

trade (one of the few freedoms currently provided for in the Commonwealth Constitution), played a role in the High Court decision which struck down Chifley's bank nationalisation program.

There is, however, broad support from the Left for a bill of rights. As has been recognised by Scalia and Bork this can be traced to a belief that courts are more likely to provide 'progressive' outcomes than elected legislatures. Indeed, much of Williams' book is given over to examples of cases, such as anti-terror laws, where a bill of rights might have led to a preferable policy outcome.

A casual reader of Williams' book would not be aware that his position is even slightly controversial. The key argument against Williams' position is that giving judges power to restrain government invariably makes judges susceptible to usurping government. This weakens democracy and disenfranchises ordinary citizens from contributing to important decisions about their lives.

Revealingly, Williams also fails to respond to criticism of his preferred model. He favours giving Courts no power to strike down a law which is inconsistent with a specified human right. The problem with this is that a government that was inclined to pass an abhorrent law, one which was clearly a breach of human rights, is a government which would cheerfully override or ignore a declaration from the Court asking them to change that law. Helpfully, we have a current example of this process in Victoria. There, the Attorney-General appears ready to legislate for the indefinite detention of sexual offenders—even in the

face of legal opinion that this will be contrary to Victoria's new charter of rights, which, as we know, was recommended by Williams himself. Only the briefest mention of this problem is made by Williams in his book.

This is unfortunate, as it brings us to a troubling juncture for all bill of rights advocates. If we accept that a statutory bill of rights can't work as a safeguard in an extreme case, then its actual role will be that recognised by Scalia and Bork. Williams' model will do little more than play kingmaker to lawyers who will gain the means to argue about the merits of the law. These are, in the end, policy matters and should thus be decided by the democratic process.

Ultimately, this book brings to mind the comments of United States Justice Brandeis:

Experience should teach us to be most on our guard to defend liberty when the purposes of government are beneficent. Men who are born to liberty are naturally alert to repel the invasion of their liberty by evil-minded rulers. The greatest threats to liberty lie in the insidious incursions of men of zeal, well meaning but without understanding.

Williams' book is a missed opportunity to move beyond zeal, to address contrary arguments, and to demonstrate to the sceptical a measure of understanding.

Reviewed by Benjamin Jellis

Which School? Beyond private vs public

by Joanna Mendelssohn

Pluto Press, 2007

\$17.95, 108pp

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Joanna Mendelssohn is an art historian and art critic, and associate professor at the College of Fine Arts in Sydney. Her foray into writing on schools began when she was invited to write an essay on the subject in the *Griffith Review* last year. The essay details Mendelssohn's conflicted feelings about choosing non-government schools for her children, and how she eventually came to her decision. Raised in a modest home in a working class suburb and a product of state schools herself, Mendelssohn felt that sending her four children to 'elite' independent schools was somewhat out of the box, but her desire to provide the best for her children overruled her instinctive qualms about abandoning tradition.

Which School builds on the premise of the original essay and proposes some useful ideas for how to improve the state school system, based on thoughtful accounts of past and present experiences with education.

Mendelssohn isn't against state schools as such, just the modern version. She clearly has very fond memories of her alma mater—Kingsgrove North High School in southern Sydney. But society has changed over the past 40 years and the state school system has failed to adapt, largely due to politicking, bad policy and bureaucratic intransigence.

Bureaucracies have their own dynamic. Large bureaucracies find it easy to forget their original purpose of being. In many cases

administration becomes its own reward. The particular nature of the state schools teachers unions can be seen as part of the educational bureaucracy ... Children and their interests sometimes took second place.

There is a classic chicken and egg conundrum at the heart of the school choice debate: Did the middle classes abandon state schools because of a decline in educational and disciplinary standards, or did educational and disciplinary standards in state schools decline because the middle classes abandoned them?

There has been much discussion about this, but the more pertinent question is the corollary: Would the middle classes return to state schools if educational and disciplinary standards were improved?

Mendelsohn's evidence leads us to the conclusion that this could only happen if state schools underwent a dramatic reformation. In short, if they became more like private schools.

Indeed this is the crux of Mendelsohn's message. It is true to say that when choosing a school the decision should not be a matter of public versus private, but rather finding a match between child and school. The book's subtitle 'Beyond public vs private' conveys this. However it is equally true, and the book makes this point sharply, that there are crucial and fundamental differences between public and private.

The most important difference between public 'state' schools and private 'non-government' schools is their governance.

The advantages in non-government schools come from interconnections between schools and their communities, an emphasis on scholarship rather

than control, but above all, a streamlined bureaucracy.

State schools are run by a large, central government department responsible for thousands of schools. For most parents and teachers, the people making decisions about their schools are nameless and faceless. State school principals have very little control over staffing, budgeting, timetables, curriculum or any other major aspect of their school. Non-government schools—especially independent schools, but also Catholic systemic schools to a lesser extent—operate like small autonomous organisations with clearly defined roles and responsibilities, and the ability to adapt and respond to the demands of parents and society.

The decentralised nature of non-government schools, and their accountability to parents is the key to their success, according to Mendelsohn. State schools, no matter how good their leaders and staff, are captive to the whims of education departments and politics, and are slow to evolve.

Mendelsohn makes the important insight that this problem has been exacerbated because the consumers of education have changed. Gone are the days of parents being deferential to teachers.

The education revolution—when increasing numbers of baby boomers followed by generations X and Y completed high school and beyond—changed the unequal relationship between teachers and parents. One of the problems currently facing traditional educational authorities is that all

parents now expect to be treated as intellectual equals—not an unreasonable assumption. Many of the complaints by teachers about parents come down to a failure to adjust to the changes in those who eyeball them at parent-teacher night. Teachers are now expected to be as accountable and available as other professionals.

According to Mendelsohn, state schools struggle with this, but it 'has never been a problem for elite private schools' leading to 'a close working partnership

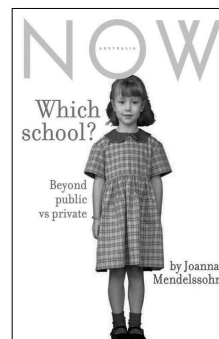
between schools and parents'.

Mendelsohn does not go into great detail as to how state schools might become more autonomous—funding mechanisms, accountability processes and so on—but that she is in favour of such a move is pretty

obvious. And although *Which School* is not a policy monograph as such, it does make a number of policy suggestions, most of which are consistent with the concept of increasing autonomy and flexibility among state schools.

Apparently the original draft of *Which School* was almost twice as long as the published version and I can't help but wonder if a lot of substance was lost in such a savage cut. Presumably this was in order to achieve a certain style for the book. It sometimes reads like journalism rather than an academic text. This is both a strength and a weakness.

The book is an enjoyable read, without being flippant. The reader doesn't feel as though there is any particular ideological zeal underlying the author's critique of modern state schooling. John Howard and the state school



teacher unions each cop a good share of the flak for their roles in maintaining educational mediocrity.

However, the essay style of the book means that it lacks the weight that a broader range of information sources would have provided. With the exception of a few historical accounts and a smattering of statistics (unreferenced), the book relies heavily on case studies and potted histories of half a dozen schools. I am aware of the empirical evidence that confirms the anecdote, so this did not bother me. But I imagine that other readers might be more difficult to convince, especially those hostile to Mendelssohn's basic message. It is likely that this is due to editorial prerogative rather than the author, but it has left her vulnerable to attack from dissenters—and there are plenty of them in what Mendelssohn calls the 'state school tribe'.

After giving a talk on *Which School* at the Sydney Institute in July, Mendelssohn was challenged by an audience member about what makes her 'qualified' to write and talk about schools. Mendelssohn's well considered response was that she is a mother of four, well-educated, did a lot of reading and research, and hears a lot from a wide circle of friends and acquaintances. More importantly though, Mendelssohn said, there is nothing that disqualifies her from entering the public debate. It is good that she has done so.

Reviewed by Jennifer Buckingham

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