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# BOOK REVIEW

## *ANTIBIAS REGULATIONS OF UNIVERSITIES*

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The views expressed in this article are those of the writer and not necessarily those of the Institute for the Study of Educational Policy nor the *Black Law Journal*.

### ANTIBIAS REGULATIONS OF UNIVERSITIES

When reasonable men can disagree on controversial topics and each has made valid and cogent points, then civilization is advanced. Ideally, such scholarship should be commonplace within the academic community. Thus, when the Carnegie Commission on Higher Education commissioned Dr. Richard A. Lester of Princeton University to prepare a report on antibias regulations in higher education, it was anticipated that a scholarly discussion of this controversial topic would follow. For serious students of higher education, Dr. Lester's book can best be described as a singular disappointment, not because of the position he has taken, but because of its inconsistencies and lack of scholarship. The distressing but inevitable conclusion to be reached based on this book is that, even among those who should be the intellectual leaders of American scholarship, controversial topics, such as affirmative action and antibias regulations, cannot be treated with dispassionate reason. When learned men cannot employ reason to discuss a controversial topic they doom us to repeat, rather than profit from, our mistakes.

The case that Dr. Lester makes against antibias regulations and affirmative action as presently implemented is so weak that it cannot be taken seriously by thoughtful readers. Because of his book *Antibias Regulations of Universities*, we are literally forced to conclude that an adequate defense of current faculty recruitment practices has not only been made, but indeed may not be possible. Moreover, in his attempt to defend what may well be indefensible, American scholarship, not affirmative action, is the loser.

In *Antibias Regulations of Universities*, Richard Lester attempts to

persuade the reader of three things: first, antibias regulations and affirmative action are a threat to the unquestionable professional integrity of higher education's search for, and contribution to knowledge and truth; second, that the white men and women who comprise over 90% of all teaching faculty in the United States are overly sympathetic to the elimination of prejudice from faculty employment; and third, that the villain in the piece is the myriad state and federal agencies, especially the United States Office for Civil Rights of the Department of Health, Education and Welfare that enforce equal employment opportunity requirements. Of these, the first is untrue; the second, even if true, is irrelevant; and the third, to the limited extent that it is valid, cannot alone support Lester's overall condemnation of antibias regulations and affirmative action.

### *Affirmative Action and The Integrity of the System*

Lester begins by presenting an idealized model of how teaching appointments are made by faculty committees unbiasedly seeking the best possible candidates. Diversity of race, sex, and religion is important, he tells us, primarily for student-faculty relationships and role models, but not for the quality of research and academic excellence. In so doing, Lester discounts completely the educative process that prepares diverse groups and the unique intellectual contributions and criticism made by minorities and women in shaping American thought. His view also presumes what is patently false—either that diversity of perspective is unimportant to scholarship and the growth of knowledge, or that perspective is totally independent of differences in experience and environment attributable to one's sex or minority group status.

Throughout the book, Lester draws the distinction between what he regards as the appropriate recruitment practices for nontenured and tenured positions as crucial for the preservation of American scholarship. The nontenured positions are characterized as those used by a university to bring in educators of unknown or unproven potential. Minority educators according to Lester, tend to fall into this category. Tenured positions, however, are those used by universities to hire educators of known potential and excellence. Few minorities would qualify for these positions, Lester tells us.

The appropriate recruitment practices vary as a function of whether the position to be filled is tenured or nontenured. Anti-bias regulations, in Lester's view, and affirmative action are appropriate only in the selection of nontenured faculty, for which less discriminating judgments are sufficient. Poor faculty selections, the natural outcome of affirmative action in Lester's view, can be more easily tolerated by a university in nontenured, rather than tenured, teaching ranks. Tenured faculty selections, on the other hand, must be made with great precision and care which, Lester tells us, is not possible, if they are made subject to antibias regulations. In describing how faculty search committees fill tenured positions, Lester presents an idealized version of what is, once the rhetorical trappings are removed, little more than an "old boy" system. Allegedly, designed to perpetuate the high standards of American scholarship that all educators value, in fact the system merely perpetuates the *status quo*—the exclusion of minorities and

women from top level teaching positions. Moreover, it relegates Blacks and other minorities to the position of second class citizens within the higher education community.

The relatively low rate of advancement from nontenured to tenured positions at most universities reported by Lester himself (p. 24) simply underlines the exclusionary effect of limiting minority recruitment to nontenured positions. His own data support the need to expand, rather than limit, recruitment activities for *all* faculty positions to include those highly talented minority educators likely to go unnoticed by college appointment committees.

The premise of Lester's recommendation is that the current recruitment system, drawing for the most part from the white male pool of potential faculty members, works successfully. Ironically it is Lester himself who tells us that this isn't so. The current system, he says, has produced too many low quality educators who represent costly selection "mistakes" in both tenured and nontenured appointments. The obvious solution is to revise recruitment practices and selection criteria to expand the availability pool to include Blacks and other minorities. Not surprisingly, Lester rejects this, arguing that an expanded recruitment effort will automatically increase the number of poor appointments. Considering the small number of minority Ph.D.'s nationally, however, and the small likelihood that one university will hire all of them, Lester's fear of the increased cost of "mistakes" in the appointments of Blacks is a bit of a red herring.

More importantly, unless one accepts Lester's unspoken premise that Black doctorates as a group are less able than white doctorates, there is no reason why opening tenured positions to minorities would inevitably increase the number of poor appointments. Indeed, integration in other areas indicates that minority staff are more likely to be overachievers. They are under pressure to "prove" their worth in sometimes hostile work situations; yet those who can and do endure the hostility and distrust are numerous. The achievements of Blacks as teachers and researchers in traditionally Black colleges and in predominantly white colleges hardly support Lester's dire predictions of the demise of academic excellence.

Of course, "mistakes" in the appointment of minority and female faculty will undoubtedly be made, as they have always been made in the appointment of white male faculty. But Lester's use of highly questionable speculation to discourage antibias regulations and affirmative action is hardly justified. Indeed, if "mistakes" already being made in appointing white faculty members are as frequent as Lester claims, it would seem that university selection committees, which are presumably composed of reasonable men and dedicated scholars, would welcome, rather than resist, the opportunity to review and evaluate their selection procedures. The procedures obviously need improvement, regardless of antibias regulations, if the number of "mistakes" is to be reduced.

Under certain conditions expanding the teaching pool may be absolutely necessary, as when new courses of study, such as Black Studies programs, are added to the curriculum. In his discussion of the hiring of Black faculty for Black Studies programs, the same recruitment practices

which Lester found acceptable in hiring all other faculty were used, yet Lester charges "reverse discrimination." Because double standard is distorting his analysis, the reader is led to the irresistible conclusion that it is nondiscriminatory to use Lester's preferred selection and recruitment processes only when whites are to receive the benefits of it, but it is discriminatory when Blacks are the beneficiaries.

The integrity of Lester's position rests in part on the criteria he recommends for the selection of nontenured and tenured faculty. Unfortunately, Lester's recommendations lead one to wonder whether their purpose is to advance American scholarship or thwart integration of college faculties. Each of his recommended qualifications for nontenured positions (p. 33), though racially neutral, tends to have a greater adverse impact on minorities. What Lester does not state is that the opportunities to meet his narrowly drawn qualifications for faculty positions are simply not available to the vast numbers of talented minorities. Their opportunities have been especially limited by financial barriers and racial prejudice.

For example, the primary criterion for junior faculty Lester proposes is their early research productivity which for Blacks is lower than for whites of the same age. The cause of this disparity is a matter of economics more than intelligence or competency. Primarily because of financial barriers, most Blacks cannot complete their doctoral training immediately after undergraduate or Master's training; work full-time while going to school part-time; and have fewer mentor relationships with major professors. As a result, they tend to be older doctoral candidates, beginning their productive period later in life. It would be fairer and more accurate to look at Black achievement between the ages of 35 and 45 and even older, rather than during the earlier period Lester suggests.

Because Lester recommends entry into tenured positions only from nontenured positions, and then sets nontenured selection criteria with an exclusionary racial impact, his position is untenable. It calls to mind not only Joseph Heller (*Catch-22*), but also Alexis de Tocqueville (1835), who observed over 100 years ago that America forces its Blacks to be bootblacks, then turns and blames the Blacks for what they were forced to become.

Later in his book, Lester concedes that only limited opportunities exist for Blacks to gain research experience, but then goes on to blame, not the many white colleges that have actively discriminated against Black students who wanted research careers, but the relatively few Black colleges because they have stressed teaching!

In light of student complaints about the quality of instruction they have received at the major universities, and in light of the public criticisms questioning the social value of the research performed at the same universities, one should seriously question teacher selection criteria that emphasize research over teaching competency as Lester does. Business as usual just will not suffice; the track record of these selection criteria and the selection processes themselves are not unblemished. Were not educators taught anything, one can ask, by the agonizing and embarrassing lessons of the '60's and early '70's? Are not educational institutions educable? Can centers of learning not learn? One senses in Lester's book an attempt to

obliterate the lessons of the 1960's and 1970's in the name of intellectual excellence and institutional integrity. But excellence for what and integrity for whom?

### *Liberalism on Campus*

The assertion of liberalism among college faculties when self-interest, rather than abstract social ideals, are involved is simply not supported by the data. Lester asserts that the white men and women who predominantly comprise the faculties of the nation's colleges are overly sympathetic to the elimination of prejudice in faculty employment. A faculty survey by Bayer (1973), which Lester himself cites, reported that 68% of the male and 58% of the female faculty in universities did *not* favor preferential hiring for women in faculty positions at their institutions. Bayer also found that 65% of the males and 64% of the females did *not* favor preferential hiring for racial minority group members. This hardly constitutes an overwhelming sympathy for the elimination of prejudice in employment at their institutions, especially through affirmative action. The results of the survey do suggest, however, the level of resistance—both passive and active—that Blacks can expect to encounter when they are hired through affirmative action processes, a conclusion supported by Moore and Wagstaff (1974) in their study of Black educators on white campuses.

In any event, faculty liberalism is not determinative of the need for antibias regulations in employment. Whether or not campuses are liberal is irrelevant, for the critical issue is faculty positions, not love and moral support. Although Lester may have ignored it while writing this book, our society has gone past the primitive time when racial animosity and deliberate intent were thought to be necessary elements of discrimination, and racial love and friendship the prerequisites for integration. Even one who truly loves Blacks—one whose best friends really are Black if you will—can discriminate, however innocently, by using the invalid selection criteria and recruitment practices that have an exclusionary impact. The relevant question, therefore, is not the question Lester raises, whether white faculties are prejudiced, but the one he ignores, whether faculty selection and recruitment practices that tend to exclude minorities are necessary and valid indicators of future successful performance on the faculty.

In his final effort to demonstrate that racial discrimination has significantly declined in faculty hiring under the present recruitment system, Lester reports the changes in percent of Black faculty from 1968-69 and 1972-73. In all universities in the United States, the proportion of white faculty went from 99.5% in 1968-69 to 99.1% in 1972-73 in all universities, a change of only 0.4%. In four-year colleges, faculties went from 95% white in 1968-69 to 94.6% white in 1972-73, also a change of 0.4%. And, in two-year colleges faculties went from 99.3% white in 1968-69 to 97.9% white in 1972-73, a change of 1.4%. In all institutions combined, the total percent of white faculty fell from 97.8% in 1968-69, to 97.1% in 1972-73, a decline of 0.7%—less than 1%. *It should be stressed that these figures include traditionally Black colleges which have majority Black faculties.*

All white higher educational institutions, whether two-year or four-year, college or university, have overwhelmingly white faculties, and insignificant

numbers of Black faculty. To state, as Lester does, that there has been a great expansion of Black hiring between 1968-69 and 1972-73 is to misrepresent completely the actual situation. The figures cited above dramatically illustrate the immediate need to redress this unconscionable situation.

### *Federal Intervention*

Lester describes the potential and actual confusion arising from the number of public agencies investigating employment discrimination—the number of which should be reassuring to potential complainants. Unfortunately, his discussion does not distinguish between the many agencies with only investigative authority and the far fewer ones with actual enforcement power. Moreover, his discussion exaggerates the suggestion of chaos because he does not acknowledge the presence of any coordination among these agencies.

Lester points out the need for coordination among employment discrimination agencies and for uniform standards in investigation and enforcement. The statistics he presents support his contention and that of civil rights advocates as well, that the enforcement of civil rights laws is inconsistent.

Lester argues that HEW guidelines are appropriate to nontenured, but not tenured positions. His conclusion rests on the assumption of only one availability pool, i.e., new Ph.D.'s for all positions, despite the fact that HEW guidelines allow an institution to identify its separate availability pools for tenured and nontenured positions. Under these guidelines, the institutions themselves determine the size of the availability pools and set goals.

Research is long overdue in conceptualizing and quantifying availability pools appropriate for tenured and nontenured positions in each field. The objections Lester raises to the affirmative action guidelines have yet to be discussed as research problems. Although research competency and productivity are the primary criteria for faculty positions in Lester's view, the use of these critical skills to solve the conceptual and enumeration problems of antibias regulations and affirmative action within the higher education community is conspicuously absent from this book.

In his arguments against affirmative action guidelines and goals, Lester states that both supply and demand figures are inflated, and that goals are thus unattainable. Demand inflation occurs because by being required to publicize all vacancies, there is an unwarranted assumption that all positions will be available to minorities. Thus, the need for minority educators is greatly exaggerated. What Lester describes as demand inflation, however, is merely a prejudgmental statement that all positions available will *not* be filled by minorities.

Similarly, the supply inflation occurs because all minority Ph.D.'s are included in the availability pool without proper screening for "amount and quality of developmental experience" (p.79), according to Lester. In other words, supply is inflated because the small number of Black Ph.D.'s who are potential faculty members must be discounted in some way unlike their

more numerous white counterparts.

Lester's comments on the need for increased sophistication in HEW data collection, validation, and analysis are well taken. When HEW has developed such capabilities, the spurious arguments such as those raised in this book may be silenced once and for all.

Lester goes on to warn us of the dire consequences of affirmative action, especially in regard to personnel records. His discussion here is highly colorful and speculative. Because amelioration of past discrimination in other employment situations has not led to such a dire course of events, it would be instructive to know how Lester arrived at this conclusion.

More importantly, Lester fails to mention the constructive role that any university administration should assume when discrimination may be at issue. He does not tell us how administrators should set examples to avoid petty bickering and open hostility among staff, nor does he mention how they can eliminate those discriminatory practices that precipitated the problem in the first place. The use of the American Arbitration Association's National Center for Dispute Settlement which Lester recommends may well lead to speedier and, perhaps, less costly resolutions of discrimination charges. Arbitration, however, does not replace the need for creative leadership by university administrators, nor relieve them of their legal responsibility to eliminate discriminatory employment practices.

Lester complains that the staff of the Department of Health, Education and Welfare Office for Civil Rights (OCR) is, in essence, stacked against the universities because of the "large numbers of women and minorities" on staff who are inexperienced, overpaid and insensitive to the problems of higher education (pp. 105-107). The implication is that these biased federal agents are doing unnecessary damage to higher education by pressing for the rights of their own groups regardless of the needs of the higher education community. It is interesting that when minorities and women are in decision-making positions, as in OCR, Lester seems to question their ability to be fair and reasonable. No such concern was raised in his discussion of university faculty search committees which are predominately white and male. The reader is left with the impression that had the staff of OCR been majority white and male, neither sex nor race would have been used to discredit their decisions.

Regarding the inexperience of OCR staff in higher education, Lester answers his own criticism, (p. 107) by pointing out that all personnel received inservice training throughout their periods of employment. It should also be noted that OCR attempts to recruit personnel with experience in higher education.

Lester's implication that OCR, in effect, deliberately attempts to hire slow staff either hostile to or ignorant of higher education does a serious disservice to the otherwise valid points he makes regarding the administration of antibias regulations in higher education at the regional level. His comments on the weaknesses of regionally administered national standards for example, are well-taken. Whatever is gained by having staff who are familiar with a region's characteristics seems to be lost in the inconsistency in practices across regions. But this problem is not the product of some misguided or hostile incompetent in OCR, nor is it unique to higher



education compliance. Rather, the push toward regionalization was an outcome of former President Nixon's desire to decentralize the federal bureaucracy. To blame OCR for this state of affairs is to ignore the truth of the matter.

Finally, Lester proposes a system of data collection and reporting that supports a highly circumscribed affirmative action program limited to nontenured positions. His recommendation for data collection is noteworthy for what it excludes: hiring goals for tenured faculty positions; aggregation of tenured hiring goals and actual hires by race and sex; hiring goals reported by department; terminations reported by rank, race, and sex; and a record of the university's equal employment officer involvement in recruitment and hiring for nontenured and tenured positions.

### CONCLUSION

*Antibias Regulations of Universities* gives almost total credence to the fears and prejudices of white male educators, with stereotype views of Blacks and women as intellectually deficient and unproductive. Moreover, the book assumes without discussion that the current selection and recruitment procedures of the overwhelmingly white male faculties are superior *per se* and that their perpetuation should be uniformly desired by the minorities and women. In addition, this book denies that minorities and women are human beings with equal capabilities for research and teaching excellence and virtues and strengths of their own.

Lester's attempt to pass off unreasonable and unsupported speculation as a serious discussion of a controversial topic is unworthy. The reader is left to wonder whether a reasonable argument against antibias regulations and affirmative action can be made at all, especially by those most likely to be affected by it.

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