Social engineering courtesy of the Supreme Court

By Thomas L. Jipping

The Supreme Court continued its cultural jihad on America last week by declaring single-sex education unconstitutional. Through the decision in Virginia v. United States, the culture czars who sit on America's courts have driven another stake into the heart of self-government.

The Virginia Military Institute has reserved admission to men since 1839. It is part of a diverse array of public educational opportunities offered by the Commonwealth of Virginia. Its unique "adversative" approach includes elements of physical rigor, deprivation of privacy, loss of individuality through absolute equality of treatment, extensive regulation of behavior, and indoctrination of values. The evidence in this case, including research and scholarship by educational experts, was uncontested and simply supported what common sense, experience, and tradition have already established. The VMI system has unique educational and character benefits which can only be thoroughly gained in a single-sex environment. This is why, even after conscious and deliberate reconsideration, the people of Virginia and their elected representatives just a few years ago decided to maintain VMI as an all-male school.

The campaign to trash these values and traditions began in 1990 when the Justice Department, under Republican President George Bush, filed suit. They, of course, cloaked this exercise in political correctness in the language of constitutional law. The Fourteenth Amendment of the Constitution prohibits states from denying "equal protection of the laws." Yet as Justice Antonin Scalia correctly noted in dissent, the decision in Virginia v. United States was "not the interpretation of a Constitution, but the creation of one."

Everything government does treats some people differently from others. The key is to identify which instances of unequal treatment are so egregious that the Constitution itself trumps what the people have chosen to do. An immodest judiciary can easily use this exercise in judicial review simply to impose its values on us all in the name of the equal protection clause. The entire debate over the proper role of the judiciary, and the titanic battles over Supreme Court nominees such as Robert Bork or Clarence Thomas, is the debate over whether unelected federal judges, appointed for life, have the unlimited power to make the Constitution mean anything they wish. If judges have that power, then the people do not govern themselves and have no liberty.

The Supreme Court has held that government policies, statutes, or regulations that treat men and women differently must be "substantially related" to an "important" government purpose. No one, not even Supreme Court Justices, knows what these words mean. The question is, however, where those Justices will look to determine, in a case like this one, whether something like single-sex education is "important." A majority of the Supreme Court apparently believes they can look anywhere they choose in making that decision. Single-sex education is important only if they say so, based on whatever criteria they wish to use.

Justice Ruth Bader Ginsburg has been an advocate for a particular sociological theory about men and women for decades. She founded the Women's Rights Project at the American Civil Liberties Union to argue that theory in court. Now, by writing the majority opinion in Virginia v. United States, she took the opportunity to impose that theory upon us in the name of the Constitution. We are now told that this theory — which posits essentially no differences between the sexes and has no tolerance for what the people may believe — is the only constitutionally permissible opinion on the matter.

To borrow a phrase from another of Justice Scalia's dissenting opinions, the Court is using the Constitution as the "bulldozer of its social engineering." The importance of single-sex education to the people of Virginia means nothing. The traditions of the Virginia Military Institute mean nothing. The demonstrated value of VMI's unique program means nothing. The evidence that this unique program can only be successful in a single-sex environment mean nothing. The diversity that VMI gives to the educational opportunities funded by the people of Virginia means nothing. All this, and more, must sit in the back of the cultural bus once the Supreme Court climbs aboard.

There is nothing self-limiting in Justice Ginsburg's majority opinion. It is not limited to military colleges, all-male schools, or unique educational approaches. Every public all-female school can now be shut down, and even innovative experiments such as the all-male elementary schools in inner-city Detroit trying to provide at-risk kids some positive role models must bow to the elitist will of the Supreme Court's superior values.

Earlier in this century the Court had been using the Fourteenth Amendment's due process clause — which prohibits deprivations of liberty without due process of law — to impose its preferred economic theory upon government and business. Justice Oliver Wendell Holmes, in a famous 1905 dissent from that view, wrote that "the fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statistics."

Someone once said that to forget the mistakes of the past is to repeat them. The Court has no more power to enact Ruth Bader Ginsburg's theories through the equal protection clause than it did to enact Herbert Spencer's theories through the due process clause. When judges have the power to re-write the Constitution in their own image, self-government, individual liberty, and the rule of law no longer exist.

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