Student Rights of Passage: A Full or Limited Partnership in University Governance

George P. Smith II
The Catholic University of America, Columbus School of Law

Follow this and additional works at: http://scholarship.law.edu/scholar
Part of the Education Law Commons, and the Legal Education Commons

Recommended Citation
George P. Smith II, Student Rights of Passage: A Full or Limited Partnership in University Governance, 9 J.L. & EDUC. 65 (1980).

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.
Student Rights of Passage: A Full or Limited Partnership in University Governance?

GEORGE P. SMITH, II*

The late 1960’s bore witness to campus tumult, disorientation and disorganization at universities and colleges throughout the world.1 It was truly a period of marked social upheaval. There were few total wins or losses for the students and their professors. Today, in response to the student demands of that period, the nation’s institutions of higher education have not only eased course requirements, their methods of evaluation and grade recordation (and of admission), and allowed for greater student involvement and actual participation in academic governance—but have also relaxed much of their in loco parentis control over student life.2

A recent study points to a marked shift in the characteristics of today’s students. With significant rising tuition costs, more and more students are conspicuously becoming consumers—intent on “getting their money’s worth.”3 Coupled with this attitude is a tone of seriousness about education—with little radicalization and a willingness to seek and listen to advice from college authorities. Serious frustrations and confusion mark a growing number of attitudes found among the college students of today; confusion instead of satisfaction over liberation permeates the collegiate attitude.4 For young people making the teacherous passage from late adolescence to adulthood, it has

* Professor of Law, Catholic University of America

1 Lipset, Students & Politics in Comparative Perspective, 97 Daedalus 1 (Winter, 1968).


4 Kerper, Student Activism Redirected, Indiana Alumni Mag., Oct 1976 at 22.
become obvious that guidance, order and stability are part and parcel of later
success and direction.\textsuperscript{5}

Is the past but a prologue to the future? Does history often repeat itself, so
that if we do not learn from the past we will be doomed to repeat it?\textsuperscript{6}
Considering the Columbia University experience in 1968 as a microcosmic
paradigm of similar campus activity undertaken at such institutions as the
University of Wisconsin at Madison, Cornell, University of California at
Berkley, Stanford, etc., an exegesis may be developed which will probe the
etiology of this unrest and the extent to which a new partnership has evolved
among administrative officers, the faculty and the students, and finally, con-
sider whether these changes are sufficiently strong to withstand the tensions
of the future.

I.

The Beginning of Open Conflict—1968

In 1811, a group of students disrupted the Columbia University commence-
ment exercise at Trinity Church in New York City and forced the faculty to
scatter in order to avoid bodily harm.\textsuperscript{7} On April 23, 1968, the Students for a
Democratic Society (SDS) mobilized a rally on the Columbia campus to
protest the University's working relation—through federal contracts—with the
federal Institute for Defense Analyses (IDA), her so-called "racist policies"
(which were never satisfactorily articulated) and the central administration's
placement of six SDS leaders on probation as a consequence of their previous
violation of a university rule against indoor demonstrations.\textsuperscript{8} From this rally
grew a seizure of five university buildings by anywhere from seven hundred to
a thousand students led by the SDS and the Students' Afro American Society.\textsuperscript{9}
After six days of negotiation, the university buildings were cleared of the
student protestors and a semblance of calm was restored—but not before more
than one thousand policemen were called in to establish order.\textsuperscript{10}

What precipitated the student rebellion at Columbia in 1968? Were they the

\textsuperscript{5} Rice & Cramer, \textit{Comes the Counter-revolution}, \textit{Psychology Today} Sept. 1977 at 56.
See, Belknap & Kuhns, \textit{General Education: Coping with the Problems of the Seventies},
Columbia Spring, 1978 at 35 \textit{America's Youth, Angry... Bored... or Just Confused? U.S. News
\textsuperscript{6} G. Santayana, \textit{The Life of Reason}, (1905-06).
\textsuperscript{7} R. Kahn, \textit{The Battle for Morningside Heights}, 55-56 (1970): After giving what was
considered a contentious commencement address on the need for strong representative govern-
ment, President William Harris refused to present to the speaker, John B. Stevenson, his diploma;
whereupon, most of his classmates became so enraged that they gave chase to the faculty.
\textsuperscript{8} Commission Appointed to Investigate the Disturbance at Columbia University in
\textsuperscript{9} Id. at xv.
\textsuperscript{10} Id.

The New York Times Edition of November 11, 1974, at 31, column 7, carried an interesting riot
article. Two former Columbia Students were suing New York City and the University for three
million dollars in damages. Their charge was that they were beaten by policemen during the riots
and that the University "acquiesced and encouraged the presence of the police officers on campus."
This suit was settled when the student plaintiffs received $11,000.00 as a settlement. One student-
plaintiff received an award of $7,150.00 and another received $3,850.00 \textit{N.Y. Times}, Dec. 8, 1974
at 9, col. 3.
same factors that sparked the 1811 outburst at the same institution? Was there a near universal spirit of student discontent and rebellion present around the world in other colleges and universities? What were the real motivations of the students who sought to change, and in some cases, destroy systems of university governance? Were student frustrations and disappointments with a responsive society more timely and significant in the mid-and-late 1960's than similar disappointments faced by previous generations of students who faced the Depression, two World Wars and the Korean conflict? Some of the answers to these questions have emerged from previous analyses. It is advantageous, however, to probe more carefully the etiology of the student protest movement. By doing this, an attempt will be made to discern the validity of the movement’s objections, the responses thereto, and the significance of the post rebellion period in American higher education.

In the mid and late sixties, there appeared to be a gap of some dimension between the social and political ideals being advocated and the social and political performances being recorded. How could a truly “Great Society” either promote or even condone the Vietnam War, a selective service that conscripted young men, pronounced a potential death sentence on those who were sent to the front lines in Vietnam, tolerate racism (however defined), allow poverty to continue unchecked and suffer the deaths of President John F. Kennedy, his brother, Robert, and Martin Luther King? The young college and university students were frustrated over this inability to be forces of dynamic change in society. The sense of frustration was especially keen for those students who were imbued with a spirit of militancy, and who came from family backgrounds which did not allow a passing acceptance or even familiarity with a university system and its genteel goals.

Still other students, raised as children under the Spock theory of permissive behavior, found difficulty adjusting to standards of any kind imposed—often for the first time—within the university community. Society’s refusal to listen to their babblings intensified their confusion and anger. Given these factors set within this atmosphere, it is easy to understand how the universities became whipping boys for society. Indeed, it was asserted by means of political justification for the protest movement that the university was in fact nothing more than a “microcosm of society.” Interestingly, a survey of the views of

11 Supra note 8 at 9.
12 Id. at 11.
13 Id.
Sampson, Student Activism and the Decade of Protest, in Student Activism and Protest 4-5 (E. Sampson, H. Korn eds. 1970).
14 Id.
15 Id.

some two hundred college students revealed that the most "wrenching" problem for them was finding a place in society. So it is seen, then, that while rejecting certain societal values, the students were nonetheless still endeavoring to find a place for themselves within the same society.

Columbia's problems, then, were in many ways no different from the problems found at other college and university campuses. There were, to be sure, certain rather unique influences at Columbia which heightened the general societal conflicts previously discussed. One such influence was the geographic placement of the University on the fringe of Harlem. This juxtaposition was claimed to symbolize "the relation between white and black, affluence and poverty, youthful reform and established order." The University has extensive residential and commercial property holdings in and around its campus. It has been often accused of being unfair in its dealings with its poor black tenants—charging them more rent than the white tenants and confiscating their properties for purposes of university expansion.

When Columbia decided to build a new gymnasium in a part of Morningside Park (the black city park separating Harlem from the University by a high fence) antagonisms among the local black population rose to a new high. Every precaution had been taken to invite black Harlem community representatives and New York City government participation in the University planning effort. Arrangements had been made to allow the ghetto residents rights to use certain parts of the gymnasium, once it was completed. The subsequent protest thus was more symbolically against Columbia's past record of property dealings with the neighbors and society's failure to aid the ghetto areas through redevelopment and welfare plans then against any real grievance with the construction of the gymnasium.

The student protest over the University's alleged support of the Vietnam War through its research and development contracts with the Institute for Defense Analyses was but another reaction to what the students contended was a societal weakness: condonation and support of the war effort. There were still other reasons why 1968 was a ripe year for student fomentation.

1. Disruption, corruption, hypocrisy, war.
2. Poverty, distorted priorities, and law making by private power.
3. Uncontrolled technology and the destruction of the environment.
4. The decline of democracy and liberty.
5. The artificiality of work and culture.
6. The absence of community.
7. The loss of self or death in life.
9. Supra note 8 at 193.
10. Id.
11. Id. at 192.
12. Id.
13. Disruption, corruption, hypocrisy, war.
14. Poverty, distorted priorities, and law making by private power.
15. Uncontrolled technology and the destruction of the environment.
16. The decline of democracy and liberty.
17. The artificiality of work and culture.
18. The absence of community.
19. The loss of self or death in life.
20. Supra note 8 at 193.
21. Id.
22. Id. at 192.
23. Id.
As at other institutions of higher education, Columbia's central bureaucracy was far too rigid and authoritarian. It invited both student and faculty distrust.\textsuperscript{21} Inferior living conditions in the dormitories and in the so-called outside "town" areas were all too obvious and not at all conducive to the development of close personal and professional associations.\textsuperscript{22} A significant number of the faculty members appeared to be remote from student worries and grievances.\textsuperscript{23} Inflexible "irrelevant" curricular offerings unresponsive to growing social needs and reforms helped contribute to student restlessness.\textsuperscript{24} Finally, the inability of the University to anticipate and accordingly deal with the extraordinary difficulties encountered by black students as they began to be acculturated in larger number than ever before into a strange, foreign educational environment was yet another reason for an all-pervasive atmosphere of unrest at Columbia.\textsuperscript{25}

Because of a sense of uncertainty about their status, career goals, and broad, almost limitless aspirations, students sought help and direction from the universities and colleges. Lacking directional values from their parents and being unable to find the strength of character within themselves, it was only natural that the university would be looked to for this help.\textsuperscript{26} But when the help so desperately needed was not forthcoming, despair and frustration arose. Efforts were made in many cases to strike back blindly in anger at "the system," i.e. the status quo.\textsuperscript{27} One author has suggested that most of what happened at the colleges and universities was not due to inadequacies in higher education but, rather, "a reaction to the world beyond the cloister."\textsuperscript{28}

One conclusion of the Cox Commission investigating the Columbia University disturbances in 1968 was that the collegiate student body should be recognized as an "essential part of the community of scholars" and allowed to participate more fully in university governance.\textsuperscript{29} Although the specific ways for allowing meaningful student influence into the governance process were not elucidated, an obvious first step would appear to be a decentralization of some of the bureaucratic processes. Most major colleges and universities already have a process of decentralization within their bureaucracy: starting with the President's Cabinet (comprised of essentially the Vice Presidents),

\textsuperscript{21} Id. at 193.
\textsuperscript{22} Id.
\textsuperscript{23} Id. at 35.
\textsuperscript{24} Id. at 94.
\textsuperscript{25} Id. at 193.
\textsuperscript{26} Id. at 23.
\textsuperscript{28} C. Frankel, Education and the Barricades 15 (1968).
\textsuperscript{29} Another author has concluded the principal reason for discontent among college and university students was boredom: "boredom among the better students because the modern American university offers too little for mind and conscience; boredom among the poorer students because they never should have enrolled at all." Kirk, Rebellion Against Boredom, in Seeds of Anarchy: A Study of Campus Revolution 26 (F. Wilhelmsen, ed. 1969).
Council of Deans, the Board of Trustees, Department Chairmen and Faculty Senate. Having the process is one thing; allowing it to work yet another. Students should have an opportunity to influence university affairs at significant levels within the bureaucratic process.

But it is not essential to have student representation on all of the hierarchial levels of a university. For example, each of the previously noted units of a decentralized bureaucracy have committees which normally provide the reports upon which subsequent group determination are made. It is at this initial level of study where student involvement is most vital; for it is at the committee level that the initial strengths and weaknesses of an approach to decision-making or problem-solving are probed, and a conclusion or posture for action posited.

This approach was recently endorsed by the Vice Chairman of the Columbia University Board of Trustees in considering the question of whether students should serve as members of the Board. Acknowledging that the University is run for the benefit of the students, he nonetheless stated his opposition to the total implementation of such an idea. "We cannot expect students to run a large and complicated and hopefully perpetual institution because the student has a transitory interest and doesn't have the time or, in most cases, the wisdom." The Vice Chairman did not, however, object to admitting student observers to certain trustee committees so long as the work of the particular committee did not involve highly sensitive and confidential issues.

II.

A Return to Normalcy?

In the early twenties, the Columbia students would have been called 'squares' today. We thought the students of Paris or Caracas or wherever, who took part in the politics of their country by marching in sometimes riotous demonstrations, were typically unstable citizens of comic opera countries. To us a student was one who studies. His job was to prepare himself for life rather than seek precociously to participate in it. So it seemed only natural to learn what one could from the older generation. One could always be certain of improving on the older generation when the time came to go out into the world and conquer it.

The refusal or non-interest in political activity really carried through until the early 1960's. There was, in fact, "a great deal of fun...on (the Columbia) campus in the 50's." The social, economic, political and religious problems of early and mid-1900's did not unduly plague or overburden the college student of that period. He was surely "aware" of these problems, but he chose to use his college or university years to prepare to solve the "real" problems of the terribly complex "real" world. Perhaps in a way the average student of that

31 Id.
32 Id.
33 Brucker, A Student Was One Who Studied, in UNIVERSITY ON THE HEIGHTS 167, 169 (W. First, ed. 1969).
35 Id.
time was somewhat like the proverbial ostrich with his head buried in the sands; but in the sands of academia in this case.

Today at Columbia and other American institutions of higher education this metaphor is becoming accurate again. The Assistant Dean of Student Affairs at Princeton University, Richard L. Brean, has summed up the situation succinctly: "The sixties are dead, students are mostly apolitical and the world is back to normal."36 A graduate of the Class of 1971 at Princeton has observed, "people are more willing now to think of their four years here as a time for introspection. They know they can wait to change the world after they leave."37

Is this campus calm transitory and about to change in the manner of women's high fashions? Or, is a new golden age of peace here for an indefinite period of time? The plight of the ghetto is still all too obvious. Forms of racism, or class inequality based on color, can be said to still exist. Environmental issues of grave consequence are all too apparent. A soaring inflation—said by some to be inducing a recession—is tearing at the social and political fibers of the nation. A fuel crisis and international famine are cited almost daily in the newspaper. Can the war in Vietnam be singled out as the catalyst for all the social and political ills of the campus in the mid and late 1960's?

In 1974, a chilling, unsigned letter to the President of Columbia University appeared in the student newspaper.38 It noted that Columbia still served a

---

36 N.Y. TIMES, Nov. 11, 1974, at C31, cols. 1-3.

See also, Rieder, Columbia Keeps Quiet, THE COLUMBIA DAILY SPECTATOR, Mar. 27, 1975, at C5; THE COLUMBIA DAILY SPECTATOR, Mar. 6, 1975, at 3; Dickstein, Remembering the Sixties, COLUMBIA TODAY, June, 1977 at 34; Cowley, Reconsiderations: The 1960's, THE NEW REPUBLIC Aug. 21 & 27, 1977 at 37.

The academic world is not of one uniform disposition however, regarding normality. When the Governor of Massachusetts announced plans to cut substantial amounts of money from state education budgets (with the University of Massachusetts thereupon raising its fees), students at the University demonstrated outside the statehouse demanding the Governor not cut educational funding. Similar demonstrations at Brandeis and at Brown were reported when these Universities announced higher boarding and tuition costs because of outstanding deficits. "Low Cost, High Quality Education For All" was the rallying cry of the students! TIME, May 5, 1975, at 81; TIME, May 11, 1975, at 48; N.Y. TIMES, May 1, 1975 at 35.

Some 6,000 students at the University of Texas in Austin staged protest demonstrations against the appointment by the Board of Trustees of a new President of the University. Campus anger was directed primarily against the Board which had ignored the presidential candidates offered to it by a student faculty committee for the appointment and—instead—elected Dr. Lorene Rogers as President. TIME, Oct. 6, 1975 at 50.

37 Id.

A study sponsored by the Carnegie Council on Policy Studies in High Education revealed that attitudes on colleges and university campuses of undergraduates, graduate students and faculty members regarding academic policy, race relations and the use of violence to achieve political goals have become more moderate since 1969. The students in the survey expressed satisfaction with their schools. The percentage of undergraduates satisfied with their colleges rose from 66 to 71% and the number of respondents "on the fence" or dissatisfied dropped from 22 and 12% to 20 and 9% respectively. N.Y. TIMES, Jan. 15, 1977, at 1, col. 4.

38 Dr. William J. McGill, the President of Columbia, in a May Commencement address at Columbia, observed that the feelings of rejection that caused students to develop a "counterculture" that questioned a rejected the Establishment are stirring again. He stated that there had been "no resolution of the deep problems posed by the increasing rigor of education and prolongation of adolescence that modern forms of higher education seem to require." He continued, "We have not curtailed the burgeoning competition for academic credentials. If anything, com-
system of imperialism in that it allows Central Intelligence Agency employment applications to be submitted by interested parties at the university recruitment office; conducts Defense Department research and has a majority of its stock portfolio invested in companies which operate in furthering apartheid in South Africa.39 The letter closed with a demand that these university activities end and that, additionally, ROTC never be allowed to be reinstated as a part of the curriculum—especially since it "supplied over 45% of the U.S. Officers in Vietnam."40

Of course, the obvious question is whether issues such as these can generate enough student support to renew or revitalize the rebellious spirit of 1968. If recent "demonstrations" at Columbia called to protest the mere consideration of re-instituting ROTC in the curriculum (which, incidentally, drew no more than a handful of students), are any indication of student response to "current" problems, it must be concluded that the spirit of radical rebellion has been extinguished. And, in its place has come a serious-minded, deeply introspective student intent on learning. The time and circumstances may be considered ripe for protest. The temperament for action, however, is lacking among the participants.

What the student Activist demanded during 1968 was not so much a re-writing of university statutes, by-laws or a bureaucratic restructuring; as a mere change in attitude. Interpreted as positive education theory, "student power" stood simply for the principle that candid, forthright exchanges between faculty and students, and between administrators and students was proper. If nothing else was achieved than the restructuring or revitalization of a spirit of cooperation and accommodation by all members of the university community, the student protest movement may be termed an unqualified success.41

petition for grades and for admission to professional schools is more deeply entrenched now than it was a decade ago." Because of inadequate graduate and professional opportunities in many national schools, a growing number of talented young people (desirous of a medical career, for example) are presently being forced to take up residence in foreign countries in order to study medicine because no places are currently available in the United States. Ashbury, McGill Hints Calmness is Deceptive at Columbia, N.Y. Times, May 15, 1975, at 34, cols. 1-2. See also, Simmons, The Deceptive Calm on Today's Campuses, University: Feb., 1974 at 10; Belknap & Kuhns, General Education: Coping with The Problems of the Seventies . . . , Columbia Spring, 1978 at 35.

Competition to obtain admission into United States medical schools has assumed an alarming dimension. At many universities pre-med students are engaged in a sort of academic guerrilla war to assure not only higher grades for themselves but also lower grades for their competing classmates. What might be normal social lives are broken in favor of unbroken study periods. Time, May 20, 1974, at 62.

Interestingly, at Yale University a special committee chaired by the eminent historian, C. Vann Woodward, undertook a study of free speech on the campus. The study was prompted as a consequence of an incident in 1974 when Dr. William Shockley—after having been invited to speak on the campus—was unable to make his speech because of student disruptions. The committee suggested strict rules against the disruption of speeches be imposed. "The banning or obstruction of lawful speech can never be justified on grounds the speech or speaker is deemed irresponsible, offensive, unscholarly or untrue," concluded the committee. A. Lewis, A Report on the Dangers to the Right of Free Speech, N.Y. Times, Jan. 26, 1975 at E18, col. 1; E. Hudson, Yale Takes Stand on Free Speech, N.Y. Times, Mar. 9, at 32, col. 1.

41 C. Frankel, Education and the Barricades 37 (1968).
III.

The University as a Bureaucratic Institution: New Flexibilities after the War?

Higher education is both a force in the general society and a reflection of it. It is largely bureaucratic because the society in which it operates is, itself, bureaucratic. From the standpoint of organization, there is striking similarity between a college or university and, for example, a corporation, labor union, or state and federal governmental units. In a very real sense, the autonomy of a university is limited to the subgroupings within it. As a single corporate personality, its real ties with outside societal interests through public service projects and research grants are constant threats to both its autonomy and its neutrality. In a real sense, the university may be properly thought of as "catalytic agency of social change for society."

For purposes of analysis, a bureaucracy may be defined along the lines suggested by the German sociologist, Max Weber, as being a large scale organization with complex, yet nonetheless definite, social functions to perform. It is composed of specialized personnel and guided by fixed rules and procedures. A definite hierarchy of authority exists.

In addition to being a complex social structure in society, a university—it has been said—is becoming increasingly archaic. It is thought archaic because under its traditional design as a teaching institution, it has not been able to incorporate or develop mechanisms which would allow it to accommodate new responsibilities for expanded research, public service and what has been termed

---

45 Id.
44 Id.
43 The University as an Organization, 11, 253 (J. Perkins, ed. 1972).
46 Supra note 42.
Trent, Revolution and Re-evaluation in Student Activism and Protest 47 (E. Sampson, H. Korn eds. 1970).
47 Id.
H. Stroup, supra note 42 at 14.
48 Id.
49 Id.

A university is said by one author to be best understood as a configuration of social groups with basically different life styles and political interests. J. Baldridge, Power and Conflict in the University 23 (1971).

Clark Kerr has termed a "multiversity" as several nations of students, faculty, alumni, trustees and public groups. "Each group is said to have its own territory, jurisdiction and form of government. Each can declare war on the others; some have a veto power. Each can settle its own problems by majority vote, but altogether they form no single constituency. It is a pluralistic society with multiple subcultures. Coexistence is more likely than unity." C. Kerr, The Uses Of The University 36 (1963).
50 3. The University as an Organization, 3 (J. Perkins, ed. 1972) 45 at 3.
"the achievement of an ideal democratic community."\textsuperscript{51} Instead of following the goal of higher education to free people by teaching them how to do their own learning, the dominant goal today appears largely to be job accreditation; self-development of students is of secondary value.\textsuperscript{52}

At the heart of every institution of higher education is, ideally, its commitment to teaching and the pursuit of knowledge. The freedom of members of the academic community to execute this responsibility is crucial. The American Association of University Professors has affirmed and re-stated the role of the faculty in university governance by enunciating five guiding principles: that faculties have the primary responsibility over educational policies within a university or college; that they work and concur only through established committees and procedures in academic matters; that they must all be allowed to actively participate in the selection of presidents, deans, and department chairmen; that they be consulted on budgetary decisions, and, finally, that appropriate agencies to ensure this participation be given official standing by the university.\textsuperscript{53}

The relation of academic freedom to student governance is as significant as the relation between its faculty and the university itself. Moreover, the AAUP has recognized that in order to have sound academic government at any institution of higher education, there must be a joint effort toward cooperation and accommodation expended by all groups within the institution. These groups and subgroups would include students, faculty, administration and the governing board of trustees.\textsuperscript{54} Frequent opportunities for exchanges of opinion are as important as formal avenues for participation in university decision-

\textsuperscript{51} Id.

The mission of achieving an ideal democratic community within the university stems "from the notion that the policies of the universities must conform to the social aspirations of its members and that its 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." \textit{Id.} at 12. A close parallel to this concept is Kingman Brewster's concept of accountability. Brewster, \textit{Politics of Academia}, in \textit{POWER AND AUTHORITY} 56 (H. Hodgkinson & L. Meeth, eds. 1971).


\textsuperscript{52} Powell, \textit{Student Power and Educational Goals}, in \textit{POWER AND AUTHORITY} 66 (H. Hodgkinson & L. Meeth, eds. 1971).

\textsuperscript{53} \textit{The University as an Organization}, 3 (J. Perkins ed. 1972).


\textsuperscript{54} \textit{Student Participation in Colleges and University Government}, in AAUP POLICY DOCUMENTS & REPORTS 47 (1971 ed.).


Sidney Hook defines \textit{academic freedom} as the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence. Academic freedom, as such, is a relatively recent acquisition in the United States being little more than a century old. It was first introduced in a tentative fashion at Johns Hopkins University. The original concept, itself, was important from Germany and more particularly the University of Berlin which recognized it at its founding in 1810. In Germany, academic freedom was originally defined as \textit{Lehrfreiheit} and \textit{Lernfreiheit}, freedom to teach and freedom to learn. In the United States when academic freedom was first bantered about, no one paid any attention to \textit{Lernfreiheit}—freedom to learn. Academic freedom was thus identified simply with \textit{Lehrfreiheit}—freedom to teach. S. Hook, \textit{Academic Freedom and Academic Anarchy} 34-41 (1969).
making processes. As to the latter, no universal standard of applicability can be set. Each institution of higher education must determine the mode, extent and criteria of eligibility for student involvement.\footnote{Id. at 48.}

Consistent with, and complementary to, the overall standard of academic freedom, the American Association of University Professors has determined that every student should have the right of free inquiry and expression not only in the classroom, but in private student-faculty conferences as well.\footnote{Id. at 47.} Student views on admission policies, academic programs, academic courses and staff performance, academic grading systems, and general academic environment (i.e., class schedules, library policies) should be sought and carefully evaluated.\footnote{Id. at 48.} When it is decided that voting privilege of participation is desirable on particular issues, it remains for the criteria for eligibility to be devised jointly by faculty and students.\footnote{Id.} The formulation of policy decisions through student participation should not necessarily be limited to the above areas. Students should be given primary responsibility for determining the course of extracurricular activities (i.e., cultural programs, student political affairs and student public actions) as well as for formulating student regulations governing their conduct on campus. Appropriate university officials should, of course, be allowed to consult with and to be advised of student decisions in these areas.\footnote{Id. at 49.}

Students should, additionally, be accorded a right to express their opinions through a formalized process—on the use of an institution's physical resources, its "outside" relationships with non-campus groups or agencies and its budgetary allocations.\footnote{Id.} Finally, the students should be accorded the opportunity to participate in the formulation of student disciplinary codes and to participate in the actual disciplinary process.\footnote{Id.}

Although a consequence of the student rebellions of the 1960's new emphasis has been given to student participation in university governance, student involvement in this area has a broad historical record of accomplishment. In 1928 a "House of Students" was established at Amherst College. Although short-lived, it sought, as a legislative body, to regulate campus security, library study hours and other similar matters of student concern.\footnote{Id.} During the 1921-22 school year, Barnard students undertook a thorough analysis of the curriculum, listing its strengths and weaknesses.\footnote{Id.} In 1924, a group of Dartmouth seniors reviewed the program of education at the College.\footnote{Id.} And, at Harvard in 1946, in response to the issuance of a faculty report on "General Education in a Free Society," the students followed suit with an equally formidable report of their own—in the form of a rebuttal—on the same topic.\footnote{Id.}

Historically, the influence of the American student on the decision-making...
processes of higher education has been of a continuous, although normally informal, nature.\textsuperscript{66} The net results of the 1960 push for power by students remain conjectural.\textsuperscript{67} There is evidence to suggest, however, that this push will "tend to dissipate further the influence of boards and presidents."\textsuperscript{68}

There is yet another way students have influenced the direction of educational programs through the years. As a accommodative process, higher education uses students not only as objects of education, but as its principal instruments to effect education policies.\textsuperscript{69} Students need not demonstrate against a particular educational program if they believe it to be deficient in one form or other. They can prevent its further development—and in fact have over the years—by submitting to it "passively and unexcitedly."\textsuperscript{70} Regarded as a consumer of sorts, a student may further exercise his option of selection or purchase by choosing his teachers, courses of study and institutions where he will be served.\textsuperscript{71} These choices have contributed markedly to the "general courses of evolution of an institution of learning."\textsuperscript{72}

Kingman Brewster, the former President of Yale University, has suggested still another way for student participation in university governance. Decrying wide use of student representation at various administrative levels, he advocates the adoption of a principle of accountability as a viable tool for maintaining students as partners in the process of higher education.\textsuperscript{73}

Disclosure is the first and most basic requirement of accountability.\textsuperscript{74} Under this requirement, those individuals within the university community who are affected by policies and decisions should—when the occasion develops—be given a full and adequate "public access to the record of the process by which the decision was made."\textsuperscript{75} Certain circumstances or situations (i.e., an exchange of personal confidences or impending investment opportunities) should remain outside the needs of this requirement, however.\textsuperscript{76}

The second requirement under the principle of accountability is that there be provided a right of petition for those affected by administrative decisions.\textsuperscript{77} In a normal situation, informality should be the keynote here.\textsuperscript{78} The third and final essential calls for a regular process of re-appraisal of administrative

\textsuperscript{66} Id. at 33.
\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{69} C. FRANKEL, EDUCATION AND THE BARRICADES 26 (1968).
\textsuperscript{70} Id. at 27.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} Brewster, Politics of Academia, in POWER AND AUTHORITY 56 (A. Hodgkinson & L. Meeth, eds. 1971).
\textsuperscript{74} Id. at 59.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id. at 60.
\textsuperscript{78} Id.
competence and community confidence in the administrator himself.\textsuperscript{79} Institution of this process will hopefully defuse a possibly rebellious situation before it fully develops.\textsuperscript{80}

It is submitted that, if implemented, the principle of accountability is far better than "... expecting actual direction of university affairs to come from a participatory democracy in which only a minority would participate, a representative democracy which would be unlikely to be truly representative and the substitution of a legislative power for what are inherently executive responsibilities."\textsuperscript{81} There is much merit to the Brewster theory. Its unstructured operational nature gives one pause, however. If superimposed or engrafted to a specific area or category, e.g. the content of academic programs, it might well have greater clarity and thereby greater functional applicability. Contrariwise, it could be asserted that this theory, by its very unstructured nature, promotes greater ease in involving students in university governance; and, that its informal nature allows for greater trust among students of the faculty and administration. The process of politicization is, thus, greatly deemphasized.

While most if not all of the requisites of Brewster's accountability model for student involvement in university governance can be implemented by university and faculty action, there may be resistance to some of the suggestions by such officials. Thus it is not unreasonable to suggest that state legislatures, at least with respect to state colleges and universities, might enact legislation that would broadly support or induce the use of the Brewster principle of accountability, and thus recast the gains of the student-participation movement in more durable fashion.

For example, the so-called "Sunshine Laws" stress the open meeting concept of participation. This purpose is accomplished by typically requiring all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision to conduct their meetings publicly at all times. Such laws would foster the interest of disclosure. The boards of trustees at state colleges and universities have been held as within the provisions of state sunshine laws,\textsuperscript{82} but the extent of the "openness" of meetings has not been definitely charted.\textsuperscript{83} Enactment of such laws or clarifications thereof should require the disclosure of information concerning the manner in which university policies were adopted. Similarly, legislatures might adopt statutes requiring that "due process" safeguards surround decisions that adversely affect a student's interest, however minimal. For example, requiring that universities establish an internal adjudicatory system which would allow the application of college or university

\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{83} See Bennett v. Warden, 333 So. 2d 97 (Fla. App. 1976) (president of junior college not required to comply with sunshine law with regard to certains meetings he conducted).
policies regarding a number of areas (i.e., search and seizure policies, severance-expulsion procedures, housing regulation, traffic policies, enforcement of academic standards, etc.) heard in an open forum, free of suspicion where the fairness of the proceedings process could be observed. With such a system, then, both procedural and substantive guarantees are structured and validated in the collegiate setting. These procedures would be informal and need not necessarily be construed to give rise to any rights or claims other than that the procedures be followed. These requirements would support the interest of petition that Brewster suggests.

Finally, legislation requiring an on-going public audit of the operations of the various enterprises of a university would, in addition to other potential benefits, give students a vehicle through which they can express dissatisfaction with the personnel and/or practices of university administration.

IV. Conclusions

The principle that the brightest and most talented members of a constituency are not attracted to professional politics also applies with equal force to student politics at colleges and universities. Oftentimes the "opportunity for spokesmanship in the name of student opinion is seized by a wholly unrepresentative group." The truth of the matter is that today the majority of students on college and university campuses in America do not have sufficient time and interest in participating at a necessary level of commitment which would make that very participation of a real and sustained value to them and the institution. The concept of a participatory democracy in higher education is indeed illusory.

The university community is a hierarchial human organization, with students as members in good standing. Yet, within the organization, it is assumed as an operating principle, that some have greater skills, powers and authorities than others. The rights which are in turn given or formed as a consequence of these skills are earned rights of passage. Participation in university administration should, however, not be based upon rights, but rather upon a realization of sound education and administrative practice which demands it.

Professor Frankel states: "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."
persuasion, restraint and mutual respect are the touchstones for effective performance within the university community. For freedom to flourish, limits must be placed upon it.92

The extent of student participation and the process through which it is achieved is a matter for each college, university, school or department to determine. Informal processes may in some cases work as effectively as formal ones. Rights of participation—at any level—should only be conferred when they do not jeopardize the principle of academic freedom for the members of the university faculty. Standards of accreditation should not be jeopardized in conferring or expanding student rights. The categories of student participation submitted by the American Association of University Professors are helpful guidelines here within which real progress can be made. Coupled or aligned with Kingman Brewster’s concept of accountability, action within these categories designed to promote student involvement in university governance would promote a healthy partnership of interest among student, faculty and administrators. It is only through such a partnership that institutions of higher education can remain responsive to the fundamental demands and needs of the past and not jeopardize the solid dialogue that has been fostered thus far. Finally, state policy-makers should consider making or interpreting the law supportive of student participation through partnership model than the problematical representative approach that resulted from the upheavals of decade ago.

However accomplished, consolidating the gains in student participation through more informal methods will result in broader student participation which in turn should avoid the isolation of the students from the faculty and administration that fueled the earlier troubles.

92 Truman, The University, 10 COLUM. FORUM 51 (1967); see generally, Smith, Student Participation in University and Law School Governance, 1976 WASH. V. L. Q.