

Disequilibrium in the Search for Freedom

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TWO of the prerequisite conditions to freedom are safeguards from undue institutional restraints upon basic human activities, and the individual's abilities to base his choices and actions upon understandings and values achieved for himself through rational processes. A free mind in a free society. A society which creates circumstances for a freedom of basic human activities and an environment which encourages the attainment of freedom of the mind.

The personnel of the schools have readily accepted the changes and adjustments being promoted to encourage and foster the conditions necessary for the development of rational processes. One exception might be the use of controversial issues as a content vehicle. Now the schools have a similar opportunity to participate as society re-evaluates the conditions guaranteed for basic human activities. The schools may not choose one condition and reject the other. Schools, just as our social system, must exemplify conditions appropriate for freedom of basic human activities and of the mind.

Within the United States of America, the circumstances and safeguards for freedom of basic human activities are identified within the Constitution, specifically the Bill of Rights. The framers of the Constitution may primarily have been concerned with the

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political institutions of the proposed society. Yet, a reasonable extension to their concerns, as well as an appropriate application of their product, would be to all institutions created by such a society to serve societal purposes. Schools are an institution created and supported by society to serve those fundamental circumstances which created the society and those purposes which are supported by society. Therefore, the articles of our basic document, the Constitution, are applicable to the socially-created institution called school.

One of the provisions of the Constitution is for the three branches of federal government: executive, legislative, and judicial. These three branches were created for "check and balance" purposes. In recent years, each of these branches has been more or less active in the general area of the application or interpretation of constitutional rights for the

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student and for the school as a social institution.

One branch, the judicial, has been particularly active. The activity of the judicial branch could be interpreted as a "check and balance" upon the activity or inactivity of the other branches of government. Also, the judicial branch is providing the needed interpretations of the implications of the Constitution for societal institutions and their clients. The activity of the other two branches has increased as a means of "check and balance" toward the judicial branch. The intensity of government activity in this area may have somewhat declined. Yet the issue is not resolved, and continued activity will ultimately reestablish a new equilibrium.

Our Rules vs. Their Rules?

Social institutions will never be the same, just as society as a whole has changed, in regard to human and civil rights. The disequilibrium involved in a resolution of "rights and responsibilities" within the society has, of necessity, become a disequilibrium for the school. Unfortunately, within society, and especially within schools, this reexamination has become muddled by emotionalism. Administrators have felt that they usually made decisions in terms of what will best meet the needs of students.

To renegotiate these decision-making areas in light of an expansion of student rights and responsibilities has resulted in some administrators feeling it is "us against them." Our rules versus their rules. Who has the authority, rather than who has rights? Yet, two facts remain: these are our children, not our enemies, and the possession of rights is a socially transmitted, blessed inheritance for our children.

Within the school, the administration does not have an *a priori* right to impose arbitrary restrictions on student behavior, nor does it have the right to cease making rules and regulations concerning student behavior. If policies, rules, and regulations are to be made, and they are, the following can serve as touchstones and guidelines:

1. The present and future interpreta-

tions of the application of constitutional rights are to be considered as pre-emptive to policy.

2. The doctrine of *in loco parentis* is limited only to restraint and temporary correction in discipline cases.

3. The requirement that the relationships be demonstrated between operational policies, rules, and regulations and the abilities of the school to perform its primary obligations of educating students and providing for their physical safety.

The American Civil Liberties Union has suggested that school policies be based upon the following premises:

1. Predictably unwise student behaviors which are not dangerous to life or property and do not seriously disrupt the academic process imply the right of students to make mistakes.

2. To live under "rule of law" rather than "rule of personality" in school, as in society, is a right of students.

3. Deviation from opinions and standards deemed desirable by the faculty is not an automatic threat to the academic process.

These touchstones, guidelines, and premises should give a basis for an institutional inquiry into the circumstances and safeguards they provide for basic human activities. The inquiry should center upon: the application of the Bill of Rights to schools; the establishment of overt relationships between policies affecting student rights and institutional missions; the development of faith in rule by law through the experiencing by students in their interaction with the institution; and the value of diversity as an essential element of freedom.

Courts Have Been Active

As a guide for the analyzing of the school's practices and policies, the following summaries of court actions might be useful. The landmark decision came from the U.S. Supreme Court in the Tinker case (1969). The Supreme Court ruled that age is no barrier to the enjoyment and protection of the

Rights Guaranteed by the First Ten Amendments

The first ten amendments to the Constitution were proposed by Congress September 25, 1789, and became effective December 15, 1791. Together they are known as the Bill of Rights, though only the first eight amendments guarantee individuals specific rights and liberties:

1. Freedom of religion, speech, the press, and public assembly guaranteed
2. Right to bear arms guaranteed
3. Quartering of soldiers on householders prohibited in peacetime
4. Search and seizure only of described articles or persons in a warrant, issued after sworn testimony offering good reason for search and seizure
5. Trial for major crime only after indictment by a grand jury
Double jeopardy prohibited

Witnesses shall not be compelled to testify against themselves

No punishment except by due process of law

No confiscation of property without just compensation

6. Speedy, public trial in state where the offense was committed

7. Jury trial of civil suits of more than \$20 and jury findings of fact to be final

8. Excessive bail prohibited
Cruel or unusual punishments prohibited

9. Statement of guarantees does not deny other rights retained by the people

10. Powers not given or prohibited to the United States are retained by the states or by the people.

Constitution, particularly the Bill of Rights. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school-house gate" (U.S. Supreme Court in *Tinker, Des Moines*).

Generally, the rights of freedom of speech are fully protected and upheld by the courts. Certain questions of limits remain as yet undefined, such as: The school can act against obscenity, but what is the nature of criticisms by faculty and/or students which disrupt the educational process? Within the schools, it would seem that although court rulings are not always clear on specific issues, freedom of speech is to be protected when and as it seems a necessary element in the exercise of intelligent choice in the selection of alternatives for action.

The right against self-incrimination is also being reinterpreted as it applies to criminal justice actions and within social institutions. From this right is the assumption that the individual is innocent and that the burden of proof of guilt is upon the government. Figuratively, if not literally, the school is a form of "government" for the students; therefore, the right against self-incrimination is applicable. The specific instances of applica-

bility in schools have not yet been clearly defined by the courts. Yet, it is time to reexamine school policies and practices which assume guilt or which exercise undue influence or unfair pressure upon students to implicate themselves in disruptive problems.

The rights of due process and equal protection under the law are also guaranteed by the Constitution. Here, the courts have concerned themselves mainly with: what are the rules; are they readily available; how are they applied; are the rules reasonable in regard to the protection of the academic processes and the safety of students; and is the penalty reasonable? The courts have varied somewhat in regard to specific issues but have consistently emphasized the procedural and substantive aspects of due process procedures for students at all levels.

To Develop a Free Mind

Other rights guaranteed by and/or derived from the Constitution and being interpreted by the courts are:

1. The freedom of assembly, association, and petition is generally protected when done peacefully and may be subjected to reasonable regulations.

2. The right to security of privacy, property, and person from search and seizure appears to be moving toward the recognition of the need for more institutional and, if necessary, court protection.

3. The right of dissent is being consistently protected whenever the school cannot demonstrate that the exercise of the right has interfered or will materially interfere with appropriate operation of the school.

The turmoil, uncertainties, and disequilibriums involved as administrators struggle to accommodate the interpretations and applications of constitutionally-based rights into school policies must parallel the turmoil, uncertainties, and disequilibrium a learner (student) experiences as he or she develops a free mind. Learners sometimes seek the security of an absolute, even arbitrary, outside authority; so will administrators seek, and so have they sought such authorities. When authorities, the courts for example, seem vague or even inconsistent, there is a tendency on the part of seekers to reject the whole issue. If disequilibrium is an essential ingredient for the learner's achievement of a free mind, then disequilibrium is part of the circumstances essential to the development of institutional safeguards of freedom.

From the resolution of such disequilibriums, perhaps my vision of the circumstances and environment necessary for basic human activities fundamental to the development of a freedom of the mind may occur.

Schools Supporting and Students Learning

My vision is of schools supporting and students learning:

- to love and regard oneself
- to love and honor human sexuality
- to identify with a faith that is larger than oneself
- to feel the joys and pleasure of knowing and of knowing how to know
- to interact with the objects, events, and situations in their environment in a rational way
- to honor the continuity of knowledge and of mankind
- to experience the joys and pleasure of curiosity, investigation, and trying
- to regard differences as newnesses, rather than strangenesses
- to start and/or continue during both success and failure
- to balance collectiveness and individualness
- to recognize the values and functioning of relativeness and change as an aspect of growth
- to follow and to lead based upon a criterion of quality of service rendered
- to protect the nature, functioning, and value of institutional safeguards of freedom. □



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