

# STUDENT PARTICIPATION IN UNIVERSITY AND LAW SCHOOL GOVERNANCE

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## I. INTRODUCTION

From the German and Austrian Revolutions of 1848 and the "Professors' Parliament,"<sup>1</sup> through the revolution that toppled Czarist Russia<sup>2</sup> and the overthrow of the Manchu (Ch'ing) Dynasty in 1911,<sup>3</sup> university students have shaped and altered political philosophies and movements.<sup>4</sup> The student movement in America, however, was not radical or politicized until the 1960's.<sup>5</sup> Even then, the two largest political groups on American campuses were the Young Republicans and the Young Democrats.<sup>6</sup> The Students for a Democratic Society (SDS) in 1967 only numbered seven thousand members.<sup>7</sup> The Young Democrats and Republicans worked to correct and strengthen democratic processes; the SDS,

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1. Lipset, *Students and Politics in Comparative Perspective*, 97 DAEDALUS, Winter 1968, at 1.

2. *Id.*

3. *Id.*; Israel, *Reflections on the Modern Chinese Student Movement*, 97 DAEDALUS, Winter 1968, at 229.

4. Student movements had considerable influence in the overthrow of Peron in Argentina in 1955; the ouster of Perez Jimenez in Venezuela in 1958; the October demonstrations for Polish freedom in 1956; the Hungarian Revolution of 1956; the riots in Japan against the Japanese-United States Security Treaty in 1960; and the anti-Sukarno movement in Indonesia in 1966, to name a few of the most prominent instances. Lipset, *supra* note 1, at 2-3. See also Symposium, *Campus Freedom and Order*, 45 DENVER L.J. 497, 623 (1968).

5. Lipset, *supra* note 1, at 2-3.

6. Combined membership of these two organizations in 1967 was 250,000. *Id.* at 3.

7. *Id.*

publicly committed to "participatory democracy" in the early 1960's, ultimately adopted revolutionary goals and disintegrated into factions, some of which espoused violence as a means of political expression.<sup>8</sup>

Confrontations between student activists and university administrators during the 1960's caused new recognition of students' rights of participation in university administration. Students are no longer considered to be children in care of their colleges.<sup>9</sup> The actions of a public university are now limited by the same federal constitutional provisions that protect adult citizens from state action;<sup>10</sup> at private institutions a

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8. The early program of the Students for a Democratic Society (SDS) is set out in *STUDENTS FOR A DEMOCRATIC SOCIETY, THE PORT HURON STATEMENT* (1964 ed.). SDS, originally the student department of the socialist League for Industrial Democracy, *id.*, title page, was organized at a conference in Port Huron, Michigan. *Id.* at 1-5. The conference adopted a statement of views and a program of action, known as the *Port Huron Statement*, that was extensively circulated in the early 1960's. *Id.* This document coined the phrases "new left," *id.* at 62, and "participatory democracy." *Id.* at 7. The *Port Huron Statement* called for reform of the Democratic Party, to be accomplished by enlarging the role of organized labor and expelling the Southern bloc. *Id.* at 54-61. Students and faculty were to be allies in this effort. Reforms in university life were proposed; the theory of *in loco parentis* was a principal object of attack. *Id.* at 9-10. See note 9 *infra*. By 1965, the SDS had abandoned its original program, and directed all its efforts to protesting the war in Vietnam. See P. Potter, Address to the March on Washington to End The War in Vietnam, April 17, 1965 (printed and distributed by SDS, May 1965) (Address by SDS president). As campus protests became more frequent and more violent, their goals became less clear; by 1968 Professor Charles Frankel of Columbia University suggested that students merely wanted power for its own sake. C. FRANKEL, *EDUCATION AND THE BARRICADES* 22 (1968).

9. A school was formerly considered *in loco parentis* for its students: The school acted as a parent in dealing with its students, who were considered children. *Gott v. Berea College*, 156 Ky. 376, 161 S.W. 204 (1913). This view has been generally abandoned. See *Goldberg v. Regents of the Univ. of Cal.*, 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (1967). See also *Buttney v. Smith*, 281 F. Supp. 280 (D. Colo. 1968).

10. The constitutional rights of students are usually raised in an attack on some disciplinary action. Courts have generally applied the due process and equal protection clauses of the fourteenth amendment to public colleges and universities in such cases. See *Goss v. Lopez*, 419 U.S. 565 (1975) (minimum due process required for suspension of public high school student for less than ten days); *Dixon v. Board of Educ.*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961); *Stricklin v. Regents of Univ. of Wisc.*, 297 F. Supp. 416 (W.D. Wisc. 1969); *Albaum v. Carey*, 283 F. Supp. 3 (E.D.N.Y. 1968). See generally T. FISCHER, *DUE PROCESS AND THE STUDENT-INSTITUTIONAL RELATIONSHIP* (1970). State action is sometimes found in private colleges. See generally *Keller & Meskill, Student Rights and Due Process*, 3 J.L. & EDUC. 389 (1974).

First amendment rights also have been extended to students. See *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969). Cf. *Wright, The Constitution on the Campus*, 22 VAND. L. REV. 1027 (1969) (first amendment guarantees should apply to university actions to the extent they apply to any state action).

number of new theories of the relationship between student and college have emerged, most notably that students are beneficiaries<sup>11</sup> or contracting parties.<sup>12</sup>

To gain a better perspective for analysis of the present extent of student participation in university governance, it will be helpful to examine the experiences of several countries in Western Europe. This Article will examine the means by which American law schools have permitted reasonable student participation without threatening the academic freedom of law school faculties, a threat which the European experience reminds us is very real.

## II. THE STUDENT RIGHTS MOVEMENT IN WESTERN EUROPE

Comparisons among law students in different countries are difficult, because of the different ways in which law is viewed and taught. Although law is taught as a profession in some countries, including the United States, in other countries law is a preprofessional study, or a broad social science with a heavy emphasis on philosophy.<sup>13</sup> The following review examines university student movements generally; the degree to which law students participate in these movements depends heavily on the status of law studies in the various countries.<sup>14</sup>

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11. A school may be considered a trustee of a charitable or educational trust of which students are beneficiaries. Yegge, *If You Trust the Beneficiaries, You Don't Need Trustees*, 3 CONN. L. REV. 406 (1971).

A close parallel to the beneficiary theory is the fiduciary theory, which assumes the school owes a fiduciary duty to its students. This duty arises from status, not contract law. See Goldman, *The University and the Liberty of Its Students—A Fiduciary Theory*, 54 KY. L.J. 643 (1965); Holland, *The Student and the Law*, 22 CURRENT LEGAL PROB. 61 (1969).

12. Under the contract theory, a student agrees to follow college rules. If he does not, the duty of the college to continue to supply educational services to him is extinguished; the student may be suspended or expelled. Carr v. St. John's Univ., 10 App. Div. 2d 632, 231 N.Y.S.2d 410 (1962); Anthony v. Syracuse Univ., 224 App. Div. 487, 231 N.Y.S. 435 (1928). See generally Patterson, *Compulsory Contracts in the Crystal Ball*, 43 COLUM. L. REV. 731 (1943); Van Alstyne, *The Tentative Emergence of Student Power in the United States*, 17 AM. J. COMP. L. 403 (1969). The contract theory generally is used to justify expulsions, and has not resulted in a broadening of student rights. See Note, *Judicial Review of the University-Student Relationship: Expulsion and Governance*, 26 STAN. L. REV. 95, 104-05 (1973).

13. See generally Lipset, *supra* note 1.

14. *Id.* See also Kuenhnel-Leddihn, *Student Revolts—European Version*, in SEEDS OF ANARCHY: A STUDY OF CAMPUS REVOLUTION (F. Wilhelmsen ed. 1969).

### A. *France*

Until 1968, the French university system, like its school system as a whole, was highly centralized: the 23 district universities had little autonomy, and students had little opportunity to join directly in governing the universities.<sup>15</sup> About twenty percent of the students belonged to student unions, most of which were organized on a national scale. Although the *Union des Etudiants Communistes* was affiliated with the Communist Party, the other major students' unions—the *Union Nationale des Etudiants des France* and the *Federation Nationale des Etudiants de France*—were independent, and the student movement in general was not highly political.<sup>16</sup> The situation changed dramatically in May 1968, when a nationwide strike and student rebellion almost toppled the French Government.<sup>17</sup> Students allied themselves with trade unions in an unexpected radical political movement which included among its aims the reform of the universities.<sup>18</sup>

One result of this uprising was the *Loi d'Orientation de l'Enseignement Supérieur* passed by the Parliament on November 12, 1968.<sup>19</sup> This statute reorganized the university system, each university to be operated by a council elected by students, faculty, and administrators.<sup>20</sup> The national "faculties," which correspond roughly to academic departments in American universities, were reorganized to include proportional representation from the same three groups.<sup>21</sup> The students had also demanded a share in decisions about grades, examinations and faculty recruitment, but after much debate Parliament refused to extend student authority to these areas, thus preserving for a time at least the semblance of academic freedom.<sup>22</sup>

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15. Carreau, *Toward 'Student Power' in France?*, 17 AM. J. COMP. L. 359, 361 (1969).

16. *Id.* at 370.

17. J. GREYTON, *STUDENTS AND WORKERS: AN ANALYTICAL ACCOUNT OF DISSENT IN FRANCE, MAY-JUNE 1968* (1969).

18. *Épistemon, Ces idées qui ont ébranlé la France (Nanterre, novembre 1967 - juin 1968), comprendre les étudiants* (1968).

19. Statute of November 12, 1968, [1968] J.O. 10579, [1968] B.L.D. 561.

20. *Id.*

21. *Id.*

22. See Carreau, *supra* note 15, at 368. Student protest recently erupted again over a government plan to reform university curricula by deemphasizing liberal arts courses and strengthening the trade courses. Over 20,000 students took to the streets. N.Y. Times, April 16, 1976, at 1, col. 1.

## B. *West Germany*

A crisis exists in higher education in West Germany.<sup>23</sup> The traditional view of a university as an institution controlled by professors has given way, and the university in West Germany presently resembles a miniature state complete with internal class struggles.<sup>24</sup> The principle of codetermination (*Mitbestimmung*), which guarantees a degree of student participation in every level of university governance, threatens havoc in West German systems of higher education.<sup>25</sup>

The *Studentenwerk* is the organization charged with rendering social and economic assistance for students on the university campuses.<sup>26</sup> Through this organization the students have issued basic legal demands as well. For some time the Free University of Berlin and the University of the Saarland allowed modest student participation and codetermination.<sup>27</sup> New demands have forced a new level of participation at some universities. In these universities all decisionmaking organs are now tripartite, composed equally of full-time professors, the junior scientific staff (instructors and Ph.D. candidates), and students.<sup>28</sup>

The politicization of university processes, under the guise of democratization, has caused most West German universities to surrender much of their academic freedom. To keep his students content, one professor fakes a "little bit of Marxism" when he begins a class.<sup>29</sup> The appellation "anti-democratic" is reserved for the professor who fails to see the "social relationships of his science and [does not draw] the appropriate political consequences from them."<sup>30</sup> Teaching must contribute to the process of democratization.<sup>31</sup> Thus, science must be "politicized along

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23. Geck, *Student Power in West Germany*, 17 AM. J. COMP. L. 337 (1969); Mason, *Reflections on the Politicized University: The Academic Crisis in the Federal Republic of Germany*, 60 AAUP BULL. 299 (Autumn 1974). The German universities are creatures of the state: Approximately 60 universities and other institutions of higher learning operate under 11 state governments. The states must finance the universities, and generally impose statutory limits on the governance of the universities. The systems of governance vary widely among the universities, but the federal constitution guarantees freedom of research and teaching. Geck, *supra* at 338-39.

24. Geck, *supra* note 23, at 357.

25. Mason, *supra* note 23, at 307.

26. Geck, *supra* note 23, at 348.

27. *Id.* at 349.

28. *Id.* Cf. Mason, *Reflections on the Politicized University: Triparity and Tripolarity in the Netherlands*, 60 AAUP BULL. 383 (1974).

29. Mason, *supra* note 23, at 43.

30. *Id.* at 311.

31. *Id.*

democratic lines; since the only free science is that which reflects the right kinds of political mandate."<sup>32</sup>

The Federal Constitutional Court of West Germany—whose jurisdiction is comparable to that of the United States Supreme Court—recently provided new hope for those seeking a return to normalcy in higher education.<sup>33</sup> In a decision about the extent of shared decisionmaking among groups in university governing structures, the court recognized the basic right of a professor to enjoy effective university governance.<sup>34</sup> All university groups whose decisions affect teaching, research, and the appointment of new professors must have at least a majority of full professors.

It appears that codetermination is firmly entrenched in higher education in West Germany, however, for the court did not reject the principle of student participation. If the past is a true prologue to the future, the vitality of the traditionally free university has been destroyed in West Germany in consequence of the politicization of university governance by students.

### C. *Italy*

The situation in Italy<sup>35</sup> is like that in France. Italian students, before the 1967-68 academic year, did not participate in governing their universities.<sup>36</sup> The student groups that did exist undertook primarily cultural, recreational, and social welfare activities, and served as a conduit for student grievances.<sup>37</sup>

In 1968 the Student Movement (*Movimento Studenesco*) in Italy forced the government to accede to codetermination in university governance.<sup>38</sup> In all four levels of restructured authority—faculty, department, university, and central administration—student representatives now share the same powers as professors save in one area: the appointment of the teaching staff.<sup>39</sup> Only the professors exercise this highly

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32. *Id.*

33. Judgment of May 29, 1973, 35 BVerfG 79.

34. *Id.*

35. Mancini, *Student Power in Italy*, 17 AM. J. COMP. L. 371 (1969). See also Merryman, *Legal Education There and Here: A Comparison*, 27 STAN. L. REV. 859 (1975).

36. Mancini, *supra* note 35, at 371.

37. *Id.*

38. *Id.*

39. *Id.* at 375.

important function. Although these achievements of student power seem adequate to destroy the Italian university system, the leftwing parties boycotted recent student elections to demand still greater power.<sup>40</sup>

#### D. Britain

Unlike the Continent Britain has a diverse educational system with private as well as government components. A relatively young university system is operated by the national government;<sup>41</sup> the larger number of British colleges are private corporations insulated from government interference.<sup>42</sup> Student activism has been most pronounced at the newer universities, as at the University of Birmingham in 1968<sup>43</sup> and the Polytechnic of North London from 1971 to 1974.<sup>44</sup> Disturbances at the older private universities have been much more restrained.<sup>45</sup> Polit-

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40. Hoffman, *Boycotts by Italian Leftists Cut into Vote in Student Parliament Elections*, N.Y. Times, Feb. 16, 1975, at 14, col. 1.

41. See Britain, *The Aging of the New Universities*, THE ILLUSTRATED LONDON NEWS 38 (June 1975). According to Britain, seven universities built in the 1960's to open higher education to a larger fraction of the public have been afflicted by student unrest, academic disillusionment, and shrinking government support. Requests for larger budgets are refuted by statistics predicting a significant decline in the number of students wishing to attend a university in the next decade. See also THE IDEA OF A NEW UNIVERSITY: AN EXPERIMENT IN SUSSEX (D. Daiches ed. 1964).

42. The autonomy of American universities is founded in part on this British tradition. See *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819) (college charter issued by George III is contract protected by the impairment-of-contracts clause of the Constitution). The strong legal protection of university freedom in Britain dates from the efforts of the Catholic monarch James II to interfere with the Protestant colleges at Oxford and Cambridge. *Id.* at 584-88 (argument for plaintiffs).

43. See Brown, *Student Protest in England*, 17 AM. J. COMP. L. 395 (1969).

44. During this period 18 student disruptions and two building occupations occurred at the Polytechnic. Lord Annan, Provost of the University College, London, observed that militant International Socialists who dominated the Student Union at the Polytechnic attracted support from equally militant faculty members; political pressure by the militant students subverted academic standards. The Times (London), July 3, 1975, at 3, col. 4; *id.* at 15, col. 1; *id.* at 15, col. 5 (Letter to the editor by Lord Annan). At Bradford University, students occupied university buildings in protest over an increase in fees. The Times (London), June 4, 1975, at 2, col. 1. On the student protests generally, see Halsey & Marks, *British Student Politics*, DAEDALUS 116, 132 (Winter 1968).

45. On June 3, 1975, about 150 students occupied the Cambridge University Senate House for about 10 hours to demand "full-time nursery and creche facilities in the University for use by the children of students and staff." An impotent administration—wishing to avoid adverse publicity because of an honorary degree ceremony planned in the Senate House—promised to resolve the problems the students presented. No disci-

ical radicalism has made itself felt, however; a committee on Student Radicalism chaired by H.L.A. Hart, Professor of Jurisprudence at Oxford, concluded in 1969 that university decisions should be made by general assemblies to the "maximum extent possible."<sup>46</sup> Perhaps because of its doubtful practicality, this proposal for direct democracy has not been carried out.

Oxford and Cambridge have apparently avoided upheavals found elsewhere by maintaining high standards for admission and graduation. They have selected students who understand the goals of a university and who share in a community of mutual respect and understanding. Unrest and disruption have afflicted those colleges that have sought to extend higher education to a larger group of students with a wider range of frustrations. As yet, the public universities have not resolved the problem of student participation.

#### E. *An Assessment*

Even this brief review of the experience of West Germany, France, and Italy shows the hazards of allowing students to participate equally with faculty members in governing the university. Not only do external political affairs intrude on university activities, but the process of teaching itself becomes politicized. Student representatives may easily campaign for office on a platform that calls for changing examination practices or eliminating examinations. Still another student may campaign on the promise that, if elected, he will work to abolish a particular professor's teaching technique, or to dismiss an unpopular professor.

Such circumstances inevitably pressure younger faculty members to ingratiate themselves with students. It is unsurprising that West German professors throw out a party line in their lectures. Fear and combat become the characteristics of student-teacher relations. While the faculty retains token freedom to teach, undertake research, and select fellow faculty members in the countries examined here, the principle of parity or codetermination erodes the basis of academic freedom. Codetermination may appear merely to provide students with a right to

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plinary action was ordered. *Cambridge Univ. Reporter* 1174-78 (June 20, 1975); *The Times* (London), June 4, 1975, at 2, col. 1.

46. H.L.A. HART, REPORT OF THE COMMITTEE ON RELATIONS WITH JUNIOR MEMBERS (1969), quoted in Brown, *supra* note 43, at 398 n.7.



participate in university governance. In reality, however, it politicizes the educational process and so destroys academic freedom.

### III. LAW SCHOOLS IN THE UNITED STATES

Student activism in the United States is more recent and less extensive than in Europe, and the voice that students have gained in university management is more limited. The general standards for student participation in law school governance in the United States are set out in this section; Section IV will consider in more detail the role of students in governing Columbia University's Law School, an example of successful student participation.

The American Bar Association and the Association of American Law Schools (ABA-AALS) are the two accrediting agencies for law schools. These associations set standards which must be followed by those schools wishing to become or to remain accredited.<sup>47</sup> The ABA-AALS standards control law student participation in law school governance since

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47. AMERICAN BAR ASS'N, APPROVAL OF LAW SCHOOLS—AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE (1973) [hereinafter cited as ABA STANDARDS]:

Standard 205 . . . the dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure; curriculum; methods of instruction; admission policies; and academic standards for retention, advancement, and graduation of students.

. . . . .  
Standard 208. The law school may involve a Committee of Visitors or current students, or both, in a participatory or advisory capacity. The dean and faculty shall retain control over matters that are entrusted to them under the Standards.

. . . . .  
Standard 403. The major burden of the education program and the major responsibility for faculty participation in the governance of the law school rests upon the full-time faculty members.

BYLAWS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS, INC. (1972) state:  
Approved Association Policy: . . .

Section 6-1 . . . A faculty of high competence and suitable size, vested with primary responsibility for determining institutional policies [shall be maintained].

. . . . .  
Comment (b). Upon the full-time faculty members rest the major burdens of planning and executing the institution's instructional work.

Comment (c). Faculty government. Determination of institutional policies by the law faculty presupposes a properly constituted and organized faculty, meeting regularly according to orderly procedures, with records of its deliberation . . . .

The omitted portion of Comment (c) requires that faculty appointments or changes in faculty status must be initiated by the faculty. *Id.* art. 6, § 6-1.

they require that the dean and the faculty at each law school have exclusive responsibility for formulating and administering the school's program and determining institutional policies.<sup>48</sup>

The ABA-AALS standards protect the academic freedom of the law faculty to teach and to engage in research. Within the standards some accommodations are possible, however, to bring students into the governing process. The standards allow, but do not encourage, student advice and participation so long as dean and faculty retain control.<sup>49</sup>

All facets of the law-school decisionmaking process—faculty selection and retention, promotion and tenure, curriculum development, teaching methods, admission policies, and academic standards—are entrusted to the faculty by the ABA-AALS standards. Indeed, the responsibility is complete; for the faculty must not only *formulate* the law school program but administer it.<sup>50</sup>

The ABA and the AALS conduct periodic examinations to ensure compliance with the standards. When violations are found, a school may be censured, placed on probation, or deprived of accreditation.<sup>51</sup> Sympathetic as some law faculties may be to student desires and demands for participation in law school governance, the spirit and the letter of the ABA-AALS professional standards impose sharp limits. What accommodations, then, are possible for student (and faculty) wishes to share power in law school decisionmaking?

Equality of voting, or codetermination, is outside the realm of possibility for American law schools. The ABA-AALS standards rightly prevent this; no inroads should be permitted on academic freedom of the faculty. Exceptions are easily engrafted upon exceptions, and student interference in academic decisions can only result in mediocrity.

Involvement or participation, however, can develop through informal exchanges of opinion or more formally. Students may acquire voting or

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48. ABA STANDARDS, Standard 205.

49. *Id.*, Standard 208.

50. *Id.*, Standard 205.

51. The ABA STANDARDS provide that whenever the ABA Council has reason to believe that an approved school has failed to maintain ABA standards, the deficiencies will be noted; if the school does not resolve the deficiencies, a hearing is held and proper disciplinary action taken. ABA STANDARDS, Rule IV. The *Bylaws of the Association of American Law Schools* state that when a member school fails to fulfill the obligations of the AALS bylaws, "including the requirements and approved policies they embody and the regulations promulgated thereunder," the Executive Committee may recommend the school be censured, suspended or excluded from the Association. BYLAWS OF THE AMERICAN ASSOCIATION OF LAW SCHOOLS, art. 7, § 7-2 (1972).

nonvoting membership on faculty committees, or the right to attend all or parts of faculty meetings, with or without voting privileges. If students are allowed these privileges, however, faculty members should, if desired, acquire similar membership rights on student government meetings and committees. The risk is that such reciprocal rights may lead to a dangerous air of false equality.

Recommendations by a committee of the American Association of University Professors indicate the degree of student participation permissible under ABA-AALS standards.<sup>52</sup> While the AAUP approves of faculty control of educational policy,<sup>53</sup> it also recognizes the need for cooperation among all segments of a university.<sup>54</sup> Frequent opportuni-

52. American Ass'n of Univ. Prof., *Report of Committee T, Student Participation in Colleges and University Government*, 1971 AAUP POLICY DOCS. & REP. 47.

53. The AAUP has established five guiding principles regarding the role of the faculty in university governance, which would not permit equal participation by students in academic affairs: (1) faculties have primary responsibility for educational policies; (2) faculties should work and make decisions through established committees and procedures in academic matters; (3) faculties should participate in the selection of presidents, deans and department chairmen; (4) faculties should be consulted on budget decisions; and (5) appropriate agencies to ensure faculty participation should be given official standing by the university. American Ass'n of Univ. Prof., *Draft Statement on Student Participation in College and University Governance*, 1970 AAUP BULL. 33, 1973 AAUP POLICY DOCS. & REP. 49 (as approved by AAUP). See also *THE UNIVERSITY AS AN ORGANIZATION* 11, 253 (J. Perkins ed. 1972).

Faculty control over the educational process is the definition of academic freedom:

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 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, and 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.

C. FRANKEL, *EDUCATION AND THE BARRICADES* 30 (1968). Professor Frankel believes the participation of students in university government at Columbia, achieved after the disruptions of 1968, has accomplished little because students are unable to do the job. Interview with Professor Charles Frankel in New York City, November 1, 1974.

54. *Report of Committee T, supra* note 52. See also *THE UNIVERSITY AS AN ORGANIZATION* (J. Perkins ed. 1972). Democratic organization of a university derives from the notion that the policies of the universities must conform to the social aspirations of its members and that its [*sic*] very style and organization must conform to the idea of a democratic society. Legitimate authority . . . does not and cannot come from trustees as corporate owners. It can come only from the expressed wishes of the constituent members of the campus—faculty, students and staff. Thus, decisions made by officials without community participation may be legally correct but democratically corrupt.

*Id.* at 12. Cf. K. Brewster, *Politics of Academia*, in *POWER AND AUTHORITY* 56 (H.

ties for exchange of opinion are no more important than the need for formal participation in decisionmaking. Each university must itself determine the precise form and extent of student participation.<sup>55</sup>

The AAUP recommends that every student have the right of free inquiry and expression, in private faculty-student conferences as well as in the classroom.<sup>56</sup> Students should express their views, and may be permitted to vote, on admissions policies, academic programs, academic courses, grading systems, class schedules, and library policies—but student participation in these decisions should be carefully limited according to criteria set jointly by faculty and students.<sup>57</sup> Students should have primary responsibility for directing their extracurricular activities and for formulating the regulations which govern their behavior on campus; university officials, of course, should consult with students and be aware of their decisions in these areas.<sup>58</sup> Students should also have a right to express their views, in some formalized way, on the university's policies concerning use of resources and relations with the outside community.<sup>59</sup>

Law schools have moved to implement these recommendations in recent years. A questionnaire sent in January 1974 by Boston College Law School to the deans of the 152 ABA-AALS accredited law schools attracted responses from 100 schools.<sup>60</sup> Of these, 78 allowed student members full voting rights on faculty committees. Students were usually excluded, however, from committees dealing with faculty appointments, tenure, and promotion, and from committees dealing with individual students (*i.e.*, decisions on admissions, financial aid, and disciplinary action). At 44 law schools students could attend faculty meetings; 19 schools permitted some student voting in faculty meetings on certain issues.

These results showed a dramatic increase in the degree of participation permitted law students. A 1970 survey, to which 73 law schools

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Hodgkinson & L. Meeth eds. 1971) (democracy should be increased by making university officials accountable to their constituents, rather than by permitting direct participation by students in the process of administration).

55. *Report of Committee T*, *supra* note 52, at 48.

56. *Id.* at 47.

57. *Id.* at 48.

58. *Id.*

59. *Id.*

60. Brown, *It Isn't the Sixties . . . It May Be Better*, 3 THE STUDENT LAWYER, Dec. 1974, at 33.

responded, found only three permitting students to vote in faculty meetings, and only 16 allowing students to sit on faculty committees.<sup>61</sup>

#### IV. THE COLUMBIA PLAN: A MODEL OF STUDENT PARTICIPATION

On April 23, 1968, a rally on the Columbia University campus became a student rebellion: From seven hundred to one thousand students seized five university buildings and held them for six days; one thousand New York City police were called in to establish order.<sup>62</sup> The uprising was led by the Students for a Democratic Society and the Students' Afro-American Society. While the demands and the aims of the rioters were not always clear,<sup>63</sup> one investigation after the fact concluded that students should have a larger voice in university governance.<sup>64</sup>

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61. Morris, *Student Participation in Law School Decision Making*, 22 J. LEGAL ED. 127, 137 (1969).

62. See CRISIS AT COLUMBIA: REPORT OF THE FACT FINDING COMMISSION TO INVESTIGATE THE DISTURBANCE AT COLUMBIA UNIVERSITY IN APRIL AND MAY, 1968, at xv (1968). See generally R. KAHN, *THE BATTLE FOR MORNINGSIDE HEIGHTS* (1970). Some students allegedly beaten by police sued the university as well as the City of New York; the suits were settled for about \$11,000. N.Y. Times, Dec. 8, 1974, at 9, col. 3.

63. C. FRANKEL, *supra* note 53, at 15. One author suggests that such student rebellions were caused by boredom. Krik, *Rebellion Against Boredom*, in SEEDS OF ANARCHY: A STUDY OF CAMPUS REVOLUTION 26 (F. Wilhelmsen ed. 1969).

64. CRISIS AT COLUMBIA, *supra* note 62, at 198. This report's account of the disturbances can be summarized as follows. The university is on the border between Harlem and the rest of Manhattan, and the school itself came to represent "the relation between white and black, affluence and poverty, youthful reform and established order." *Id.* at 193. The university has extensive property holdings near the campus, and has often been criticized for allegedly unfair dealing with poor black tenants and for taking neighborhood property for university expansion. *Id.* A particular source of friction was the university's plan to build a new gymnasium in Morningside Park, a city park dividing the university from Harlem. Despite efforts to involve neighborhood and city government representatives in planning the gymnasium, students joined with area residents to oppose its construction. Students also objected to university contracts with the Institute for Defense Analysis which the students contended represented support for the Vietnam War. *Id.* at 192.

Protests were also directed at the university itself. Students complained that the university was too rigidly bureaucratic, *id.* at 193; living conditions in dormitories and nearby housing were inadequate, *id.*; a significant number of faculty members were remote from student concerns, *id.* at 35; the curriculum was inflexible and unresponsive to social needs, *id.* at 94; the university made inadequate provision for the difficulties experienced by newly recruited black students. *Id.* at 193. The report concluded that students should be given a larger role in university governance, but made no specific recommendations. Although the Law School was not affected directly by the protests,

The Columbia University Law School responded to the discussion of the student's role in university governance; at a special meeting on September 23, 1970, the law faculty passed a resolution concerning the participation of students in faculty meetings.<sup>65</sup> Because the resolution is of considerable interest to other schools, it is reproduced here in full:

*RESOLVED:*

1. *Attendance and Participation at Faculty Meetings*

Student members of each committee of the Faculty may regularly attend those portions of Faculty meetings at which items reported by their committee are discussed. They may participate in the discussion of those items and remain until faculty action on them is completed.

2. *Executive Session*

Appointment and personnel matters will regularly be considered in executive session of the Faculty. By majority vote of those present and voting the Faculty may go into executive session on any matter concerning which student attendance and participation would normally be allowed under paragraph 1 above.

3. *Confidentiality and the Posting of Minutes*

The remarks of individual faculty members and student participants shall be treated by all those present as confidential. The minutes of each meeting not held in executive session will be posted, but this version of the minutes shall not include the names of individual speakers.

4. *The Nature of Business*

It is understood that the concern and responsibilities of the Faculty, with the aid of the committees reporting to it, are to direct the Law School in advancing its educational goals, and that these bodies will not take institutional stands on political issues.

5. *Composition of Student Membership on Committees and Structure of Student Senate*

Elections for student membership on committees will be by class. The Advisory, Curriculum, Rules, Scholarships and Selection, Placement, Ur-

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it responded to legitimate grievances with reforms that permitted students to influence but not determine school affairs. See notes 62-71 *infra* and accompanying text. For discussions of the more general factors influencing student rebellion in the United States in the 1960's, see, e.g., M. HEIREICH, *THE BEGINNING: BERKELEY*, 1964 (1970); D. PENTONY, R. SMITH & R. AXEN, *UNFINISHED REBELLIONS* (1971); R. SMITH, R. AXEN & D. PENTONY, *BY ANY MEANS NECESSARY—THE REVOLUTIONARY STRUGGLE AT SAN FRANCISCO STATE* (1970); Report of the American Bar Association, Commission on Campus Government and Student Dissent (1970); Greenawalt, *A Contextual Approach to Disobedience*, 70 COLUM. L. REV. 48 (1970).

65. Columbia University Law School Faculty Minutes, September 23, 1970.

ban Affairs, and Student-Faculty Relations Committees will each have three student members, one from each class. The Library Committee will have two student members, one from the second and one from the first year class. The Associates Committee will have two student members, one from the third and one from the first year class. The Continuing Legal Education Committee will have two student members, one from the third and one from the second year class. The Appointments Committee will have three consultants, one from each class.

#### 6. *Mode of Selection*

Third and second year students will elect members of their own respective classes to committee assignments. A preferential voting system will be used so that the person [*sic*] has wide support among his classmates. Voters shall rank the candidates in order of preference on their ballots. The candidate receiving the fewest first-place votes shall be dropped, and the second choices of those voting for him shall be counted as first-place votes. With the ballots thus retabulated, the candidate who now has fewest first-place votes shall be eliminated. Each of his first-place votes (whether original or by virtue of retabulation) shall be assigned to the still eligible candidate who is next in order of preference on the particular ballot. The process of elimination and retabulation shall be repeated until two candidates remain. The one having the greater number of votes shall be declared the winner.

In order for any election for committees to be valid, at least two-thirds of the class must vote in the election, and for any election to a particular committee to be valid at least a majority of the class must vote for that particular committee. If two-thirds of a class have not voted within the time specified for the election, the election will be reopened until two-thirds of the class have voted. If, when two-thirds of a class have voted in an election, there is still not a majority voting for one or more committees, the election for those committees will be reopened for those who have not yet voted in the election, until a majority have voted for each such committee.

At the beginning of the academic year, the first year class may decide by a preferential ballot among three options: 1) by election of committee members in mid-November; 2) appointment of members by lottery in late October; 3) appointment of members by lottery for the first semester, and election at the end of that semester for the second semester. Any first year election to committee will be held in the same manner and governed by the same requirements as upper class elections.

It is the sense of the Faculty that each student at the Law School has a responsibility to participate in the selection of committee members and consultants.

7. In view of concern expressed by several members of the Faculty that issues might arise on which an individual member of the Faculty might desire to speak to the Faculty alone, the Advisory Committee was directed to consider means for guaranteeing this right. The submission to the Advisory Committee contemplates only provision for an individual statement and not for discussion or voting. Discussion and voting shall be governed by the foregoing paragraphs of this resolution.

The resolution was enacted after considering the report of an Advisory Committee (mentioned in paragraph seven). The effect of the resolution is to put student voting members (three, in most instances) on each of ten faculty committees. The student committee members are entitled to attend faculty meetings that discuss or implement the work of their committees. The Appointments Committee is singled out for separate treatment. This committee, which deals with personnel matters, has student consultants, not voting members; these consultants cannot attend faculty meetings that decide appointments. An elaborate scheme for electing student committee members is designed to ensure broad support for the persons selected. No election is valid unless two-thirds of the students participate, and no election to a particular committee is valid unless a majority votes on candidates for that committee. These safeguards prevent a well-organized minority from dominating the electoral process.

Later faculty resolutions further opened the decisionmaking process. On March 17, 1971, the faculty resolved to permit "oral presentations by other than faculty members and student committee members" at committee meetings, when the committee members voted to accept such presentations.<sup>66</sup> Two years after its initial resolution, on May 26, 1972, the faculty revised its plan more extensively. The faculty debated a resolution permitting five student members to attend all faculty meetings; this would have greatly extended student participation, until then

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66. The resolution allows oral presentations

. . . only if the Faculty has been polled prior to the meeting, and a majority of those responding to the poll have approved. The Dean shall conduct such a poll upon the request of any student or students who, not less than 48 hours before the meeting, deliver to his office a written request for such oral presentation, supported by a memorandum explaining why it cannot be made satisfactorily by one or more student committee members and a summary statement explaining the matter to be presented. Notwithstanding the foregoing, the Faculty will hear an oral presentation if (1) it is shown to the satisfaction of the chairman that the need for oral presentation arose less than 48 hours before the meeting, and (2) the Faculty consents.

Columbia University Law School Faculty Minutes, March 17, 1971.



limited to attendance by committee members when committee work was being discussed. A compromise permitted three students, members of the Advisory Committee, to sit in regular attendance at faculty meetings, but limiting student representatives from committees with business before the meeting to one representative each. Students were still excluded from executive sessions of the faculty.<sup>67</sup>

The Advisory Committee of the Columbia Law School Faculty, in a memorandum to the entire Law Faculty, subsequently suggested a further change concerning the size of the Curriculum Committee.<sup>68</sup> The Curriculum Committee originally consisted of three faculty members. When student participation was invited, three more faculty members and three students—one from each class—were added. Noting the difficulty in finding times for Committee meetings agreeable to the nine members, and the time-consuming discussions generated by a large committee, the Advisory Committee recommended reducing the Curriculum Committee to four faculty members and two students, one from the second and one from the third year class. A first year student member of the Law School Student Senate would be designated a nonvoting consultant to the Committee.<sup>69</sup>

The faculty adopted this proposal.<sup>70</sup> In the event the chairman of the student senate was not a member of the Advisory Committee during the 1974-75 academic year, the Law Faculty also decided that he or she should be invited to attend the faculty meetings to ensure representation to the duly elected leader of the students.<sup>71</sup>

## V. CONCLUSIONS

The President of the Association of American Law Schools observed several years ago that he could “not detect any kind of political unrest among our law students . . . legal education never had it so good. Let us not spoil it.”<sup>72</sup>

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67. Columbia University Law School Faculty Minutes, May 26, 1972.

68. Columbia University Law School Advisory Committee on Educational Policy, Memorandum to Members of the Columbia Law School Faculty, May 3, 1974.

69. *Id.*

70. Columbia University Law School Faculty Minutes, May 3, 1974.

71. *Id.*

72. Miller, *Law Schools in the Great Society*, 18 J. LEGAL ED. 247, 253, 256 (1966). See generally THE LAW SCHOOL OF TOMORROW (D. Haber & J. Cohen eds. 1968); E. LEVI, POINT OF VIEW 109-21 (1969); P. DEL SWORDS & F. WALWER, THE COSTS AND RESOURCES OF LEGAL EDUCATION (1974); Boyer & Cramton, *American Legal Education:*

Law schools are not, however, immune from disturbance. Student protest at Columbia University Law School dates from 1891.<sup>73</sup> Disgruntled by the decision of the University Administration to add a year to the two-year curriculum, and to change from the lecture method of instruction to the Langdell case method, a large part of the Class of 1892 refused to return to the School during the Fall of 1891. (Three faculty members also resigned). Student petitions to the Board of Trustees for postponement of the curriculum change were unavailing. Many students who did not return to the Law School never graduated. Others, more enterprising, formed the class at the New York Law School. Opened in October 1891, the New York Law School was a direct consequence of the Columbia Law School furor.<sup>74</sup>

The rebellions on college and university campuses in the late 1960's, so far as public reports show, did not greatly affect the law schools. No law buildings were seized or damaged; no deans trapped in their offices; no police called to restore order. There were, to be sure, expressions of concern: teach-ins, an occasional protest march, petitions for redress of socio-political grievances, fasting and prayer vigils to protest the Vietnam War.<sup>75</sup> Law students have been concerned over the same issues that engaged their peers in other disciplines, but have been more cautious in their choice of means of expression.

Although law students have shared the general student interest in obtaining more influence in university management, the response from

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*An Agenda for Research and Reform*, 59 CORNELL L. REV. 221 (1974). But see Carrington, *Professionalism and Student Protest*, 55 A.B.A.J. 943 (1969); Kinoy, *The Present Crisis in American Legal Education*, 24 RUTGERS L. REV. 1 (1969); Richardson, *Does Anyone Care For More Hemlock*, 25 J. LEGAL ED. 427 (1973); Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444 (1970).

73. J. GOEBEL, JR., *A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY* 144-45, 150-51 (1955).

74. *Id.* at 150. Law students' interest has been mobilized more recently by such great issues as the uniform adoption of the Juris Doctor degree as the first degree in law. Smith, *Much Ado About Nothing*, 11 STUDENT LAWYER, June 1966, at 8; Smith, *When You Wish Upon a Star: The J.D. Fantasy*, 21 J. LEGAL ED. 177 (1968). Today there are more substantive rallying points. Brevin, *Law Students Vow Tuition Action*, Columbia Daily Spectator, Feb. 6, 1975, at 1, col. 1; Green, *300 at Law Threaten Strike to Fight Unequal Fee Hike*, Columbia Daily Spectator, December 6, 1974, at 1, cols. 3-4.

75. Carrington, *Professionalism and Student Protest*, 55 A.B.A.J. 943 (1969); Howard, *Good-bye Mr. Chips: Student Participation in Law School Decision Making*, 56 VA. L. REV. 895, 900 (1970); Morris, *Student Participation in Law School Decision Making*, 22 J. LEGAL ED. 127, 139 (1969).

law schools has been and should be quite limited. Law schools have not traditionally considered faculty and students as equals.<sup>76</sup> It is inconceivable that a freshman in law school, for example, should have representative or political power equal to a senior member of the faculty; the relationship between the two groups can best be viewed as "more akin to that of master and apprentice than that of complete equality required by the democratic principle."<sup>77</sup> This view of the student's role is confirmed by the disastrous effects of student codetermination in higher education outside the United States.<sup>78</sup>

Primary responsibility for the management of the law school enterprise must lie with the faculty and their dean. A law school is a special-purpose organization, not a polity;<sup>79</sup> the American Bar Association and the Association of American Law Schools require ultimate control by faculty and dean.<sup>80</sup> The need for continuity in decisionmaking requires the same result: the members of the faculty are permanent partners in the educational enterprise, the student but a transient. Furthermore, to attract men and women of quality to a law school faculty requires assurances—even guarantees—about academic freedom.<sup>81</sup>

The value of student participation, however, remains unquestioned. Such participation has a definite educational value, in that it allows students to take part in law school decisionmaking. It creates "an atmosphere of mutual respect and co-operation between faculty and students,"<sup>82</sup> serves to reinforce the values of the educative process, and assures better decisions and basic fairness to those affected.<sup>83</sup> If a student does not identify with his law school when he is a student, he is unlikely to identify with it once he graduates. Involvement in law school governance by students, therefore, affords hope for continued involvement in later years by alumni, on whom the survival of law schools as private institutions depends.

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76. Howard, *supra* note 75; Morris, *supra* note 75, at 139; Smith, *Academic Aloofness: Stimulant or Depressant to Legal Education?*, 21 J. LEGAL ED. 89 (1968). See also Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 679 (1973).

77. Morris, *supra* note 76, at 139.

78. See text accompanying notes 13-40 *supra*.

79. Howard, *supra* note 75.

80. See notes 47-51 *supra* and accompanying text.

81. See generally Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637 (1968).

82. Howard, *supra* note 75, at 900; Morris, *supra* note 75, at 139.

83. Howard, *supra* note 75, at 900; Morris, *supra* note 75, at 139.

Law schools have established a good record in the past six years for involving their students in local governance. The most striking example of responsiveness is the change in curriculum to reflect student concern for the problems of racism, urban blight, and poverty.<sup>84</sup> By structuring seminar or course offerings in these areas of concern, the law school meets its responsibility to society, and responds in a positive way to student demands for curriculum relevance.<sup>85</sup>

Although students cannot participate on an equal footing with faculty in managing a law school, more limited participation is possible. An ideal program should avoid undue politicization and be simply designed, its basic purpose kept in view. Committees should include persons with expertise necessary for the task in hand. When students are personally concerned, as in issues concerning grades, conflict should be expected and means of resolving disagreements amicably should be provided. In sensitive or confidential matters, common understanding should be sought.

The Columbia University Law School program for student participation in faculty governance is a sound model which embodies the above principles. Of course, no blanket assertion can be made of the superiority of this form of organization. Each school must consider its own philosophy, goals, and unique problems. But some form of student participation is both wise and profitable, and the principles embodied in the Columbia program may assist other schools in creating successful programs of their own.

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84. McKay, *The Seat Belts of Legal Education*, 160 N.Y.L.J., July 5, 1968, at 4. See also Reich, *Toward a Humanistic Study of Law*, 74 YALE L.J. 1402 (1965).

85. McKay, *supra* note 84.

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