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Judicial Review of Accreditation: The *Parsons College* Case

BY WILLIAM A. KAPLIN

Since courts have seldom become involved in the process of educational accreditation which operates in the United States, the private regional and professional accrediting agencies that evaluate our educational institutions have generally functioned without judicial (or, for that matter, legislative) interference. This freedom from any form of governmental control has been of singular importance in shaping the development of a private accreditation system unique to this country. Any court case challenging some aspect of this system could, therefore, be of enormous significance to education and the future of accreditation in the United States. Such a case is *Parsons College* v. *North Central Association of Colleges and Secondary Schools*,[1] decided on July 26, 1967, by the United States District Court for the Northern District of Illinois.

In 1963, during a period of innovation and rapid growth, Parsons College was placed on probation by the North Central Association. This probation was removed in 1965 on condition that Parsons' accreditation be reviewed again within three

[1] *Parsons College* v. *North Central Association of Colleges and Secondary Schools*, 271 F. Supp. 65 (N.D. Ill. 1967).

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years. In accordance with this condition a North Central visiting team evaluated the college early in 1967, and, after a series of meetings at which the matter was considered, the association voted to withdraw Parsons' accreditation. After unsuccessfully appealing this decision to North Central's board of directors, the college turned to the courts.

Parsons sought a preliminary injunction which would prevent the association from effectuating its disaccreditation decision until it had been reviewed by the court in a full trial. To succeed, the college had to prove two things: (1) that it would be irreparably harmed by disaccreditation, and (2) that it would, when the case went to trial, have a reasonable likelihood of demonstrating that the defendant's decision had violated its legal rights. In an opinion which undertook a rigorous examination of North Central's accrediting activities, the court decided that Parsons had made a convincing demonstration of irreparable injury but had not proven that any of its legal rights had been violated. The court therefore denied the plaintiff's request for a preliminary injunction and, in so doing, placed a judicial stamp of approval on the policies and procedures utilized by the defendant in carrying on its activities.

If accreditation decisions are to be judicially reviewed, as in the *Parsons* case, it is important to determine how courts may approach accreditation problems. Will they ensure that accreditation decisions comply with the association's constitution and bylaws? Will they impose other judicial requirements on the procedures used in extending or withdrawing accreditation? Will they examine the substantive standards relied upon to measure educational quality?

In studying these questions, due regard must be given to the traditional judicial attitude toward private associations. Typical private associations—such as athletic or social clubs, businessmen's groups, and fraternal organizations—usually operate in areas of little concern to the public, and membership in them is usually a matter of personal preference on the part of each applicant. Such associations are designed to be auton-

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omous, and courts have generally respected their autonomy by declining to interefere with their internal affairs.

Educational accrediting agencies, like the typical private associations, also desire to be autonomous. Autonomy is particularly important for them because they develop and apply expertise in the field of education—an expertise which courts obviously do not possess. But the expertise of the accrediting agencies and their desire for autonomy are not the only factors to consider in examining their status in the eyes of the law. Educational accrediting agencies differ in important respects from typical private associations, and these differences increase the likelihood that their policies and procedures will be closely examined when accreditation decisions are challenged in the courts.

First, the operation of accrediting agencies is of great concern to the public. There is a vital relationship between the quality of our schools and the public welfare, and accreditation has become the recognized method of fostering and preserving educational quality. As the *Parsons* decision acknowledged, many segments of society now rely on accrediting agencies to identify schools which meet acceptable standards of academic excellence and to weed out schools which fail to meet these standards.[2]

Second, membership in an accrediting agency, contrary to the court's suggestion in the *Parsons* case,[3] is not a matter to be determined freely by each school according to its personal preferences. Since the public relies so heavily upon accreditation, a school must become accredited if it wishes to operate successfully. And it cannot shop around to determine which accrediting agency it would most like to join, because there is

[2]The court said of the North Central Association that "its actions are accepted as controlling for a variety of purposes and by a variety of institutions, agencies, and individuals. Attendance at an unaccredited college, for example, may prejudice a student's application for graduate study at another institution, and the absence of accreditation may impair the ability of a college to obtain financial support from private and governmental sources." *Parsons College* v. *North Central Association*, p. 67.

[3]Apparently in partial explanation of why it declined to interfere with the defendant's accreditation activities, the court remarked that "if it [the defendant association] fails to satisfy its members, they are free to join another group." *Parsons College* v. *North Central Association*, p. 74. Future courts may view this matter differently and, if they do, may be less hesitant to examine the policies and practices of accrediting agencies.

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usually only one recognized agency operating in any particular region of the country or field of professional endeavor. A college in Massachusetts, for instance, is within the jurisdiction of the New England Association of Colleges and Secondary Schools, the only private agency with general accreditation powers over New England colleges, while a college in Florida must turn to the Southern Association of Colleges and Schools, the only private agency with general accreditation powers over Florida colleges. Thus as a practical matter neither college, if refused accreditation or disaccredited, would be "free to join another group,"[4] just as neither would really be "free" in the first instance to choose between joining an accrediting agency and not joining one.

Seen in this light, accreditation is a kind of monopoly power which, as in other fields, carries great potential for concerted action but is also susceptible of abuse. Because an accrediting agency has this power, its decision to refuse or withdraw accreditation can have drastic consequences for the school and its students, faculty, and graduates. Employers (both private and governmental) are less likely to hire graduates of unaccredited schools; other schools often will not accept transfer students or advanced-degree candidates from unaccredited schools; and state licensing boards may not allow graduates of unaccredited schools to practice a profession within the state. Because of these potential consequences, a school whose accreditation is withdrawn or which is denied accreditation may lose students and faculty, its number of applicants for admission may drastically decline, and both the institution and its students may become ineligible for financial aid from the federal government or from private sources.[5]

Because the accreditation power carries great potential for harm if used irresponsibly and exists in an area which is vital to the public interest, it is likely that courts will be more con-

[4]See footnote 3, above.

[5]The court in the *Parsons* case fully recognized the consequences which disaccreditation can have. "It is clear from the evidence," it said, "that loss of accreditation would work substantial and irreparable harm to the College. . . . The . . . commencement of a new academic year would threaten a loss of current student enrollment, a decrease in the number of new students, and the resignation of some faculty members." *Parsons College* v. *North Central Association*, p. 69.

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cerned with the affairs of accrediting agencies than they are with the affairs of other types of private associations. But given the conflict between the agencies' desire for autonomy on the one hand, and the public's need to be protected from abuse of the accreditation power on the other, what form will judicial review take? How will it differ from the policy of noninterference courts have traditionally followed in respect to private associations?

Simply phrased, the question to be examined here is how deeply courts will dig into the policies and procedures of an accrediting agency to determine whether they pass judicial muster. The answer generally applied to private associations is that courts will only decide if an association has violated its own rules. This judicial policy is premised on the theory that a private association is a composite of consensual relationships whereby each member voluntarily subjects himself or itself to the association's rules and agrees to abide by them. Only when the association violates these rules will the agreement between association and member have been breached, and only then will judicial relief from expulsion be available.

This theory of limited judicial review was applied to an accrediting agency in *North Dakota* v. *North Central Association of Colleges and Secondary Schools*[6]—the only reported decision prior to *Parsons College* v. *North Central Association* which examined the process of private educational accreditation. In that case the North Central Association had investigated the plaintiff's state agricultural college after several of its personnel had been fired, allegedly without cause and without opportunity to be heard. When the association threatened disaccreditation, the governor of North Dakota sought an injunction against such action. The court denied the governor's request, concluding that

> the Association being purely voluntary is free to fix qualifications for membership; and to provide for termination of membership of institu-

[6] *North Dakota* v. *North Central Association of Colleges and Secondary Schools*, 23 F. Supp. 694 (E.D. Ill. 1938), aff'd, 99 F. 2d 697 (7th Cir. 1938).

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> tions which do not meet the standards fixed by the Association. The constitution, by-laws, and rules of government of the Association measure the rights and duties of the members.[7]

The *North Dakota* decision also suggested, however, that disaccreditation decisions should be free from "fraud, collusion, [or] arbitrariness."[8] In so doing it foreshadowed a more modern answer to the judicial review question—an answer which is also reflected, to a larger extent, in the *Parsons College* case. This answer calls for deeper digging: courts may also examine an association's decision to see if it is fundamentally fair. This requirement has been variously phrased. The *North Dakota* case settled upon the three-pronged standard quoted above. The plaintiff in the *Parsons* case called the requirement "rudimentary due process." Zechariah Chafee, speaking a good many years ago of nonprofit associations in general, divided it into the twin concepts of "good faith" and "natural justice."[9] But however phrased, this second, deeper, level of judicial review bows in the direction of regulation at the expense of autonomy. It looks behind the association's cover of privacy to determine its responsibility to its members and to society.

Perhaps if educational accrediting agencies were not as significant as they are today, the deeper level of judicial review would be relatively unimportant; the private character of the agencies, combined with their asserted reliance upon professional expertise, would reinforce their need for autonomy and thus persuade courts to limit the scope of their examination. But such a possibility becomes proportionately more remote as accrediting agencies become more influential, for it is through the second level of judicial review that courts may seek to guard against abuse of the accreditation power.

The *Parsons* case provides an excellent illustration of the two levels of judicial review and how they are applied. The court began its examination on the first level—to determine

[7]99 F. 2d 697, p. 700.
[8]23 F. Supp. 694, p. 699.
[9]Zechariah Chafee, Jr., "The Internal Affairs of Associations Not for Profit," *Harvard Law Review*, XLIII (May, 1930), pp. 1015–20.

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whether the defendant had violated any of its own rules in deciding to disaccredit the college. It found that

> within the limits of judicial review as thus defined, the College has failed completely to show any wrong in the termination of its membership and the consequent removal of accreditation. No violation of the Association's constitution or by-laws is charged or proved.[10]

Then the court went on to state:

> The College does not concede, however, that the scope of judicial inquiry is confined to the question whether the action of the Association was in compliance with its own rules. . . . [It] argues that the action must be set aside if it is "contrary to rudimentary due process or grounded in arbitrariness."[11]

Addressing itself to the college's argument, which amounted to an assertion that the second, deeper level of judicial review should be pursued, the court indicated that it was unclear whether the applicable law sanctioned such an examination. But in view of the uncertainty, it decided it would be prudent to examine the association's decision in the way requested, just to see if the college could establish a violation of "rudimentary due process." In making this examination, the court considered (1) whether the college was given an opportunity to be heard concerning its accreditation, (2) whether the hearing afforded the college an adequate opportunity to present its side of the question, (3) whether the college was given sufficient notice of the proceedings, (4) whether the "charges" against the college were sufficiently specified, (5) whether the standards by which the college was evaluated were sufficiently definite, and (6) whether the reasons for withdrawing accreditation were adequate in the substantive sense. It will be instructive to examine each of these issues, for they encompass virtually every consideration a future court might embark upon in testing the validity of an accreditation decision.

The Hearing.—The normal process of accreditation provides numerous opportunities for a school to be heard on the matter

[10] *Parsons College* v. *North Central Association*, p. 71.
[11] *Ibid.*

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of its academic quality. In the first instance, college officials prepare their own critical report on the institution's strengths and weaknesses. The college is visited by an examining team, which spends several days evaluating the institution, during which time both administrators and faculty are interviewed. The report of the examining team and the college's own report are considered at a meeting of an appropriate committee of the accrediting agency, in which college officials are invited to participate. The committee recommends a particular course of action, and this recommendation is studied and acted upon by one or more higher agency bodies, usually including the full membership, with some opportunity along the way for school officials to be heard. Then, if a decision to disaccredit is made, the school normally can appeal it to some body within the agency hierarchy.

In the *Parsons* case, the examining team's report was referred to a "committee by type,"[12] which heard from the college at a committee meeting. The recommendation of the committee by type was reviewed by the executive board of the agency's Commission on Colleges and Universities, which in turn made a recommendation to the full membership of the commission. The commission accepted this recommendation for forwarding to the full membership of the association, and the membership voted to withdraw the college's accreditation. This decision was appealed, pursuant to an agency bylaw, to the board of directors of the association, which first ordered the executive board of the commission to hold a hearing and subsequently held one itself.

It is apparent that some opportunity for the college to speak for itself existed at almost every stage of the accreditation proceedings—in consultation with the examining team, at the committee by type meeting, and at hearings before the executive board of the commission and the board of directors of the association. Moreover, the court indicated, college officials

[12]For purposes of examining the accreditation of colleges and universities, the North Central Association is subdivided into several committees according to the type of degree granted by the school. They are called committees by type.

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could also have appeared before the staff of the commission and before the full membership of the association had they desired to do so. In this process, as the court remarked, "so far as rudimentary due process requires a hearing, there is no doubt that the college was afforded a hearing in fact."[13]

Adequacy of the Hearing.—The college also argued that, while it had been given a chance to be heard, this hearing was inadequate. It maintained that the association should have afforded it protections similar to those provided in criminal trials. The procedures used in the process of guilt determination, however, would not normally be useful in an accreditation hearing. Criminal proceedings and accreditation proceedings are not analogous, as the court quickly pointed out:

> The nature of the hearing, if required by rudimentary due process, may properly be adjusted to the nature of the issue to be decided. In this case, the issue was not innocence but excellence. Procedures appropriate to decide whether a specific act of plain misconduct was committed are not suited to an expert evaluation of educational quality. . . .
>
> Here, no trial-type hearing, with confrontation, cross-examination, and assistance of counsel would have been suited to the resolution of the issues to be decided. The question was not principally a matter of historical fact, but rather of the application of a standard of quality in a field of recognized expertise.[14]

While courts may concern themselves with the adequacy of the accreditation hearing, then, they are not likely to expect either the format or the formality of a trial. The important thing is that there be some sort of official proceeding in which the school is able to tell its side of the story freely, by use of whatever means may be effective, to officials directly involved in the decision-making process.

Notice of the Proceedings.—Unlike the criminal who is arrested, indicted, and required to be present at every major step in the proceedings, a school may not always realize that its accreditation is in question. If a nonaccredited school makes an initial

[13] *Parsons College* v. *North Central Association*, p. 72.
[14] *Ibid.*, pp. 72–73.

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application for accreditation, the mere fact that it applies will indicate that it is aware of the pending evaluation and its importance.

But if a school has already been accredited, it may not so readily realize when its accreditation is endangered. A school which is examined in accordance with an accrediting agency's program of periodic reevaluation, for instance, might not expect this routine procedure to jeopardize its accreditation. If not warned of such a possibility, a school may never fully realize the necessity to speak up for itself and to participate actively in all proceedings concerning its status. Thus, whenever an accrediting agency questions a member's status, it should immediately and explicitly inform the school.

In the *Parsons* case, the college contended it had no actual notice that its accreditation was in danger until the vote of the association's full membership. The court rejected this claim because "after a long history of questionable status, the visit of the Examining Team was adequate notice without more."[15] Nevertheless, even if the college's prior accreditation problems should have alerted it to the proceedings' significance, it would seemingly have benefited from specific notice of the action taken by the various intermediate bodies within the association. Had the college been informed of the adverse recommendation of the Commission on Colleges and Universities, for example, it might have accepted an invitation from the commission to appear before it for an explanation and might have attended the meeting of the association to defend itself. It may be well, in future accreditation disputes, for the accrediting agency to notify the school in question of all intermediate recommendations adverse to it.

Specification of the "Charges."—It is apparent that notice of the proceedings would be relatively insignificant if not accompanied by some specification of the deficiencies attributed to the school. This requirement will generally be satisfied, as it was in the *Parsons* case, by giving a copy of the examining team's report to the school. If the school reads this report in

[15] *Ibid.*, p. 72.

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light of the published standards of the agency and the knowledge it has gained through the process of self-evaluation, it should be adequately apprised of the "charges" levied against it. Were the association to consider alleged deficiencies not attributed to the school in the examining team's report, however, it should inform the school of these additional considerations so that the school can defend itself regarding them.

Definiteness of the Standards.—Specification of the "charges," in turn, will be of little aid to the school if it cannot determine and understand the standards by which it is being evaluated. But this does not mean that these standards must be defined with a great deal of specificity. The criteria which guide the examining team in making its evaluation, in conjunction with the accrediting agency's policy pronouncements and its general prerequisites for membership, will usually be sufficiently definite to inform the school what is expected of it. As the *Parsons* court wisely pointed out,

> the standards of accreditation are not guides for the layman but for professionals in the field of education. Definiteness may prove, in another view, to be arbitrariness. The Association was entitled to make a conscious choice in favor of flexible standards to accommodate variation in purpose and character among its constituent institutions, and to avoid forcing all into a rigid and uniform mold.[16]

Substantive Adequacy of Reasons for Disaccreditation.—This issue differs from the others discussed above because it deals with the substantive basis for an accreditation decision, that is, the criteria relied upon to measure the school's quality, rather than the procedure followed in making accrediting decisions. While courts are well equipped to handle problems of procedural fairness, they can hardly claim to have professional expertise in evaluating educational quality. They are therefore less likely to examine the substantive aspects of accreditation than the procedural.

In the *Parsons* case the court gave full recognition to this dichotomy. In refusing to examine North Central's reasons for withdrawing the college's accreditation, it said:

[16] *Ibid.*, p. 73.

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> The public benefits of accreditation, dispensing information and exposing misrepresentation, would not be enhanced by judicial intrusion. Evaluation by the peers of the college, enabled by experience to make comparative judgments, will best serve the paramount interest in the highest practicable standards in higher education. The price for such benefits is inevitably some injury to those who do not meet the measure, and some risk of conservatism produced by appraisals against a standard of what has already proven valuable in education.[17]

When the substantive adequacy of accreditation standards is questioned, then, the function of the courts is likely to be very restricted. What is important is that the agency is in fact relying on its expertise when it makes an accreditation decision; so long as it is, the courts should defer to this expertise and refuse to examine the standards by which the school is judged.

The *Parsons College* case is a landmark in the developing law of educational accreditation. Although the court's decision suggests that the role of the courts in the accreditation process will be a limited one, it nevertheless serves as a reminder that accreditation decisions are not immune from judicial scrutiny. The opinion considers almost every legal requirement that might conceivably be imposed upon an accrediting agency, and hence can serve to alert both school administrators and accrediting officials to aspects of the accrediting process with which courts may become concerned.

There are basically two inquiries a court may make if called upon to examine a decision to refuse or withdraw accreditation: (1) did the agency follow its own rules in reaching the decision, and (2) did it utilize procedures which were fair to the school.

In pursuing these inquiries, courts will be interested only in protecting the public interest by ensuring that accrediting agencies wield their power responsibly. They are likely to be satisfied in this regard if it appears that an agency making an accreditation decision has in fact relied on its expertise and has given the school being evaluated a fair opportunity to speak up for itself.

[17] *Ibid.*, p. 74.

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