COMMENTARY

GOODBYE MR. CHIPS: STUDENT PARTICIPATION IN LAW SCHOOL DECISION-MAKING

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AS politics and ideology come to the universities of America, it becomes increasingly difficult to define such oft-heard slogans as "student rights" or "student participation" or "democracy on the campus." Defining the student's role on campus is as elusive as discerning the real politics of the Vicar of Bray.[1] One approach is to define these concepts through litigation. We are, as de Tocqueville reminded us long ago, a people given to clothing such questions in legal garb and asking courts for the answers.[2] In the decade following the Fifth Circuit's landmark decision in *Dixon v. Alabama Board of Education*,[3] a staggering body of case law has accumulated regarding student rights and student responsibilities, especially in areas of procedural rights in disciplinary proceedings and freedom of expression on campus.[4]

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[1] This chorus states the Vicar's credo:

> And this is law, I will maintain,
> Until my dying day, Sir,
> That whatsoever King may reign,
> Still I'll be the Vicar of Bray, Sir.
> —17th Century English air.

1 ENGLISH MINSTRELSIE 15 (S. Baring-Gould ed. 1890). As portrayed in this air, the Vicar of Bray manages to adapt his theology to each change of reign from Charles I through the House of Hanover. The historical Vicar of Bray was Simon Aleyn, vicar from 1540 to 1588.

> "He was a Papist under the reign of Henry VIII., and a Protestant under Edward VI.; he was a Papist again under Mary, and once more became a Protestant in the reign of Elizabeth. When this scandal to the gown was reproached for his versatility of religious creeds, and taxed for being a turncoat and an inconstant changeling," as Fuller says, "he replied, 'Not so neither; for if I changed my religion, I am sure I kept true to my principle; which is, to live and die the Vicar of Bray.'"

Id. at xxvii-viii.

[2] 1 A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 280 (P. Bradley ed. 1945):

> Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.

[3] 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961).

[4] *See, e.g.*, Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503

In this brief comment, I am not concerned with such well-developed areas as due process in disciplinary procedures or First Amendment rights of students.[5] Instead, I am concerned with what is usually called "student participation" in the governance or decision-making processes of a law school—a problem that, in turn, suggests questions about student participation in the governance or decision-making of universities generally.

"Student participation" can mean many things. It can be, like the revolutionary slogan of "all power to the people," a call for "student power"—a summons to the most numerous element on a campus to impose its will through raw power. Or, perhaps more philosophically, "student participation" may connote a "democratic" principle of one man, one vote, in order that universities may be run like society at large. Or "student participation" may suggest a pluralistic system in which "interests" or "estates"—students being one such interest—are represented and bargain over their respective roles and statuses. More simply, "student participation" may be taken to mean that, without any effort to systematize a philosophical base for student participation, students are brought into the decision-making process, either as voting partners or as sources of advice and opinion.

Whatever the theoretical basis, and whatever the form that student participation takes, it is clear that everyone's doing it. In a random survey of one hundred college and university presidents by the American Council on Education in 1968, 90 percent of the presidents "foresaw students serving as voting members of most academic committees on the typical campus." [6] A survey by the Office of Institutional Research at East Carolina University documents this trend; 88.1 percent of the institutions replying to a questionnaire reported student membership on at least some academic committees.[7]

(1969); Dickey v. Alabama Bd. of Educ., 273 F. Supp. 613 (M.D. Ala. 1967), *vacated as moot sub nom.* Troy State Univ. v. Dickey, 402 F.2d 515 (5th Cir. 1968).

[5] The literature on this subject is voluminous. Among the best articles and sources are Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027 (1969); *Symposium—Legal Aspects of Student-Institutional Relationships*, 45 DENVER L.J. 497 (1968); Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. FLA. L. REV. 290 (1968); *Developments in the Law—Academic Freedom*, 81 HARV. L. REV. 1045, 1128 (1968); General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education, 45 F.R.D. 133 (W.D. Mo. 1968). For a bibliography of cases, articles, and other sources, see Van Alstyne, *A Suggested Seminar in Student Rights*, 21 J. LEGAL ED. 547 (1969).

[6] Wilson, *Changing University Governance*, EDUCATIONAL REC., Fall 1969, at 398.

[7] OFFICE OF INSTITUTIONAL RESEARCH, EAST CAROLINA UNIV., A SURVEY OF PRACTICES

Law schools show the same developing pattern. While the arrangements vary widely from one law school to another, rare is the law school that has not taken some formal step to bring students into the decision-making process in one way or another. The popularity of the subject of student participation is also reflected by the existence at many law schools during the last academic year of committees that have submitted reports on student participation or are still at work on the question.[8]

Probably the subject of student participation in law school decision-making deserves no particular scrutiny, save as a branch of the more fundamental problem of the governance of universities generally. Certainly there is no separate body of literature on student participation in law school governance alone.[9] In general, infusion of students into the decision-making processes of the nation's law schools seems to have taken place in a pragmatic and intuitive fashion. Reports of law school committees which have studied the matter are typically (perhaps mercifully) short and to the point, making recommendations for student participation without seeking to explore the larger questions of law school or university governance. Examination of such reports does reveal a number of common features, for example, a universal sensitivity about students taking part in the hiring or promotion of law faculty. More often than not, however, the premises on which a law school goes about creating one form or another of student participation are not notably articulated in these reports.

Before turning to the specific question of student participation in law school decision-making, are there more general background subjects that ought to be explored? For example, ought one to reflect on the nature of decision-making generally? No doubt there is some cultural value in understanding how decisions are arrived at in any group or organization. It is hard, for instance, not to reckon with the so-called "iron law of oligarchy" in any collective decision-making process.[10] And, of course, much has been written on theories and principles of

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RELATED TO STUDENT MEMBERSHIP ON ACADEMICS COMMITTEES 2 (1969).

[8] Illustrative reports are cited in the body of this Commentary.

[9] One essay on the subject is Morris, *Student Participation in Law School Decision Making*, 22 J. LEGAL ED. 127 (1970).

[10] The "iron law of oligarchy" is a theory developed by Robert Michels and Vilfredo Pareto "which propounds the impossibility of democracy in practice because of the tendency of small groups to dominate and control the majority." J. PLANO & M. GREENBERG, THE AMERICAN POLITICAL DICTIONARY 11 (1962).

decision-making.[11] But, save for those already immersed in this esoteric subject, it is hard to recommend that one linger on this aspect of the matter.

It is more to the point, in looking at law school decision-making, that one reflect on the nature of a university and its governance, and on the nature and purpose of a law school. It is increasingly difficult—and increasingly indefensible—to view a law school in isolation from the university of which it is a part. With some notable exceptions, law schools are somewhat less susceptible to the shock-waves that have struck many campuses in recent years. However, this has become markedly less true, especially after the malaise pervading the campuses following the Cambodian invasion and the shootings at Kent State in the spring of 1970. Student unrest is not the only force at work; the rise of interdisciplinary studies, the changing career expectations of law students, and other new dimensions in legal education tie the law school more and more to the fortunes of the larger university world.

The models for the university are many. Familiar are the concepts of the university springing from English, German, and American prototypes—models which respectively are said to emphasize teaching, scholarship, and public service.[12] The modern American university is a blend of all of these impulses and more, producing an uneasy marriage of traditions that has much to do with the identity crisis in which American higher education finds itself. In addition to the voluminous literature on the character of higher education in this country, such as the well-known enquiry by Christopher Jencks and David Riesman,[13] a number of our best minds have addressed themselves to the governance of the university and the place that students ought to have in that governance.[14]

[11] *See, e.g.*, J. BUCHANAN & G. TULLOCK, THE CALCULUS OF CONSENT (1962); A. DOWNS, BUREAUCRATIC STRUCTURE AND DECISIONMAKING (RAND Corp. Memorandum RM-4646-PR, 1966); M. RICHARDS & P. GREENLAW, MANAGEMENT DECISION MAKING (1966).

[12] Robert Paul Wolff, in his provocative *The Ideal of the University*, suggests four "models" of a university: the University as Sanctuary of Scholarship, the University as Training Camp for the Professor, the University as Social Service Station, and the University as Assembly Line for the Establishment Man. Wolff argues for reconstituting the university along the lines of a "social contract," placing ultimate authority in the hands of faculty and students. R. WOLFF, THE IDEAL OF THE UNIVERSITY 127 (1969).

[13] C. JENCKS & D. RIESMAN, THE ACADEMIC REVOLUTION (1968).

[14] Jacques Barzun has suggested that there are essentially three ways of running a university: student power, central control, and faculty control. Barzun, *Tomorrow's University—Back to the Middle Ages?*, SATURDAY REV., Nov. 15, 1969, at 23.

Illustrative of the general literature on university nature and governance are R. GOHEEN, THE HUMAN NATURE OF A UNIVERSITY (1969); C. KERR, THE USES OF THE

In considering student participation in law school decision-making, it seems equally relevant to ask how that participation may relate to trends in legal education. "The Times, They Are A'Changin' " seems to be the theme of annual gatherings of law alumni. Practitioners are apt to ask the dean of the law school to defend the dropping of evidence or trusts and estates as required courses, or to justify the rise of "socially relevant"—and therefore not practice-oriented—courses in the law school curriculum. Many of these changes have come about as much through the prompting of law students as through innovations from faculty or other quarters.

Challenges to the way law schools now do things are by no means confined to arguments that law faculties should, in shaping educational policy, pay more attention to the students. A more far-reaching position, under the revealing title "Toward a New Politics of Legal Education," [15] attacks the notion that reform can come from the teachers: "[T]he climate of educational reform has had about it that smug satisfaction and bland assurance that proceeds from the assumption that those who teach know what is best for those who learn." [16] By this view, the classroom is not just a place where teachers and students meet periodically, it is "a complex social and political structure" in which classroom dialogue may really be "a struggle for power and respect." [17]

That author's total alienation from the central assumptions of legal education is reflected from his sweeping assertion, which sets the tone of the article: "There is not a single lawyer I know with whom I went to law school who feels that his legal education adequately prepared him for the practice of law (or anything else for that matter)." [18] Most critics of the existing patterns of legal education would no doubt speak in more muted tones, but there is no escaping the fact that the doubts and soul-searching which characterize today's university campuses cannot leave the law schools untouched. And it seems equally demonstrable that to speak of curricular or other reforms and to speak of student participation in shaping those changes is to speak of a seamless web. Hence it would be proper to ask in what direction one would

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UNIVERSITY (1963); H. TAYLOR, STUDENTS WITHOUT TEACHERS: THE CRISIS IN THE UNIVERSITY (1969).

[15] Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970).

[16] *Id.* at 445.

[17] *Id.* at 480-81.

[18] *Id.* at 446.

like to see legal education move as he asks what role students ought to have in moving it.[19]

Premises for Student Participation in Law School Decision-Making

Recommendations for student participation in law school decision-making, and the form and structure of that input, ought to be accompanied by some statement of premises and assumptions. These will surely vary with the law school to which they are being applied, but essentially they ought to reflect the values thought to underlie the proposals.

I would like to advance three premises to consider in approaching the question of student participation in the decision-making process of a law school:

(1) That unlike society at large, a university, and correspondingly a law school, is a special-purpose organization, that it is not a body politic, and that, therefore, political models, or interest group theories, or other analogies drawn from the world of politics are inapposite.

(2) That for most purposes ultimate responsibility for legal education must lie with the dean and law faculty—a premise arising not only from responsibility as a corollary of accountability, but also from the recognition of a professional commitment to legal education and a law school, of an expertise and perspective in matters of legal education, and of the need to provide that measure of continuity and academic freedom that is essential to attract faculty of quality to devote their best years to a law school.

(3) That the merits and value of student input into the decision-making process should be recognized and meaningful channels created for that input—a judgment supported by several considerations: the quality of the ultimate decisions that will be made, notions of fairness to those affected by decisions, the creation of an atmosphere of mutual respect and cooperation between faculty and students, and the educational value of students' taking part in the decision-making process.

[19] Among the literature on trends in legal education are The Law School of Tomorrow: The Projection of an Ideal (D. Haber & J. Cohen eds. 1968); Report of the Curriculum Committee, 1966 Proceedings of the AALS 37 (1966); Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 Va. L. Rev. 637 (1968); Reich, *Toward the Humanistic Study of Law*, 74 Yale L.J. 1402 (1965); Miller, *Drawing the Indictment* in *Symposium on Science, Technology, and the Law*, Saturday Rev., Aug. 3, 1968, at 39. *See generally* D. Alspaugh, A Bibliography of Materials on Legal Education (1965 with annual supplements).

Political Analogies Inapposite

Occasionally one hears the argument that academic communities ought to be organized as "participatory democracies," and that the proper model for the university is the body politic.[20] There are cogent reasons to think the political analogy inapt.

In the first place, an academic enterprise is not a unit of general government; it is a special-purpose organization. The Supreme Court, in applying the "one man, one vote" rule, has sought to draw the line between governmental units having general powers and special-purpose units.[21] A similar distinction is useful in the academic context; it contradicts sense and experience to apply principles that have evolved for the governance of society to undertakings having a more specialized purpose. Oxford's Hart Committee draws the distinction in the following words:

> We conceive that it is quite wrong to approach questions of academic authority with the assumption that a university either is or should be a microcosm of society at large, and then to draw the conclusion that, in a democratic country where students are acknowledged as entitled to the legal and political rights of adults, they have a right to share in the government of a university in all its aspects and so to be represented on all its decision-making bodies on at least an equal footing with teachers. We think that this general argument from the democratic character of society rests on an undefended and indeed indefensible assumption that a university has no special purposes or functions and no special problems to confront, which should differentiate its academic decision-making processes from those of society at large. The position of a university is in fact a complex one; it is partly in and partly out of the surrounding society; it is dependent upon external support but also free in many areas of decision from external interference; some of the issues that have to be decided by its decision-making bodies require the special skills, knowledge, experience, and the continuing responsibilities of the professional teacher, while others do not—or do so only to a small extent.[22]

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[20] *See, e.g.*, Davidson, *University Reform Revisited*, EDUCATIONAL REC., Winter 1967, at 5-10. In this article the SDS leader outlines the "ideology of participatory democracy."

[21] *Cf.* Avery v. Midland County, 390 U.S. 474 (1968). *But see* Hadley v. Junior College Dist., 397 U.S. 50 (1970).

[22] UNIVERSITY OF OXFORD, REPORT OF THE COMMITTEE ON RELATIONS WITH JUNIOR MEMBERS 22-23 (1969) [hereinafter cited as the HART COMM. REPORT].

Cambridge University's Consultative Committee of Senior and Junior Members simi-

Organization and governance are functions of purpose, and the structure or the governance of a university or a law school should rest on this premise just as much as would the governance of a labor union, a corporation, or a private club.[23]

In the second place, it is a mistake to view an academic community such as a law school as a collective of interest groups, each having a preserve to protect and all jockeying for position as decisions are made. Berkeley's Study Commission on University Governance has exposed the shortcomings of this "pressure group mentality" as not being "an adequate, much less ideal, process for creating an educational setting fit for the cultivation of the mind and the strengthening of the human spirit." In the Commission's words:

> Most issues of university policy are questions requiring qualitative judgments rooted in values and principles. Such questions cannot readily be broken down into component units over which highly politicized interest groups can bargain and for which some mutually agreeable form of distributive justice can be arranged. Moreover, an issue of university principle should not be decided on the basis of which group has the most bargaining power.[24]

Neither the students' pursuit of intellectual growth and professional development nor the faculty's search for scholarship, teaching, and public service is likely to flourish where a law school's future is shaped

larly rejected the political model in making recommendations for student participation in decision-making in Cambridge. *See* 1 SELECT COMM. ON EDUC. AND SCIENCE, HOUSE OF COMMONS, REPORT ON STUDENT RELATIONS 121 (1969).

A rare exception to the general approach taken in the academic world is Goddard College in Plainfield, Vermont, which was reported in September 1969 to have created a community council elected on a one man, one vote principle from the students, faculty, and staff members. A letter to the president of Goddard College asking for details of the plan elicited no reply.

[23] Princeton University's Special Committee on the Structure of the University, in recommending the creation of a University Council (which would be primarily an investigating, deliberative, and recommending body), noted:

> At no time have we found general analogies to systems of government characteristic of other organizations—whether they be nation-states, corporations, hospitals, trade unions, cooperatives, or private clubs—directly applicable to the University.

SPECIAL COMM. ON THE STRUCTURE OF THE UNIV., PRINCETON UNIV., A PROPOSAL TO ESTABLISH THE COUNCIL OF THE PRINCETON UNIV. COMMUNITY 15 (1969) [hereinafter cited as PRINCETON PROPOSAL].

[24] C. FOOTE, H. MAYER & ASSOCIATES, THE CULTURE OF THE UNIVERSITY: GOVERNANCE AND EDUCATION 17-18 (1968) [hereinafter cited as CULTURE OF THE UNIVERSITY]. This is the majority report of the Study Commission on University Governance.

by a process resembling that which takes place when the Automobile Workers confront General Motors across the bargaining table.

Thirdly, it is probably best to avoid a legalistic statement of powers and duties, of rights and responsibilities. Such a legalistic approach is highly artificial and concerns itself with legal formalisms while missing the central point: the spirit of a law school's undertaking, a spirit that one would hope would be shared by faculty and students alike. A sense of concensus and of participation is far more important to the future of legal education than is a legalistic allocation of powers.[25]

The conclusion, therefore, is that the arguments against analogizing to political models in the structuring of a university at large apply with even more force to the governance of a law school.[26] An undergraduate college, with its wide range of disciplines and academic fields, comes much closer to being society writ small than does a professional school. Yet undergraduate colleges are not bodies politic; even less so are law schools. That law schools do and should serve society is a proposition that should command general acceptance. But it does not follow that, in carrying out its work, a law school operates like, or can be governed like, a body politic.

Central Role of the Faculty

While student participation should not be approached in too legalistic a spirit, it would be remiss not to speak of ultimate responsibility. At some point someone must have responsibility and be accountable for decisions. I submit for most purposes—above all academic decisions—ultimate responsibility lies with the law faculty.[27]

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[25] As Yale's Kingman Brewster has put it:

> Ultimately it is the sharing of purposes, however, not the allocation of rights and duties and powers, which keeps a university intact. Yale is a community of good will and of loyalty more than it is a regime of laws.

YALE UNIV., REPORT OF THE PRESIDENT, 1967-68, at 26 (1968).

[26] The Kennedy Committee at the University of Michigan Law School, in making recommendations on student participation in law school committees, rejected at the outset of its report the notion of participatory democracy as being applicable to the governance of a law school. AD HOC COMM. ON STUDENT PARTICIPATION IN LAW SCHOOL COMMS., UNIV. OF MICH. LAW SCHOOL, REPORT 1 (1969) [hereinafter cited as the KENNEDY COMM. REPORT].

[27] As throughout this Commentary, I speak here chiefly of academic decisions. There are many areas of decision-making in which I would argue that ultimate responsibility should lie with the students. As illustrations, I would give the Honor System as it is administered by the students at the University of Virginia, many aspects of life in college dormitories, and student activities and publications generally. As an instance

The central role of a university's faculty is widely recognized. Even student radicals in attacking a university's administration have the tactical insight to appreciate that the faculty's view of the students' cause is likely to be crucial. Save in the realm of resources, the faculty of any modern university is the central factor in shaping the quality and character of the institution.[28] But the premise here being advanced, of essential and ultimate responsibility for legal education lying with the faculty, is not meant to be simply descriptive of what actually goes on at universities nor is it meant to be a theory of the locus of de facto power. The premise springs from the assumption that the quality of legal education is the most important consideration in structuring a law school's decision-making process and from the necessary impact of the law faculty on legal education.

In the first place, to affirm the central role of the faculty recognizes the commitment of the faculty to legal education generally and its stake in the future of its law school specifically. Moreover, it recognizes the faculty's greater expertise and perspective in matters of legal education and the reality of the necessary voice that the faculty, by virtue of its continuing commitment and its acquired perspective, will have on shaping legal education.[29]

A law school should seek that margin of excellence which sets apart a stimulating and enriching legal education from the commonplace and the mediocre. In the final analysis, that excellence must depend on the kind of scholars and teachers a law school attracts to its faculty. Many considerations enter into an individual's decision to join a particular law faculty: the stimulus of working with first-class minds as colleagues and as students, sufficient financial reward, and pleasant circumstances for his family's life, among them. But there is at least one thing more: the faculty's need to count on a significant degree of self-determination.

The faculty's legitimate expectations include the freedom to write and speak as one will, an open society in which teachers and students freely exchange ideas, some expectation of continuity in the academic

of the last example, editorial judgments as to the contents of a law review or other student publication are, in my judgment, the prerogative of the student editors.

[28] Bundy, *Faculty Power*, ATLANTIC MONTHLY, Sept. 1968, at 41-42.

[29] Kingman Brewster has observed that "the quality of the faculty, from generation to generation, has more to do with the quality of the university than does any other single factor. . . . [I]n the course of time the best students will naturally tend to go where they expect to find the most stimulating and creative faculty." YALE UNIV., REPORT OF THE PRESIDENT, 1967-68, at 3.

institution's basic purposes and priorities, and faculty determination of faculty appointments and tenure and of degree standards.[30]

The legitimacy of such expectations is in good part a function of the stake which one who joins a faculty has in the future of the institution. Students have a stake, too; their education and the prestige of their degrees are involved. But, whatever may happen, they pass on to other things after three years at a law school. Despite mobility in the teaching profession, when compared to a student, a law professor more nearly marries the institution whose faculty he joins. His hopes for making a worthwhile contribution to his profession and to society, his aim of a fruitful life of teaching, or writing, or public service depend in large measure upon his expectations about the character and purposes of the law school with which he identifies not being readily upset by forces beyond his control. It follows, then, that an institution

> will do a better job and be more likely to make bold decisions swiftly and decisively if ultimate responsibility for its direction is sharply focused on the shoulders of people who are devoting their personal energies and risking their professional reputations, full time, for the best years of their lives, for the quality of the institution.[31]

The faculty's central role is based, then, not so much on a legalistic view of university structure, as on the faculty's stake and commitment, and the critical extent to which the future of the law school and legal education depends on recognizing and giving meaning to that stake and that commitment.[32]

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[30] *Id.* at 4-5.

[31] These remarks were made by Yale President Kingman Brewster, Jr., in an address to student members of the Yale Political Union, reported in Wash. Post, Sept. 28, 1969, at B3, col. 3.

[32] Study committees at other law schools have recognized this premise, that whatever the committee structure, and whatever the student or other input, final responsibility lies with the faculty. Boalt Hall's study committee, for example, observed that, strictly speaking, faculty committees had only the power to make recommendations to the faculty, which was the locus of decision-making power. Likewise, Minnesota Law School's McCoid Committee believed it perfectly proper to bring students onto faculty committees so long as, consistent with existing university organization and delegation of authority, the faculty retained the ultimate authority to act on matters entrusted to committees. SCHOOL OF LAW, UNIV. OF CAL. AT BERKELEY, MEMORANDUM ON STUDENT PARTICIPATION IN LAW SCHOOL DECISIONMAKING 1 (1969) [hereinafter cited as BERKELEY MEMO]; UNIVERSITY OF MINN. LAW SCHOOL, FIRST REPORT OF THE AD HOC COMM. OF FACULTY AND STUDENTS ON STUDENT PARTICIPATION IN LAW SCHOOL MATTERS 20 (1969) [hereinafter cited as the McCOID COMM. REPORT].

University of Oxford's Hart Committee has similarly concluded that final authority in most matters must rest with the faculty. HART COMM. REPORT 23.

The Value of Student Input

Nothing said so far about rejection of political analogies or about the essential responsibility of the faculty should detract from the third premise: a belief in the inherent value of student input, whatever its precise form, into the decision-making process of a law school. Such student input has several merits:

(1) Having a first-hand expression of views by students is likely to result in better informed decisions. Even if we indulge the presumption (a rebuttable one) that law professors are uncommon folk, we might take to heart the admonition of Oxford's Hart Committee:

> A very modest effort at self-scrutiny is sufficient to reveal to most of us, besides ordinary human failings, symptoms, more or less advanced, of the specific failings which the conditions of academic life may foster or at any rate not sufficiently discourage: fear of doing anything for the first time; unnecessary secrecy; reluctance to learn what students think of the teaching offered to them; and tendencies, sometimes hardening with the years, to believe that what is interesting or merely convenient for the teacher to teach, is interesting and necessary for the student to learn.[33]

Hence, concludes that Committee, a university is apt to do its job better if dons are obliged to consider cogent criticism and advice from their juniors.[34]

(2) Students deserve a voice in a law school's decision-making process because, at some points at least, that process vitally affects them—most notably in the quality of their legal education and in the preparation they will have for their professional future. In general, it seems that those who are affected by a decision have a fair claim to having a voice in the making of that decision, although competing considerations may shape the scope and nature of that voice.

The argument is sometimes made that because students are transients, they are apt to act less responsibly—that students taking part in a given decision may well have graduated before the full impact of that decision is felt. To this argument, it ought to be said that many, perhaps most, decisions in which students may take part have immediate effect. Moreover, the argument betrays a lack of trust—which I hope need not be entertained at most law schools—in the commitment of law students to

[33] HART COMM. REPORT 23.

[34] *Id.* at 23-24.

the long-term excellence of the schools they attend.[35] Finally, as Berkeley's Study Commission on University Governance has noted, the transience argument might have some merit if the issue were "the wholesale delegation of power over educational policy to the student body;" [36] the argument has less significance when the question is not outright control but simply participation in policy-making.

(3) Student participation in law school decision-making should contribute to an atmosphere, important to the pursuit of a legal education, of mutual respect between faculty and students. Student involvement should also engender confidence in the manner by which decisions are arrived at and a healthy spirit of cooperation in the tradition of academic enquiry. Paul J. Cashman, of the University of Minnesota, has suggested that a student's respect for an institution tends to be undermined by an appearance of condescension on the institution's part, an attitude that the student has contracted for a service and that he can either "accept the service as it is or go elsewhere." [37]

Stress should be on means by which those who make administrative and academic decisions can be accountable for those decisions, through such vehicles as disclosure and right of petition.[38] Having direct student input into decision-making in the first place creates accountability of decision-makers to students without compromising the ability of decision-makers to get their jobs done.

(4) Student participation in law school decision-making promises to have educational value. Law schools, like universities, are societies in which one must constantly make qualitative judgments both about ideas and individual performances. Increasingly we attempt to give reality to the belief that law schools exist for more than the impartation of legal knowledge. They should create environments in which law students can develop and refine their sense of values and ability to scrutinize the basis upon which legal and other decisions are made, and provide suf-

[35] The Ad Hoc Committee of Faculty and Students on Student Participation in Law School Matters at the University of Minnesota Law School noted in its first report, dated February 20, 1969, that, aside from general feelings of commitment to the Law School, students realized that the future value of their own degrees would be affected by the fortunes of the Law School long after their graduation. McCoid Comm. Report 24-25.

[36] Culture of the University 91.

[37] Cashman, *Legal Aspects of Student-Institutional Relationships*, AGB Reports, Dec. 1968, at 14.

[38] *See* Address by Kingman Brewster, Jr., Yale Political Union, reported in Wash. Post, Sept. 28, 1969, at B3, col. 5.

ficient intellectual autonomy so that they can contribute to the enrichment of law and society.

Hence we may hope that, as Berkeley's Commission on University Governance put it, "[w]hen we acknowledge the student's membership in the university by asking him to share responsibility for governing it, we express the hope that such participation will enrich the relationships and reinvigorate the intellectual fellowship" within the academic community.[39] Specifically, in a law school, students who serve on joint faculty-student committees are likely to learn something watching a decision evolve in committee and having a hand in that evolution. Just as one sees only the tip of the iceberg by watching a lawyer perform in court, it may well be that a student will learn more about how lawyers think by dealing with them across a committee table than by seeing them from the other side of the podium.

The widespread practice of American law schools in bringing students into the decision-making process, especially through their service on joint student-faculty committees, appears to reflect a judgment that student participation does indeed have advantages, such as those suggested above. One can conclude, therefore, with the Parliamentary Select Committee on Education and Science, which recently reported to the House of Commons: "As the involvement of students in the government and organisation of the universities and colleges is no longer widely challenged, the problem is to devise sensible ways and means for providing for that involvement." [40]

Applying the Principle of Student Participation

Beyond basic premises such as those developed above, implementation of the principle of student participation brings into play a number of factors worth bearing in mind. Some of these are problems that arise only in certain areas of decision-making (for example, admissions and appointments), while others are practical points which may have general application. Such factors include (1) avoiding unnecessary and undue politicization of the process, (2) seeking simplicity and avoiding over-structuring, (3) keeping the whole question of governance in perspective, (4) structuring committees with reference to bringing relevant expertise to bear on problems, (5) noting potential conflict-of-interest questions where students may be deeply involved in effect as self-

[39] Culture of the University 81.

[40] 1 Select Comm. on Educ. and Science, House of Commons, Report on Student Relations 130-31 (1969).

certifiers of their own academic achievement, and (6) taking account of areas in which a committee must deal with confidential or highly sensitive information regarding students, faculty members, or potential members of the faculty.

Avoiding Politicization

Just as one should not consciously model a law school on a unit of general government, so it is useful, in shaping recommendations for student participation, to seek to avoid making proposals which inadvertently will tend to politicize a law school's decision-making process. Raymond Aron, reacting perhaps to the disturbances at the University of Paris, points to the ultimate dangers of politicization of the universities:

> There is no other moral basis for the university except reciprocal tolerance between teachers and the voluntary discipline of students. There will be no more higher education if the students utilize the university as a place for political agitation. That would signify the Latin-Americanization of French universities, the ruin of the universities.[41]

The problem of politicization is not limited to dramatic situations of "confrontation," conjuring pictures of the Paris Commune of 1870 and students manning barricades. Turning academic decisions into political ones entails much more down-to-earth disadvantages: the distraction from long-term issues, the inherent propensity for eularging small issues, the prejudgment of issues (as through the "instruction of delegates"), the tendency to create issues where none exists so that one may have a platform on which to run for office, the substitution of political confrontation for rational airing of problems, and the loss of face when one side or the other loses.

In one sense, some "politicization" of the process is desirable. That is, there is an advantage in having student debate on topics of interest to them before law school committees act; moreover, some such process of debate and action among the student body can enhance the credibility and authority of students who serve on joint committees or otherwise take part in decision-making. Hence, one might envision channels of student communication and input that encourage the flow of ideas and

[41] Quoted in Wilson, *Changing University Governance*, EDUCATIONAL REC., Fall 1969, at 400.

the openness of the process, while avoiding proposals which would tend to invite confrontations where none need exist, to dramatize differences where a sense of shared purpose ought to be cultivated, and to divert time and energy away from the real purpose of legal education.

Simplicity

A related premise is to avoid overstructuring a law school's committee system and decision-making process. It is easy to fall into the temptation of drawing mental box-and-string charts and to create an overstructured mechanism that at best is unnecessary and at worst will delay decisions, drain faculty and student time and energy, stand in the way of getting things done, and make life more unpleasant for everybody. Members of the faculty who must lay aside more scholarly pursuits to attend committee meetings and faculty meetings will surely not react with good humor to suggestions for yet more organized activity unless a good case is made out that it will yield positive advantages.

Neither are students likely to want to divert much of their time and energies away from the study of law to take up the burden of running a law school. Students want their views heard and their interests heeded, but this can and should be done in a way that is economical of their own time, as well as of that of the faculty.[42] Kingman Brewster has hazarded the guess that the great majority of students do not "want to spend *very much of their time* or energy in the guidance or governance of their university." [43] I suspect that is a fair assessment.

Furthermore, the implementation of the principle of student participation in a law school calls for less formality of structure than might be true for a university at large. A study committee of the Harvard Board of Overseers, chaired by Judge Henry Friendly, has recommended that there be a single university-wide body of students and professors to meet with alumni and Governing Board representatives to deliberate and make recommendations to governing bodies at Harvard. But in

[42] Study committees at several law schools have recognized the importance of unnecessarily diverting faculty or student time to administrative and other such activities. Michigan's Kennedy Committee, while deciding that the merits of student participation substantially outweigh the risks, cautioned against investing "too much energy in the making of trivial decisions." KENNEDY COMM. REPORT 2. Minnesota's McCoid Committee observed that eularging committees to add student members gives rise to mechanical, but sometimes important, problems such as the increased difficulty of calling meetings at a time when a sufficient number of members can attend. McCOID COMM. REPORT 26.

[43] Wash. Post, Sept. 28, 1969, at B3, col. 2 (emphasis added).

seeking institutional arrangements for channelling student views and interests into Harvard's decision-making process, the Friendly Committee observed, as to Harvard's professional schools:

> However, our impression is that the greater commitment of the students, the smaller size of the full-time faculty, and constructive measures already taken by many of the schools have made the problems of most of them considerably less acute, although there are significant variations.[44]

Such observations do not undercut the objective of striving actively to promote student participation in law school decision-making. The point is that, in pursuing that goal, simplicity of decision-making is to be preferred to complexity, informality of process and structure to formality, and economy of everyone's time and energy to waste and diversion.

Perspective on Governance

Related to the premise, "keep it simple," is the admonition: "Don't become preoccupied with governance." It is too easy to become so involved in the structuring of the decision-making process that one forgets that the creativity of a law school and the strengths of its intellectual currents rarely flow from committees or other formal structures. Phil C. Neal, Dean of the University of Chicago Law School, made this point at a recent American Association of Law Schools meeting when he said, "The elements which make for excellence in a law school are ideas, intellectual climate, and incentives." Preoccupation with governance, he thought, was a "dreary road that leads to a dead end" and reflects a "misconception about the nature of the [law school] enterprise and an illusion how it in fact operates." [45]

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[44] LONG-RANGE STUDY COMM. OF THE BD. OF OVERSEERS, HARVARD UNIV., INTERIM REPORT 5 (1969).

From Berkeley come like reactions, with individuals like Clark Kerr and study committees like the Study Commission on University Governance commenting that the more serious problems are in the undergraduate divisions, not in the professional schools, where vocational aims are clearer, the curriculum is more tailored to these aims, the student body is usually smaller, and the opportunities for student-faculty contact usually greater. *See* Kerr, *Toward the More Perfect University*, in CENTER FOR THE STUDY OF DEMOCRATIC INSTITUTIONS, THE UNIVERSITY IN AMERICA (1967); CULTURE OF THE UNIVERSITY 114.

[45] Neal, The Role of Students in the Governance of Law Schools (statement presented to a meeting of the American Association of Law Schools, Dec. 28, 1969).

Expertise

The significance of the relative expertise of faculty on the one hand and students on the other ought to be put in perspective. The conclusion that ultimate responsibility for law school decision-making must rest with the faculty is supported by the faculty's having greater professional skills, more years' experience, and a greater awareness of some aspects of the running of a law school than would most students. But control of a law school is one thing, and input and communication quite another. As argued above, however, students ought to be involved, not merely because of expertise (though they will have ideas or insights which never occurred to their faculty mentors), but also because they are affected by such decisions, because their having a part in decision-making will contribute to a spirit of mutual trust and shared purpose, and because the endeavor may well have educational by-products. Thus, for example, that faculty members may be expected to be more knowledgeable about curriculum matters argues only for a faculty majority on the curriculum committee, not for the exclusion of students, and their valuable input, from that committee.[46]

Conflicts of Interest and Self-Certification

One should be sensitive to the question whether student participation in some areas, for example, deciding whether or not there will be examinations, raises problems of conflicts of interest. It is worth avoiding situations in which students are in effect certifying themselves or being judges in their own cases.

Again the crucial distinction is between control and participation. Although ultimate responsibility for deciding degree requirements and standards must rest with the faculty, it does not follow that student participation in the deliberative and decision-making process of shaping a curriculum should be neglected. Quite the contrary. The faculty can exercise its final responsibility in such matters with greater assurance if, before decisions become final, student input has been direct and meaningful.

Sensitivity of Information

Law school committees or administrators often deal with personal or sensitive information. Sometimes the information concerns present

[46] For similar positions taken by study groups at Berkeley and Minnesota see CULTURE OF THE UNIVERSITY 90-91, and the MCCOID COMM. REPORT 25-26.

faculty, as in decisions whether to grant tenure. Sometimes it concerns prospective faculty, as in appointments decisions. Yet other times it concerns students, past, present, or future, as in admissions and readmissions decisions.

The thread of protecting individuals from even the remote possibility of misuse of personal or sensitive information runs through many of the study committee reports on student participation. Thus, reports recommending addition of students to faculty committees in a range of areas usually draw short of making such recommendations in such areas as appointments and tenure. Likewise, where reports have taken up the question of student presence at faculty meetings, the norm is to reserve the right of executive sessions, especially where matters involving individual members of the faculty or prospective members are to be discussed.

Other Considerations

The premises and considerations discussed above do not exhaust the factors which might come into play in deciding whether to have student participation in law school decision-making and, if so, to what extent and in what form. Other factors might include: What is the relevance of the fact that a committee in general makes policy (legislates) or decides cases (adjudicates)? Is there any applicable state law or university policy? What would alumni, state legislators, members of the public, and others think of student participation? Are there practical problems, such as the need of a committee to meet in the summertime, when few students are in town?

Specific Areas of Decision-Making

Each law school has its own committee and decision-making structure. Decisions which at some law schools are made by a dean are at other schools the province of a committee. At most law schools there are matters of parochial concern which have no counterpart at other law schools. But a few areas appear to be universal, notably admissions, appointments and faculty status, and curriculum or educational policy. Brief mention of these areas of decision-making can serve to illustrate application of some of the premises and special considerations mentioned above.

Admissions

Student input into the admissions process has demonstrable advantages. For example, student views can be useful as to decisions on the composi-

tion of an entering class (geography, undergraduate schools, minority groups, etc.), recruiting efforts, and the weight to be accorded these factors in reviewing applications. Informal decision-making benefits from such input. At the same time, in structuring that input, it is well to distinguish between bringing student views to bear on overall admissions policy and allowing students to have access to individual applications or to vote on such applications. Bringing students into the file-by-file admissions process involves considerations of access to confidential and often sensitive information in applicants' files and also raises practical problems, at least in large schools with large numbers of applications, of making the admissions process cumbersome and unmanageable.[47]

Appointments and Faculty Status

In terms of direct impact on the students, the appointment and status of faculty rank perhaps second only to curriculum matters. Hence there would seem a strong argument for direct representation for student participation in the work of the appointments committee itself.

Yet few areas of law school operations are more sensitive and more directly involve the reputations and fortunes of individuals. The manner in which appointments to the faculty are made has implications for academic freedom. It seems unwise to have a system in which students participate directly in the selection of faculty who will in turn be teaching those students or their fellows. Such a system might encourage

[47] There is no general pattern among law schools. At some schools, such as California at Davis and UCLA, students serve as members of the admissions committees, with, so far as the information I have shows, no restriction on their voting on applications or having access to individual applicants' files. SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA AT DAVIS, MEMORANDUM: STUDENT-FACULTY COMMITTEES FOR 1969-1970 (1969); Letter to the author from Associate Dean John A. Bauman, UCLA School of Law, Nov. 20, 1969 [hereinafter cited as UCLA Letter].

Other schools, such as Michigan, have student members of the committee, but with the right reserved to the chairman to excuse the student members. KENNEDY COMM. REPORT 6-7.

Yet other schools such as Wisconsin and Yale, have student members on admissions committees but only insofar as those committees decide policy; the student members do not take part in decisions on individual applications. Letter to the author from Associate Dean Gordon B. Baldwin, University of Wisconsin Law School, Nov. 19, 1969; Yale University Law School, Faculty Minutes on Principles Regarding Student Participation, April 28, 1969 [hereinafter cited as Yale Facnlty Minutes.]

And still other schools, such as Berkeley and Northwestern, have a parallel student advisory committee. BERKELEY MEMO 3; NORTHWESTERN UNIVERSITY SCHOOL OF LAW, MEMORANDUM: LAW SCHOOL COMMITTEE ASSIGNMENTS FOR 1969-70, at 1 (1969) [hereinafter cited as NORTHWESTERN MEMO].

a politicization of the appointment process and introduce pressures into the appointments system tending to undermine academic freedom.

Law schools commonly recognize the sensitivity of the appointments process. A study committee at Duke University's Law School, for example, recommended against student membership on the Appointments Committee on the ground that Duke would be "materially hindered" in faculty recruitment were students on the committee. The Duke study committee's reasoning was that "prospective faculty appointees would insist that the formal recommendation as to whether they should be offered a position on the Duke Law School faculty be made by their peers." [48] Similarly, Michigan Law School's Kennedy Committee, while suggesting methods for consulting student opinion, recommended against having students on their Personnel Committee because of the "risk of an unwelcome alteration in the degree of independence felt by those selected." [49]

In addition to the conclusion that students ought not to serve on the appointments committee, another consideration may well argue against there being any other formal vehicle for student opinion in this area, such as a parallel student committee. Knowing how students feel about the teaching ability of a professor should be highly important both to the appointments committee and to the faculty itself. Granted that students are usually not in a position to judge many of the other facets of a professor's qualifications and contributions, such as his research and published works, his work with graduate students, or his participation in professional activities outside the law school, the student is in a good position to say how the professor comes across in the classroom. Even though members of the faculty often have a generalized notion of how effective their colleagues are in the classroom, professional etiquette is such that a professor rarely attends another's class.

Yet it is precisely the importance of having reliable, informative feedback from students as to a professor's teaching abilities that may suggest avoiding institutionalizing any particular channel for seeking student

[48] SCHOOL OF LAW, DUKE UNIV., REPORT TO THE FACULTY FROM THE FACULTY COMM. ON STUDENT PARTICIPATION IN LAW SCHOOL DECISION-MAKING 4 (1969) [hereinafter cited as DUKE REPORT].

[49] KENNEDY COMM. REPORT 10. It is revealing that Minnesota Law School's McCoid Committee, in its first report on student participation, originally proposed having student members on the Appointments and Tenure Committees, but that, after faculty opposition, the McCoid Committee withdrew these recommendations and proposed instead that the two committees in question be composed only of faculty. McCOID COMM. REPORT 13; the Supplementary Report is dated April 30, 1969.

views. As we all know, students in a given class typically differ among themselves as to the effectiveness of a given teacher's approach. Some like a socratic method; others want the facts. Some want a practice-oriented approach; others prefer to be more speculative. A professor's personality turns some students on, and others off. For the most part, a student is not likely to know which professor was really effective or which was not until the student has graduated and taken up the profession of law outside the law school's walls.

Given such diversity, there may be reason to prefer informal means of ascertaining student opinions on teaching ability. Informal views can be evaluated according to one's judgment of who is giving the view. Creating a formal channel for student opinion adds a step to the process, a kind of filter, and runs the risk that an "official" student representation will be taken as more representative and accurate than by its nature it can be.[50]

However, the necessary corollary of avoiding formal mechanisms should be that the faculty at large and the appointments committee in particular should take care to sound, to encourage, to seek out student opinions on how well law is being taught and by whom. The larger a faculty grows, the more the faculty is likely to find it increasingly difficult to have an accurate impression of other faculty members' teaching abilities. Hence, the importance of ensuring that, if informal communications are to be the source of student opinion in this area, those channels be used to the fullest.[51]

Curriculum

There seems to be universal agreement that, where law schools have taken any steps at all to put students on any faculty committees, students should serve on curriculum committees. While those schools that have added students to faculty committees appear universally to have put students on their curriculum committees, there is variation in the composition of those committees. Sometimes, as at Northwestern, there is parity in the number of faculty and student members.[52] More often, as at Yale, there is a faculty majority.[53]

The faculty's stake in the curriculum is perhaps not comparable to

[50] Preference for the informal approach is stated in Boalt Hall's study. BERKELEY MEMO 5.

[51] *See generally* CULTURE OF THE UNIVERSITY 121-23.

[52] NORTHWESTERN MEMO 1.

[53] Yale Faculty Minutes 42.

that which they have in appointments and tenure; their professional careers are more directly involved in the latter. Nevertheless, as the shape of the curriculum is central to the quality and direction of a law school's function, there is good reason to argue that those who have the professional commitment to legal education and presumably the greater perspective about curricular matters should be in a majority on the curriculum committee. What is surely more important than a student majority is meaningful student input.

Selection of Student Members of Committees

There are many ways in which students might be selected to serve on joint faculty-student committees or on parallel student committees. Among the arrangements that have been used at law schools are selection by the dean, nomination by the faculty, selection by the student government, appointment by the student body president or by some other student officer, and direct election by the students themselves.

Leaving it to the students themselves to determine the method of appointing student members of committees has a number of reasons to recommend it. This approach is, of course, the most flexible. Possibly one method of selection will be found applicable to all committees, or it may be that the method should vary with the committee in question, since different values or interests may come into play on the several committees. It may also take some experimentation to devise ways by which one achieves such ends as having student members of a committee be chosen from the more interested and energetic students while also having those members sensitive to the range and depth of student opinion on given issues.

Moreover, leaving the method of selection to the students' own devising is philosophically in line with the premise of the value of student participation as such. The students will have every reason to want to make their input effective and therefore presumably will want to exercise their judgment in structuring that input. Thus, for example, it seems unnecessary to suggest reserving to the dean or faculty the right to "veto" student nominations, or the use of a list of student nominees from which the dean or faculty selects student members of committee, or other such devices.

There is reason, however, to argue against selection by direct, popular election. Earlier in this essay, the political analogy has been rejected as an inapposite model by which to structure a university or a law school.

Hence, the question of student participation on committees should not be conceived as a question of "representation." To treat the question of student participation as a political question, one of representation, is to invite the dangers of politicization of the law school decision-making process, a process which, as already argued, would drain valuable time and energy away from the serious and professional business of running a law school.

Direct election especially invites politicization of the process. People must "run" for office and are likely to require a "platform." The tendency is to create issues where none exist, or to emphasize the issues which happen to be uppermost at the time of the election to the neglect of less exciting, but perhaps more basic problems. Direct election tends to engender prejudgment of issues and enlargement of small matters to large ones. In a body politic, direct elections are, of course, the essence of the process, but in an academic community politicization would detract from the objectives to which a law school should dedicate its best efforts.

Student Participation in Faculty Meetings

Throughout the country there is increasing attention to suggestions that student members be added to faculty senates[54] or that university-wide bodies be created in which there is some form of student participation.[55] Similarly, law schools have seen moves in the direction of some kind of student contribution to deliberations of law faculties.

Arrangements which have come into being at law schools take a number of forms. A common system is to allow students who are members of a joint faculty-student committee to attend faculty meetings to participate in, but not vote in, discussions of reports or recommendations coming out of the committee on which they sit.[56] Another approach is to allow certain students, ex officio or selected on some other basis, to attend meetings regularly, but again without vote.[57] Whatever the arrangement, one invariable qualification is the reservation by the law faculty of the right to call executive sessions.[58]

[54] E.g., American University and University of Maryland. *See* Wash. Post, Oct. 9, 1969, at M7, col. 1; Jan. 24, 1970, at A4, col. 3.

[55] *See* Princeton Proposal.

[56] *E.g.*, Duke Report 5-6; Kennedy Comm. Report 13.

[57] *E.g.*, Yale Faculty Minutes; Letter to author from Dean Page Keeton, University of Texas at Austin, School of Law, Nov. 18, 1969 [hereinafter cited as Texas Letter].

[58] *E.g.*, Texas Letter; UCLA Letter; Yale Faculty Minutes; University of Pennsylvania Law School, Memorandum: Statement of Law School Policy (n.d.).

In approaching the question of student presence at faculty meetings, two concerns ought to be considered. First, the nature of law school faculty meetings should be considered. At meetings of undergraduate faculties, discussion is typically restricted to issues of curriculum and academic standards; questions of appointments, tenure, and promotion are largely determined by departments or deans. By contrast, law school faculty meetings cover a broader range of subjects. A sizeable portion of these meetings involve subjects such as promotions and tenure, or professional qualifications of prospective faculty members. These are areas of faculty responsibility which require candid and confidential discussion; non-faculty participation in such matters is undesirable and perhaps unworkable.

At the same time, students are affected by many decisions made at faculty meetings. Student input to the faculty decision-making process, and information about that process, are desirable. Consequently, some provision for student participation in faculty meetings is merited.

A reasonable approach which seeks to balance these two considerations is to provide that student members of a joint faculty-student committee be invited to be present at and take part (but not to have a vote) in the discussion of reports or recommendations coming out of their committee. Further, where a faculty committee lays before the faculty a proposal that is the product of a joint effort between that committee and a parallel student committee, provisions may be made for representation from the student committee to be invited to attend, and take part in, the discussion of the proposal.

Such devices serve the objective of student contribution to the decision-making process. As to the other objective, that of channelling information to the students about faculty decisions and how they are arrived at, many devices can be used: publication of the text of faculty resolutions, reports by the dean to students at meetings with them, and other similar vehicles developed as the need arises. It is doubtful that having one or more students present at a faculty meeting on a regular basis (whether for all business or under the approach discussed above) is a particularly effective way of conveying information to students as to how faculty decisions are arrived at.

Toward Larger Questions of Governance

I have spoken here of student participation in the decision-making processes of a law school. Yet, in evaluating the basis for creating such

participation, one should not be blind to the implications his choice may have for participation by other groups as well. Neither for the university at large nor for the law school specifically are administration, faculty, and students the only possible "constituencies." Trustees or regents, especially from a legal standpoint, are very much in the picture. A state university must look to the state legislature and, beyond that, to the people who elect those legislators. Alumni have a stake beyond simply being called upon to contribute to annual fund-raising drives. The local community can make claims to being heard when universities make decisions, as institutions expanding into urban neighborhoods have often been forcibly made to realize.

It is because so many groups—legislators, alumni, the local community, the people at large, and others—may and often do demand a say in how a university is run that it makes a difference what rationale is adopted for student participation in decision-making. Many theories might be adduced to account for allowing one form or another of student participation: following democratic principles drawn from political analogies, giving a voice to those affected by decisions, yielding to displays of student power in order to preserve the peace, creating an "open society" in which trust and confidence are engendered, and seeking better-informed decisions in which more views and ideas are brought to bear. Some of these theories have merit, others are misconceived, some are downright dangerous. But we hear all of them at one time or another, and the decision to articulate one or another as a justification for student participation may have profound implications beyond the claims or interests of students.

Consider, for example, the argument that students should participate in decisions which "affect" them. It would be arbitrary to recognize this claim on the part of students yet deny it when made by people beyond the gates of the university. Tax-paying citizens who are called upon to put up tax money for the operation of the state universities have an interest in how decisions are made at the university, if it is upon an interest theory that we are to proceed. Indeed, taxpayers or not, people in general have a common interest in how well the university functions, what it teaches, who is on its faculty, and so on. It is not clear that those who argue for a student's "right" to shape decisions which affect him would be especially cheered by the prospect of extending that "right" to others who might also be "affected" by the decisions.[59]

[59] *See* C. FRANKEL, EDUCATION AND THE BARRICADES 52-53 (1968).

In particular, some of the more extreme forms of claims to student participation raise questions for academic freedom quite as serious as those raised where state legislatures or other public officials take steps impinging upon the free exchange of ideas which ought to take place on the campus. Concessions to "student power" in its more strident manifestations can undermine academic freedom in at least two respects: directly, by subjecting the academic community to pressures from within to adapt to a given ideology or movement, and indirectly, by inviting backlash and crackdown from larger "constituencies" who resent seeing the teachers hand the reins over to those whom they teach. In universities as in the international community, "democracy" has many faces, some of them not very benign. Intolerance of dissenting views is no monopoly of those outside the university; it has all too many manifestations on all too many American campuses.

Hence, gauging the dimensions of student participation requires one to assess larger questions, such as academic freedom. For example, Charles Frankel, speaking of selection of faculty, has said:

> Academic freedom is the product of a long and difficult struggle. It has been achieved by excluding all groups but professors from any formal power over what goes on in the classroom. The exclusion applies to administrators, trustees, legislators, parents, alumni, and the public. There are questions that can be asked about academic freedom —about its range and extent, about misrepresentations of it, about departures from it that have been defended in its name—but there are no reasons for reconsidering the role of students in relation to it. There is nothing about students to justify giving them a power no other group has.[60]

None of this is said to undermine the value of student participation in the decision-making process of a university or a law school. Anyone who has worked with today's law students, in the classroom, on committees, or elsewhere, knows the vision and insight of which they are capable. Bringing students into the law school's decision-making process is well worth the effort, for the dividends can be significant. But in taking this step, lawyers, of all people, have an obligation to give reasoned grounds for what they do—above all, in the structure of legal education itself—and to rest their approach on principles which they are willing to defend.

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[60] *Id.* at 30.