strong drive to simplify so that we may understand—a drive that often has us careening recklessly past relevant distinctions. For many Americans, the classical Hollywood western is naturalistic drama. There are two categories of people—good guys and bad guys. People who throw rocks are bad guys, and it is simpler to think of them as all bad. Therefore, everything they stand for must be rejected.

If you think that I have succumbed to oversimplification in this stark analysis, consider reactions you have observed to the Black Panthers. To some, the Panthers are the benefactors of children, a sword against racism, the martyrs of Chicago; to others, they are the
lunatic fringe—violent, anti-Semitic, revolutionary. But what are the Panthers really? For a sense of proportion, I find it helpful to begin with numbers. The Black Panthers is a minuscule organization. I have heard one Attorney General of the United States estimate their national membership at 100, another at 1,500. Their ideology is a combination of Marx, Mao, and the National Rifle Association. The possession of weapons is an obsession with them. Some of their members are violent. Some are anti-Semitic. At the same time, the racism they decry often does exist. As one button I saw someone wearing has it, “Even paranoids have enemies.” And whatever the Panthers’ batting average on their charges of racism, we know that it was bigotry that made them possible.

It is possible to sort some of these things out. One can oppose racism without supporting the Panthers. One can be impressed with the evidence that the Chicago police murdered Fred Hampton in his bed and yet still suspect Panther complicity in the slaying of Alex Rackley. One can deplore the high bail set for the New York Panthers and still reserve judgment on the issue of their guilt or innocence.

One can do these things, but millions cannot. For them, the Panthers must be either heroes or villains, all good or all bad. And that sort of choice, however made, is calamitous for justice and for liberty. If they are heroes, their trials are acts of political repression and should be resisted in the streets. We need not stop to ask who tortured and killed Alex Rackley. If they are villains, we had better keep them locked up. Shoot first and ask questions later.

And so it is with the rock-throwers of Washington, D.C. They are bad and so their cause must be bad. It also follows, I am obliged to remind you, that those actively associated with their cause must also be bad. If you picket for peace, in full compliance with the law, you nonetheless carry the burden of those rock-throwers along with your picket sign.

Students have been learning this—with no little pain. To be a student, or to be any kind of academic for that matter, is to be a member of a suspect class. How many Americans do you suppose shrugged their shoulders over Kent State and said, “Well, what do these crazy kids expect?” Few, I hope, really approve of capital punishment as the penalty for brick-throwing. For today, though, I am more interested in the implicit assumption that there is a category of students; that a lot of them have been making trouble; that the Kent State students were members of that category; and, therefore, while it’s too bad that young people had to die, it was not nearly so tragic as if they had not in some vague way deserved what they got.

Let me hazard a few estimates about today’s university students. To start with, there are about 7½ million of them in about 4,000 institutions of higher learning. Perhaps 300,000 of these are black. The overwhelming majority of those 7 million-plus students have either never participated in a demonstration at all or have participated in wholly acceptable ways, as, for example, by walking in a peace parade. Their political outlook is indistinguishable from that of their elders. That I have eminently respectable company in this estimate is evidenced by Congress’ passing and the President’s signing legislation allowing 18-year-olds to vote. While the President apparently hopes that the Supreme Court will assert itself just this one time, the fact remains that the working politicians see no threat to the republic, perhaps not even to the Republicans, in this measure. Yet many Americans think of these millions of innocents as if they were that minuscule minority who perpetrate acts of violence. I would place the percentage of
students who have engaged in illegal acts of protest—from building seizures to fire bombings—at fewer than one percent. I cannot estimate the number who condone these acts: condonation can be a very private matter, and it obviously varies with the gravity of the offense. But I do not want to gloss over this group. Condonation of lawlessness is a troublesome American tradition. The West had its vigilantes, the South the KKK, much of the nation its police excesses—and in each instance many respectable citizens were not troubled so long as the lawlessness was directed at a common enemy. And so, too, many students emulate their elders: if lawlessness is aimed at the Vietnam war, racism, and poverty, it’s not all that bad.

The actors, not the spectators, have caught the attention of America. Fear of a handful of violent young radicals has turned into widespread antagonism toward youth generally. This is, of course, the sort of situation that feeds on itself. Youngsters seeking legitimate change now commonly encounter elders who react as though confronted by bomb-throwers. On these occasions, the youngsters see frightened, rigid, and repressive adults. Since young people, too, find a world without distinctions much easier, many leap to the generalization that the older generation is frightened, rigid, and repressive. Some then take the step to the proposition that peaceful change is impossible. A few will act on this premise and turn to violence.

The process has many names, depending on the stance of the observer. It is called radicalization by those looking at what happens to the previously moderate youngster who is arbitrarily rebuffed by an adult in authority who cannot distinguish among young people. It is called polarization by those who follow the process far enough to see how each outrage from one side of the generation gap gives rise to fresh antagonism from the other, which in turn provokes new ill-will. And, it is called a self-fulfilling prophecy by those observers who follow the model through to its theoretical end—when at last all young people do, in fact, hate all old people, and vice versa.

We can dismiss this apocalyptic vision where age is the divider. Some of our children at least will love us. But can we be so sanguine concerning race? I remember a taxi ride in Washington some years ago. My driver was holding forth on the change in race relations in the nation’s capital. He was troubled. He said to me: “Now, you understand. I don’t have anything against Nigras. It’s just that every time I get so’s I can stand them, one of them does something wrong and I hate them all again.”

Stereotyping is, of course, a cliche in race relations. And now we find it afflicting relations between generations. Just as all “Nigras” are the same, so are all students.

And, for some, so are all protesters, all doves.

The very human tendency to oversimplify, to stereotype, is intensified by fear. And much contemporary militant activity is genuinely frightening. One can imagine a public rendered so fearful by events like the bombing at Wisconsin that any form of protest, however law-abiding and however well-founded, becomes threatening. In that state of mind, a kind of tunnel vision would afflict the American people, allowing them to see only the protest, not the condition begin protested against. Dissent would then be a dangerous business indeed.

Ironically, the more responsibly students, blacks, and others interested in reform behave, the greater the risk that terrorism will intensify. SDS once saw itself as the cadre of a mass movement. The strategy was to provoke authoritarian responses that would alienate millions of liberals, and a great mass movement led by SDS would then carry out its social
programs. Those hopes have been dashed. There is little true affinity between madmen like Mark Rudd and the general run of students. Frustrated by their failure, the would-be revolutionaries grow even more enraged than they were before. Though they have an ideological rationalization for their destructive behavior, it has all the earmarks of the frustrated child’s tantrum. We must not lend credence to their ideology. We must not become so obsessed with the form of their protest that we damn all dissent. We must not lose sight of the continuing need for reform, for social change.

If we are to survive in this terribly complex world, we must remember one of the first skills we learned as law students—to distinguish. We must differentiate among young people, among protest groups, sometimes even within them. As lawyers, as thoughtful citizens, we must help others to see past their stereotypes. We must underscore the difference between peaceful protest and mindless violence. And we must respond to just claims, even though some who press them do so by unjust means.