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Book Reviews

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PRIVATE SCHOOLS AND THE PUBLIC GOOD. By *Edward McGlynn Gaffney, Jr.* Notre Dame, Ind.: University of Notre Dame Press. 1981. Pp. xxx, 212. \$7.95.

*Reviewed by Regan C. Kenyon.**

Two years ago, the Institute of Public Policy of the University of Notre Dame sponsored a symposium in Washington, D.C. on the public policy of private education, its problems and its alternatives.¹ Edward McGlynn Gaffney² then ably edited those proceedings into *Private Schools and the Public Good*. Gaffney divided the materials into three roughly equal parts: "Educational Freedom for Minorities," "Legislative Proposals for Broadening Education Opportunity," and "Constitutional Perspectives." The sections respectively address the three major criticisms levelled at private schools: that they are racist, that they foster elitism, and that their publicly financed support is both unwanted (coming at the expense of public schools) and unwarranted (violating the establishment clause of the first amendment).

Overall, *Private Schools and the Public Good* is simply the best book around on the public policy of private education, even viewed within a context of increased scholarly interest in private education. Gaffney's reader contains the widest and most complete assortment of thought on this subject and presents each piece cogently and succinctly. Heretofore, the lack of such a comprehensive collection forced a student in this field to gather tracts, monographs, briefs and speeches from a myriad of sources to gain a comparably wide view of current thought. In addition, each section concludes with a round-table discussion by participants and other conferees which offers the reader the unique opportunity to eavesdrop on factual challenges and theoretical differences between the major participants.

Although some of the ideas expressed in the book are not new,

* Gustav A. Harris Scholar, Harvard University; formerly Executive Assistant to the Assistant Secretary for Non-Public Education, United States Department of Education. Ed.D. candidate, Harvard University, June, 1983; M.Ed., B.A., University of Missouri, 1973, 1969.

1 The conference participants included researchers Andrew M. Greeley, Denis P. Doyle, John E. Coons and Stephen D. Sugarman; policy-makers Daniel Patrick Moynihan and Ernest F. Hollings; and attorneys Walter Berns, Charles H. Wilson, and Antonin Scalia.

2 Director of The Center for Constitutional Studies, University of Notre Dame Law School. LL.M., Harvard University, 1976; M.A., J.D., Catholic University, 1975, 1974; S.T.L., Gregorian University, Rome, 1967.

having appeared elsewhere (including the well-known and well-stated theses of Berns, Coons, Greeley, Moynihan, Olivas, and Sugarman),³ this redundancy is not fatal. Collection of the essential characteristics of the many writers' ideas in one volume performs a valuable service to both students and general readers. Moreover, in some cases the authors have practiced alchemy, having transformed their long, leaden discourses into succinct nuggets.

A minor problem stems from the book's claim to be an "open, balanced and authoritative" discussion (p. vii). While it is indeed open and authoritative, the book is not balanced. As its title indicates, it is biased in favor of private education. Of the seventeen articles included, only four truly espouse the preponderant American view that alternative public financing schemes for private schools, in the words of Senator Hollings, "benefit the few at the expense of the many, proliferate substandard segregation academies, add a sea of red ink to the federal deficit, violate the clear meaning of the first amendment to the Constitution, and destroy the diversity and genius of our system of public education" (p. 85). This bias, however, does not necessarily detract from the ideas proposed. The sparse but flavorful criticisms of private education help to establish the *Zeitgeist* in which these policy alternatives are proffered. Recently, there have been far too many harangues against private education that were unfounded in fact and grounded in an American ambivalence towards private schools. These visceral attitudes have long affected local, state and federal policies towards private education.

Throughout our nation's history, the issue of the separation of church and state has been inextricably entwined with the public policy toward private education. At the local and state levels, public school administrators traditionally held the conviction that a democracy's success rested on all children attending the same public school to learn basic citizenship values.

The Supreme Court altered this notion of "one best system" in the 1925 decision *Pierce v. Society of Sisters*⁴ when it upheld the parents' right to satisfy state compulsory attendance laws by sending their children to private schools. Five years later, in *Cochran v. Louisiana*

3 Many of these proposals have been hanging around for some time. Educational vouchers, forwarded by Coons and Sugarman, was a cause celebre of the early 1970's liberals, including Christopher Jencks. Tuition tax credits, a Pat Moynihan pet, was attempted in a closely related form in New York, which led to the 1973 Supreme Court decision in *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973).

4 268 U.S. 510 (1925).

State Board of Education,⁵ the Court held a Louisiana law that provided textbooks to public and private school students constitutional as advancing education in general. With this case, the Supreme Court established the secular purpose of legislation as the first of several guidelines for testing possible violations of the first amendment guarantees.⁶

Although public educators accepted this doctrine, many remained adamant in their conviction that money raised by taxes should go only to schools organized by school districts and regulated by states. Church or private schools could exist in their opinion but had no claim on the tax dollar. The Horace Mann League, a group of distinguished public educators who occupied top local and state public superintendencies, held this view for many years. This group actively opposed any proposal to spend public money on private schools and their students. Later, this stand was reinforced by the public school suspicion that many private and parochial school parents voted against bond issues and budgets for local public schools.

Private school proponents held that school attendance, not school choice, was compulsory. Parents who chose private schools for their children pointed to the injustice of having to pay both public school taxes and private school tuitions. If the government would not give tax relief, they claimed, it should provide equitably for private as well as public education in any aid measures.

The controversy hamstrung national education policy for years. For the twenty years after 1945, the diametrically opposed views of public and private educators deadlocked all federal legislative proposals that provided for "general aid" to education. On the one hand, public school groups (dominated by the powerful Washington-based organizations of the local and state public educators, including the National Education Association and the Council of Chief State School Officers) refused to consider proposals that gave federal tax money to private and parochial students. On the other hand, private school interests (notably Catholics) were able to defeat in Congress any general aid bill that excluded their schools from its benefits.

This stalemate ceased in 1965 with the passage of the landmark Elementary and Secondary Education Act (ESEA).⁷ Under ESEA, Congress provided, for the first time, comprehensive aid for

5 281 U.S. 370 (1930).

6 The establishment clause requires that statutes have a secular legislative purpose, have a principal or primary effect that neither advances nor inhibits religion, and not foster excessive entanglement with religion. *Wolman v. Walter*, 433 U.S. 229, 235-36 (1977).

7 Pub. L. No. 89-10, 79 Stat. 27 (codified as amended in scattered sections of 20 U.S.C.).

America's public and private school children. Based on the formula application of the child benefit theory, benefits were to accrue to children regardless of the school they attended. Private school children who met eligibility criteria would participate in the benefits of the act. ESEA targeted aid for national priorities - disadvantaged children, library development, innovation in curriculum development and teaching methods - not for the schools themselves.

Congress based ESEA in large part on the 1947 case *Everson v. Board of Education*.⁸ The plaintiffs in *Everson* challenged New Jersey's reimbursement to all parents, including those with children in private schools, for students' bus fares to and from schools. That type of aid, the Supreme Court ruled, was constitutional because it benefited children and not the churches that operated the schools.

With ESEA, Congress did not resolve the long-standing public-private school conflict but instead incarnated the controversy in the federal language. As a result, this dispute became imbedded in educational policy and practice. The congressional compromise attempted to placate public school administrators by giving them control and maintenance of the federal programs. This provision was intended both to obviate any constitutional challenge and, in the words of former United States Commissioner of Education Francis Keppel, to "get the church-state question out of the nation's capital and into the states and localities."⁹

Since 1965, ESEA has been the primary tool used to provide federal services to private school children. Public school educators have continually criticized it as unduly burdensome to require them to supply equitable and comparable services to a student population in schools they do not control. Private school educators dislike the delivery mechanism because, in practice, their students have less chance to participate and, if they do participate, they receive fewer services than their public school counterparts. ESEA satisfies no one, least of all the private school people. Thus, as manifested by *Private Schools and the Public Good*, the private education community continues to seek different policy alternatives. The problems of both pupil participation and public finance have not disappeared. Some of the approaches to solving the controversy are unique, some have been around for quite a few years, but none have yet met success.

8 330 U.S. 1 (1947).

9 Interview with Francis Keppel, Former United States Commissioner of Education, at the Aspen Institute for Humanistic Studies, Cambridge, Massachusetts (May 17, 1982). For more on the significant role of Frank Keppel in forging this piece of legislation, see E. EIDENBERG & R. MOREY, *AN ACT OF CONGRESS* (1969).

Thomas Vitullo-Martin convincingly contends in his portion that past regulations of federal education programs, as well as tax policies, have discriminated against private schools and conspired against those socio-economic lower classes that increasingly wish to enroll in them (p. 25). He advocates reshaping our current policies to better enhance "racially and economically integrated schools" (p. 43). John E. Coons also condemns present policies that force upon the citizenry a public education monopoly based on wealth and place of residence (p. 91). In response, he and Stephen D. Sugarman have devised an elaborate system of educational vouchers. They prefer that scheme over the two proposed by Senator Daniel Patrick Moynihan, who supports both tuition tax credits (whereby parents of private school children would be allowed a credit on their income tax of a specified amount) and a federally-subsidized loan program for students in private schools (p. 115). All of these plans have their merits. Unfortunately, as factions often do, private education proponents quibble over the individual merits of their pet programs.

In addition, no matter how well-conceived and worthy these funding mechanisms are, America remains ambivalent toward private schools. Congress, reflecting that attitude, adopts policy in this area by ransom votes, not research validity. This offers little hope that our educational policies will change fundamentally. As is well known, President Reagan supports tuition tax credits. However, veteran Capital Hill watchers give them little chance of passing. In his essay, Senator Hollings lists over forty reputable national organizations, as diverse as the NAACP, the UAW, and the National Council of Senior Citizens, that oppose a tax credit plan, costing over \$3 billion, for parents who choose to send their children to non-public schools (p. 88). The Coons-Sugarman voucher idea has gained little support in California. In fact, proponents have not garnered enough support to place it on the ballot. This past year, District of Columbia voters overwhelmingly repudiated a tuition tax credit for their locality.

Perhaps the root of this ambivalence lies, as Walter Berns believes, in the intentions of the framers of the first amendment to the Constitution (p. 192). Maybe Senator Moynihan is correct that the origins of these attitudes are "in the Catholic-Protestant antagonisms of the nineteenth century" (p. 79). Professor Chester E. Finn, Jr. contends elsewhere that "private elementary and secondary education has never—well, not in a century, anyway—quite attained legitimacy in the eyes of the predominately liberal elites that continue to

shape many of the nation's ideological, cultural, and intellectual views . . . [although] such sentiments occasionally have an ugly underside that is not rendered any more attractive by the fact that it may be unconscious. Bigotry may be too strong a term for it, but distaste may be too mild."¹⁰ At any rate, as both Edward Gaffney and Diane Ravitch hold, there is a fundamental value clash separating public and private school adherents.¹¹

Public education proponents control, in large measure, this clash. They control the policy and also the terms of the quarrel, making support of private education appear as a "zero-sum game," as many of the writers in this volume mention. Private educators, as this book demonstrates, are forced to formulate arguments on public school terms. In fact, despite the increasing evidence that private schools are not racially and economically segregated institutions, the first third of *Private Schools and the Public Good* is devoted to rebutting this myth.

Perhaps the nature of a minority (such as private education) in a democracy forces it to play by the rules of the majority. During the 1960's, the term "co-option" described such activity. Perhaps private education should alter this game. Federal aid has often been more of a headache than a help. Over the past seventeen years of federal involvement in education much of the private education community has participated warily and wearily in federal programs. So what if the Supreme Court is wrong, to use Senator Moynihan's words? Even Moynihan admits he cannot foresee it changing its ways in this century.

I do not advocate the abandonment of the federal battle. Rather I propose that private education open wider its second front. As former Assistant Secretary for Non-Public Education, Edward R. D'Alessio, states in the preface, we are no longer in the

difficult decade of the Seventies . . . marked by unfavorable court decisions, financial problems, school closings and low morale. In a five year period from 1968 to 1972 private school enrollments decreased by nearly 16 percent. Now, as we begin the Eighties, we can look with optimism to what may be private education's 'finest hour'(p. x).

That finest hour will not be achieved through federal intervention. It will be achieved by private initiative.

10 Finn, *Public Support for Private Education, Part I*, 18 AM. ED. 4, 8 (May 1982).

11 In his overview, editor Gaffney effectively interweaves the themes of the seminal work of Diane Ravitch, *THE GREAT SCHOOL WARS: NEW YORK CITY, 1805-1973* (1974).

Presently, enrollments in private schools have stabilized and are even increasing. The National Center for Education Statistics estimated that during 1976-78, there was a 3.3% decrease in the number of school-aged children in the nation. Relative to that decrease, private education enrollments more than held their own, declining less than 2%.

During a period when American disenchantment with public education continues, private education not only maintains 10% of the enrollment but, as Denis P. Doyle points out, it is projected to increase another 12% by 1990 (pp. 73-74). No wonder public educators are alarmed. Andrew Greeley (pp. 6-16) and Virgil Blum (pp. 17-24) demonstrate that private schools play an increasingly important role in the education of minority and disadvantaged children. In 1978-79, 249,000 black Americans and 248,000 Hispanic Americans attended Catholic schools. This represented 16.5% of the enrollment in these schools. During 1975-76, Catholic schools in the ten largest inner-city areas showed a minority enrollment of 113,302, or 45% of the total Catholic school enrollment in those areas. In 1978-79, minority enrollment in Lutheran schools increased 7.3% to a total of 13%. During 1980, while enrollment in the prestigious independent schools increased 2%, minority enrollment in these schools rose 9%.¹² As quoted several times in Gaffney's book, in California there are more minority students enrolled in private schools than public schools (pp. 28, 74-75).

Private Schools and the Public Good gives ample evidence that private schools are not racist, that they are not elitist, and that their success is not directly related to the demise of public education. However, the book also demonstrates that as long as the battle continues to be fought on the federal frontier, those stigmas will remain. The research, the thought, and the policy alternatives presented in this book indicate that those concerned about the future of private education are expansive and creative. These talents, especially during a period of New Federalism, need to be redirected inward to private education.

This introspection could lead to new funding mechanisms within the present private school apparatus, new management techniques, new self-sustaining scholarship and privately-financed loan programs, new uses of centralized and systematized computer systems, new methods to increase access and equity within the schools,

¹² R. Kenyon, *Private Education in the Nation* (January, 1980)(Office of Non-Public Education, U.S. Department of Education internal document).

new benefit packages to offset rising faculty costs, better ways to coordinate with other schools (both public and private) and post-secondary institutions and perhaps even a constitutional break-through equivalent to the child-benefit theory. *Private Schools and the Public Good* offers the reader a thought-provoking glimpse into some of the best minds concerned with the future of private education.

