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Book Reviews

HIGHER EDUCATION AND THE UNHOLY CRUSADE AGAINST GOVERNMENTAL REGULATION. By Harry T. Edwards. Cambridge, Massachusetts: Harvard University, Institute for Educational Management, 1980. Pp. 53. \$5.95.

*Reviewed by Edward R. Hines**

The title of an "unholy crusade" against governmental regulation accurately describes the substance of this brief essay by Judge Edwards. The thesis is clear and well argued: the magnitude of the expansion of American higher education could only have happened in response to "a new attitude about higher education" becoming the vehicle for social mobility and professional advancement; increased and sustained governmental support of higher education was the policy outcome resulting from this rising expectation; the accounting for this fiscal support would involve some form of regulation; the benefits of funding exceed the costs of regulation; the case against governmental regulation has been overstated; and higher education has more to fear from the economy than from direct governmental regulation. This general line of reasoning, even with somewhat of a tongue in cheek tone, is a welcome change from the near avalanche of commentaries that decry and condemn governmental intrusion, regulation, and control. Substantive merit aside, it is refreshing to see recognition that this issue has more than a single facet. The rising tide against government undoubtedly has been fueled by the larger polity, by the symbolic shift to the right signaled by the results of the 1980 Presidential election, and by a rush to catharsis by attempting to reduce the effects and entrapments of government.

It is the prediction of this reviewer, however, that this monograph will receive more criticism than plaudits. There are a number of reasons for this observation. First, the monograph makes liberal, even excessive, use of the 1980 report of the Sloan Commission on Government and Higher Education (*A Program for Renewed Partnership*, Cambridge, Ballinger). Even before release of this final report, the

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Sloan Commission was criticized for favoring the private, independent sector of higher education (*The Chronicle of Higher Education*, November 13, 1979). In this context, the arguments of Judge Edwards take on the character of a point-counterpoint to the Sloan Commission. Second, this monograph cites additional work by the Sloan Commission staff, including an institutional case study of the impact of governmental regulation on Oregon State University. Author Edwards argues that in the area of the effect of the Buckley Amendment (the Family Education Rights and Privacy Act of 1974), the internal student services operation had not been affected adversely, and the start-up costs of compliance were in keeping with a broader trend within the university. This observation is at variance with the stated conclusions of the commission's case study in its full explication. One conclusion dealt with a negative effect on instructional programs described as "extensive" due to the addition of 20 personnel positions to satisfy federal requirements. Another conclusion pertained to the burden of nonreimbursement placed on internal offices and departments because of such activities as affirmative action. Still other conclusions included "accelerated bureaucratization" within the university, and a "moral dilemma" of reconciling socially desirable goals with "the application of resources beyond the institution's ability to provide them." ("Governmental Impact Study," report for the Sloan Commission, Corvallis, Oregon State University, October 1977, pp. 112-116).

The third problem with Edwards' monograph is its limited use of published, yet readily available material that might have illuminated some of the difficult issues of regulation and autonomy. For example, the final report of the American Assembly dealing with "The Integrity of Higher Education" contained, in the background papers, an essay by Carl Kaysen offering a typology of governmental regulation of higher education as well as an enumeration of policy questions pertaining to regulation ("The Growing Power of Government" in *Disorders in Higher Education* by C.C. Walton and F. Bolman, Englewood Cliffs, Prentice-Hall, 1979, pp. 40-68). Another example is an essay by Stephen Bailey entitled, "The Peculiar Mixture: Public Norms and Private Space," in which three themes are described. First, Bailey cautions that higher education should not overreact to government laws, regulations, inspections, and reports. The second theme is that higher education would do well to negotiate with government in achieving compromise affecting its own autonomy and self-regulation; "the essence of democracy is not in confrontation but in permeation." (Stephen K. Bailey in *Government Regulation of*

Higher Education, edited by W.C. Hobbs, Cambridge, Ballinger, 1978, p. 103). Finally, Bailey warns that the pervasiveness and severity of regulation will be conditioned by higher education, itself, and by the process of resolving these regulatory issues. A more recent source, published since the Edwards monograph, is the Heritage Foundation report on the federal role in education. A summary of this report along with three divergent views was presented in the March 1981 issue of *Change* magazine. What these sources and others provide in combination is a broader scope of coverage and a more penetrating analysis than are offered in this single, brief treatment of governmental regulation.

There are a number of positive aspects to this monograph. Foremost is that it is clearly argued and definitive. The monograph is an excellent companion piece to other more extensive works. Next, there is other substantive material in this monograph that is of interest. In a chapter entitled, "Academic Abstention and Judicial Deference," Judge Edwards traces the history of judicial deference to academic authority, citing *Faro v. New York University* (502 F.2d 1229, 2d Cir. 1974); the fact that courts have exercised minimal scrutiny of higher education employment practices even in the context of Title VII; and the reality that procedural due process protections for faculty as well as for students have not expanded into a major influence upon more traditional notions of institutional autonomy and academic freedom. The author, in conclusion, predicts that the disruptive effects of regulation will decrease, that the higher education lobbying effort will be effective in asserting itself, and that academic abstention is presently "alive and well." These predictions are made largely without empirical evidence. This reviewer concludes that this monograph is a useful addition to the source material, but that publishers might release such treatises as critical essays with no pretense about dispassionate inquiry. Viewed in this light, our knowledge about issues as important as governmental impact can be enhanced.

MANDATE FOR CHANGE: THE IMPACT OF LAW ON EDUCATIONAL INNOVATION. By Joel F. Henning, Charles White, Michael Sorgen, and Leigh Stelzer. Eugene, Oregon: ERIC Clearinghouse on Educational Management, 1979. Pp. 315. \$9.95.

*Reviewed by David L. Colton**

In 1971 the American Bar Association initiated a project designed to stimulate and guide reform in the ways schools teach young people about law, the legal process, and the legal system. Concern about growing juvenile lawlessness and reports about the sterility and ineffectiveness of traditional citizenship education curricula prompted the ABA to form a committee on Youth Education for Citizenship (YEFC). YEFC has stimulated and supported a wide variety of "law-related education" projects that have sprung up under state, federal, and private auspices. More than 300 such projects are said to be in existence today, developing instructional materials for classroom use, training teachers, and encouraging use of community resources (e.g., lawyers) for law-related education. YEFC has encouraged dissemination of the new law-related education materials and techniques by compiling catalogues of available materials, by organizing leadership training programs, by publicizing teacher training opportunities, and through publication of *Update on Law-Related Education*—an outstanding journal of ideas, techniques, and news of interest to law-related educators.

Mandate for Change is a report of the YEFC's study of the effect of state education statutes and regulations on law-related education in the schools. Prior studies of curriculum reform projects in math, social science, and other areas during the 1960s had yielded disappointing findings. Teachers were not using new materials, or they were using them badly.¹ Anxious to avoid a similar fate for law-related education, the YEFC staff used a Ford Foundation grant to study conditions affecting curriculum change in the schools. As the title implies, one specific condition—legal mandates—was of particular interest. However, *Mandate for Change* also reports on other determinants of reform. In that respect the book's title is misleadingly narrow. The title goes too far in implying that the report studies innovations other than law-related education. It does not.

Two studies are reported in *Mandate for Change*. The first, presented in chapters 3-8, examines the law's impact on the formal curriculum, i.e., the courses and units on law that teachers present to their students. In chapters 9-12 a second study is reported; it deals

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¹ For example, see John Goodlad and F. Klein, *Behind the Classroom Door*, Worthington, Ohio: Charles A. Jones, 1970; Ernest R. House, *The Politics of Educational Innovation*, Berkeley: McCutchan, 1974; Ford Foundation, *A Foundation Goes to School*, New York: The Ford Foundation, 1972; Rand Corporation, *Federal Programs Supporting Educational Change* (5 vols.), Santa Monica: Rand Corporation, 1975.

with the law's impact on the informal or "hidden" law-related education curriculum of the schools. The hidden curriculum lies in the messages transmitted to children by a school's authority structure and by teachers' own political participation and views. Of the two studies, the first is considerably neater and more comprehensive. But to this reader it also is less interesting.

The first study defines law narrowly. Local school board policy is ignored. The law of concern in the YEFC study is state laws and regulations pertaining to curriculum requirements, textbook selection, teacher preparation and certification, and use of community resources. *Mandate for Change* includes comprehensive compilations and discussions of these laws insofar as they appear, on their face, to stimulate or inhibit law-related education. Readers in any state will find that these compilations provide detailed information about the legal context of civics and law-related education in the schools.

To estimate the effects of state laws, the research staff interviewed 214 high school social studies teachers and 116 school administrators representing 78 randomly selected schools in California, Georgia, Illinois, Pennsylvania, and Texas. The interviews were designed to provide information on the extent of law-related education and on factors that might stimulate or inhibit law-related education. The authors of the report carefully acknowledge two limitations of their study. First, although schools were randomly selected in the five states, the interviewees were not; rather they were individuals likely to be particularly knowledgeable about law-related education. Second, the interviewers' reports are unverified claims about law-related education curricula; direct evidence about the nature and scope of classroom practice was not collected. The research team failed to note that the teachers in their sample were likely to be "early adopters" of innovations and that legal mandates might affect later adopters differently.

The principal conclusion of the first study is that teacher and administrator interests are far more significant than legal mandates in accounting for the presence or absence of law-related education curricula in the schools. Teacher interest, it was found, usually reflects the personal experiences of teachers themselves. Preservice training and inservice institutes contribute significantly to teacher interest. In words that reflect the refreshingly straightforward prose evident through most of *Mandate for Change* the conclusion is put this way: "The teacher is the one." Legal mandates have very limited influence on curricula. Indeed a substudy of twelve teachers who operated under a Texas mandate suggested that mandates inhibited teacher

spontaneity and enthusiasm for law-related education. This reviewer, who harbors a suspicion that advocates of law-related education are prone to exaggerate the significance of law, was particularly pleased to see the YEFC project's candid acknowledgment of the limits of law as a tool for school reform. The teacher is the one.

However, as *Mandate for Change* makes abundantly clear, reliance upon educators at the building and classroom level does not necessarily bode well for improvement of students' understandings of the law, the legal process, and the legal system. Teachers are not particularly knowledgeable about the law. YEFC interviewers asked teachers and administrators about their knowledge of the Supreme Court's *Tinker* and *Goss* cases.² The former, protecting students' First Amendment rights, and the latter, concerning school suspensions and due process, are central to an understanding of the legal milieu of today's schools. Yet only one-third of the teachers and barely half of the administrators had even a minimal understanding of *Tinker* and *Goss*. The YEFC investigation was not designed to identify the determinants of teachers' legal literacy, and so the sources and limitations of teachers' legal knowledge are discussed only in passing. We need to know more. Clearly proponents of law-related education will have to surmount the same obstacle that blocks improvement of many other instructional programs: teachers simply do not possess—without training—the knowledge that must undergird effective instruction.

The second study conducted by YEFC considers the impact of law on the informal or "hidden" curriculum of the school. The hidden curriculum is complex, implicit, and difficult to describe. YEFC interviewers sought insights and ideas for further inquiry rather than systematic data. This reviewer found the results particularly intriguing. For example, a query designed to identify teachers' own legal concerns found that teacher liability is the number one topic in which teachers feel the need for new knowledge. It would be useful to know whether and how this concern is associated with teacher willingness to let students take responsibility for their own actions. Does the threat of malpractice encourage or inhibit teacher willingness to let students try their wings? More generally, how does law affect pedagogy?

Teachers and administrators reported that recent court cases have had the effect of clarifying school rules and making them more ex-

² *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). *Goss v. Lopez*, 419 U.S. 565 (1975).

plicit. Do students view these developments as repressive, or do they welcome the clarity? Interestingly, YEFC interviews indicated that respondents were quite evenly split among those who said that the court cases had improved or worsened conditions in school. As to teachers' own political participation and the role models such participation provides to students, YEFC interviewers found that the protections granted by *Pickering* have not overcome teachers' fear of reprisals for criticism of school policies and practices. As *Mandate for Change* notes, "should this attitude be transmitted to students, it might result in students learning a lesson on conformity that would have implications for their notions of citizenship." Data comparing teachers' rankings of citizenship values in a 1965 study and in the YEFC study suggest that teachers' own values may affect the manner in which law-related education materials are taught and, therefore, their results. Clearly we need to know more about such matters.

Mandate for Change provides good descriptive data about the legal context of law-related education. It reinforces other studies showing that teachers rather than legal mandates are the key to curriculum change. It draws attention to the importance of the informal curriculum in law-related education. Social and policy scientists, however, are likely to be dismayed by the book's inattention to student outcomes, by the vague specification of the dependent variable (law-related education curricula), and by lack of information about the data-analysis techniques used by the research staff. The study fails to investigate significant determinants of change, e.g., the quality and availability of curriculum materials, competing demands, and financial retrenchment. But these problems of design and method are by no means fatal to the book's central message. As Joel Henning put it in his foreword, "there is no shortcut to the reform of elementary and secondary curricula, even in a field as important as law." For reformers inclined to forget that truth, *Mandate for Change* is an instructive antidote.

SCHOOL LAW DESK BOOK. By M. Chester Nolte. New York: Parker Publishing Co., 1980. Pp. 269. \$17.95.

*Reviewed by William D. Valente**

As contention becomes more commonplace in our schools, observ-

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ers may wonder whether to fault social change or the law for recent upheavals. For example, the rights revolution and teacher unionization can be seen as both cause and effect of significant shifts in federal and state laws governing our schools. As educators become more pressed to govern within the law, the need for clear and accurate school law references to guide them also becomes increasingly evident. That need is not easily met, for school law is both complex and massive, and it must be organized and explained in sensible laymen's language. This requires special intellectual talent, practical experience, and patient labor.

Fortunately, Professor Nolte possesses that rare combination, having worked over fifty years as a teacher, school principal, superintendent, and professor of educational administration at the University of Denver (now emeritus). The purpose of his desk book is best stated by him: "This book is designed to help those who manage schools or who participate in the making of educational decisions. . . . A desk book is just what the name implies—a book to have handy on your shelf when trouble of a legal nature crops up." (Op. cit. *supra* p.12). He goes on to explain that his purpose is not to make lawyers of administrators, but to alert them to the dimensions of legal problems so that they can make practical decisions and adopt prudent courses of action. In the light of that very laudable goal, this book must be judged a clear success, for the author is not only able to relate to the problems and perceptions of schoolmen, but is able to deliver his thoughts in a style and mode that is congenial to the educated layman.

The book's fourteen chapters seem to cover three sequences. The first is an overview of familiar school trouble situations that illustrate the need for legal awareness in school supervision. The following three chapters address problems that arise more often from direct institutional initiative and policy than from individual relationships, namely, church-state relations and antidiscrimination disputes. The last eight chapters deal with problems that are more commonly identified with personalized grievances of particular subgroups, such as teachers, parents, and students. A constant feature in each chapter is the counterpoise between the problems presented and the suggested administrative techniques to minimize or avoid those problems.

The author's strong focus on problem solving (rather than elaboration of legal concepts) causes him to address principles and rules in terms of their application to concrete settings, rather than in terms of their doctrinal foundations. Consequently, different facets of teacher or student supervision are found in different chapters. Thus,

teacher management is broken down to labor relations bargaining (chapter 6), freedom of expression (chapter 8), and problems of dismissal or layoff (chapter 10). Similarly, student management issues appear in several chapters that deal with topical situations, such as child abuse, student testing and grouping, special education, and student rights and discipline. This clinical approach enables the author to provide crisp summaries of specialized law, supported by useful charts and tables.

The foregoing approach, while dominant, is not pristine. Even the most utilitarian writer on school law would be required to discuss untested theory in addressing frontier legal problems. For example, perplexing issues arising from affirmative action programs can only be reviewed in terms of the law's rationalizing principles. On affirmative action problems, Nolte goes farther, to suggest administrative approaches that may reconcile the demands for "affirmative action" with avoidance of charges of "reverse discrimination."

A practical quick-reference feature, to be found in each chapter, is the author's arrangement of graphic informational charts and tables that summarize and encapsulate material in the narrative text. These charts are located near the text to which they directly relate and are admirably organized to reinforce the text lesson. Some charts identify the legal issues to be considered; others cover principles or circumstances that bear upon legal results; and still others list pertinent legal authorities (cases or statutes). All are captioned to describe clinical situations. By cataloguing his charts (called figures) near the table of contents, the author provides a ready reference to particular chapters that discuss the issues covered by each title. More extensive data tables, collected in appendices at the end of the book, include useful outlines of equal employment opportunity statutes and of student publication guidelines.

Some persons may prefer a different scheme or organization whereby all branches of law dealing with a particular group would be collected either in a single chapter or in a continuous series of chapters. Such an organization would, of course, inject complex analyses of the interaction of different levels of law that could converge upon the same subject in particular cases.

Lawyers, such as myself, have a trained bias for such an approach. We view law as a process that combines logical and institutional sources of lawmaking with social policy judgments in arriving at a specific decision on a concrete problem. I recognize, however, that such an organization of ideas would tend to blur, if not blind, the perception of busy administrators. One cannot seriously fault the au-

thor's decision to sequence his material in the order in which he ranked its importance to the everyday work of schoolmen. This desk book does not attempt intensive case citation to cover the spread of law variations in the sister states. Such coverage again would require a different kind of book than that intended by the author.

While the materials serving this author's purposes are necessarily more selective and economical than might be desired for deeper study, it would be unfair to quibble about the lack of excess of particular elements one individual might favor. For all the book reviews and critical guidance that widen the vistas of authors and publishers, the fact remains that, short of a twenty-volume text, in the manner of McQuillin on Local Government, no single-volume work can be all things to all readers, be they academics, practitioners, or commentators from related fields.

Happily, for the expert as well as the novice, Nolte's School Law Desk Book provides a handy reference to school law and a good starting point for those who would undertake continuing research and study in this fascinating field. The author, whose many past publications have earned him wide respect, has added a fine volume to education literature.