1960

Book Review (reviewing Julius Cohen et al., Parental Authority: the Community and the Law (1958))

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on phases of state constitutional law renders it a disservice. The book is fit for the task of cumulating references where comparative provisions of various state constitutions are to be examined—its maximum value is in quickly identifying the sources to be examined.

Vincent Eugene Fiordalisi


It is an often noted point that today the law school world is once again in a period of enthusiasm for joint research with their colleagues in the social sciences. The evidences are many and familiar from the large scale projects at Pennsylvania, Chicago, Yale, Columbia, Michigan and elsewhere to the presence of lawmen at the Center for Advanced Study in the Behavioral Sciences at Palo Alto. This time there is reason to hope that the marriage will last and that the difficulties of past efforts, which were due in large part to a "flight from law," will be avoided. If, however, work of this sort is to have durable impact on law, it is imperative that there develop a corpus of interdisciplinary materials which can be seriously studied, which can, that is, be subjected to the disciplined scrutiny and analysis that is made of more traditional law material. It is already too late in the day to philosophize about the potential in interdisciplinary work. If the proof of this pudding is to be in the eating, it is obviously necessary that there be a pudding. Because of the care with which this study was designed and executed, because of the importance of its central theme, and because it is reported out with such full disclosure of method and result, Parental Authority ranks as a substantial contribution to an emerging literature. It will have an impact not only on the teaching of family law, but perhaps even more on the study of jurisprudence and legislation.

The study has a clean cut, well defined and important purpose: to take an area of law and to match it against an empirical inventory of public opinion, or, as the authors prefer, an inventory of "the moral sense of the community." They have done this for some seventeen points of family law for the community of the State of Nebraska. Their report is a model of full disclosure: they have told us exactly what they did, why they did it and exactly what they found. The result is a solid example of community sentiment vis-à-vis law. It will occupy a prominent place in future discussions of the role of community opinion in shaping law, a topic which, as the authors properly note in Chapter I, is a favorite among legal scholars for discussion but not for serious research.

The work was completed while Professors Cohen, Bates and Robson were members of the faculty of the University of Nebraska. It is, I think, most significant that this marks the second impressive empirical law study that Nebraska has executed in recent years—the first being Fred Beutel's study of bad checks. Both studies were completed under very modest budgets indeed—Parental Authority is said to have cost only $11,500. Since the high dollar costs of modern social science research remains one of its most

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puzzling features, these studies are of major value in showing how financially modest research can be designed.

Although in form a conventional opinion survey, *Parental Authority* shows several striking characteristics in interviewing technique. First, the authors were able to recruit and train a group of college students as interviewers, and the brief account of the sixty-hour training course devised is impressive indeed. Again, the interview schedule itself is interestingly aggressive. The questions were put simply but rather extensively, with care being taken to suggest competing advantages and disadvantages to legal control in each instance; the factual circumstances were varied by subquestions so as to provide a more rounded view; and finally the interviewer summarized the respondent's view as a check and then asked him for his reasons for holding it. Thus, in a lively intensive fashion they were able to interview some 860 respondents who appear to have been an appropriate sample of the Nebraska community and to cover some seventeen legal issues in interviews requiring only one and one-quarter hours on the average. It is a sign of the success of the method that only twenty-six drop-outs are reported.

Three results seemed to me particularly impressive. First, that on the issues of law which were matched against the community moral sense, in ten instances the dominant view was in disagreement with the law and in only five was there agreement. Second, that the effort to locate separate publics by use of such background criteria as age, income, education, religion and whether respondent was a parent or not proved unsuccessful. Quite surprisingly, as the authors point up, the opinions across these groups were homogeneous and those who agreed with the law did not differ in terms of such characteristics from those who disagreed. Third, unlike the law which treats a person as either a child or an adult, the community seemed to recognize the period of adolescence and to favor a more gradual emancipation of the child. And beyond this there is an arresting chapter in which the reasons the respondents gave for their preferences are matched with the law.

Does the book then provide a persuasive exciting example of the utility of this type of research for law? I find myself neither fully persuaded nor excited and for a variety of reasons. The first set of difficulties relates to the survey method in general more than to the authors' use of it. By and large the authors have surmounted most of the difficulties of opinion research. With one important exception to be noted below, the questions were not ambiguous and there is little reason to believe that they did not tap the latent opinions and sentiments of their respondents. The nature of the interview insured that they did not collect the casual transient response. However, as they readily admit, they did not probe for either the intensity or the salience of the opinions. Further, as Chapter VI indicates, the respondents frequently gave reasons for their views which the authors classify as "tautologies"—which seems to be symptomatic of the anemia of the moral sense which is being harvested. However, in one of the most engaging passages in the book the authors argue that the frequency of tautologies means simply that most people, in a survey or out, tend to justify moral preferences this way.
Also, the failure to elicit separate publics is not persuasive. One cannot but wish that they had made three modifications of their design and analysis at this point, although they were deliberately aiming to keep costs down. First, that they had followed more closely Stouffer’s *Communism, Conformity, and Civil Liberties*, which they appear to have admired, and attempted to scale respondents on some general axis of parental control. Second, that they had attempted cumulative use of background characteristics to test whether certain combinations of age, income, etc., did not discriminate. And third, that they had added some additional characteristics such as respondent’s experience as a child. It would have been of particular interest to learn whether the respondents had ever had personal experience with the various issues raised, such as disinheritance, support of elders, etc. Again, it would have been of interest to learn something of the logical pattern of the preferences. How did people who favored permitting disinheritance, for example, feel about depriving a child of a college education? It is of course all too easy to suggest additional complications for other people’s research and such comments here should not obscure how well the authors did what they set out to do. But one elegance of the Stouffer study was the use of an elite group against which to compare the general public and some similar device would have enriched the results here.

All these points perhaps go to a single difficulty with opinion research in general, namely that the opinions are so bland in the end. If we are to be seriously concerned with gaps between the community moral sense and the law, we must know more about the emotional force and color of the community sentiment than the current survey can tell us.

Other sources of difficulty stem from the law side. It is widely thought that community preference on legal issues tends to follow what people think the law is. It would have been most interesting to find out what the respondents thought the law was on the various issues and whether they were conscious of disagreeing with it, or to find another community with different legal answers on some of the points in order to see whether the difference echoes in the opinions. However, since on several issues the legal answer was overwhelmingly rejected, the authors might claim with some force that their results tend to show that the community sentiment does not mechanically reflect the law.

A more substantial difficulty for me is with the area of law selected. With few exceptions, although I am deeply ignorant on the points selected, the issues do not appear to raise serious issues of justice around which genuine moral sentiments might gather. And in any event it is quite striking that all the explicit law needed for the book is contained in a terse four pages in the appendix. What is missing then is the sound of legal debate on the issues. I would gather that there is little serious controversy either in or out of law on the test issues.

Again, since a main point of the study is the existence of a large gap between the law and the community, it is difficult to know what “law” means on several of the issues. And the authors appear to count the minimum age for marriage and for requiring parental consent as deviations of sentiment from law simply because the exact legal ages were not favored by a
majority. In brief, I would suspect that the gap on the ten issues would appear less impressive on close scrutiny although it assuredly would not disappear.

It is here that I find a serious ambiguity in several questions. Take the issue of denying a career choice or a college education to the child. What would legal control of parental authority in this area mean? That the child would sue the parent to compel him to permit the child’s choice? I think there is a risk that most respondents did not have in mind a clear image of what legal intervention would entail, and therefore, took the question as asking whether the parents should be allowed to curtail the child’s freedom of education or career. Hence the answer might indicate only that the respondent favored the parent letting the child follow his own choice, but not that he favored a court compelling the parent to do so.

Just as the book seems to me to fall short in fusing discussion of legal policy with community sentiment, so also does it seem to fall short of matching pre-existing sociological theory about the family with the community view. In brief, as was also true of the Stouffer study, there is no pre-existing analysis of the issues on which the researcher has gone to the community. To put this perhaps over-harshly, there is a suggestion throughout of a method in search of a problem.

A further observation goes to the peculiar problems of exposition that are created when one attempts to present empirical data to a legal audience. The book is clearly and in many places well written, and it is carefully organized, but it suffers from a too flat and literal reporting out of the research design, a weakness which the Stouffer study, despite an effort to be journalese and popular, also shares. The most interesting chapters are the first and the last which are straight essays relieved of the burden of data. The most difficult chapter is V, where the small differences that the background factors produced are reported out in laborious and intricate detail.

The ideal in this area is the ideal of the continuous literate essay of ideas where the points are documented empirically. Parental Authority, in spite of considerable clarity and elegance in writing, indicates how supremely difficult it is to reach the ideal.

There remains then the ultimate question of just how such documenting of community sentiment is to be used in the law. The authors prudently abstain from advocating a position other than to insist that if it is relevant, it is better to ascertain it as carefully as possible than to guess it. Here, although not without some perplexity, I would agree fully. The community moral sense does seem to me relevant to a judgment of the law although it is not easy to say exactly what its role is. Professor Cohen’s exploration of these themes in the opening chapter is attractive, but I wish he had held his speculations until he had had the data of the study reported behind him so he could have dealt more directly with it.

To sum up, I admire the book and I am very glad that it exists. It is truly a pioneering effort. It will provide an admirable diet for all of us in law schools to chew over as we continue to pursue the elusive theme of the relation of the community’s sense of justice to its law.

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