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Higher education came into the 70's with a certain number of built-in inequities. One often hears the question: "Can we really legislate attitudes on the part of institutions and individuals, especially, to remove inequities?" To me, this is an old and familiar question, since we heard precisely the same question when we entered the 60's with American society still characterized by built-in structural inequities in the case of most minorities. I can remember even a President of the United States saying: "What this really needs is a change of heart and that can't be legislated".

The fact is that we did remove many inequities in the 60's, maybe not in hearts, but at least through new structures. And we did it by legislation. Not just by any kind of legislation, but legislation that was effective, that had teeth in it.

Memories tend to be short so I will illustrate. For over 200 years in America, blacks had not been allowed to use the same public facilities and accommodations as whites. This was true of hotels, of trains and buses, of drinking fountains, restaurants, rest rooms, beaches, cemeteries, movie houses, etc. These restrictions were a built-in part of the life, mores, and century-old customs of all of the Southern and border states, and there were similar practices in many of the Northern states. If one had waited for a change of heart, we would still be waiting. But despite the enormous pressures in the opposite direction, this whole cultural situation was changed in one single day by one single piece of legislation.

As mentioned above, it was not just ordinary legislation, but legislation with sanctions built into it. The Federal Civil Rights

Act of 1964 specified that whatever service was provided for the public had to be provided for all the public, not just the white public. The sanction was very simple. Either facilities and accommodations that were open to the public would be open to all the public or they would be shut. Curiously enough, practically none were shut, except a chicken restaurant in Georgia run by the future Governor of that State.

One could legitimately ask, "How did this happen so easily?" One reason I suspect was that the time was ripe. Everyone understood the inequities of the past situation when a dozen times every day a black citizen had to face insult and indignity, to be reminded that he was inferior, not a full-fledged citizen, not a real part of American society. No one person, no one institution could change this situation, no leadership no matter how strong in the Presidency or in the Governor's office or in the Office of the Mayor of a large city could change it. Only one thing could change it and that was federal legislation that would affect the whole country and that would have enough built-in sanctions to make it effective. Such legislation was passed in 1964 and the situation changed overnight.

One may argue whether or not attitudes were changed along with the customs and practices. I would have to admit that perhaps hearts were not really touched, but there must have been some over-all consensus in the hearts of men that allowed this to happen peacefully, effectively, and immediately once the law was passed. The very fact that the law could be passed also says something about

the mentality of the moment and the fact that attitudes were ready to be changed, at least insofar as their practical applications were concerned.

Some other changes of practice by legislation could be noted in regard to voting, education, housing, employment, and the administration of justice. It would perhaps take this discussion too far afield to go into each of these areas in detail, but the simple fact is this: There were widespread inequities in each of these fields. They were accepted, practiced widely, and no one individual person or locality or state had much of an intention to change the inequitable situation. However, the situation in each of these areas was changed and changed quite effectively once there was legislation to the contrary. Some situations took longer than others to change and some are still in the period of transition, but the thrust of change is clear and the motive for change was legislation in every case. I should also have to add that legislation in many cases is also educative. It not only indicates what must be changed, but why. I believe that too often we denigrate the law and underestimate its value as an educator. Once the law is operative and effective, it also educates by proving wrong all of the previous myths that said, "It can't work". Once it does work, you have a better argument: Contra factum non datur argumentum, "It's impossible to argue against a fact".

Curiously enough, it was in the field of education that change was most difficult, even after legislation had been passed.

It was declared in the Brown case in 1954 that the dual system of black and white education in the South was unconstitutional and must be changed. Ten years went by with only 3% change throughout the Southern states. Then again in the Civil Rights Act of 1964, there was included Title VI which stated that unless action was forthcoming, federal funds would be cut off from the educational institutions in the South which did not follow the mandate of the Brown decision of the Supreme Court.

Again sanctions did what a judicial decision by itself could not do. And the sanctions had to be part of the legislative process. Title VI of the 1964 Civil Rights Act, after only five years of operation, was able to integrate about 40% of the formerly dual school system in the South, and the next year raised the average to about 70%. In five years, good legislation with built-in sanctions was able to do what a decision of the Supreme Court of the United States was unable to do in ten years.

Again, one can ask whether attitudes were changed, but certainly the change took place and those who are close to the situation perceive a great change in attitude over the ensuing years, especially when it was proved by demonstration that integration could work and did have values that were lacking in the former dual school system. One should perhaps say at this point that the South has made much more progress in this area than the North where refuge is taken in a de facto situation which strives to elude the clear mandate of the 1954 Brown decision, which spoke primarily to a de jure situation. This is a

dubious distinction at best, since the action of the Federal Government deeply affected the housing situation in the North which led to segregated schooling for the majority of whites and blacks. Again, I believe that legislative leadership is needed to accomplish in the North what has in larger measure been accomplished in the South.

In the field of higher education, enormous progress was made during the 1960's. In the beginning of the 60's, there were many state universities in the South that did not have a single black student and I can recall the time when we established in a hearing of the Civil Rights Commission in San Francisco that there were only 29 Chicano students in the whole of the University of California's Berkeley campus. Everyone can remember the crisis of Autherine Lucy at the University of Alabama and James Meredith at the University of Mississippi. Somehow that seems light years away and even somewhat silly, but the fact is that these students were the first of their kind to integrate what was formerly an all-white campus. Again, it was the law that made the difference. Once the law clearly threatened to withhold federal funds, there was massive integration throughout the institutions of higher education in the South, and today there are literally thousands of students throughout the region enrolled in institutions which formerly did not have a single black. As to the Chicano experience, at one point a few years ago there were more Chicano first year law students at UCLA than there were total Chicano lawyers in Los Angeles County.

Again, law led the way and whether or not it changed attitudes, it certainly changed practice and performance.

Today we are facing an entirely new situation in higher education wherein the inequities are not so much in the student body as in the staff, and affect not so much minorities among student bodies as minorities in staff and faculty appointments. There is also one great new dimension. While women are not a minority and, in fact, are a majority in the population at large, they are an enormous minority on the faculty and staffs of our universities, especially in the higher echelons. Once again, one might ask whether or not the law can bring some relief to the situation. In fact, the situation is more and more covered by the Civil Rights laws and Executive Orders. Only last year sex was made one of the additional concerns of the U. S. Commission on Civil Rights, in addition to race, religion, color, and national origin. However, the largest stick in this area at the moment is Executive Order 11246 which clearly prohibits any discrimination in employment on account of sex.

A few short years ago, these laws began to be implemented by inquiries from the Department of Health, Education, and Welfare. Everyone has heard of the initial inquiries at the University of Michigan which were followed in quick order by others in Wisconsin and a whole series of Midwestern universities, including my own. The East Coast did not escape either with great concern being voiced at many universities, particularly Columbia. Once again, the

question arises: "Can this problem be solved by legislation?" Most of the legislation is already existing. The question is: "Can it be enforced?" Here again I must fall back on my fifteen years experience as a member and latterly Chairman of the U. S. Commission on Civil Rights. It is not enough just to have legislation. The legislation must have teeth and the teeth must bite. Enforcement is the real key to the effectiveness of legislation. Where there is effective enforcement, and especially the use of the means of enforcement included in the legislation, then action takes place and quickly.

I believe that in the matter of assuring women and minorities an adequate place on the faculty and staffs of higher educational institutions it will be enormously important that enforcement, as presently sanctioned in the law, actually takes place. Whether it will or not is an open question at the moment. There have been the initial movements and the counter movements by those who feel set upon by the new demands of women and minorities. However, the long range realities, I believe, are in favor of both minorities and women and should be honored as soon as possible. I have no doubt that there will be all of the anguished cries of "quotas" and whatever other code words are devised, but justice is on the side of women and minorities and in the long run I believe they will prevail. Justice is on their side. Personally, I prefer the word "goals" to "quotas" because of the overtones of past inequities in the latter word. But even goals are useless without leadership, energy, and initiative in reaching them.

Let no one believe that this is a simple matter. In the one institution I know best, if 50% of the new appointments were made in favor of women over the next twenty years, we would still only have 22% female representation on the faculty of this institution. The reason is, of course, that we are starting from a very low base, and while any progress is progress, even great progress is not very much in view of the starting position. This makes it even more important that we give serious attention to this matter, whether or not we are impelled by the imperatives of legislation and the sanctions it includes or, more importantly, by the inherent demands of the simple justice that should characterize an institution of higher learning.

Honesty impels me to say briefly at this point that it is an illusion to equate the problems of blacks and Chicanos with that of women. If and when women put their minds and efforts seriously to the solution of the inequalities that exist between themselves and men (not a one-way street), they will make rapid progress in righting the wrongs, as is now beginning to happen. Not so for the deep-rooted inequities that blacks, men and more especially women, suffer. The color problem is far more difficult of solution, far more influenced by deep-seated prejudice than the problem of gender. We must try to solve all problems of injustice in human society, but we had better recognize that while all are not now equal, neither are the problems of blacks and women equal.

Life in higher education would certainly be easier and more decent if one could always assume that justice would be the order of the day and that inequities would be done away with whether or not one were impelled by the sanctions of the law to do so. However, I think the present situation is clear evidence that: 1) A law is needed; 2) it must be accompanied by adequate sanctions; and 3) there must be adequate enforcement of the sanctions to see that the law is in fact obeyed and observed by those very institutions which civilize and, therefore, promote lawful society. Justice does indeed impel us all, but the law sees that justice is spelled out in detail and the sanctions of the law allow us no escape from justice if the law is indeed enforced by those who have the responsibility to do so. Aristotle said that law is intelligence without passion. I would have to add, perhaps more cynically than I would like to, that the earlier strict enforcement of Civil Rights laws seems now to be giving way to myriad forms of evasion which will be practiced to perfection unless administrators with a passion for justice, both in government and in higher education, see that ^{justice} ~~it~~ prevails in our institutions.

I should conclude with my personal conviction that law can indeed change attitudes if it is good law, administered by good men and women. These persons, whoever else they may be, must also and always be the chief academic and administrative officers of our institutions of higher learning. One can never

be absolutely certain of leading, or of leading wisely, but the path is clear today if one is determined to lead justly. One must only and simply follow the law and help it work. If it does, and it can, then attitudes too will change.

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Headquarters:
One Dupont Circle
Washington, D.C. 20036

PANEL 7 BACKGROUND PAPER
Friday, October 12, 1973
9:00--11:00 a.m.

LEGISLATING ATTITUDES

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Basic question: to promote justice

How / law-by all means

Attitude - agreeing with intent of law, would be helpful

+ title gg = interesting - long debated - not my choice

Law = historically = did achieve justice in '60s
situation - quickly forgotten - but bad

How done = Law w/ sanctions - federal ^{done} ~~didn't~~ didn't - 54-64

Law - affected all states - all states + N + S.
Σ + W
all states have

Attitude - was changing '64
Chicken-egg
Law was passed in '54

Att. post Law - often changed by experience
dis predictions didn't happen
if all change at once

Educ - Brown - 10 yrs 37%

1964 law - 5 yrs 20%

H. Educ - similar - old fights seem light yrs away

Enforcement imp - sometimes w/o results -

Fac. Challengers { few opening - Blacks + women - Tennessee
Quotas - Goals - code words - realism
Admission - esp Blacks - imp - yardstick