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## Book Reviews

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## Book Reviews

**MAKING AFFIRMATIVE WORK IN HIGHER EDUCATION—AN ANALYSIS OF INSTITUTIONAL AND FEDERAL POLICIES WITH RECOMMENDATIONS.** A report of the Carnegie Council on Policy Studies in Higher Education. San Francisco: Jossey-Bass, Inc., Publishers, 1975. Pp. 272. \$9.95.

*Reviewed by David W. Bishop\**

No one—not university or college administrators, not speechmakers, not affirmative action officers, not university or college faculty, not the President, not the U.S. Congress, not the Secretaries of Labor and Health, Education, and Welfare—no one should be directed to read or coerced or enticed into reading this entire report, not even another reviewer! Read as a whole, it is dull. It is informative and dull. It is significant and dull. Any effort to identify a single audience for whom all of the report would be informative, significant, and stimulating must fail. And yet, for each of the audiences noted above given sections of the report may significantly inform and stimulate. It is as though the eight sections are each addressing a separate audience.

Section 1, "Problems and Viewpoints," should interest university and college administrators from the department chairperson on up. It places affirmative action in perspective and through seven themes presents one coherent and cohesive positional statement. The administrator may choose to agree or disagree obviously but, in doing so, will have been stimulated. Do you believe that the federal government may already have played its major role in affirmative action? The Council does (Theme number one, p. 4).

If you dote on percentages and year by year comparisons of those percentages, or if you are seeking such to pepper your scholarly speech on women and minorities in higher education, then Section 2, "Women and Minorities on Faculties—Recent Changes," will delight you. You can revel in such esoterica as "demand gap" and "supply gap," and you can swim in "availability pools" and "pools of qualified persons" (the Council's choice). If you can't dote, revel, or swim, Section 2 is not for you.

Section 3, "Academic Policies Under the Impact of Affirmative Action," should be mandated reading for all affirmative action officers. It offers a truly comprehensive treatment of affirmative action planning through a ten step outline (pp. 66-69). It offers, too, characteristics and elements of "good" plans against which one's own institutional plan may be assessed for better or for worse. Clues for the administrative behavior of affirmative action officers abound. These lead one to believe that affirmative action advisor would be a better title.

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Are you a "majority woman," a "minority woman," just a woman, a minority male? Are you being discriminated against in employment, salary, advancement or tenure status? Do you want to do something about it? Do you know what to do? Section 4, "Background of Federal Policies," despite the title, is for you—not all of it, mind you, just certain parts. Turn to Figures 1 and 2 at the very end of the section (pp. 113–114) to locate the part(s) you need. Those figures diagrammatically untangle the maze of separate but intertwining and overlapping federal departments, agencies, offices, and commissions with responsibilities vis-a-vis discrimination and affirmative action compliance. Pick those appropriate to you and your problem.

Section 3, 5, "Goals and Timetables," and 6, "Deficiencies in the Administration of Federal Programs," are the heart of the Council's report. They contain seventeen of the twenty-seven recommendations made by the Council. Those in Section 5 are directed to university and college administrative personnel and provide categorical guidelines for goal (as distinct from quota)—setting and establishment of a time frame for achievement (five to ten years). The Council does nothing for the peace of administrative minds by pointing out that the "analyses of academic employment required of colleges and universities by current Department of Labor regulations as interpreted by OCR [Office of Civil Rights]" (Table 14, p. 204) number between 21,000 and 63,000 depending upon institutional size (p. 123). The report, however, does let you know what to do.

The discussion of federal administrative deficiencies and the recommendations of Section 6 call for the attention of the President and Congress of these United States. Basically the charge to them is to clarify the often differing, if not contradictory, guidelines and regulations of various federal agencies, to centralize affirmative action compliance review authority, to train staff for the agencies who will have the understanding of higher education lacking in present staff, and to take an affirmative action to increase the pools of qualified persons by adding women and minorities.

Lest the Secretaries of Labor and Health, Education, and Welfare feel neglected, Section 7, "Grievances and Enforcement Procedures," is addressed primarily to them, though the section does recommend to university and college administrators the establishment of institutional grievance procedures. It is recommended, for example, that the Secretaries "take joint action to appoint a special advisory committee . . . to draw up specific recommendations for appropriate penalties [for noncompliance with affirmative action requirements]" (p. 180). The Departments of Labor and HEW received still further attention in Section 8, "Who Should Have What Responsibilities?," in which the Council assigns specific tasks to universities and colleges, to the Congress, and to federal agencies.

One is struck throughout the report with the specificity of the recommendations. They well might constitute a blueprint for action at all levels. One is struck, as well, with the optimism of the Council in its confidence in the good faith of universities and colleges to carry on affirmative action efforts with minimal prodding by the federal government. Many will view this with some skepticism. Women and minority persons who have been, and who continue

to be, discriminated against in academia have justification for that skepticism.

There are a number of concerns one must have with *Making Affirmative Action Work in Higher Education*. The Council acknowledges the existence of such when it disclaims in the preface, "Indeed, we have had intense internal debates within the Council—nevertheless a degree of consensus has developed, although individual members reserve their separate views on specific points and on forms of expression" (p. xi).

The matter of reverse discrimination is inadequately addressed. It is not all that helpful to state, in essence, that affirmative actions efforts do not represent reverse discrimination because they are made with good heart and in good faith. Clearly, the rationale for Recommendation 10 must be remediation of past wrongs through a reverse emphasis. "Institutions of higher education should emphasize policies and procedures that will provide opportunities for women and minorities to serve in administrative positions" (p. 96). Are those courts which have accepted remedial efforts so absolutely wrong? Perhaps the Bakke decision, when it comes, will clarify.

It is not all that helpful either to decry women and minority quotas when accepting in their place goals that are either totally undefined or that are mathematically computed. In the first instance, there are no goals and in the second, there is a distinction without a difference. A quota by any other name is a quota.

The Council's attention to the problems of part-time academic personnel is appreciated, but its examination of the issues entailed in bringing such persons into the mainstream of academic recruitment, selection, promotion, and tenure is woefully inadequate. Illustrative of that inadequacy is the discrimination inherent in that part of Recommendation 7 which reads, "Policies relating to promotions should allow for a moderate extension of the usual period of qualification for promotion for persons . . . who have been employed part time *because of family responsibilities*" (p. 89). The emphasis is ours. It points out the discriminatory exclusion of those part-time personnel who do not have family responsibilities.

With all the caviling and carping that is inevitably possible in considering a report such as this, the Carnegie Council on Policy Studies in Higher Education is to be commended for an informative, significant, and helpful report. It is an important contribution to the "What to" and "How to" books in higher education.

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EDUCATION FOR JUSTICE: PEDAGOGICAL PRINCIPLES. By Brian Wren. New York: Orbis Books, 1977. Pp. 145. \$3.95 (paper)

*Reviewed by Kevin Gray\**

In today's society, the discussion of justice pervades every social conflict. On every level of thought—personal, local and international—the awareness

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of injustice has increased. *Education for Justice* examines the meaning of social justice and explores the possibilities of stimulating concerned learning and action for the prevention of injustice.

The main argument of *Education for Justice* is that effective action to reduce social injustice begins with the individual. Each individual must "step away" mentally and view his personality in relation to the outside world. It is this "critical consciousness" that gives humans the ability to modify their environment for their fulfillment. This understanding of the self is the first step, according to Wren, towards universal concern. He submits that by thus unifying reflection and action we can best combat injustice.

This introspective approach to justice is not new. In his well-known treatise *Moral Man and Immoral Society*, Reinhold Niebuhr argues that a sharp distinction must be drawn between the individual act and the collective action. Niebuhr contends that due to the uneven distribution of power in modern society, the relations between groups will always be predominantly political rather than ethical. Without the conscious restraint of personal desires in the interest of social harmony, the collective majority will always dominate the minority and justice will be determined by the mass. Although he states that total rationality in any social situation is impossible, Niebuhr nevertheless contends that only the growth of rationality can destroy the uncritical acceptance of injustice.

Wren carries this argument one step further. While Niebuhr's argument ends with conscious self-analysis and inner restraint for the good of the many, Wren claims that some individuals may be incapable of attaining this consciousness by their own means. The individual must, therefore, do more than reach this level of self-consciousness; he must teach his fellow man to do the same. At this point the educator becomes the transmitter of this essential knowledge. The methods supported in this book are dialogue on the individual level, and socialism on the collective level. Wren's concept of socialism is sound as a theoretical model, although in practical application his notion of perfect socialism may be idealistic and implausible in light of the American values of democracy. Brian Wren emphasizes interaction and discussion in order to increase critical awareness and perceived relevance, with the collection and memorization of materials as tools to this end. Therefore, according to Wren, "the distinctive feature of human learning is not conditioning, but changes in consciousness."

Wren does not, however, agree with Niebuhr that rationality is an unreachable ideal. Rather he contends that justice can and must be rational and consistent, impartial and predictable. This ideal justice provides for equal liberty for all, and for social and economic sharing.

Like Niebuhr, Wren argues that the obstacles in the path of justice are vested interest and the will to power. He stresses that only equality of power can insure ultimate justice, and that equality of power comes only through conflict. This inevitable conflict can be regarded as a positive result of critical awareness, and thus revolution is inherently tied to evolution and development.

*Education for Justice* defines justice as a relative commodity, an ideal that gives men a goal in their attempts to justly resolve conflict. The arguments

are based on the foundations of both Christianity and humanism. Though the implications of the book are, in the words of the author, "politically radical," it is a balanced overview of the issue of injustice in modern society. Wren presents a cogent analysis of the methods by which we can educate ourselves, in the classroom and individually, to better understand and more successfully combat injustice. *Education for Justice* is an informative and useful writing for both the educator and the interested reader.

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THE MENTALLY RETARDED CITIZEN AND THE LAW. Michael Kindred, Julius Cohen, David Penrod, and Thomas Shaffer, Editors. New York: The Free Press, 1976, pp. 738. \$18.95.

*Reviewed by Arthur J. Robarge\**

*The Mentally Retarded Citizen and the Law*, published under the sponsorship of the President's Committee on Mental Retardation, is an exhaustive and ambitious attempt to encapsulate within one volume the mentally retarded person's prerogatives within the courts. As determined by current legal precedents, the book discusses not only those issues in the delivery of services and establishment of public policies for which the mentally retarded citizen has already obtained legal redress, but additionally extrapolates from these precedents and legal opinions those issues which appear amenable to legal recourse.

*The Mentally Retarded Citizen and the Law* is organized in four basic sections which approach the mentally retarded person's accessibility to the delivery systems from the perspectives of the mentally retarded citizen as: a person, a member of the community, a resident in an institution, and finally a law breaker or criminal. A series of major papers are presented which focus on the retarded citizens' "rights" from each of these perspectives as determined by current legal practice and precedings. Each major presentation is introduced by an editorial comment and followed by reaction commentaries. In the reviewer's opinion, the format of the book is clear and the material is presented so that parents and non-legal employees in the human service delivery system could benefit from the content.

Two major themes can be identified throughout the book. In the first, the rights of retarded persons are presented from the perspective of full citizenship with equal access to constitutional safeguards. As a citizen, the *Mentally Retarded Citizen and the Law* conceptualizes the mentally retarded person's "rights" as an individual to be a complex interaction between the retarded citizen, the human services delivery system and the efficacy of the courts as an arbiter between them. Unfortunately, the legal system is ill equipped to resolve the complicated social and service delivery issues that currently impact on the mentally retarded. In reaching a decision as to whether retarded persons have obtained just and fair treatment, the courts have ruled in favor of the retarded person's pursuance of prerogatives as a citizen when it could ascertain that treatment has been denied, that due process has not

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been afforded, that education has not been provided or that the retarded citizen has been discriminated against as a function of his handicapping condition. Accordingly, those sections of the *Mentally Retarded Citizen and the Law* that deal with denial of services are clearest and most definitive while those addressing the appropriateness of that service are tenuous and often speculative.

A second theme is the extent to which the retarded citizen's membership by virtue of the handicap in a suspect class entitles that individual to differential treatment under law. Thus, in section four, for example, "The Mentally Retarded Citizen and the Criminal and Correction Process" deals with the complex issues surrounding retardate as a law breaker and the extent to which his handicapping condition might mitigate his culpability within the criminal system. Similarly, concessions on the part of the human services delivery system to the retarded citizen in response to class action suits such as PARC, and Wyatt vs. Stickney, etc. while applaudable and necessary are in direct conflict with efforts to secure for mentally retarded persons the same prerogatives as non-handicapped individuals such as the "right" to marry, procreate, vote, etc.

Accordingly, one unavoidable byproduct of an effort to include all the relevant topics within one volume is an inability to ascertain one central theme or legal opinion that is sustained throughout the work. It is therefore improbable that professionals should approach this text as a definitive manual wherein directives as to appropriate safeguards of the retarded persons could be obtained.

It was not within the purview of the editors of the *Mentally Retarded Citizen and the Law* to definitively reconcile these issues but rather to present within one volume both the precedents and the opinions that are germane to the issues. In this endeavor they have succeeded admirably. In those instances wherein the precedents are clear and precise the book cogently presents the precedents and the implications. Where the issues are more tenuous the book not only points out the plausible resolutions but additionally provided some guidelines as to how best to provide appropriate and non-discriminatory program alternatives for the retarded.

These limitations are reflective not of the book itself but rather to the increasing complexity of the issues relating to providing appropriate services to the mentally retarded. *The Mentally Retarded Citizen and the Law* is a mandatory reference work for parents and professionals who are concerned with the mentally retarded. The fact that one is compelled to continually consult the opinions contained within is a comment on the complexity of the issues addressed and the comprehensiveness of the text.

STUDENT RIGHTS, DECISIONMAKING, AND THE LAW. By Terrence N. Tice. Washington, D.C.: The American Association for Higher Education, 1976. Pp. 98, \$3.00.

*Reviewed by David Schimmel\**

Lawyers are often surprised to find that many college administrators know less about law than their public school counterparts. Unlike principals or superintendents who usually have learned something about school law during their graduate education, a very small percentage of deans, provosts, or presidents ever studied campus law on the road to their Ph.D. Many college administrators don't begin to learn about law until they confront their first legal problems on the job. Some don't even recognize that they have legal problems until after the problems have been mishandled. Thus new administrators have an urgent need to overcome their legal illiteracy—especially in the evolving field of student rights. Although there are an increasing number of texts, casebooks, and periodicals that deal with law and higher education, this reviewer knows of none that provide a brief but comprehensive introduction and bibliography in this field. *Student Rights, Decisionmaking, and the Law* is an attempt to fill this gap.

The first part of the book is a 47 page essay that examines how courts have dealt with student rights conflicts, the legal principles underlying these decisions, and the philosophic issues thus posed them. The second half of the book is an extensive 327-item annotated bibliography. The author tries to place student rights law and guidelines for administrative decisions within a larger philosophic framework and to combine this with a comprehensive bibliography—all in less than 100 pages. It is an ambitious and important attempt, and it often succeeds. The book is most successful in examining student rights issues in a moral, educational and political context: it is less successful in trying to summarize the case law on the subject.

### *Author's Perspectives*

The book begins by rejecting the notion that campus activism and student rights will be a dying concern in the late 1970's and early 1980's. On the contrary, it suggests that "a new era of intensive student activism is emerging." But unlike the explosive, mass demonstration style of the anti-war movement, activism in the future will be "more diverse, lower-keyed, and more sophisticated than in the 1960's." New areas of student concern are emerging: consumer unions and cooperatives, public interest lobbying groups, participation in faculty bargaining, plus the increased awareness among 18 year olds of their rights as citizens. These concerns may lead to increased litigation—especially where old administrative structures are not adequate to deal with such issues.

The author believes that courts have taken a generally positive and restrained role in resolving campus disputes. Unlike many educators who

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\* Director, Legal Literacy Program at the University of Massachusetts, Amherst.



are increasingly critical of "judicial intervention," Professor Tice is neither angry nor disturbed over the possibility of additional "interaction" between the courts and the campus. Rather, he notes that much can be gained from this process which can aid in the development of campus governance and that "judicial restraint with respect to many areas of college life leaves academics free to put their own house in order."

This restraint also reflects the limits of the law. While courts have helped to protect student rights, academic freedom, and other democratic dimensions of public colleges, the judiciary cannot solve basic institutional problems or educational conflicts. Because of these limits, campus administrators should be concerned with the spirit as well as the letter of the law; with moral principles and democratic ideals as well as practicality and authority. One central ideal should be the commitment to an open society on campus: to "communal involvement rather than paternalistic, authoritarian rule," to maturing responsibility for individual freedom "rather than childish dependence," and to shared decision making through "open, honest, and fair dealing with conflict." Since youth emulate their elders, Professor Tice believes that the presence or absence of these ideals in institutions of higher education "will undoubtedly have profound effects on leadership styles in tomorrow's society."

The author observes that the term "student rights" is often misunderstood and used by different groups to mean different things—from clear constitutional and statutory rights to the vague, personal "right to special consideration." To clarify this confusion, the book discusses the difference between positive and negative rights, moral and human rights, and legal and institutional rights within the academic context. Professor Tice emphasizes that it is the responsibility of public institutions not only to refrain from impeding constitutional rights but to promote their recognition and to maintain the conditions for their fulfillment.

In its *Guidelines for Administrative Decisions*, the book notes that the *in loco parentis* doctrine is being replaced by a constitutional approach which regards the student as a citizen, with full rights on and off campus. This implies a "communal or joint-participatory approach" to campus governance—especially in the area of student affairs. Decisions concerning student participation should be based not only on legal rights but also on educational considerations: what students can learn from participation in the process and how they might help improve it. Learning more about what the law does and does not require may lead colleges to develop less elaborate governance and disciplinary procedures and seek alternatives to acrimonious, criminal-type proceedings for resolving many campus conflicts.

### *Alternatives and Concerns*

In attempting to provide an overview of the current law on student rights, the book uses a modified "case" method rather than the "text" approach. While the case method usually takes more time and space, it has the advantage of getting students involved, of encouraging them to wrestle with a legal controversy from the facts and findings to the judicial reasoning and

legal conclusions. This approach presumably enables students to apply the principles of one case to the facts of another. But the case method is extremely difficult to use if there are severe space limitations; and Professor Tice often tries to do this in one paragraph or less. Typically he gives a few facts along with the court's conclusions; but the legal principles are usually omitted. As a result, the reader gets a fragmented sense of the law.

In discussing due process, for example, a number of elements of fair procedure are considered and many cases are mentioned. But the reader does not get a feeling for the flexibility of this concept. The book does not explain that the process which is due students varies according to the severity of the possible penalties. And it is puzzling that a landmark decision such as *Goss v. Lopez* is cited without comment in a quotation, but not discussed in the due process section.

In view of the space limitations, the text approach might have been better. Such an approach could start by summarizing the principles of law on a subject and then giving a few examples of how it applies. Although this approach tends to be oversimplified, it could have provided a clearer and more coherent introduction to the case law and philosophic issues in the brief space that was available. Another alternative would have been to examine 4 or 5 major cases in some detail rather than to have briefly mentioned several dozen.

Despite these criticisms, *Student Rights, Decisionmaking, and the Law* is a very useful introduction to the field. By cross-referencing the text with the annotated bibliography, the author has made both sections more valuable. His attempt to place current law and administrative guidelines into a larger educational and philosophic context is generally successful and sometimes provocative. The guidelines urge campus decision-makers to observe the spirit of the Constitution by formulating student rights policy with "the aim of enabling action rather than simply restricting it." This positive approach to the law is pragmatic as well as refreshing. Thus Professor Tice calls for problem-solving workshops for all campus committees to encourage and enable students "to make use of the less coercive, more democratic modes of change on campus" and in the larger society. This small volume is a pioneering step in the right direction.

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RETHINKING EDUCATIONAL EQUALITY, By Andrew Kippan and Herbert Walberg. Berkeley, California: John W. McCutchan Publishing Co., 1974. Pp. 162. \$10.50.

*Reviewed by Nida E. Thomas\**

In the beginning the New World offered its bounty to the brave, the strong, the curious, and the lucky—whatever their nationality and social status. Willing pioneers came from Spain, England, and other countries of Europe.

And historians tell us that they came for different reasons. Some came to

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\* Director, Office of Educational Opportunity, New Jersey State Department of Education.

Christianize the natives, others came in search of fortunes, and others to escape religious and political persecution. While there was no particular need for the missionaries or the treasure hunters to stay here once they reached their goals, the third group—in their quest for freedom—was determined to forge a new nation.

These pilgrims conceived the ideal new nation—a refuge of freedom, justice, tolerance, and equality—for themselves. They were not willing, it turned out, to extend these same franchises to others; not even to those who were here before them, least of all to those who were brought here against their will for the purpose of slavery.

—We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—

The noble concept expressed in the Declaration of Independence written two centuries ago did not apply, of course, to the black slave or to the "savage" Indian—neither of whom was considered a human being by the Founding Fathers. And although the concept was supposed to apply to later immigrants and to the residents of other territories annexed after the Revolution, we know today that this does not exactly correspond to historical reality.

Upon the schools fell the important tasks of preserving and transmitting values to immature (and uncivilized) members of the society, selecting which norms to conserve and which to reject, and sustaining the prevailing ethic in the face of contemporary challenges—both foreign and domestic.

However, it was not always educators' altruism that was coming to the fore. Most often, it was the controlling political groups who saw that societal peace was threatened and demanded whatever school action was evident.

Therefore the role of the schools has been seen as a reflection of the mores of society. Society's perceptions, beliefs, and expectations are manifest in the structure and procedure of the school. It becomes evident that existing cultural patterns and social practices continue to sort minority children into predetermined and subordinate roles. Very little attention is given to privileged children who are isolated and aloof from other people.

With the renewed emphasis in the 1960's on civil rights, the powers that be began to realize that, while bigotry and prejudice had no place anywhere in our country, the practice was especially contemptible in American schools which were—with forked tongue—*teaching* the story of democracy and equal opportunity but *acting* out patterns of individual and wholesale discrimination.

Out of this thinking emerged a new concept of educational equality along with innovative strategies to implement it, such as educational financing, compensatory and remedial programs, alternative schools, voucher systems, multicultural curriculum, bilingual education, school desegregation, sex equality, affirmative action, minority staffing, community control, open enrollment, opportunity grants, non-traditional approaches, and many others.

Some of these efforts have been with us for ten years. Is it time to re-

assess? The editors of *Rethinking Educational Equality* think so. But one has to ask, rethink for what purpose? Is too much happening too quickly? Is too little happening too slowly? Is the glass half full or half empty? It depends on who is conducting the assessment. So it becomes important, whenever anyone talks about rethinking anything, that we know what is on the agenda.

There are ten items on the agenda of *Rethinking Educational Equality*; ten chapters contributed by a variety of thinkers on the subject of educational equality.

The ten essays raise a number of critical questions in explicit ways:

- What is equality?
- Should there be educational equality?
- Does it now exist?
- Can it be measured?
- Do we measure the opportunities or the results?
- Does equality mean equal expenditure or equal achievement?
- Will educational equality guarantee income equality?
- Should income be equalized through political action instead?
- Is free tuition antidemocratic?
- Where does the process of school desegregation fit into the concept of educational equality?
- Is it the role of the schools to cure the ills of society?

The editors make no attempt to editorialize: the reader is free to reach their own conclusion. One conclusion reached by this reviewer is that the issue of educational equality is far from settled. Frequently some of the issues raised in these articles receive public attention. While it is relatively safe to assume that everyone is in agreement with the propriety of educational equality, it is likewise obvious that strategists disagree on how to provide it, while the gate keepers disagree on how much. While we ponder those gnawing questions, *Rethinking Educational Equality* is mandatory reading.

# EDUCATION BY CHOICE

The Case for Family Control

**John E. Coons and Stephen D. Sugarman**

*Foreword by James S. Coleman*

An important, beautifully reasoned work. In their controversial new book, Coons and Sugarman decry the fact that place of residence, not educational need, is the determining factor in the type of education most children receive today. They present a compelling and thorough argument for family control over education. They also address the multitude of objections that can be raised in opposition to the argument, and deal directly with such objections in a fair and informal manner.

"Coons and Sugarman have succeeded in what is an infrequently accomplished feat, the production of a volume which is at once thoughtful and scholarly and readily understandable and interesting to lay people." —*James W. Guthrie*  
288 pages, \$10.95

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