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America Goes to School: Law, Reform, and Crisis in Public Education

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Book Review

America Goes to School: Law, Reform, and Crisis in Public Education, by Robert M. Hardaway. Westport, Connecticut: Praeger, 1995.

*E. Vance Randall**

In 1983, the National Commission on Excellence in Education released its report on the perilous condition of American education. The Commission's report, *A Nation at Risk: The Imperative for Educational Reform*, described how a "rising tide of mediocrity" in American education had placed the American people, both collectively and individually, at risk to "competitors throughout the world." The educational maelstrom which followed is now in its third wave of reform efforts intended to reverse the decline in American education. Literally hundreds of local, state, regional, and national task forces, as well as numerous scholars and researchers, have contributed to the continuing debate over possible causes and cures for an ailing American education. *America Goes to School: Law, Reform, and Crisis in Public Education*¹ is another important contribution to this ongoing discussion.

The public schools' failure, asserts Hardaway, can be traced to two key developments. First, public school officials deserted traditional American education for a Prussian educational model.² Second, constitutional principles of due process and equal protection have been grossly misapplied in areas of racial segregation, vandalism and school violence. There is a "crisis of due process."³ Due Process is a right guaranteed by the Fourteenth Amendment. Despite these debilitating forces, the author maintains that the public schools can be reclaimed by "re-

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1. ROBERT M. HARDAWAY, *AMERICA GOES TO SCHOOL: LAW, REFORM, AND CRISIS IN PUBLIC EDUCATION* (1995).

2. *Id.* at 164.

3. *Id.* at 165.

vers[ing] the process of Prussianization,” establishing pre-schools and lowering the compulsory education age for children to 18 months, and the creation of “magnet classrooms” to overcome the “due process crisis” brought on by wrongheaded judicial intervention in schools.⁴

Hardaway begins his book by outlining the typical litany of problems with American education. This includes large expenditures of public funds for public education; declining standardized test scores; anemic curriculum; lower test scores than students in other countries; violence and lack of moral instruction.

Although many of these problems are real and significant, the author often overstates his case or makes sweeping, unsubstantiated generalizations about the condition of American education. First, not all schools in America are failures nor lavishly furnished, nor are all students “using drugs, vandalizing their schools, or attacking teachers and fellow students . . . [or not] doing much homework.”⁵ Rhetorical excesses such as “teaching American students ‘morals’ or asking them to participate in school maintenance is doubtless so far beyond the pale that its implementation would be inconceivable in American public schools” do not give an accurate portrayal of American students nor contribute to an enlightened discussion of the issues facing American educators.⁶

Second, although “80% of American parents gave public education a grade of C or lower,”⁷ 44% of the parents in *The 26th Annual Phi Delta Kappa / Gallup Poll* on education gave the public schools in their own community a grade of B or higher (74% gave a grade of C or higher).⁸ Many parents perceive their own schools as doing fairly well while considering public schools in general as having serious problems. This curious finding is consistent from year to year. It suggests that the perception of American education by parents is actually more positive than the author implies.

There are additional areas where modesty in asserting truth claims would be more helpful, such as whether American

4. *Id.* at 164, 165.

5. *Id.* at 20.

6. *Id.* at 21.

7. *Id.* at 3.

8. Stanley M. Elam, Lowell C. Rose, & Alec M. Gallup, *The 26th Annual Phi Delta Kappa / Gallup Poll of the Public's Attitudes Toward the Public Schools*, 76 *PHI DELTA KAPPAN*, September 1994, at 45.

education is worse now than it was thirty years ago and whether resources make a difference. For example, in a recent research report, "Student Achievement and the Changing American Family," David Grissmer and his colleagues discovered that gains were made by students in the National Assessment of Educational Progress (NAEP) mathematics and reading scores. The greatest improvements were posted by black and Hispanic students and could "in part be attributable to public investments in families and schools and/or equal educational opportunities." Grissmer et al. admonish policy-makers to "go slow in dismissing the large investments in public education, social programs, and equal opportunity policies."⁹

Hardaway suggests that if the American educators would "emulate" their counterparts in Japan, many of the problems in American education would be resolved. He is correct in reminding us that there is much we can learn from educational practices in other nations. American students would benefit from a longer school year and more time on task, and educators need to examine how to be more frugal with scarce resources. Perhaps much of the difference in academic achievement between American and Japanese students can be accounted for by the longer school year and school day for Japanese students and not necessarily inferior American educational practices. However, there are some contextual differences between American and Japanese societies which would make it difficult or foolish to engage in wholesale adoption of Japanese practices. For example, how many teachers would be left in American schools if they were paid \$10,000 a year like teachers in Japan? Additionally, a longer school day and school year will not happen without commensurate compensation for school personnel. Hardaway also finds virtue in Japanese schools which are heated solely by kerosene stoves placed in each room, have paint peeling from the walls and are furnished with poorly stocked libraries and badly worn equipment. I am not sure most parents would find such conditions even minimally acceptable, let alone laudatory.

9. RAND INSTITUTE ON EDUCATION AND TRAINING, STUDENT PERFORMANCE AND THE CHANGING AMERICAN FAMILY, Policy Brief, December 1994, at 3; L. Hedges, R. Laine & R. Greenwald, *Does Money Matter? A Meta-analysis of Studies of the Effects of Differential School Inputs on Student Outcomes*, 23 EDUCATIONAL RESEARCHER 3, 5-14 (April 1994).

Hardaway makes continual reference to the "educational establishment,"¹⁰ "vested interests," and the "educational expenditure lobby."¹¹ It would be helpful for readers to know exactly to whom the author is referring.

The second chapter continues the theme of the first, except that the point of comparison is with private schools and not educational institutions in other countries. The thesis revolves around the question of why does it cost more to educate a child in a public school than in a private school? Hardaway examines the claim of public school partisans that private schools do not incur the additional costs of bilingual education, students who are learning or physically disabled, illegal aliens, teacher certification requirements, bloated bureaucracy, school discipline, and the "crisis of due process." The author concedes that these additional costs are significant for public schools but that they are "self-imposed" and are therefore within the capacity of the public schools to eliminate.¹²

I find such an argument quite puzzling. The author himself points out that bilingual education was mandated by federal legislation with the Bilingual Education Act of 1968.¹³ The same holds true for the 1990 Americans with Disabilities Act and its antecedents.¹⁴ The United States Supreme Court, in *Plyler v. Doe*,¹⁵ held that local school officials could not deny admission of illegal aliens into the public schools. *Honig v. Doe*,¹⁶ makes it difficult for school officials to impose strict disciplinary sanctions on students. These are external mandates and are self-imposed to the same degree as federal income taxes are self-imposed by American citizens. Local school districts do not have the option of noncompliance with these mandates to avoid the costs they incur.

A more useful approach would have been to analyze the additional costs of state and federal statutes and regulations in educating a student in a public school. Furthermore, most private schools are sponsored by religious organizations where school personnel, as part of their religious calling or commit-

10. HARDAWAY, *supra* note 1, at 5.

11. *Id.* at 12.

12. *Id.* at 37.

13. *Id.* at 26.

14. *Id.* at 27.

15. 457 U.S. 202 (1981).

16. 484 U.S. 305 (1988).

ment, are often willing to work for much less than they could in the public sector or even volunteer their time to ensure a quality educational experience for the students and/or their own children.¹⁷ These factors hide the real costs of education in private schools. The 1990-91 base salary for private school teachers (\$19,783) is 37% lower than the base salary for public school teachers (\$31,296).¹⁸ Moreover, the author does not mention the educational costs for roughly 10% of private school students who attend elite prep schools with tuitions similar to private, exclusive colleges. These factors also need to be accounted for in the comparison of public and private schools.

In terms of comparative costs between American and Japanese education, the question of socially imposed responsibilities needs to be examined. Hardaway does acknowledge that "the question must be asked as to whether the public schools are being asked to perform such a variety of social functions that their primary educational mission is jeopardized."¹⁹ To what extent are schools in Japan asked to perform the "variety of social functions" required of American schools, and would the difference in social responsibilities partially explain the differences in student achievement and educational costs? Public policy may well be imposing additional social responsibilities on American schools which divert attention and resources away from educational activities and programs.

The author draws much attention to the "aggrandizement of administration" which allegedly consumes an inordinate amount of scarce funds. To prove his point, Hardaway uses the New York City School District with its top heavy administration. However, the New York City School District is not a typical school district. In most districts, approximately 80% of an annual budget goes for personnel costs with 5-6% of the budget allocated to administrators. The relatively small amount of 5-6% hardly seems like "aggrandizement" by administrators. Regarding teachers salaries, the author is correct that "after adjust[ing] for inflation, public school teachers' salaries rose 18% between

17. ANTHONY S. BYRK, VALERIE E. LEE & PETER B. HOLLAND, CATHOLIC SCHOOLS AND THE COMMON GOOD (1993); NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATIONAL STATISTICS 1993, 70 (1993); ALAN PESHKIN, GOD'S CHOICE - THE TOTAL WORLD OF A FUNDAMENTALIST CHRISTIAN SCHOOL (1986).

18. NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATIONAL STATISTICS 1993, 70 (1993).

19. HARDAWAY, *supra* note 1, at 31. *See also id.* at 71.

1982 and 1992.” However, teachers salaries are lower than other professions requiring comparable levels of education.²⁰ The author’s assertion that teacher unionization has led to a loss of professional status for teachers as the main reason for the enormous difference between public school teacher salaries and salaries of law school professors is not supported by any documentation and is self-serving.

In the second chapter, Hardaway describes a horrible incident of four female junior high students who tortured and killed a fellow classmate. Hardaway uses this account as a “tragic example of lax school disciplinary policies.”²¹ The author’s allegations of cause and effect are not substantiated by the information provided in the text and constitute a serious *non sequitur* which is troubling. The school’s disciplinary policies did not cause these girls to commit this terrible crime. The author ascribes to the school responsibility for a “deficient disciplinary environment” where acts of violence are considered a manifestation of a “handicap.”²² But the appeal for leniency in the trial toward one of the four girls because she was “handicapped” by a disadvantaged background was made by the defendant’s lawyer, not the school.²³ The author not only fails to distinguish between influences of the school and the larger society, but asserts unproven causal relationships between what a school does and its impact on students.

In the next chapter, Hardaway looks at various reform proposals for education. He considers any type of proposal expanding school choice as a “strategy of abandonment”²⁴ which skims off the best students and leaves the rest in decaying public schools. The author provides but a superficial analysis of several school choice plans and summarily dismisses them as a “fig leaf for what would otherwise be considered unfair, and educationally or constitutionally unsound.”²⁵ He misunderstands the 1990 Milwaukee Parental Choice Program when he claims that the 1% of the students allowed to enroll in a private, nonsectarian school

20. JAMES W. GUTHRIE, WALTER I. GARMS & LAWRENCE C. PIERCE, *SCHOOL FINANCE AND EDUCATIONAL POLICY - ENHANCING EDUCATIONAL EFFICIENCY, EQUALITY, AND CHOICE* (2nd ed. 1988); DAVID H. MONK, *EDUCATIONAL FINANCE - AN ECONOMIC APPROACH* (1990).

21. HARDAWAY, *supra* note 1, at 33.

22. *Id.*

23. *Id.* at 32-33.

24. *Id.* at 45.

25. *Id.*

were "gifted students."²⁶ The criterion for admission to the program was not ability, but rather was origination from low income homes. If a qualified child was also gifted, it was mere coincidence. John Witte has conducted an evaluation of the Milwaukee Program and found that it does not skim off the best students but provides an alternative educational experience for low income students who were having trouble learning in the public school system.²⁷ Furthermore, the Catholic school system in the inner cities provides a critical source of adequate education for minorities and children from low income families.²⁸

In addition to ending lavish spending on educational facilities and personnel, Hardaway offers two other solutions for American education. First, children should be placed in preschools at age three²⁹ because the child's learning development will be severely and irreparably damaged if the environment does not contain sufficient stimulation for learning during a narrow window of opportunity from birth to age three. The cultivation of a child's cognitive development is an important concept. For example, one of the goals in America Goals 2000 is that every student will come to school prepared to learn. However, the importance of cognitive development in toddlers does not necessarily require the policy of "free, if not mandatory, public education at the age of two or three."³⁰ The unfounded assumption behind the author's recommendation is that learning can only occur in a formal classroom setting. Hardaway ignores the immense amount of learning that occurs in the child's natural home and neighborhood environment. True, the richness of this natural environment varies with children, and that, as the author suggests, needs to be addressed so that all children can grow in a stimulating environment.

Another recommendation by Hardaway is the creation of magnet classrooms to address the Supreme Court's insistence of "enforcing 'due process' on the backs of innocent victims of school violence."³¹ In these classrooms teachers could teach and

26. *Id.* at 46.

27. Herbert J. Walberg & Joseph L. Bast, *School Choice: The Essential Reform*, 13 CATO JOURNAL 1, 101-121 (Spring/Summer 1993).

28. Byrk, *supra* note 17.

29. Note, however, that on page 165 Hardaway also suggests starting preschool at eighteen months, and on page 51, at age two.

30. HARDAWAY, *supra* note 1, at 51.

31. *Id.* at 53.

students could learn without the fear of disruptive students. Admission to a magnet classroom would be open to all students who are willing to abide by all discipline rules of the class and sign a "waiver of all disciplinary 'due process' rights."³² Is it wise to sign away fundamental constitutional rights? What about the other students who refuse to join a magnet classroom or have been transferred out of a magnet classroom to a regular classroom for violating the conditions of admission? What does the author propose to help these students? It would appear that the author's criticism of school choice programs for skimming the best students and leaving the rest behind is a criticism that could be leveled at magnet classrooms.

Hardaway raises important concerns about the "politicization of the public schools" and the "adoption of the Prussian model of education" with its "age segregation, sexism, adherence to the leadership principle, the stripping of the authority of the classroom teacher . . . wasteful educational administration and bureaucracy" and racism.³³ However, education is inherently a value-laden enterprise and cannot be neutral in either content or pedagogy. Political processes are the means through which private educational views and values are selected and institutionalized through legislation. Education has been implemented since the time of Plato in social engineering to create certain kinds of societies and citizens. Education will never be depoliticized. The basic structure and content of educational policy today were established during the Progressive Era from 1890 to 1930. Scientific management or "Taylorism" with its emphasis on bureaucratic organizations and "human engineering" probably had more direct influence on the governance of schools than did the Prussian model.³⁴ Public education is a reflection of the larger society. These observations do not justify the many ways in which children have been ill-served by American public education. What it does show is that public education is but a microcosm of society. It influences and is influenced by a broader social, cultural, and political context. Educational problems and solutions cannot be treated in isolation from the social and cultural fabric into which they are interwoven.

32. *Id.* at 54.

33. *Id.* at 71, 78, 164.

34. ROBERT G. OWENS, ORGANIZATIONAL BEHAVIOR IN EDUCATION (4 ed. 1991).

Finally, the author addresses the "due process crisis" brought on by the "heavy hand of intervention" by the courts which have shackled school personnel from creating a safe learning environment. Hardaway rightly contends that "cases of judicial intervention in the educational process must be examined critically with regard to whether they have served to promote or hinder the basic right of every child."³⁵

Hardaway is to be commended for his attempts to help clarify the basic problems in American education and to propose possible solutions to these problems. The issues facing American education are complex indeed and their resolution will not come easily. What makes the problems facing education so difficult is, in the author's words, that "unfortunately, the determination of causes has been complicated by factors unrelated to the problems of public education itself."³⁶ Had this critical perspective better informed the arguments made by the author, its contribution to American education would be more valuable and his treatment of the issues more balanced and instructive.

35. *Id.* at 152.

36. *Id.* at 8.