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Faculty Regulations of American Law Schools

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Faculty Regulations of American Law Schools (A Survey)

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FACULTY GOVERNMENT and administration in law schools have profound effects on the quality of their teaching. This is true in any college, of course, but it is particularly true in graduate, professional schools.

In law schools, faculty members usually are especially able lawyers, who could do well in practice if they chose practice instead of teaching as careers. It is well known that many law professors are stars in the legal firmament. They often have a bit of the prima donna in them—this not being meant in a derogatory sense as to most of them. And they are trained advocates, of course, able (and usually willing) to enforce their rights.

The nature and effect of faculty regulations of law schools thus would seem to have important bearing on the legal education that these schools offer. General faculty regulations of parent colleges or universities, of course, are important in their effects on their law schools. But of much greater interest to law teachers and students are the faculty regulations that are peculiar to law schools.

With these facts in mind, the writer undertook to survey the state of faculty regulations of American law schools. The results proved to be interesting.

Questionnaires were sent to the deans of all American law schools, both approved and unapproved, university affiliated or independent. The mailing list was obtained from the *Directory of Law Teachers in American Bar Association Approved Schools* (St. Paul, Minn.: West Publishing Co., 1964), and from the list of unapproved law schools in the American Bar Association's *Review of Legal Education* (Chicago, Ill.: Section of Legal Educ. & Admissions to the Bar, 1963).

There are one hundred and thirty-five law schools in the United States approved by the American Bar Association.[1] In addition, some twenty-six non-accredited institutions in nine

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1 West Publishing Company, Directory of Law Teachers (St. Paul; West Publ. Co., 1964); and Law School News (Ibid., monthly).

states and Puerto Rico bear the name "School of Law" or "College of Law" or "Law School." [2] Eighty law schools responded to the questionnaire.

In the modern academic world, in general, often it is the administrative body of an institution of learning that determines general policy, admission requirements, curricula, teaching loads, and so forth. This is not to say that most administrative bodies have unlimited authority in these matters. Usually such agencies must answer to some higher authority, in the form of a public school board or a board of trustees. Nevertheless, these decisions *prima facie* fall within the province of administration. It is here that trouble arises. Of course, such questions as teaching loads, grading policies, text selections, and even course content and teaching methods are of vital interest to both the faculty and the administration of any school. Of no less import are the hardly less controversial matters of tenure, pay scales, and rules of academic advancement.[3]

Problems of conflicts of authority and overlapping interests exist at every level of the academic world. They are most prominent at the college and graduate school levels, for it is here that administrator and teacher face each other on a fairly equal footing. Generally, at the graduate level, the teacher possesses a terminal degree in his chosen field, just as does the administrator in his.[4] Normally the teacher is experienced as well. As has been mentioned above, law teachers are particularly qualified.

The administrator, on the other hand, is a specialist in his chosen field. In law schools, he invariably also possesses a law degree, if he is a dean. Other administrators of the university usually also possess high academic degrees.

Many schools, of all types, have worked out a *modus vivendi* between administrator and teacher. They have delineated rules of conduct, usually called "faculty regulations," which set forth areas of authority and define duties. Other schools have systems under which administration and faculty work together in determining many large areas of school policy.[5] In spite of these efforts, a serious rift often exists between the faculty and the

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[2] Review of Legal Education, 17-18 (Chicago; A.B.A., 1963).

[3] Bossing, Teaching in Secondary Schools 467-469 (3rd ed. 1952).

[4] Ibid., 535.

[5] Bossing, *op. cit. supra*, note 3; Eley, The University of California at Berkeley: Faculty Participation in the Government of the University, 50 A.A.U.P. Bull. (1) 5 (Spring 1964).

administration. It was with these facts in mind that the one hundred sixty-one law schools previously mentioned were queried.

Only ten law schools, of the eighty responding, have taken any formal steps to solve this problem through the use of law school faculty regulations. Seven law schools reported that they are included under the general faculty regulations of the universities with which they are affiliated, but have no regulations of their own. Another nine simply made various references to regulations incorporated in the minutes of faculty meetings. The remaining fifty-four answering law schools either found the term "faculty regulations" to be meaningless (twenty-eight sent law school bulletins and applications for admission), or categorically denied the existence of any such regulations in any form.

One law school dean wrote that some of his school's regulations are "highly confidential." This suggests a rather authoritarian atmosphere.

Obviously, the total response indicates no recognizable pattern in the establishment of law faculty regulations. The ten law schools which have adopted such regulations are located in widely scattered geographical regions of the country. There is nothing to indicate any traditional, cultural or developmental ties of special strength or similarity among these schools, in this respect. Nor does there appear to be any coherent correlation in the types of rules adopted by the various law schools. The nearest thing to a common rule or set of regulations seems to concern itself with the question of tenure.

Six law schools responding indicated that they have established formal regulations regarding tenure. It is interesting to note that these regulations vary from one brief paragraph to five pages in length. Almost all seem to agree that tenure shall be awarded no later than five years from the time of appointment, and that it may be awarded sooner under circumstances which vary from school to school. Most of these regulations provide distinct faculty title classifications and strict contract periods for each. At the end of such contract period either promotion or termination must occur.[6] The shortest period for acquiring tenure seems to be three years.[7]

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[6] "Provisions Regarding Academic Freedom, Tenure, and Academic Due Process, Recommended for Inclusion as Trustee Legislation in the University Code." University of North Carolina, 1964.

[7] Cleveland-Marshall Law School of Baldwin-Wallace College.

The regulations of seven schools provide for "academic freedom" for faculty members. Most often this term is used in reference to choice of classroom methods and course content, within broad limits, as well as the right of the faculty member to ". . . be responsibly engaged in efforts to discover, speak, and teach the truth." [8] A typical regulation regarding academic freedom reads:

> The Law School will not impose any limitation upon a faculty member's freedom of exposition of his own subject in the classroom so long as the faculty member conducts the program competently and consistently with the faculty's decision as to the curriculum.[9]

Another area of academic freedom which is mentioned in the regulations of two law schools pertains to the rights of the faculty member in his spoken or written publications outside the law school. One such regulation states:

> The University recognizes that in his role as citizen, as to matters outside the area of his scholarly interest, the faculty member has the right to enjoy the same freedoms as other citizens, without institutional censorship or discipline, though he should avoid abuse of these freedoms. He should recognize that accuracy, forthrightness and dignity befit his association with the University and his position as a man of learning. He should not represent himself as a spokesman for the University.[10]

One area of friction peculiar to the faculty of a law school occurs from the fact that almost every law teacher is qualified to practice law, subject of course to the bar requirements of the state in which he teaches. One school, in fact, states in its faculty regulations that each member of the faculty must be a member of the bar in at least one state.[11] In many instances teachers of law are also practicing attorneys, as everyone knows. Yet, the question of division of interest and conflict of time requirements is subject to regulation at only four of the law schools responding. The various provisions all place some limitation on the time that a teacher may devote to an outside practice. One school says that a member of its faculty may practice only on a consulting basis,

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[8] "Dickinson School of Law Rules Governing Academic Personnel." Dickinson School of Law, 1964.

[9] University of North Carolina, *op. cit. supra,* note 6.

[10] Southern University Law School.

[11] Ibid.

another says that he may practice only in occasional cases of exceptional merit, and still another, in even more general terms, says that a member of the faculty must devote his time, thought, and energy to the service of the law school. The amount of time a teacher may devote to such a practice seems to be determined arbitrarily as a matter of individual school policy, without regard to the variance in course loads from teacher to teacher, and certainly without regard to any clear standard.

It would seem, from the limited number of law schools which have elected to adopt formal faculty regulations to meet general educational problems, that many other methods are being employed to avoid or resolve conflicts. Undoubtedly, many schools have incorporated into teaching contracts statements regarding the amount of time a teacher may devote to outside legal interests, provisions determining the method for selection of texts, and requirements concerning the number of classes to be taught by each teacher. Probably, some schools determine what teaching methods shall be used, presumably in cooperation with the teacher and without the benefit of any written regulations. A large number of faculty regulations undoubtedly are an integral part of the minutes of faculty and board meetings at many schools, and are not compiled or formalized in any way. Questions of tenure and other policy are often resolved in school bylaws, or are governed by the regulations of the parent university.

It is true that general principles as to law faculty conduct are expressed or implied in the *Standards* of the Association of American Law Schools, or in such regional codes as the *Standards* of the League of Ohio Law Schools. But these are not equivalent to a set of faculty regulations.

The conclusion must be that, in American law schools, there are hardly any specific rules of the nature of faculty regulations particularly adapted to legal education, except (to a limited extent) as regards tenure.

Whether this state of affairs is good or bad is another question.