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## Book Reviews

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# Book Reviews

RESOLVING FACULTY DISPUTES. By Jane McCarthy, with Irving Ladimer. New York: The American Arbitration Association, 1981. Pp.70. \$8.00 (paperbound).

*Reviewed by Donald W. Brodie\**

*Resolving Faculty Disputes* is another useful "how to do it" short book from The American Arbitration Association (AAA). The title indicates AAA's interest in dispute resolution has gone well beyond the traditional areas of labor and commercial arbitration. This publication presents a model procedure for resolving faculty disputes in higher education. The suggested procedures contain elements of mediation, hearings, and third party arbitration. The model procedures are set forth in technical detail and are explained at length. A schematic flow chart is presented. Special rules for each element (e.g., mediation, arbitration) are detailed. In sum, a complete dispute resolution package is presented in a straightforward, clearly written style. The book may be most useful to an institution without a collective bargaining contract since some of them may have less experience with a formal grievance process.

The foreword states a basic premise that presumably underlies the procedures, namely, "universities are special places." A "special place" may require special procedures. Procedures based upon traditional industrial model dispute resolution and arbitration techniques apparently are not appropriate. The suggested procedures, among other subjects, could be used for such identified disputes as discrimination (e.g., race, sex), workplace facilities, and promotion and tenure. The less desirable alternative methods of resolving these disputes are identified as including lawsuits or government agency reviews.

The "special place" premise is one held by virtually every interest group in society. Whether each group deserves special treatment is a different issue. One might ask, for example, whether recognition of the "special place" of historical higher education (where females and minorities were often under-represented) is part of the problem or part of the solution. To the extent that the suggested procedures

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\*Professor of Law, University of Oregon.

might tend to institutionalize this historical problem, females and minorities might find the other "nonspecial" forums to be more attractive. The problem is raised in the suggested procedures in several ways. It may be raised in the membership of the design committee which would review an institution's existing dispute procedures and recommend new ones, presumably some of those suggested in the book. The issue may also be raised by the use of a "hearing officer" who is a member of the institution, rather than a sometimes more neutral outsider. Few would deny that higher education has some distinctive characteristics. Many might question whether such alleged employment problems as discrimination and claimed breach of contract (or oral understandings) require special procedures because they occur in a university setting.

The book discusses the use of neutral, third party arbitration as a part of the dispute resolution process. Arbitration is, of course, the widely used speciality of the publisher, the American Arbitration Association. The book, however, makes no significant reference to the AAA series entitled "Arbitration in the Schools." This series includes arbitration awards primarily in elementary and secondary education, but also includes a number of higher education awards. This reviewer's analysis of these AAA school awards suggests that education is not viewed as a particularly "special place" by arbitrators. The inclusion of some of these materials from arbitrators would have given readers a practical sample of what some elements of the proposed procedures might really mean.

The suggested procedures identify a number of important elements that should be considered in higher education dispute resolution systems. One example is the need to distinguish between those disputes that can be settled at the institutional level and those disputes that can be finalized only at the level of the board of trustees. Another is the separate identification given to disputes involving the character of the work environment. This class of disputes involving "professional activity" deserves special study.

"Professional activity" includes all functions and responsibilities that affect the ability of the faculty member to pursue his or her customary research, teaching, and institutional duties.

A large number of disputes are rooted in the conflict between institutional expectations concerning faculty duties and the ability of the institution to provide adequate facilities to the faculty member to meet these expectations. The brief guidelines suggested for the conduct of mediation warrant detailed study. The author could have profitably given greater discussion to this most important element of

any dispute resolution process. It should also be noted in these procedures that an arbitrator would have the authority to award money damages as part of the award. The author's discussion also identifies one of the basic issues in many institutional disputes: the lack of explicit, written institutional policies. The author states, in part:

Since complaints will allege violations of specific practices, it is important that these institutional policies be clearly enunciated. . . . The institution should have clearly established policies on such issues as promotion, tenure, and retirement.

Meaningful resolution of disputes involving "professional activity," for example, might hinge on the comparison between written policies or contracts on the level of faculty support and the written policies on the requirements for faculty research, teaching, and institutional duties.

In sum, *Resolving Faculty Disputes* provides valuable and insightful technical detail on a suggested dispute resolution procedure. The "special place" premise caters to a commonly held image, but is of far less value than the technical analysis. This short publication warrants close attention. It should also be useful in creating dispute resolution procedures for the many higher education employers who are not members of the faculty.

EDUCATIONAL POLICY AND THE JUST SOCIETY. By Kenneth A. Strike. Urbana, Illinois: University of Illinois Press, 1982.

*Reviewed by Gail Sorenson\*\**

In 1935, John Dewey said that the enduring values of liberalism were "liberty; the development of the inherent capabilities of individuals made possible through liberalism, and the central role of free intelligence in inquiry, discussion and expression." The entirety of Dewey's writing demonstrates an abiding respect for individual human dignity—what Ronald Dworkin has called the individual's right to "equal concern and respect"—and a belief in the possibility of individual and social betterment through the intelligent use of rational capabilities. *Educational Policy and the Just Society*, by Kenneth Strike, joins the mainstream of this liberal tradition. It is a plea to take the central themes of liberalism—identified by Strike as rationality, liberty, and equality—seriously in the formulation of social and educational policy.

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\*\*Assistant Professor of Educational Administration and Policy Studies, State University of New York at Albany.

Initially, Strike observes that the liberal "intellectual tools" used to formulate and implement educational policy are not working very well in contemporary America and may need to be reformulated. He shows how this could be accomplished, in part, by illustrating the excesses of liberalism and capitalism, the unduly atomistic and mechanistic applications of empiricism, and the unjust results of an unrefined utilitarianism. But Strike's analysis goes beyond criticism by integrating themes from cognitive, developmental, and behavioral psychology; from philosophy of science; from political theory; from constitutional law; and from ethics, more generally, to recommend major goals for educational policy in the coming years. Avoiding the mistake of some earlier liberal thinkers, Strike does not claim that a just society can be achieved by applying a revived liberal theory to the formulation and implementation of educational policy alone. He suggests that we may need to look beyond schooling to find ways of maintaining economic efficiency while avoiding excessive concentrations of wealth and economic power that tend to undermine liberal conceptions of justice.

The breadth of what Strike has undertaken in this book precludes even a cursory overview of the many themes he has integrated. While there are many ideas which readily elicit agreement, it is inevitable that some topics will elicit disagreement as well. The first major section of Strike's book is devoted to a review and critique of traditional empiricist views of learning, and especially of behaviorism, for the purpose of repudiating the concept of rationality Strike believes is inherent in these traditions. The critique of behaviorism and empiricism is arguably excessive and perhaps even unnecessary. Although Strike suggests, for example, that B.F. Skinner would deny a human capacity for rationality, Skinner's admonition that we need to recognize the existence of environmental determinants to behavior in order to effect countercontrol seems to entail the acknowledgement of rationality. But the larger point is that Skinner is not necessarily engaged in the same project that Strike is engaged in. Whether one agrees or disagrees that empiricism and behaviorism are "at odds with liberal values" and that behaviorism may be a "Trojan horse in the liberal state," Strike nevertheless reaffirms that a liberal pedagogy must necessarily be concerned with developing the capacity for rational inquiry and thought.

Strike gives a concise overview of recent developments in the philosophy of science to make the point that this "much modified" empiricism, which recognizes the "primacy of the conceptual" in rational inquiry, provides a more adequate foundation for liberal

educational theory. Strike argues that important negative consequences follow if traditional empiricism is not replaced by a variety of "developmental Kantianism." Again, it may not be necessary to decide whether "the conceptual" or "the law of dots," in William James' terms, is primary; it may be that an integration or reconceptualization of both is needed for an adequate account of the process of teaching and learning.

In the second major section of the book, entitled "Public Education and Private Values," Strike notes that public schools in a liberal state are largely excluded from inculcating private values and are not very effective at inculcating public values. To resolve the problem of transmitting values, Strike suggests that the dominance of public education should be eliminated by increasing the effectiveness of family and community and that public institutions should become more personal and democratic. Strike surveys several major Supreme Court cases from *Pierce* to *Yoder* to illustrate how private values can be strengthened outside the sphere of public education. He is very clear, however, that the public values inherent in a liberal ideology are appropriately transmitted in public schools, and that the vocational role of schools needs to be revitalized by integrating it into the larger role of educating competent persons and citizens.

A related issue concerns the nature of student rights. Strike supports the concurring opinion of Justice Stewart in the *Tinker* case that "the First Amendment rights of children are not coextensive with those of adults" rather than the majority opinion, which states that students do not "shed their constitutional rights . . . at the schoolhouse gate." Since first amendment rights have never been held to be absolute, it is not clear from what Strike says that these two positions are necessarily incompatible. Few have argued that there are no constitutionally significant differences between children and adults and between public schools and the public forum. To the extent that these positions may be different, however, Strike's later point that limiting a child's right to freedom of expression should only be done with adequate justification appears more compatible with the majority's position.

Strike also treats the issue of paternalism suggested by the *Tinker* case extensively in section II. After outlining Mill's position that maturity is a necessary prerequisite to achieving the purposes of the first amendment, Strike argues, following John Rawls, that paternalism can be justified only insofar as those subjected to it are treated so as to eliminate the need for paternalistic intervention. He concludes that it would be best to assume that children are "legal persons pos-

sessed of basic constitutional rights" which can be overridden "as educational needs justify." If this were permitted only when educational needs were compelling, it would seem that Strike's views are close to the prevailing position of a majority of the Supreme Court. Strike's further conclusion that "[s]tudents have rights, but not always those of adults" appears to confuse the possession of rights with their application in a public school setting.

Later in the same chapter, Strike discusses the detrimental effects that age-segregation and the extension of rights to students may have on the transmission of values in public schools. Strike suggests that because age-segregation tends to alienate students from adults, it is difficult for educators to transmit even basic democratic values to students. When students get the message that adult life is serious and school life is not, they turn to their peers, developing an insular subculture with its own values. Research done by Strike and a colleague has shown that students have an "outsider's view of rights"—one which allows them to use rights against adults but which does not allow students to break the peer-group bond. Strike concludes that the extension of rights to students further solidifies the peer-group rather than making the school a more democratic community. Strike would not advocate the elimination of student rights, however, but would solve the dilemma of transmitting values by developing smaller and more personal public educational settings and by encouraging a variety of private, real-life educational opportunities for children.

In the last major section of the book, "Equal Rights and Equal Opportunity," Strike convincingly argues that schools have a duty to eliminate inequality, to the extent possible, through compensatory education, affirmative action, and integration. This is true, he says, even though it may entail an unequal distribution of resources and greater state involvement in education. Applying a revitalized liberal notion of equality to desegregation, Strike notes that segregation has been shown to be harmful whether intentional or not and that schools should be integrated both racially and socioeconomically. Strike goes beyond the stigma theory associated with intentional segregation to suggest that any policy, whether "intentional" or not, which knowingly results in unequal educational opportunity violates fundamental liberal notions of equality. He suggests that a consideration of intention cannot be divorced from a consideration of consequences, thereby providing the possibility of a more comprehensive and more just understanding of intentional state action for Fourteenth Amendment purposes. Strike rejects a concept of equality de-

rived from unrefined utilitarianism (which seeks to maximize the average welfare) and promotes instead a concept derived from Locke, Rawls, and Dworkin, which places fundamental importance on the right of the individual to "equal concern and respect" (Dworkin's terminology). Focusing on the concept of fundamental rights, Strike concludes that society has an obligation to reduce disparities in wealth and power so that schooling may be able to compensate for remaining inequalities.

At a time when the word "policy" is attached to nearly every endeavor of social importance, it may be that Strike's most meaningful contribution lies in pointing out that the formulation, implementation, and evaluation of educational policy take place within an ethical framework. These activities, along with continuing reformulations, are pursued within the context of a society where liberty, equality, and rationality are central ideals. Just as Ronald Dworkin would have us take rights seriously, so Kenneth Strike would have us take the enduring principles of liberalism seriously. And he has shown us where this might lead.

While Strike is not concerned that readers of this book agree with him, he hopes they will find his ideas fruitful. There should be very little reason for disappointment on that account. *Educational Policy and the Just Society* is a unique and provocative contribution to educational and social theory.

COMPELLING BELIEF: THE CULTURE OF AMERICAN SCHOOLING. By Stephen Arons. New York: New Press/McGrawHill, 1983. Pp. 228. \$19.95 (hardcover).

*Reviewed by Karen E. Holt †*

"The raw material from which this book is made is conflict—corrosive, irreconcilable, and proliferating conflict between government and family."<sup>1</sup>

This sentence, from the introduction of *Compelling Belief*, sets the tone of the remainder of the book. In it, Stephen Arons, director of the Department of Legal Studies at the University of Massachusetts, analyzes and documents the system of education in the United States and the effects of its concomitant bureaucracy. The repression of individualism and the inability of the school system to be flexible in

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† Student, University of Louisville School of Law.

<sup>1</sup> S. ARONS, *COMPELLING BELIEF: THE CULTURE OF AMERICAN SCHOOLING* vii (1983) [hereinafter cited as *COMPELLING BELIEF*].



applying its educational policies form the basis of Aron's critical examination of public schooling.

Arons uses four themes to illustrate problems within education: the stifling of dissent in schools;<sup>2</sup> the fear of parents that traditional values are not reinforced in schools; the need to restructure public education to ensure the survival of both it and the freedoms of belief and expression; and the apparent inability of the law to incorporate "the reality of family life and conflict in its decisions. . ."<sup>3</sup> These themes surface throughout the book, which is divided into four sections. Part One concerns censorship; Part Two, education; Part Three, governmental control of private schools; and Part Four, separation of church and state. Each section describes in detail a particular instance of conflict in schools and examines its extent and effect.

Part One contains six chapters on "the control of public school culture."<sup>4</sup> The first chapter describes the bookburning fervor that seized Warsaw, Indiana, in 1977 and 1978. Arons' description of the social climate in Warsaw and the events leading up to the banning illustrate the "anti-intellectualism" which gives rise to calls for censorship. This censorship eventually led to the filing of four lawsuits challenging the ban in federal court.<sup>5</sup> According to Arons, "The claim that the U.S. Constitution applies in Warsaw generated the early signs of the same hysteria that built up over the presence of dirty words in books and the appearance of labor arbitrators in Warsaw in 1978."<sup>6</sup> Arons' detailed discussion of these incidents provides valuable insight into the background of book-banning, and is especially effective in describing the aftermath of the banning and what happened to teachers who challenged it.

The next two chapters discuss other instances of censorship in the schools, but rely on headline capsulizations and blanket statements of examples of censorship with no documentation. For example, at one point Arons states: "To this day the average high-school biology text contains fewer than fifty lines about evolution."<sup>7</sup> No source or method for arriving at this conclusion is given.

The fourth chapter concerns the creation-evolution debate and its presentation in schools. Arons gives examples of some of the more

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<sup>2</sup> *Id.* As Arons notes, it is "a paradox that a society should repress intellectual freedom with the institution of education."

<sup>3</sup> *Id.* at viii.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> The only one of these four cases mentioned by Arons is *Zykan v. Warsaw Community School Corp.*, 631 F.2d 1300 (7th Cir. 1980). *COMPPELLING BELIEF*, *supra* note 1, at 8.

<sup>6</sup> *COMPPELLING BELIEF*, *supra* note 1, at 9.

<sup>7</sup> *Id.* at 19.

flammable rhetoric of each side, but wisely chooses to conclude with an observation from someone more familiar with the controversy than he, Dorothy Nelkin.<sup>8</sup> Arons is not concerned with explaining much about the scientific debate, but rather uses this as an example to support his thesis that “[t]he contest between evolution and creationism centers on which explanation of reality shall be certified by government as valid for the next generation.”<sup>9</sup>

“Casualty List,” the fifth chapter, examines how the censorship movement has affected persons involved in education. Arons discusses the loss of morale in teachers, finding they have a “fear of violating some unknowable boundary of propriety.”<sup>10</sup> Morale is also reduced because teachers are aware that if they somehow cross that “boundary of propriety,” many other teachers are ready to take their jobs. The school board’s dilemma, of being “expected to defuse this tension and to create cohesion out of conflict,”<sup>11</sup> is also noted, as are the effects censorship has on the school children. In this chapter, as throughout the book, Arons relies on incendiary language and concepts (e.g., “a witch hunt is not a witch hunt unless the witches are publicly attacked and excluded from the community”<sup>12</sup>) to make his point. Although this language does provoke feelings against censorship, one feels a nagging doubt as to the basis and support for Arons’ arguments. Indeed, *Compelling Belief* contains no list of references or bibliography, nor do footnotes provide sources for quotes. Although quotes are scattered throughout the book, most cite only an author’s name, with no hint as to context or where to look for further information.

The final chapter in the section on censorship presents the crucial dilemma in examining censorship—that while “censorship threatens the system of freedom of expression upon which democracy depends . . . schooling without individual family choice must always violate these same civil liberties.”<sup>13</sup> As Arons points out, “It is not easy to make liberty and compulsory education consistent with one another.”<sup>14</sup> This chapter succeeds at identifying the inherent conflicts, but falls short in supplying solutions.

The second part of *Compelling Belief* contains six chapters chroni-

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<sup>8</sup> *Id.* at 37. For a more thorough analysis of the creation-evolution conflict, see D. NELKIN, *THE CREATION CONTROVERSY: SCIENCE OR SCRIPTURE IN THE SCHOOLS* (1982).

<sup>9</sup> *COMPPELLING BELIEF*, *supra*, note 1, at 37.

<sup>10</sup> *Id.* at 41.

<sup>11</sup> *Id.* at 49.

<sup>12</sup> *Id.* at 51.

<sup>13</sup> *Id.* at 65.

<sup>14</sup> *Id.* at 67.

cling the attempts of persons seeking alternatives to public schooling. Chapter 7 examines the experience of Peter and Susan Perchemlides, who ran afoul of the Commonwealth of Massachusetts in trying to provide home education for their child. Arons' approach towards the Perchemlides' reasons for desiring to educate their child at home and their qualifications for doing so is persuasive, but his tone quickly becomes unsympathetic when discussing Massachusetts' efforts to accommodate the family. Although home education is a legitimate alternative to public schooling, Arons seemingly fails to appreciate the complexity of the task facing the educational bureaucracy in trying to ensure that adequate safeguards are met in such instances. Few families are capable of achieving the level of instruction given by the Perchemlides couple, making the state's goal of ensuring adequate education even more difficult. Arons' criticism of the system is probably well deserved, but not constructive.

The history of home education and the problems parents encounter in trying to set up a home program are discussed in the next four chapters. The material is informative for laypersons who might attempt such a program, but not illuminating for those more familiar with bureaucratic processes. Arons continues his melodramatic tone: "Why is it that millions of children who are pushouts or dropouts amount to business as usual in the public schools, while one family educating a child at home becomes a major threat to universal public education and the survival of democracy?"<sup>15</sup>

Chapters 14, 15, and 16 examine the Owensboro (Kentucky) Christian Academy case<sup>16</sup> and the friction between fundamentalist Christian schools and public educators. Although it is clear that some state regulation of public schools is inevitable, disagreement arises on the scope of that regulation. The feelings of both sides are well examined; in fact, this is the strongest and least dogmatic section of the book.

Chapter 17, "A Choice of Orthodoxies," reviews the challenges to and successes of value transmission in nonpublic schools. The extent to which mass acceptance of public schooling is eroded by increasing private school attendance plays a critical role in the success or failure of the public school system. As Arons concludes in this section, "The structure of schooling and the interpretation of law in the age of majority-controlled education indicate a bleak future for the creation and maintenance of voluntary associations based on beliefs at odds

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<sup>15</sup> *Id.* at 88.

<sup>16</sup> *Kentucky State Bd. of Elem. & Sec'y. Educ. v. Rudasill*, 589 S.W.2d 877 (1978), *cert. den.* 447 U.S. 938 (1980).

with public orthodoxy."<sup>17</sup>

The final section, "Separation of School and State," is a brief history of the, at times, seemingly impossible task outlined by the framers of the Constitution. Arons seeks in this section to reconcile the problems discussed in the earlier sections—families seeking control of the policies of public schools, those who desire home education, and those persons using private schools as mechanisms for socialization into their culture—with the goal of church-state autonomy. Arons identifies dissent as the common factor linking these groups, who then run afoul of traditional public schooling because of governmental hostility to dissent.<sup>18</sup> Without reaching a conclusion on the rightness or wrongness of the dissenter's opinions, Arons advocates their right to possess them, even to the detriment of the public school system. The argument here becomes political: "The battles between families and school officials for the consciousness of children are, therefore, more than a struggle over the expression of dissenting values in present-day schooling. They are a conflict over the nature of political participation in the future."<sup>19</sup>

The right to control the education of one's children originates, Arons believes, in the first amendment; he interprets it as meaning that no regulation of belief can be tolerated.<sup>20</sup> The solution is to ensure that "no group or political majority can use school socialization to maintain or extend its ideology or political power."<sup>21</sup> How to avoid this in practice Arons never reveals, but he leaves the reader with three considerations in case anyone *else* proposes a restructuring of American education:

1. Would the new structure remove economic discrimination in the choice of schools and prevent some families from pricing others completely out of the market, thereby becoming truly voluntary for families complying with compulsory education requirements?
2. Would the new structure provide a clear and enforceable policy that race discrimination in any form and in any aspect of schooling is illegal?
3. Would the new structure protect individuals, families, and schools from government manipulation of beliefs and world views? Is the direct or indirect regulation of family choice or school content prohibited except where compelling justifications exist?<sup>22</sup>

Whether these considerations can be applied and would be effective

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<sup>17</sup> COMPELLING BELIEF, *supra*, note 1, at 185.

<sup>18</sup> *Id.* at 191.

<sup>19</sup> *Id.* at 195.

<sup>20</sup> *Id.* at 203.

<sup>21</sup> *Id.* at 207.

<sup>22</sup> *Id.* at 220.

in alleviating the evils Arons has identified is unknown.

*Compelling Belief*, although well written, ultimately leaves even the sympathetic reader all fired up with no place to go. Few would question the conflicts and the seriousness of the problems Arons presents, and fewer still would be unaware of their existence. To be effective, to *have* an impact on these problems, there must be less teeth-gnashing and more resolution (or attempted resolution) than Arons musters.