SUPERVISION OF PUBLIC ELEMENTARY AND SECONDARY SCHOOL PUPILS THROUGH STATE CONTROL OVER CURRICULUM AND TEXTBOOK SELECTION

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It is generally recognized that the states have plenary power in educational matters.[1] Subject only to the limitations of the Federal Constitution as interpreted and applied by the Supreme Court,[2] states can operate their school systems under whatever constitutional provisions and legislation they see fit to adopt.

Since the curriculum is so basic in educational endeavor, it is not surprising that states have passed legislation pertaining thereto. Such legislation constitutes a form of administrative supervision of pupils. Its analysis, therefore, falls properly within the over-all title of this symposium.

In broad terms this article has as its intent the discussion of the general scope of the supervision of pupils through state curriculum control. Included will be the attempt to evaluate the effectiveness and wisdom of such control. Certain state legislation which exerts an indirect control over the curriculum will be reviewed. Since the quality and type of textbooks used in a school system frequently determine the difference between an effective and an inadequate curriculum, a study and evaluation of state laws bearing upon textbook selection is presented.

The efforts of the states at curriculum control will be balanced against parental rights to determine the kind of education they desire their children to receive.

Since no phase of educational endeavor touches more closely the lives of pupils and school patrons than matters pertaining to the curriculum, the present effort has justification.

GENERAL SCOPE OF CURRICULUM CONTROL

A look at the general scope of state control over the curriculum offers the most logical method of getting into the body of this article.

The school law statutes of the 48 states reveal that almost every jurisdiction prescribes some subject matter. The paragraphs immediately following will outline the range of provisions. A citation will furnish an illustration of each type of regu-

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[1] MADALINE KINTER REMMLEIN, SCHOOL LAW 1-14 (1950); ROBERT R. HAMILTON AND PAUL R. MORT, THE LAW AND PUBLIC EDUCATION c. 1 (1941).

[2] West Virginia State Board of Education v. Barnette, 319 U. S. 624 (1943).

lation. No attempt will be made in this article statistically to report frequency of adoption of any particular type of curriculum control.[3]

Among the more common provisions[4] are those requiring instruction in the United States Constitution,[5] in American history,[6] in the State Constitution,[7] in civics,[8] in citizenship,[9] in health habits,[10] in temperance,[11] in the evils of narcotics,[12] and in safety education.[13]

A great variety of other requirements are mentioned. Illustrative are the following provisions: that of Wisconsin demanding "study of the comparative vitamin content and food and health values of dairy products and their importance for human diet,"[14] that of the same state calling upon every public school teacher "to teach her pupils morality and how to conduct themselves as social beings,"[15] that of Iowa requiring "instruction in social problems and economics,"[16] and that of New York demanding the teaching of fire prevention and humane treatment of animals and birds.[17]

California forbids any teaching that reflects on specific nationality, color or creed.[18] Utah does not permit teaching that is partisan, political, atheistic, infidel, sectarian—religious or denominational.[19] Tennessee makes it unlawful to teach that man is descended from a lower animal and that the story of creation as taught in the Bible is untrue.[20] In Michigan[21] the teaching of birth control is outlawed.

The Oregon statute making it unlawful to teach any subject other than foreign languages in any language other than English is typical of a provision found in many states.[22]

Frequently legislative desires are couched in very general terms. For example, New York[23] and Illinois[24] speak of setting up courses in patriotism, Indiana pre-

[3] A 1952 doctoral dissertation by BERNARD F. LOUGHERY, PARENTAL RIGHTS IN AMERICAN EDUCATIONAL LAW (Catholic University of America Press, 1952), offers a good statistical analysis. An earlier statistical approach by Brudney, *Legislative Regulation of the Social Studies in Secondary Schools,* 9 YEARBOOK OF SCHOOL LAW 140 (1941), is still to a large degree up to date.

[4] In at least half of the states.

[5] MICH. COMP. LAWS §352.15 (1948).

[6] IOWA CODE §280.8 (1954).

[7] DEL. CODE ANN. tit. 14, §4104 (1953).

[8] IND. STAT. ANN. §28-3406 (1948 Replacement).

[9] IOWA CODE §280.06.

[10] Provisions for health habits are made under a variety of language. For example, Missouri (REV. STAT. §163.170 (1949)) requires the teaching of "physiology and hygiene, including their several branches, with special instruction as to tuberculosis, its nature, causes and prevention." Michigan (COMP. LAWS §352.17 (1948)) states that "there shall be taught in every public school within this state the principal modes by which each of the dangerous communicable diseases are spread and the best methods for the restriction and prevention of each such disease."

[11] N. Y. EDUCATION LAW §804 (1953).

[12] MICH. COMP. LAWS §352.18.

[13] WIS. STAT. §40.46(4) (1953).

[14] *Id.* at §40.46(9).

[15] *Id.* at §40.46(5).

[16] IOWA CODE §280.8 (1954).

[17] N. Y. EDUC. LAW §§808 and 809.

[18] CAL. CODE EDUC. §8271 (1952).

[19] UTAH CODE ANN. §53-1-4 (1953).

[20] TENN. CODE ANN. §2344 (Williams, 1943 Replacement). The statute was upheld in the famous case of Scopes v. State, 154 Tenn. 105, 289 S. W. 363 (1927).

[21] MICH. COMP. LAWS §370.2 (1948).

[22] ORE. COMP. LAWS ANN. §111-2032.

[23] N. Y. EDUC. LAW §801.

[24] ILL. REV. STAT. c. 122, §27-3 (1953).

scribes instruction in common honesty, morality, courtesy and obedience to the law, and respect for parents and home and the dignity of labor.[25]

A good proportion of the states set forth subject matter lists which must be taught. Most commonly the statute is aimed only at the elementary school. In some jurisdictions the statute is pointed at the high school.

The California statute[26] is quite typical of legislation which is directed at the elementary school. The law states that

> the course of study shall include instruction in the following prescribed branches . . . Reading, writing, spelling, language study, arithmetic, geography, history of the United States and of California, civics including a study of the Declaration of Independence and of the Constitution of the United States, music, art, training for healthful living, morals and manners, and such other studies not to exceed three as may be prescribed by the board of education of the city, county, or city and county. . . .

Kansas[27] furnishes another example of the type of statute which sets forth in list form elementary school subject matter which must be taught.

The school law of Indiana[28] furnishes an illustration of a subject matter list for the guidance of high schools. Enumerated is

> mathematics, commercial arithmetic, algebra, geometry, history (United States, ancient, medieval or modern), geography (commercial or physicial), English (composition, rhetoric), literature (English, American), foreign language, science (biology, physics, or chemistry), civil government (general and state), drawing and music.

The statute also provides that any local board may elect additional subjects.

The jurisdictions differ considerably in terms of the guidance which the school law gives in respect to such details as grade placement and time allotment. Other than the broad direction of placement within the elementary or high school fields many of the laws give no guidance. Some laws are in certain respects quite specific.

Illinois[29] provides an example of the specific in its statutory statement that in the seventh and eighth grades not less than one hour per week is to be devoted to the study of patriotism and the principles of representative government as found in the Constitution and the Declaration of Independence. One hour a week is to be used in high school for advanced study in the same area.

California furnishes another illustration. Its school law[30] states that a maximum of 50 per cent of each school week is to be devoted to reading, writing, language study, spelling, arithmetic, and civics in grades one to six and a minimum of 600 minutes in each school week in grades seven and eight.

In varying degrees many state laws explicitly delegate responsibility for formulating details as to courses of study and individual subject offerings. Even if the school laws enumerate certain required subject matter, there is still much by way of

[25] IND. STAT. ANN. §28-3428 (1948 Replacement).
[26] CAL. CODE EDUC. §10302 (1952).
[27] KAN. GEN. STAT. §72-1101 (1949).
[28] IND. STAT. ANN. §28-3418 (1948 Replacement).
[29] ILL. REV. STAT. §24-4 (1953).
[30] CAL. CODE EDUC. §10303 (1952).

power to implement the general suggestions that is delegated to school administrators or administrative bodies.

Delaware furnishes a good example of state delegation of its power over the school curriculum. The law of Delaware requires that the State Board of Education prescribe rules and regulations determining the minimum course of study for all public elementary and high schools.[31] In each district, however, Boards of Education are to adopt courses of study for the schools which are in accordance with the rules and regulations set by the Delaware State Board of Education.[32] Although providing that instruction in the Constitution of the United States and of the State of Delaware must begin not later than the eighth grade and continue in high school, the law permits the Board of Education to determine the exact extent of such instruction.[33]

Other illustrations, taken at random from statutes, will further reveal the extent and nature of state delegation of power.

In Iowa teaching of the Constitution of the United States must start in the eighth grade and continue in high school to an extent to be determined by the Superintendent of Public Instruction.[34]

The Regents of the University of the State of New York are to prescribe courses in areas named in the statute.[35] Ohio requires boards of education of the county, exempted village and city school districts to set up graded courses of study.[36]

The State Superintendent in Kansas[37] presents for approval courses of study and curriculums to the State Board of Education. However, the school laws of the state make a number of mandatory suggestions concerning what must be taught.

Maine law orders the Commissioner of Education to enumerate the studies to be taught in the public schools but reserves to local school authorities a right to add additional courses.[38] Statutory guidance is given the Commissioner by the naming of certain subjects which must be taught.

In California the law demands that a course of study for each high school shall be prepared under the direction of the governing board having control thereof and shall be subject to the approval of the State Board of Education.[39]

It is quite usual practice for states to entrust to metropolitan cities a large responsibility for the formulation of course programs. The Illinois school code furnishes an instance. Within the section which pertains to cities having a "population exceeding 500,000 inhabitants" the code states that "the general superintendent of schools shall prescribe and control, subject to the approval of the board [City Board of Education], the course of study and textbooks. . . ."[40]

State laws have not endeavored to force conformity to any particular method of instruction or philosophy of education. In a few instances jurisdictions have at-

[31] DEL. CODE ANN. §122 (1953).
[32] *Id.*, §941 (1953).
[33] *Id.* at §4104.
[34] IOWA CODE §280.7 (1954).
[35] N. Y. EDUC. LAW §801 (1953).
[36] OHIO CODE ANN. §4837 (1945)
[37] KAN. GEN. STAT. §109 (1949).
[38] ME. REV. STAT. c. 37, §3 (1944).
[39] CAL. CODE EDUC. §10501 (1952).
[40] ILL. REV. STAT. §34-8 (1953).

tempted to require a standard of achievement. In Illinois[41] no one is to be graduated from the eighth grade who does not have a "comprehensive knowledge of the history of the United States." Kansas[42] has a similar regulation which says that no person "shall be graduated who has not satisfactorily passed" courses in history, citizenship, government and the Constitution of the United States.

EFFECTIVENESS AND WISDOM OF STATE LEGISLATIVE CONTROL OVER THE CURRICULUM

Sufficient has now been written to demonstrate the more general pattern of state legislative control of the curriculum. It should be quite apparent that state power in the field is indeed only limited by local or federal constitutions.

Logical progression suggests at this time some thinking on the question of the effectiveness and wisdom of the legislative endeavors. This thinking cannot take place without giving recognition to the best modern philosophy toward curriculum planning. For if state laws were seriously out of harmony with the skilled professional educator's attitude toward curriculum planning, it would be in order to question the wisdom of such laws.

The professional educator never stops planning the curriculum. He understands that there are always pressures which logically dictate development and change. The three R's will always need to be taught. But so will much in addition.

Hollis L. Caswell in his book, *Curriculum Improvement,*[43] gives a good over-all view of the current demands for curriculum change. He lists the major demands of the time as for: greater international understanding, improved intergroup relations, increased emphasis on education for family life, greater understanding of American ideals and love of country, conservation education, and understanding of atomic energy.

In support of his position he calls attention to a number of matters. Quoting from a publication of the Educational Policies Commission of the National Education Association and the American Association of School Administrators,[44] Caswell comments that every American is personally affected by the solutions found for the problems that trouble the world and hence should be interested in their solution. He mentions the attacks on America by those who point to our frequent lack of harmonious relations between groups such as whites and Negroes, labor and management, and Catholics and Protestants. He reminds of the fact that the difficulties found in the home are reflected in poor family relations and in a very high incidence of broken homes. He points to the struggle between democracy and communism as suggesting a vital need for a real understanding of the ideals of our country. He speaks of the implications which follow from our knowledge that our natural re-

[41] *Id.* at §27-22.

[42] KAN. GEN. STAT. §72-1103 (1949).

[43] CASWELL AND OTHERS, CURRICULUM IMPROVEMENT IN PUBLIC SCHOOL SYSTEMS 23-37 (Bureau of Publications, Teachers College, Columbia University, 1950). This volume contains an extensive bibliography on the topic of curriculum planning.

[44] AMERICAN EDUCATION AND INTERNATIONAL TENSIONS (NAT. EDUC. ASS'N, 1949).

sources are not inexhaustible. He sketches the potential for good and ill that may come from atomic developments.

Educators are not alone in their consciousness of these demands for curriculum change. A great many lay people are equally alert. This has unquestionably been true throughout the years. There have always been current demands occasioned by a particular era.

To a significant extent when lay people have felt that some curriculum adjustment was in order they have turned to the legislature. They have done so out of a feeling that the effort was the quickest and best way to get results.

Considering this attitude from the standpoint of theory, the conclusion follows that legislation might appear on the books which would be quite harmful to the purposes of the school. Such approach might seriously ignore sound principles of education. As an example, the serious mistake could be made of not relating in a meaningful way the curriculum to the lives of pupils.

That this would indeed be a mistake is a logical deduction to be drawn from the stress which Caswell[45] puts on the necessity in curriculum planning

> to study the developmental needs of children and youth, to analyse the goals and purposes that challenge them, to be well aware of the abilities they possess, and to be assured that what it is proposed to include in the curriculum will find a congenial setting in learning experiences.

Further commenting the same author says,[46]

> It is possible to do actual harm by including otherwise meritorious areas within the curriculum when they conflict with the foregoing consideration. Children may be made fearful and insecure by too great emphasis on social problems for which there are no ready solutions. Introduction of instruction on marriage and family relations at an inappropriate age may result in self-consciousness and unhealthy curiosity. And so with other matters.

The question we must face now is one of fact. Have lay pressure groups put school laws on the books which seriously interfere with the attainment of sound educational objectives? Fortunately, the answer appears to be that they have not. The great mass of laws provide for instruction in such fundamental areas that we cannot find fault with them. The large percentage of these laws are so general and reasonable as respects grade placement of the fundamental subjects enumerated as to cause no concern. The majority of the states still allow a substantial chance for local communities to work out a curriculum to suit local needs. State school laws have not closed the door of opportunity for the professional educator to make a major contribution to curriculum planning. The fact, for example, that lawmakers have not attempted to dictate method of instruction is a factor favorable for educators working on curriculum planning. All in all, it seems apparent that today the interests of most pupils do not suffer because of state action in respect to curriculum requirements.

[45] CASWELL, *op. cit. supra* note 43, at 39. [46] *Ibid.*

In some few instances state legislation may have cluttered up a curriculum by making a requirement which would be vetoed by the majority of educators after weighing in the scale of relative values. It remains true, moreover, that the state has the potential power to seriously interfere with the interests of pupils by passing curriculum legislation which ignores sound educational philosophy. It, therefore, seems appropriate to devote some space in this article to a suggestion which should help to make certain that the state will never so act.

Educators can help to make it certain. They can do so if they accept a responsibility which is theirs.

The public is most likely to agitate for legislative reform of the curriculum if it is not kept aware of what the schools are attempting to do, why they are doing it, and what they are accomplishing. Misconceptions thrive in an atmosphere where public educators do not take the public into their confidence. These misconceptions can lead to pressure for legal control which may be harmful to school goals.

Educators have the responsibility of keeping the public informed. There are innumerable ways of doing so. School sponsored meetings, talks by school officials, publicity programs which give factual information in mass mediums of communication, newsletters, annual reports, and special type pamphlets all serve effectively in the effort. Good teaching and the maintenance of good teacher-pupil relations cannot be overlooked as a most effective way of indirectly informing parents and the community of the work of the school.

A great deal of space could be used in detailing the specific techniques that can be employed to keep the public informed of the work of the schools. Such emphasis does not seem appropriate for this discussion.

One method does, however, require particular mention. Educators must convince the public that they are continually alert to the need of making sound curriculum progress. A good approach in this effort dictates the use of committees and other devices in order to get broad lay participation in working closely with educators for the improvement of the school offerings. Especial care should be used to enlist the cooperation of thought leaders in various areas of endeavor. These people can make a fine contribution in thinking through problems and can do a good job of communicating the efforts of the school to the community at large.

Lay people and educators can effectively work together mutually to define a valid philosophy of education for contemporary life.

In his book, *Curriculum Planning*,[47] Edward A. Krug sets forth the following illustration of a good statement of school purposes:

1. To help every student grow up successfully in our society, to build his mental health, and to achieve maximum personality development and personal effectiveness.
2. To help each student get a chance to sample various types of recreational activities and to develop skill in a few.
3. To teach the skills of democratic group planning and discussion.
4. To teach the skills of reflective thinking and group problem solving.

[47] Pp. 64-67 (1950).

5. To support the established family pattern of Western civilization by realistic study of problems and difficulties.
6. To develop an understanding of world-wide social problems and a concern with our country's role in world peace.
7. To study continuously the meaning of democracy. . . .
8. To develop literacy in all citizens: language, quantitative, economic, industrial.

If this type of philosophy statement was the result of mutual cooperation between educators and intelligently selected lay people, it should be apparent that there would be created a favorable climate for curriculum construction which would serve the best interests of pupils. Then if it is widely made known that the objectives were mutually determined and if alert and sound educational leadership makes the public aware of the true facts on efforts to implement the goals, there will seldom be any need felt by the public to foster legislative control of the curriculum. The possibility of unwise legislation will thereby be reduced to a minimum.

But direct state action is not the only type of legislation which may affect the curriculum. Local school boards have quasi-legislative power.[48] Previously this article pointed out that a great many states have delegated to local school boards major discretion in curriculum formulation. Since school board members are usually laymen in educational matters,[49] there arises a problem somewhat similar to that involved in state legislators attempting to prescribe school courses and content.

The solution to this problem is no different from the one suggested as valuable as insurance against unwise state legislative action. It is already recognized that boards of education should not enact regulations pertaining to courses of study and educational philosophy without the recommendations of their professional experts, particularly the recommendations of their chief executive officer, the superintendent.[50] Most boards will not be tempted to act in disregard of professional advice unless the pressure from the public becomes too great. Generally, the public pressure will reach such proportions as a result of the existence of the same factors which have already been presented as exerting an influence on state curriculum legislation. The remedy to prevent the growth of such factors is the same as has previously been discussed. Educators must accept a major role in effecting the remedy.

INDIRECT CONTROL OF THE CURRICULUM

Today almost two-thirds of the states prescribe that teachers take an oath of allegiance to the United States Constitution and state constitution of the state where they are employed.[51]

In recent years much additional law has sought to supplement the philosophy of affirmance of allegiance by provisions requiring teachers to swear that they do not belong to the Communist party or its affiliates and by forbidding teachers to hold

[48] WARD G. REEDER, THE FUNDAMENTALS OF PUBLIC SCHOOL ADMINISTRATION 80-81 (3d ed. 1951).
[49] *Id.* at 97.
[50] *Id.* at 81.
[51] TEACHERS OATHS AND RELATED STATE REQUIREMENTS (NAT. EDUC. ASS'N, COMMITTEE ON TENURE AND ACADEMIC FREEDOM, 1949).

membership in subversive groups and activities that may be considered to advocate the overthrow of the government by violence or illegal means.[52]

Laws of such sort merit discussion in this article because of their indirect effect upon the school curriculum. It is quite obvious that in requiring teachers to hold allegiance to federal and state constitutions a restriction of a sort is placed upon what they can teach. And at least a partial reason[53] for providing for the discharge of teachers belong to movements that advocate the illegal overthrow of the government is that of insuring that those who adhere to such philosophy will not be able to spread it in the public schools.

The right of states to take steps to protect against subversive teaching in the schools is supported by the majority decision of the United States Supreme Court in *Adler v. Board of Education of the City of New York*.[54] The majority upheld the very restrictive[55] Feinberg law and permitted the discharge of teachers who belonged to groups listed by the Board of Regents of the University of the State of New York as advocating the overthrow of the government by force. Their opinion, while admitting that teachers had a right to assemble, speak, think, and believe as they will, emphasized that "a teacher works in a sensitive area in a schoolroom" and, therefore, the state has a "vital concern" and a "right . . . to screen the . . . teachers . . . as to their fitness to maintain the integrity of the schools as a part of ordered society. . . ."[56]

In recent times there has been a rash of comment, both in legal publications and others, which has argued the fairness and wisdom of teacher oath legislation and of that of the type of the Feinberg law. Many see in the oath requirements an insult to a profession which generally speaking has stood as a staunch defender of our way of life. Others see a serious threat to academic freedom in the type of legislation under discussion.[57] A great number quarrel with the inadequacy of the statutory standards which are set up for determining disloyalty.[58]

While those critical of teacher loyalty legislation often present arguments worthy of some consideration, it seems to this writer that as respects the fundamental principle involved the state does have a right to ask teachers to take an oath that they will uphold the Constitution and that they do not belong to the Communist party or other groups which advocate the overthrow of the government by force. It also

[52] For an indication of the states which have enacted such legislation and a good summary of the common characteristics and major divergencies, see Prendergast, *State Legislatures and Communism: The Current Scene*, 44 AM. POL. SCI. REV. 556 (1950).

[53] It is recognized that another important reason for the legislation is the belief that a teacher's influence pervades more than the classroom. The law takes cognizance of the fact that a teacher's attitude may have a profound effect outside the classroom.

[54] 342 U. S. 485 (1952).

[55] The Feinberg Law (N. Y. EDUCATION LAW §3022 (1953)) is called the most restrictive of its kind by MADALINE KINTER REMMLEIN, THE LAW OF LOCAL PUBLIC SCHOOL ADMINISTRATION 177 (1953).

[56] 342 U. S. at 493.

[57] ALAN BARTH, THE LOYALTY OF FREE MEN c. IX (1951), presents most of the usual arguments.

[58] Because an analysis of standards falls outside the topic of this article, the writer does not undertake to discuss objections based on inadequacy. The assumption herein is that standards are used which will pass the test of constitutionality.

does not appear unreasonable for the state to refuse to employ or continue in its employment those teachers who belong to groups which urge the overthrow of the government by illegal methods.

The extent to which such legislation controls the curriculum seems entirely proper. It is very difficult to ignore the fact stressed by the United States Supreme Court in the *Adler* case.[59] The teacher is indeed in a strategic position. It is proper that government protect itself against teachers using their favored position to encourage its overthrow by improper methods. And, since the Constitution is the supreme law of the land, it is legitimate for government to require teachers to instruct in harmony with its philosophy.

It is generally recognized that the term liberty never means unbridled freedom. It seems clear that an instructor cannot teach whatever he pleases. Furthermore, since the teacher can influence in such subtle ways, his liberty to espouse the Communist philosophy outside the classroom does not give him the right to continued employment in the public schools. The opportunity to teach in the public school is a privilege which cannot be abused by adherence to a philosophy which advocates the forceful overthrow of the very government which grants the opportunity to teach.

James Marshall in "The Defense of Public Education From Subversion"[60] makes a very forceful comment on the true meaning of academic freedom. He says:

> Education has a central position in our structure of civil rights and freedom. Civil rights and freedom as we understand them are basic means by which in our American culture we handle our hostilities, free our reason from subservience and undue anxiety, and increase our productivity. It is important to us, therefore, that education be uncensored and that teachers be not subjected to autocratic controls. Consequently one of our freedoms is academic freedom; but this assumes that the teacher himself is free to use his reason to the best of his ability and is neither committed to the perversion of truth, to the justification of autocracy, to the teaching of hatred, nor to the forceful overthrow of the government. It likewise assumes that students have the right to learn the truth, to have all the facts before them including the intellectual commitments of their teachers.
>
> When these assumptions are not met, a teacher can have no justification in pleading the right to teach in the name of an academic freedom which he himself has corrupted.

Another type of indirect restriction on the curriculum is found by Brudney[61] to exist in state teacher tenure regulations. Specifically alluding to statutes which provide that teachers on tenure may be dismissed for "good cause," for "cause manifestly sufficient" or for certain enumerated specific reasons and "other just cause," the writer sees a "virtually unbridled discretion which . . . may operate as a restriction on the teacher's actions in the classroom. . . ." He further comments that "the nebulous formulae permit the application of divers pressures upon the instruc-

[59] 342 U. S. 485 (1952).
[60] 51 COL. L. REV. 587, 603-604 (1951).
[61] Brudney, *Legislative Regulation of the Social Studies in Secondary Schools*, 9 YEARBOOK OF SCHOOL LAW 140, 165 (1941).

tional staff by superiors in the educational system and indirectly by interested groups out of it."

In actual practice, however, this writer does not feel that tenure laws exercise a significant enough different type of control over the curriculum to justify detailed review of the cases construing the rights of school authorities to dismiss tenure teachers under the "other good and sufficient cause" type of wording.

It is self-evident that if a teacher were to refuse to follow the course of study prescribed by state law or duly constituted school authorities, the refusal could be looked upon as grounds for dismissal under "for cause" legislation.[62] It is equally apparent that a teacher who preached subversive doctrine in the classroom could be dismissed for cause. As the Massachusetts court has said, "'good cause, is held to include any ground which is put forward by the Committee in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the [school] committee's task of building up and maintaining an efficient school system.'"[63] Certainly an efficient school system cannot tolerate the preaching of subversion.

These results from the application of tenure laws do not appear startling or unsound.

There is, however, an existing philosophy used to justify discharge under "for cause" statutes which gives some support to Brudney's position. Decisions have held that if a teacher has earned undesirable notoriety in the community his usefulness in the classroom may be at an end—even if the facts which gave rise to the reputation are not actually true.[64]

Holdings of this type raise some interesting questions. Would they influence a teacher in a particular locality to modify the expression of his economic or social viewpoint[65] so as to conform with the general climate of thought? Would teachers not dare to do otherwise because of a fear that an expression of certain viewpoints might bring the kind of notoriety that would mushroom into loss of control over students in the classroom and resultant loss of tenure? If this is true, there exists a form of control over the curriculum.

It is not possible to give a statistical answer to the question. Certainly, some instructors may be consciously or unconsciously influenced, in the manner indicated, by the existence of "for cause" tenure provisions.[66] It is more likely that a greater number, regardless of tenure regulation, are aware of the practical fact that they cannot be happy in a community if they express too vehemently economic or social views that are too far out of harmony with the general philosophy of the community. On the assumption this is true, there seems to be little reason to center

[62] Lack of cooperation as grounds for discharge "for cause" is upheld in Stiver v. State *ex rel.* Kent, 211 Ind. 380, 1 N. E. 2d 1006 (1936).

[63] Davis v. School Committee of Somerville, 307 Mass. 354, 362, 30 N. E. 2d 401, 406 (1940), quoting from Rinaldo v. Dreyer, 294 Mass. 167, 169, 1 N. E. 2d 37, 38 (1936).

[64] Anthony v. Phoenix Union High School District v. Maricopa County, 55 Ariz. 265, 100 P. 2d 988 (1940); Baird v. School District No. 25, Fremont County, 41 Wyo. 451, 287 Pac. 308 (1930).

[65] The phrase economic or social viewpoint as used above does not mean a seditious viewpoint.

[66] Especially if they knew of such action.

too much concern on the effect of tenure legislation on the curriculum through causing modification of the expression of an economic or social outlook.

TEXTBOOK SELECTION AS AFFECTING THE CURRICULUM

It is quite apparent that the quality and type of textbooks used in a school system can make the difference between an effective and an inadequate curriculum.

Professor Gwynn points out that the "textbook reflects and establishes standards . . . [and] by its teaching and learning aids it markedly affects methods. . . ." "Regardless," he says, "of whether some school systems or some teachers supplement the textbook with library materials . . . the textbook is still the main tool employed by teachers."[67]

This role which the textbook plays suggests that no article which deals with state laws affecting the curriculum can ignore a treatment of the laws from the standpoint of their impact upon textbook selection.

As was true in connection with the part of this article which dealt with direct state regulation of the curriculum, the approach to provisions relating to textbook selection will not be a statistical one.[68] Rather the technique used spotlights types of provisions and refers for illustrations to certain state statutes. This is done for the purpose of laying the groundwork for an evaluation of the various methods by which states exercise their rights to supervise the choice and adoption of textbooks for use in the public schools.

Certain common features of statutory regulations concerning textbook selection are clearly discernible. As regards their fundamental approach, states can be grouped into three categories—those in which the State Board of Education is the adopting agency,[69] those which provide for local choice,[70] and those which have set up Commissions or Committees to recommend the books to be adopted.[71]

[67] J. MINOR GWYNN, CURRICULUM PRINCIPLES AND SOCIAL TRENDS 221-223 (rev. ed. 1950). The writer's position is expressed in a quote from E. B. WESLEY, TEACHING THE SOCIAL STUDIES 375 (2d ed. 1942).

[68] The Loughery dissertation (BERNARD F. LOUGHERY, PARENTAL RIGHTS IN AMERICAN EDUCATIONAL LAW, *op. cit. supra* note 3) does present a statistical report. Also see EDUCATION: TEXTBOOK SECTION, A REPORT TO THE COMMITTEE ON FUNCTIONS AND RESOURCES OF STATE GOVERNMENT, PREPARED BY THE STAFF OF THE LEGISLATIVE RESEARCH COMMISSION, RES. PUB NO. 17 (KENTUCKY, 1952). It is interesting to compare the modern compilations with TISHWELL, STATE CONTROL OF TEXTBOOKS, COLUMBIA UNIVERSITY CONTRIBUTIONS TO EDUCATION No. 299 (1928). It can be seen that there has not been too much shift in the basic attitudes of the various states.

[69] For example: California (CAL. CODE EDUC. §11151) (the California law pertains only to the selections of textbooks for elementary schools; the governing board of each high school district is given the power in that area); Kansas (KANS. GEN. STAT. §72-4101); Delaware (DEL. CODE ANN. §4104).

[70] As illustrative: Illinois (ILL. REV. STAT. c. 122, §28-6); Iowa (IOWA CODE §301.1; either local district or county as determined by voters, §301.23); Maine (ME. REV. STAT. v. 37, §50(2)); Michigan (MICH. COMP. LAWS §381.2); Missouri (MO. REV. STAT. §170.100; in the case of cities, §170.170 (1949)); Nebraska (REV. STAT. NEB. c. 79, §4,118 (re-issue of 1950)); New Hampshire (REV. LAWS N. H. c. 135, §16 (1942)); New York (N. Y. EDUCATION LAW §701); Ohio (OHIO CODE ANN. §4854-7; local school boards select from lists adopted by County Board of Education).

[71] For example: California (CAL. CODE EDUC. §§11156 and 11157); Utah (UTAH CODE ANN. §53-13-1); Oregon (ORE. COMP. LAWS ANN. §111-2001); Oklahoma (OKLA. STAT. c. 70, §16-12 (1951)); Florida (FLA. STAT. §233.09 (1953)); North Carolina (N. C. GEN. STAT. §§115-275, 115-278-5, 115-278-6 (1952)); Indiana (IND. STAT. ANN. §28-405).

In the case of the latter group, the recommendations are usually mandatory except that frequently a State Board of Education is allowed to select from a committee-approved multiple list. California[72] furnishes an example of a Commission whose recommendations are not mandatory. The Board of Education in the state is, however, required to give the Commission a public hearing before adopting any book. In actual practice the suggestions of the Commission are usually accepted.

There is about an even split among the 48 states (including those that make use of Commission suggestions) between those that provide for some form of state adoption and those that permit local school authorities to select textbooks.

Iowa[73] and Wisconsin[74] make it possible, under certain conditions, for the people of the school district to vote upon county adoption in place of local adoption.

Since the use of a textbook committee or commission constitutes an effort to insure securing the opinion of those with professional qualifications, a look at the personnel requirements set forth in the statutes authorizing such groups should be of interest.

California provides for a Commission made up of the State Superintendent of Public Instruction and 10 additional members appointed by the Superintendent of Public Instruction with the approval of the State Board of Education.[75] Among the appointive members there must be at least one county superintendent of schools, one city superintendent, one person employed in a junior college who holds a teacher's certificate, one high and one elementary school principal, one college teacher of education, and one classroom teacher.[76] In Kansas[77] the Advisory Committee is named by the State Board of Education. There is a separate committee for the elementary, junior high and senior high schools. The total membership of each committee is to be from 5 to 7. The majority shall be supervisors, principals, superintendents or teachers. They are to be selected so as to represent all types of schools in which the books adopted are to be used. Two members are to be persons not engaged in the teaching profession.

The state superintendent of public instruction, dean of the State School of Education, and 5 school superintendents are appointed to the Textbook Commission in Utah.[78] Oregon's[79] Textbook Commission is appointed by the State Board of Education. It is to consist of 5 citizens of recognized scholarship and professional standing who shall have been actively and continuously engaged in teaching or supervision of schools in the state for five years preceding the date of appointment. A provision is made for an alternative selection from the faculties of normal schools or institutions of higher learning. The statute sets out a plan of nominating for appointment individuals who come from various areas of the state.

The Oklahoma[80] Textbook Committee is made up of 8 members appointed by the Governor. Each member must have five years' experience teaching or supervising in the public schools of the state and at least four years' college training. A

[72] CAL. CODE EDUC. §§11156 and 11157 (1952).
[73] IOWA CODE §§273.12 and 273.13.
[74] WIS. STAT. §§40.48 and 40.49.
[75] CAL. CODE EDUC. §10,001.
[76] *Id.* at §10,002.
[77] KAN. GEN. STAT. §72.4129.
[78] UTAH CODE ANN. §53-13-1.
[79] ORE. COMP. LAWS §111-2001 (1940).
[80] OKLA. STAT. c. 70, §16-1 (1951).

minimum of 3 of the group must be classroom teachers. The State Superintendent of Public Instruction serves as a secretary and votes only when there is a tie. There is a provision that not more than one from any particular area should be named to the Committee. A unique feature of the Oklahoma law is its setting up of local textbook committees who are to select books from the multiple list determined upon by the State Textbook Committee.[81]

Florida[82] has a textbook rating committee[83] of 12 members actively engaged in teaching or supervision in the public elementary, high or teacher training institutions in the state and representing the major fields and levels in which textbooks are used. The State Superintendent and a member of his department whom he designates are ex officio members.

In North Carolina[84] the Governor and the State Superintendent may appoint a textbook commission of 12 members. Seven are to be outstanding teachers and principals in the elementary grades, 7 with the same qualifications are to come from high schools. One may be a county or a city superintendent. The members from the elementary field evaluate all books offered for such grade level. The high school members review the books designed for the secondary grades.[85]

Even among those states that do not provide for local participation in textbook selection there is frequent delegation to local districts of the right to select books from a multiple list furnished by a state body.[86] In some jurisdictions this grant is only to high schools.

Often clauses in state laws spell out permission to secure supplementary texts.[87]

It is quite usual for jurisdictions with state adoption regulations to exempt cities of a certain size and permit them to make independent selections.[88]

Kansas[89] makes it possible for the State Board of Education to test books in 40 or 50 of the average schools of the state for not less than one year or more than two so that a comparison of progress can be made with those previously in use.

In about one-fourth of the states there is a prohibition against the use of texts that are in any way sectarian, denominational, partisan or seditious in content.

In the large number of states that entrust textbook choice to local school boards, the actual practice is generally for the board to delegate its authority to the superintendent of schools or to a local committee made up of teachers and supervisors. Even if the delegation is to the superintendent, it is usual for him to set up a com-

[81] *Id.* at §16-10.

[82] FLA. STAT. §233.07 (1953).

[83] The Committee rates each book and furnishes a written report to the State Board of Education indicating in relative order the three most suitable books.

[84] N. C. GEN. STAT. §115-278-5.

[85] Each member files a written evaluation of each book and then meets with the State Board of Education (N. C. GEN. STAT. §115-278-6). A joint examination of the reports is made before the Board selects from the evaluated list.

[86] IND. STAT. ANN. §28-666; DEL. CODE ANN. tit. 14, §122.

[87] CAL. CODE EDUC. §11151.

[88] Illinois (ILL. REV. STAT. c. 122, §34-8); Oregon (ORE. COMP. LAWS ANN. §§111-1402 and 111-2011); Utah (UTAH CODE ANN. §53-13-11).

[89] GEN. STAT. KAN. §72-4105.

mittee of professional educators to help with the task of evaluation and advice. The recommendations of the committees are usually accepted.

The same pattern generally results in those cities that are exempted from state adoption regulations.

The constitutions of Colorado[90] and Wyoming[91] state that neither the legislature nor the state board of education nor state superintendent of public instruction shall have the power to prescribe textbooks to be used in the public schools.

Many states protect the textbook selecting authority in its relations with publishers. This is true even in the case of a considerable number of the states that permit local school authorities to make the decisions as to choice of books. Common provisions of this type require publishers to deposit books with the state authority, to deposit a stipulated amount to accompany bids to insure execution of the contract if the bid is accepted, to file surety bonds conditional upon the full and faithful performance of the contract, to agree that no higher prices may be charged in the particular state than are charged elsewhere in the United States, taking into consideration cost of shipping and dealers' commission, and to provide for prices at which adopted books may be exchanged for more recently adopted ones.

Another extremely common feature running through state endeavors to regulate textbook selection is the requirement pertaining to the frequency with which textbooks can be changed. States have realized a need to protect school patrons (and taxpayers in the case of free textbooks) against the expense of too frequent change. Many have understood the need to prevent too long use of a book without reevaluation and have set a limit on original adoption. The most commonly named time span is four or five years. Three and six years appear in a number of statutes. Ten is the maximum mentioned.

Some states have used qualifying phraseology to permit textbook change sooner than the general provision found in the law. For instance, in Illinois[92] cities of over 500,000, textbooks are not to be changed oftener than four years except upon the recommendation of the general superintendent of schools approved by the 11 man Board; in Kansas[93] textbooks cannot be changed unless they are in use for five years except that the Board of Education shall have authority to vary the period of adoption for high school classics so as to meet college entrance requirements; and in Utah[94] any textbook found unsatisfactory can be changed or any textbook of unusual merit may be added to the adopted list at any regular meeting of the textbook commission.

In addition to the time restrictions, much state legislation also regulates textbook change at each adoption period through the techniques of allowing as new adoptions only a certain percentage of all the books or a certain number of books at each grade or subject level.

Most state laws put textbook selection on an annual basis. A biennial plan is set

[90] COLO. CONST. Art. 16, §9.
[91] WYO. CONST. Art. 7, §2.
[92] ILL. REV. STAT. c. §122, 34-8.
[93] GEN. STAT. KAN. §72-4101.
[94] UTAH. CODE ANN. §53-13-3.

forth in some of the laws. A few states make no specific requirement as to spacing between the preparation of textbook lists.

EFFECTIVENESS AND WISDOM OF STATE LEGISLATIVE CONTROL OVER SELECTION OF THE TEXTBOOKS

All that has been written pertaining to the pattern of state policies toward textbook selection should demonstrate, just as did the discussion of state control over courses of study, that it is only state and federal constitutions which limit state legislative power over the public schools.

Since the range of state power is so unlimited and the textbook plays such an important role in the education of the young, it becomes logical, just as it did previously at the conclusion of the outline of state course-of-study legislation, to raise some questions concerning the effectiveness and wisdom of existing statutory attitudes toward the selection of textbooks.

The matter of state uniformity versus local adoption has been long and much debated.[95] The most common arguments in favor of state uniformity can be summed up as follows:

1. Books will cost less because of quantity purchases and saving to the publisher in sales expenses.
2. State commissions are better qualified to select than many local boards and commissions.
3. Families do not lose on books when they move from one school district to another.
4. The use of uniform textbooks throughout the state makes possible the adoption of a minimum state course of study which can be enforced.

The proponents of local adoption answer by:

1. Pointing to facts which indicate that costs under a local adoption plan need not be greater than those under state adoption.
2. Raising the query as to whether a uniform course of study best meets the individual needs of children in each local community.
3. Rather logically showing that the matter of family cost to those who remove from the district is not a major issue.
4. Pointing out that a state commission with its limited membership cannot best serve the needs of pupils in all areas.

Reflection upon both viewpoints enables the writer to present an evaluation of the present state plans for textbook adoption.

If there are educational disadvantages to state-wide adoption of uniform texts, the slight possible cost saving does not seem to justify the plan.

Certainly the use of a commission or textbook committee in connection with state-wide adoption plans is desirable. There is considerable merit in the contention that such groups are better qualified to survey all possibilities and select books

[95] See, for a discussion on the point, STATE CONTROL OF TEXTBOOKS, COLUMBIA UNIVERSITY CONTRIBUTIONS TO EDUCATION No. 299, c. IV (1928).

than are some local regions. But there is also much to be said for the viewpoint that state-wide commissions cannot best sense local needs.

It is undoubtedly the recognition of such facts that has caused many jurisdictions to compromise by permitting cities and districts of a certain size to make their own selection and by requiring that state textbook commissions submit a multiple list so that the smaller areas will have some opportunity to make a decision with thought to their particular needs. It would seem that all the regions with state-wide adoption legislation should so compromise.

The attitude of those states that entrust selection to local school boards is becoming more realistic each year. Even if legislation does not require it, there is great use at the local level of advisory textbook committees made up of superintendents, administrators, and teachers. Each year more school administrators and teachers in local areas are becoming better trained professionally. Furthermore, there is available much guidance for those who work on textbook committees. University schools of education usually have experts whose counsel can be sought. Books and articles have been written on the subject.[96]

From the standpoint of good relations with the community the local adoption plan of selection is the best plan. If the determination of the texts is done on a local basis, it is easier to keep the public informed as to the merit of the book in serving local course of study needs.

The importance of such effort was presented in a previous section of this article. Since the textbook is such a basic tool in educational endeavor, there is just as much reason to use the formerly suggested techniques for enlightening the public as there is for doing so in connection with courses of study and educational philosophy.

Other provisions on textbook legislation lend themselves to brief evaluation. From the standpoint of serving individual school needs a multiple list is to be approved over a basal one. For the same reason, there needs to be provisions for adoption of supplementary texts.

Statements controlling frequency of change are reasonable, particularly if the limit is set at not more than four or five years. The law should permit changes to be made more frequently in exceptional circumstances such as may arise in fields where there is a rapid development in subject matter content. Less reasonable but perhaps oftentimes financially expedient are the statements which curtail to a certain percentage the change that can be made at any one adoption period.

Generally, those regulations which protect the textbook selecting authority in its relations with publishers are worthwhile.

One remaining aspect of the textbook selection problem requires discussion. It is the matter as to whether there is any danger to "freedom to learn" through what one writer describes as "the local school board playing censor with controversial ideas in books and magazines."[97]

[96] For example: JOHN A. CLEMENT, MANUAL FOR ANALYZING AND SELECTING TEXTBOOKS (1942).
[97] Comment, *School Boards, Schoolbooks, and the Freedom to Learn*, 59 YALE L. J. 928 (1950).

The anonymous commentator in the *Yale Law Journal* sees in the actions of school boards a real danger which he sums up as follows:[98]

> Suppression of opinion in a public school is the antithesis of education . . . . Administratively its inherent evil is an incapacity to draw the line. Once a book banning precedent is established, future exclusions are made simpler. A board which removes books critical of Catholics today must reasonably respond to the injured cries of Jews and Negroes, perhaps even Democrats and Republicans tomorrow.
>
> . . .
>
> A recent study conducted by the American Council on Education indicates that current teaching materials are "guilty of failing to come to grips with basic issues in the complex problems of human relations." [Footnote omitted.] Perhaps school boards might better devote their energies towards establishment of school programs wherein basic controversial issues would be openly studied and discussed. . . .
>
> But for those who have less faith in the Freedom to Learn, an exemplary legal sanction is urgent. . . .

Much the same concern was expressed at the recent Chicago University Law School Conference on *The Arts, Publishing and the Law* by the then General Counsel of the American Book Publishers Council.[99]

The issues raised by such thinking cannot be dealt with in any general statement. Indeed, in many respects it is hard to deal with them at all unless the factual pattern is spelled out in detail.

If a book is intentionally "critical" of any religious or racial group, it would appear entirely improper that it be used in the public school. Surely, if sectarianism cannot be taught in the public schools, as the courts admit,[100] an attack on a particular religious or racial group cannot be sanctioned. If such intentional criticism is presented it would seem to fall within the condemnation of *Rosenberg v. Board of Education of City of New York*.[101] It would be outlawed because written "for the apparent purpose of promoting and fomenting a bigoted and intolerant hatred against a particular racial or religious group. . . ."[102]

If an endeavor was made to indicate impartially points of friction between groups without any effort to take sides there is probably no legal reason to condemn the approach. In the area of controversy, a book used in the public school might be fully approved if it did not attempt to influence people and merely contented itself with a clear, impartial statement of the conflicting points of view. The great difficulty, however, is often the determination of whether an approach to a controversial issue is impartial. Viewed by some, it may seem to be so. Scrutinized by others, it may appear not to be so. This differing attitude as to the impartiality of approach will exist not only in respect to the presentation of points of friction between re-

[98] *Id.* at 954.

[99] Farmer, *The Pressure Group Censors the Author,* CONFERENCE SERIES No. 10 132 (1952).

[100] Illinois *ex rel.* McCollum v. Board of Education, 333 U. S. 203 (1948); Zorach v. Clauson, 343 U. S. 306 (1952).

[101] 196 Misc. 542, 92 N. Y. S. 2d 344 (Sup. Ct. 1949).

[102] 196 Misc. at 543, 92 N. Y. S. 2d at 346.

ligious, racial and political groups but also in connection with the presentation of varying social or economic outlooks.

A textbook dealing with controversial issues may affect selecting authorities in just such fashion. It may appear impartial to one. To another it will not. The fact that there may be this divergence of opinion is no reason to say that there should be admitted into the public school any and all books dealing with controversial issues. There is certainly no legal justification for the dissemination in the public school of propaganda. Minds can differ, too, on the matter as to whether, at various age levels, children are mature enough to analyze certain controversial issues, even if those issues are treated impartially.

In spite of the possibility of differing attitudes, decisions must be made. The best that can be done is to set up a professionally qualified textbook selection committee of fair-minded people. Then it can *generally* be expected that improper pressure will be resisted and no unreasonable "book burning" will occur. If such a committee does exist, there should be no serious interference with "freedom to learn."

It is not fair to condemn any and all censorship as repressive and tyrannical. Certainly, all books cannot be approved for use in the public schools. None but the most unreasoning would, for instance, admit in the schools extreme expressions of obscenity or a violently seditious utterance. None but the most "liberal" feel that the public school should be a medium for a propaganda approach. Someone has to stand guard against the propaganda approach. The professionally qualified, fair-minded textbook committee is the best guard it seems practical to have. Censorship of such type has a place in the democratic governmental process.[103]

PARENTAL RIGHTS IN CURRICULUM DETERMINATION

The topic of state control over the curriculum cannot be concluded without some reference to parental rights in curriculum determination. It is in order to make some analysis of the respective powers of the parent and the state to decide what specific subjects or course of study should be offered to a particular child.

Justice McReynolds' pronouncement in *Pierce v. Society of Sisters*[104] that "the child is not the mere creature of the state" and that "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations" is perhaps most frequently cited to support parental rights.

Although the language seems quite specific, it must be remembered that the *Society of Sisters* case involved a state effort to wipe out private schools and require attendance at public schools. The high priority of a parent's constitutional right to make a choice between a private and public school seems very clear. It is not nearly so apparent that the parent has a right to select for his child just exactly the

[103] The last sentence is the philosophy of Judge Charles S. Desmond of the New York Court of Appeals. See his article, *Censoring the Movies*, 29 NOTRE DAME LAW. 27 (1953).

[104] 268 U. S. 510, 535 (1925).

subjects he should pursue in the public school. Indeed some reflection seems to indicate that there must be some limit to the right.

If we believe that the professional schoolman generally knows more about the educational needs of children than the average layman parent, we must concede that it could be wholly unrealistic to allow the parent to revamp the curriculum to suit his whims. Schools might find it very difficult to maintain discipline and set standards for graduation if they were bound to respond to every parental plea. Furthermore, in many regions it would be impractical to give the parent full freedom of choice. Many schools simply could not offer the myriad subjects which might be necessary to satisfy parental requests.

The realization of such facts undoubtedly influenced the courts to generally agree upon two fundamental principles: (1) that a parent may control his child's education only in so far as such control impairs neither the efficacy of the school system nor the interests of the other pupils,[105] and (2) that certain studies plainly essential to good citizenship must be taught.[106]

The difficulty is that the enunciated principles do not constitute a definite yardstick. Judicial minds can and do differ in connection with the use of the formula. For instance, in working with the "good citizenship" rule most courts would acknowledge that the good citizen must be literate and understand our form of government. Therefore, they would refuse to allow a parent to prevent his child from studying the fundamentals of mathematical computation, of English composition, and of United States history and government. But when, for example, the question is raised as to whether a course in music,[107] dancing,[108] art, or domestic science[109] is essential to the training for good citizenship, judicial minds may differ.

Many subjects stand in between the extremes of the indicated examples. In such an intermediate area, there is always the possibility of varying attitudes on the part of the courts.

This article has already shown that certain state statutes list subject matter fields that must be taught. Many of the fields mentioned are those which the courts would agree are fundamental in training for good citizenship. All courts may not, however, necessarily agree that every child should be made to take each specific course which may be designed to give training in the various fields.

In the effort to determine if the parents' request will impair the efficacy of the school system or the interest of other pupils, the courts often have to struggle with many practical considerations which may influence the outcome. It will not be

[105] Morrow v. Wood, 35 Wis. 59 (1874); Trustees of Schools v. the People *ex rel.* Martin Van Allen, 87 Ill. 303 (1877).

[106] People *ex rel.* Vollmar v. Stanley, 81 Colo. 397, 255 Pac. 610 (1927).

[107] School Board District No. 18, Garvin County v. Thompson, 240 Okla. 1, 103 Pac. 578 (1909), upheld the refusal of the parent to permit his child to take a singing class. State v. Webber, 108 Ind. 31, 8 N. E. 708 (1886), held *contra* on substantially the same facts.

[108] Hardwick v. Board of School Trustees of Fruitridge School District, 54 Cal. App. 696, 205 Pac. 49 (1921), upheld the parent's objection to his child taking dancing.

[109] State *ex rel.* Kelley v. Ferguson, 95 Neb. 63, 144 N. W. 1039 (1914), sided with a parental protest against having a child take domestic science.

possible to permit the same degree of choice in a small school as in a large one. And if the parents' demands cannot be met, requirements of discipline may dictate against allowing the child to reduce his total course load.

One court, however, has suggested that there may be a way for the parent to get around the obstacle of limited course offerings at a school. In *Sherer v. School District of North Beaver Township,*[110] the Pennsylvania court held that a parent who lived in a district which operated only a vocational school could send his child to a nearby district for instruction in an academic high school and that the vocational school district was bound to pay for the child's tuition. The order was made even though it was shown that the child could study academic subjects in the vocational school. The court seemed to think that the vocational school would not afford an atmosphere as conducive to the study of academic subjects as a school which puts major emphasis on such program. In arriving at its conclusion, the court was aided by a state statute which sanctioned the choice which the parent made. It would not be as certain that a court would have approved the parent's request in the absence of an assisting statute. And if there was no statute a neighboring district might refuse to accept the pupil.

In many instances there may be no solution through the technique under discussion because of the distance involved between schools.

There is one type of parental demand which requires special analysis. An objection to a particular course is often made on the ground that the content conflicts with the parents' religious belief. Such objections are pointed at science and hygiene instruction. Frequently a parent may claim that a Bible class constitutes sectarian education.

In actuality, the largest percentage of parental objections to specific courses do raise the religious conflict issue. Most school boards and courts (and, indeed, a number of statutes) are very liberal in their recognition of the validity of the objection. A study of the cases will not be presented in this article. The philosophy which controls will be covered in another discussion in this symposium.

CONCLUSION

Because of the variation in legislative provisions pertaining to state control over curriculum and textbook selection, it is somewhat difficult to summarize. It does seem, however, that for the most part the supervisory control of the state has not been unreasonably arbitrary. There is, of course, opportunity for improvement in the attitude of some jurisdictions.

[110] 141 Pa. Sup. 401, 14 A. 2d 855 (1940).