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Book Reviews

THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION. By Jennifer L. Hochschild. New Haven: Yale University Press, 1984. Pp. 263 \$27.00

*Reviewed by Donald H. Layton**

In the last three decades no issue of public policy has dominated American education more than school desegregation. Initially the issue of school desegregation appeared to be largely a Southern one, evoking the imperative to eliminate patterns of *de jure* segregation of pupils in the school of that region. But after the courts set forth principles and guidelines to shape school integration in the South, the jurists turned attention to racial patterns of school attendance in the North. As Boston and other Northern school districts amply demonstrated, the goal of achieving school desegregation was often more difficult and local white populations more intransigent than had been the case with most Southern integration efforts.

The issue of school desegregation has clearly been enticing to political scientists, sociologists, and other social scientists as well as to journalists and educators. Dozens of volumes and hundreds (yes, thousands) of articles have been written about various facets of school desegregation efforts in America. Researchers have probed seemingly all conceivable facets of this manifestation of the "American dilemma." The result has been a plethora of studies—from individual case studies of how school systems succeeded or why they failed in desegregation efforts to thoughtful explorations of the deeper meanings and consequences of race and racial prejudice in American life.

The New American Dilemma: Liberal Democracy and School Desegregation belongs more to the latter genre of American scholarship. It is a synthesis and interpretation of our total national experience with school desegregation on the scale of few previous studies. The book is also a call to action for those who share the author's concerns about equity and fair play in public education. The author, an assistant professor of political science at Princeton, wants the nation to come to terms with the evils of racism in American education and to act decisively to eliminate those evils.

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Yet Jennifer Hochschild's book is far from a simple-minded polemic against remaining vestiges of racism in public education. Rather it is a thoughtful and probing analysis of varied school desegregation experiences in America since the historic *Brown v. Board of Education* decision. These experiences are examined in the context of American political values. One of these values is liberalism, "the guarantee by the state that all citizens can enjoy the Constitution's promises, regardless of whether other citizens want them to or not" (p. 199). Another value is popular control or democracy: "citizens are sovereign, . . . government action is shaped by citizen preference (usually defined as majority rule)" (p. 199). Hochschild points out that these two values need not conflict but in matters of race they do.

In its response to pressures for change, democracy generally favors incrementalism. "Incremental policy-making occurs when governments change existing policies and practices in small steps." (p. 9) Popular government rarely sees fit to "rock the boat" to any significant degree. Where local officials (rather than the more independent courts or federal officials) have had to address school segregation, their approaches are invariably incremental.

One of Hochschild's most compelling arguments is that, if desegregation is to succeed, it is far more likely to do so when it is imposed in a nonincremental way. Among other things, this means that desegregation should be implemented at the metropolitan area level. Further, it should be carried out without regard to busing and other logistical concerns. Incremental decisions on school desegregation tend to arouse anxieties and fears; people are more accepting of desegregation when faced with an order to do so with their schools and where their chances of changing such an order are nil.

This is a very provocative book. The author has done an exhaustive literature review in preparing for the publication of her study. Her notes, containing hundreds of citations and annotations, extend for almost fifty pages at the end of the volume. Not only has Hochschild consulted the best known and classic research studies on school desegregation, but she has made use of a rich array of census and polling data, general social science literature, and even personal correspondence with key actors and scholars. The author has obviously been a student of desegregation for a number of years and she has been testing out some of her assumptions and conclusions during much of this time.

Hochschild's study has far more theoretical (and thus enduring) interest than most of the treatises that have appeared on school desegregation in recent years. As a political scientist, she has been able to utilize some conceptual lenses that enhance her treatment of the topic. Not only are Hochschild's expositions on the linkages of school desegregation with

liberalism and democracy lucid and her treatment of incrementalism insightful but her treatment of racism in American education is most useful. She surfaces the ambiguities and complexities both white and black Americans feel (and sometimes express) on matters of race. Her skepticism that racism and its sinister consequences will be eradicated through incremental policymaking is well founded.

Criticism of this book relates as much to the nature of school desegregation and school desegregation research as to the author's sins of commission or omission. School desegregation is an intensely controversial subject, and it is not surprising that research about its successes and failures is not easily described, let alone quantified. The process of school desegregation is extremely complex. Further, studies of school desegregation are at best a mixed bag, reflecting differing agendas, motivations, and purposes of researchers. How one sorts out fact from opinion and the generally true from the generally false pose a great challenge with respect to school desegregation.

Given these circumstances, it is hardly surprising that the lay public is often confused about the specifics and generalities of school desegregation in America. To her credit, Hochschild tries to set forth the true and reliable and, based upon her judgment calls, builds a strong case for continued efforts to desegregate public schools. But even with the impressive evidence she amasses to undergird her argument, Hochschild may leave the reader wishing for more conclusive data and with a number of troubling questions.

Whether we shall continue to have the production of many books on school desegregation in the future is now debatable. At mid-decade the desegregation movement has lost much of its earlier momentum. Courts have adopted more relaxed postures toward compliance with desegregation edicts. Many in the black community now question busing and other efforts to achieve school desegregation. The general public is at best ambivalent or indifferent toward school desegregation imperatives. Hochschild provides a vision and a blueprint for American education in the future. Whether or not anyone is interested and listening is the question.

LEGAL PROBLEMS OF RELIGIOUS AND PRIVATE SCHOOLS. By Ralph D. Mawdsley and Steven P. Permuth. Topeka: The National Organization on Legal Problems in Education, 1983. Pp. 115. \$9.95.

Reviewed by H.C. Hudgins, Jr.*

As a field of study, education law is comparatively new. It was approximately a half century ago that the University of Chicago offered the first course in the field. For three decades which followed—the 1930's, 1940's, and 1950's—few publications on the subject came off the press. This was due to two reasons: the very restrictive area of study plus the few individuals who had specialized in the field. It was not until the mid-1960's that education law began to experience a very large growth spurt. At that time a large number of institutions began to include education law in their curriculum and it became a requirement in many programs at both the masters and doctoral levels. As of today, the course is offered in some law schools, but it is taught in schools of education to a far greater extent.

The earlier books in education law were basic treatises whereas more recent ones have treated specialized topics. Similarly, the early works tended to focus almost exclusively on the law of public education. Now that has changed, as witnessed by a recent book *Legal Problems of Religious and Private Schools* by Ralph D. Mawdsley and Steven P. Permuth. The academic credentials as well as the work experience of these two individuals give strength to this work. Mawdsley, the principal author and editor, is both an attorney and a Ph.D. graduate in educational administration. He has been a teacher and an administrator in nonpublic schools in Minnesota as well as a professor at the University of Minnesota. He is currently legal counsel and professor of education law at Liberty Baptist College.

Mawdsley's coauthor, Steven Permuth, is Dean and Associate Professor of Education at Bradley University. He holds a doctorate also from the University of Minnesota. The two have an impressive record of consulting, lecturing, and publishing in the discipline, both singly and as a team.

In this joint effort, the authors have combined for a slim publication of slightly over 100 pages that addresses a number of issues relevant to private and parochial schools. In the first five chapters they treat such broad issues as governmental regulation of parochial and private schools, torts, discipline of students and faculty, and federal anti-discrimination legislation. This reviewer is curious, however, as to why the authors chose

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to include a final chapter on copyright legislation. The content of that chapter does not seem relevant to or consistent with the focus of the other chapters; it treats copyright law in general and does not distinguish between its application to the nonpublic schools from its application in general.

That criticism aside, the reader should focus on the first five chapters of the book. They contain well researched and well thought through statements about the essential differences between public and nonpublic schools. It is while reading these chapters that one realizes that Mawdsley and Permuth say more in some paragraphs than a number of writers say in an entire page. The language is focused on the issues, and it is stated with clarity and very often with precision. The authors make no effort to avoid mention of public school law altogether; to the contrary, they often point out how nonpublic schools are both similar to and unlike public schools. That is a real strength of this book, for it is possible for a private or parochial school to be completely divorced from some kinds of governmental control or regulation. In clarifying that relationship the authors correctly eschew pat or trite distinctions, for these distinctions are too complex and often too subtle to be subject to simple characterization.

As an example, in speaking of the degree to which the federal Constitution is applicable to faculty and students in private education, the authors state "[g]enerally, though, unless a private school has significant involvement with the state, such as incorporation into the state university systems with one-third of funds paid by that system, it is difficult to find a sufficient number of contacts for state action" (p. 43). They continue with a discussion of that dichotomy by pointing out that "[t]he effect of a finding of no state action for almost all private schools is that faculty and students can be disciplined or dismissed without adhering to the formal and sometimes very rigid, substantive and procedural due process standards imposed upon public schools" (p. 44).

"The right of nonpublic schools to exist and operate does not presume a right to be free of governmental regulation. For the nonpublic school the critical question is the extent to which a state legislature or administrative agency can regulate such schools out of existence when they cannot be legislated out of existence" (p. 69). In discussing this notion, the authors cite the identification of a religious connection as being the most important criterion in determining whether a state can regulate the operation of a nonpublic school. Where that religious nexus does not exist, governmental intrusions in nonpublic education are limited and are determined principally by the test of rational legislative purpose.

The authors also treat a second doctrine which allows a state to regulate nonpublic schools—the compelling state interest doctrine. They draw from

Pierce, *Yoder*, and *Runyon* for precedential support as well as from the most recent case of *Nebraska v. Faith Baptist Church*. They conclude by noting that the Supreme Court has not spoken with definitive authority on what the limits of a compelling state interest are.

The treatment of these two doctrines is consistent with what the authors set out to do, for in the foreword they state the “[n]ormally the law makes little distinction between sectarian and nonsectarian schools but where a unique legal distinction does exist, such as in free exercise of religion claims, the differences are discussed.”

Overall, in their treatment of state legislation and regulation of nonpublic schools, the authors show considerable restraint. Since both of them are currently working in nonpublic institutions, they could have attempted to use the book as a forum in defense of and in support of private education. To their credit they avoid doing this. It is evident throughout the work that they have researched and written with a detachment that reveals no biases on the subject. For that reason, as well as the comprehensive coverage of the content in a short space, this reviewer finds the book to be very useful in one’s understanding of the place of the nonpublic school in our society.