

#99 There's No Democracy without Public Education

Jennifer Berkshire Welcome to Have You Heard. I'm Jennifer Berkshire. And Jack, as you well know, we are in the throes of a season of books on Have You Heard.

Jack Schneider I mean, it's always the season of books Jennifer. Since I haven't been able to access my office, I now have books overflowing in my living room, from things that I have read for the show in terms of hosting authors of books, or just in preparation for the show. And that doesn't even include all the books that I would have had had you told me the homework that I needed to do to be adequately prepared. In this case, I did it. I've now got several books that are law related, including Derek Black's new book, *Schoolhouse Burning: Public Education and the Assault on American Democracy*.

Berkshire Well, that of course is the subject of today's episode. But Jack, first I have to ask you, on top of your pile of books, threatening to spill over, are there perhaps some brand new books that you want to tell people about?

Schneider You're so proud of this little red book. Yeah, I received a shipment of our new book in the mail and I think I got eight copies. That seems to be a pretty random number there. So our book is apparently shipping, *A Wolf At The Schoolhouse Door: The Dismantling of Public Education and the Future of School*. I'll be really excited to talk about Derek's book on this show because I think it pairs really nicely with ours.

Berkshire If you're a regular listener then you will immediately recognize the distinctive voice of Derek Black. We had him on the show a couple of years ago to make the case that there is in fact a federal right to education. That was episode #41 - Getting Fundamental. Check it out. And now he's back to talk about his brand new book: *Schoolhouse Burning: Public Education and the Assault on Democracy*. It's really good. And one of my favorite things about it is that we get to learn about Derek's own story. The book opens with a powerful prologue about how Derek's own school experiences shaped him.

Derek Black Until I started writing that chapter. I didn't realize how many times I had changed schools and how many different homes I had lived in as a young person. You think of everything it's just sort of working out right in the end. It's like, I'm here. You know, I've got children, I didn't didn't fall off the deep end, but you know, looking back there were a lot of things to sort of overcome. And, you know, I had the love of my parents and grandparents, but that was really, you know, primarily the, the most that they could offer me. Public schools made the difference in my life. You know, I say that they often wanted more me for than I wanted for myself and I don't go into that. But like, I just, I didn't try very hard at all at school. Like I tried my best to undermine myself in the way that young people do.

Berkshire For example, there was that time when a student teacher took over his algebra II class for a few weeks, and young Derek saw an opportunity not to dig deeper into polynomials and quadratic equations but to catch up on his sleep.

Black I slept through four straight weeks of Algebra II. And when she gave the test at the end of those four weeks, I made a grand spanking zero on that test. Nothing on that exam computed to me. And to be clear, I'm someone who had good math scores. And so Ronnie, Mr. Cris, saw the grade and thought, geez, something's strange here. And then he said something to me and I started crying about it. He said, look, Derek, you got one week, go home, study this stuff. And after school on next Wednesday, or whenever it is, you can come in and take the exam again. And he did, I made a hundred on it.

Literally the difference between a zero and a hundred is someone sort of taking, you know, mercy on me and wanting me to succeed. I didn't deserve that. I wasn't owed that. And that's just sort of one of, a lot of, a lot of stories that children across this country have that are good stories sometimes. And other times they're not right. I mean, my book on zero tolerance talks about pushing kids out and not giving them that opportunity. And so I clearly grew up in a time and was of a race and place that I got at least some benefit of the doubt.

Berkshire We also learn about where Derek grew up and how the intersections of race and place ended up shaping him - even if it would take him a while to figure that out for himself.

Black Clinton High School is the first traditionally white school, high school in the South to graduate an African American. And the school was later bombed, not by people from Clinton, Tennessee, but from folks outside the state. Thurgood Marshall had come to Clinton had, had said immediately after Brown vs Board of Education, let these 12 kids walk a couple hundred yards up the hill to the white school, instead of taking an hour long bus ride to a different county every day.

Growing up as a child, I didn't know all the ins and outs of that, but I used to play basketball, rec league basketball at that one room African American school building where all the African American children had been housed together with one teacher. And so, you know, that story and my experience with race and sort of trying to figure it out as part of the story, and then ultimately going to college, the first in my family, and by happenstance ending up in an African American studies class began to make sense of my life in a way that I hadn't fully made sense of it before and understood not just, you know, education's role in my life, but education role in this larger democratic project.

And so I sort of give that as just sort of the springboard for saying like, that's where I'm coming from. Right? And finally, that public education is the inheritance that one generation passes to another, particularly for kids who can't hope for an inheritance in the traditional sense. And that's certainly what it was for me. And I feel it's my responsibility to, to try to pass that inheritance on to younger people when I'm gone.

Berkshire Well, Jack, I'm guessing that anyone who just heard Derek recounting his own story can immediately get a sense of why he's a friend of the show, right? We love him, but also why his book is so compelling. And one of the things that really stood out to me just now listening to

him is how expansive that education is that he got that, you know, that, that the way that he was steeped in race in place as he put it. And I wondered as someone who is so often pushing back against what you refer to as a narrowing of the aims of schooling, I wonder what you heard.

Schneider Yeah. I heard Derek describing relationships with teachers that went far beyond the acquisition of content knowledge in two subject areas. Right? He had relationships with teachers that were trusting and caring and that were based on those teachers, knowing him and seeing him in a variety of ways. It actually reminded me a lot of, some of the ways that Mike Rose has written about the transformational power of education, right? That education doesn't happen exclusively inside schools and schooling is not always educational, but when true education does happen within a school, it's a powerful thing to witness that's Mike's phrase. And the way that it happens is when professional educators have the training and the capacity and the autonomy to engage with young people in not only the instructional core as what Harvard scholar, Dick Elmore would call it. But also all of the other aspects of young people's interests, talents, abilities which again is a way that Mike has talked about the importance of education, right? That it not only exposes you to the core of the academic experience, but it also helps you discover your interests, your abilities. It broadens the world for you. It's a broadening experience. And clearly that was Derek's experience

Berkshire Back to Derek and his new book. Despite the title - *Schoolhouse Burning* - and the dramatic cover art of charred pencils arranged in the shape of a flag - this is a deeply optimistic book. And that's because as Derek immersed himself in a sort of people's history of the post-civil war year, he kept finding a commitment to public education that just astonished him.

Black The last time we were together on the podcast, I was talking all about this discussion primarily in Congress and their conversation with the states. That really kind of sounds like old white men telling the South what to do. And so there's this version of my research that could have looked like that a couple of years ago. But as I began to dig into the stories of real people, you know, what I realized was no. Congress is having this conversation because of what people at the grassroots level are saying. And when I say people, we're not even talking about freed men, I'm talking about people who are enslaved and trying to get education before the Civil War was even over. It was shocking to me to learn that the first schools for African Americans were not built after the civil war, they were built in the middle of the civil war and Buford, South Carolina and St. Helena Island is the best example of that. Northern missionaries sent prefabricated walls during the civil war down to St. Helena's Island so that they could build a school for African Americans.

Berkshire In state after state Derek found a similar story playing out after the Civil War: a powerful and largely forgotten push from the grassroots - Black and white - for public education.

Black Down here in Charleston, South Carolina, as soon as the war is over the Colored Citizens Convention comes together and says, we want the pillars of society to be as secure in South Carolina as they are in New Hampshire. And those pillars are the pulpit and public education, right? They understood that they wanted to have their religion and they wanted to

have public education. And that would, would assure their future, or at least give them a reasonable chance at a future.

And so you have all this background of, of sort of agitation organization and advocacy, not just in South Carolina, but in Arkansas and Louisiana and elsewhere, demanding that the states provide public education. So our state constitutional conventions are really getting hit from two sides. They're getting hit from the, from the grassroots side and they're getting hit from, from Congress. And that's really saying Congress, I think, is coming to realize this issue as much because of the grassroots advocacy as anything. But anyway, it is a very powerful story.

Schneider You've got a great line, almost exactly halfway through the book that I think echoes where you were just saying Derek public education in the South, which was really a black idea, had become too powerful to quash, but I want to approach this from a different angle. You make this powerful argument in the book that there has always been a federal right to education. And that the radical idea is that public education doesn't have a special place in our democracy and the government has no business in it.

You give us some exemplary federal involvement through the Northwest ordinances and through reconstruction, looking at the importance of education for the promotion of democracy and democratic equality. In both cases, there is top-down elite concern for those who would otherwise not receive an education. If this was left to the whims of the marketplace, there are people who would not get an education, and that was viewed as too risky. They didn't want to take that chance that people out in those Western lands or in states being readmitted after the civil war would not have an education. So I'd just like to hear you talk about the top down concern and about what political elites actually wanted in terms of extending education to people

Black That moment at the nation's founding, we are a world run by kings and queens and elites. And America was a radical idea that we would let regular folks, not necessarily women, but maybe regular white men, run the country. And if that was going to happen, like the kings and the queens and the elites, they were worried about that. I mean, Hamilton, everyone in a lot of people reading Hamilton. Now you read that now, like Hamilton is afraid of common people. A lot of them said look, if we let the common people take control, they'll just tax us to death and take all of our stuff. And we'll be the poor ones on the street. And the only guard against that is to give them an education that allows them to see the common good. And so there is this idea from the get go that, that our system may implode without public education, or as Madison says, it'll just be a farce and a tragedy.

So very early on Thomas Jefferson begins working in his home state. We have Adam's working in his home state towards creating those state level systems of education. But then there's like everyone else, particularly the territories. And so the America that we have today is much bigger than those original colonies. And they said as to the rest of the territories, there will be a center law reserved and every single town in the rest of America for a school.

Law professors don't spend much time thinking about the Northwest Ordinance and public schools and public education historians don't spend a lot of time thinking about constitutional theory. And so I kind of, for the first time put two things together and I realized, wow, the Northwest ordinance, not only did it mandate public education or sort of preserving of land for public education, which education historians have been talking about forever.

It's actually part of the deal for passing the United States constitution, that you had several colonies asserting competing claims for these Western territories. And you cannot have a United States of America under the US Constitution if Pennsylvania, Virginia, and Connecticut all think that they own Ohio, Illinois, Michigan, on and on and on. There's also this land deal whereby the colonies give up claims those Western territories come up with the rules for developing them and moving them into statehood. So this plan and the Northwest ordinance is actually a precursor to the constitutional structure that we have today. And the same people who voted on the U S constitution are the same people who voted on the Northwest ordinance as well. So I argue you can't separate those two things from our constitutional structure,

Berkshire A trademark of Derek's work is that he takes history that we think we know and approaches it with fresh eyes. Take the question of how to pay for public education.

Black Congress hoped that land would be enough, but what we found in that first 75 or so years was the land was mismanaged. It really wasn't that valuable because there's always more land out there out West and land was not creating the resources necessary. But Congress had not paused to find a solution to that. But following the civil war, at least in the South, the South transitions to saying number one voluntary efforts on land is not enough. What we need is one, a constitutional obligation to provide it and a tax system to fund it. And so we clearly, we clearly see those two things happening in the South. Of course, the North had had its own fits and starts with statewide tax systems throughout the mid 1800's as well.

But the interesting thing when we start talking about regular people's commitment to using their own tax dollars, to make sure everyone has education is the poll tax. Poll taxes are bad business through the modern eyes, right? They were the means by which to exclude African American voters, but African American citizens and the South were the very ones insisting on poll tax. And they wanted to do it because every single dollar from the poll tax would go to public education. And they understood, particularly in a war torn South, there was no money coming from lands and plantations, per se. If we're going to have public education, we have to have taxes and we think everybody's going to want to vote. So let's tax the vote. Now they were also egalitarian enough that they said, if you can't afford to pay the poll tax, you can still vote anyway. But the point being that they established through relatively, what would seem like a radical idea today, a way to fund statewide public education.

And then during the Redemption Period, when the Southern whites took over power after Reconstruction, they began to attack that tax system and start to change it so that the money wouldn't be divided up equally and spent around the state. They wanted to make ways that

some communities could raise more funds than others. And basically let the dirty business happen at the local level, rather than the state level to hide it from the eyes of the federal government. And today to hide it from the equal protection clause, to be quite honest.

Schneider It struck me as something of a paradox that there could be no federal right to an education, but there could essentially be, I'm obviously oversimplifying things here, but essentially be a right to an education in every one of the States. And that in many of those States, they could recognize they could read in a federal right to education. There's sort of this, this funny thing going on there, right? Where like there is a right to an education everywhere in the United States, but there's no right to an education in the United States.

Black All 50 States have this constitutional obligation and most of them have lands right front from the federal government. They've all been readmitted... the Confederate States were all readmitted, pursuant to admissions conditions, following Reconstruction. And I sort of go through all these facts and go, 'now you tell me, do you think all of these things are just happenstance or, and circumstantial, or do you think there was a design from the get, go to make sure that these states had had public education? And so I say, look, yeah, they've all got state constitutions because Congress and the nation has been committed towards that agenda from the beginning.

The problem is I think that that sort of commitment got crushed by Jim Crow segregation, right? Here I am sort of telling a story in the book about the freedmen and these Reconstruction conventions. And like most people don't know anything about that. I mean, they know about Jim Crow segregation, hopefully know a little bit about Brown versus board of education, but they don't realize that Brown versus Board of Education is really the reawakening of an idea that started in 1868.

And so I just think all of the blood, sweat, and tears that African Americans and Congress and people like Charles Sumner and others put into public education, got quashed by Jim Crow segregation. And now you might say sort of the modern far right privatization agenda that just doesn't want to acknowledge that history of where we came from. So yes, it's only a paradox in so far as you ignore history. If you read the entire history, what you find is that we are operating under a false set of pretenses right now.

Berkshire As I mentioned earlier *Schoolhouse Burning* is infused with a spirit of optimism. That's in part because of its author's sensibility. But it also reflects what Derek sees as a profound commitment to public education in our history, even the parts that don't exactly shine.

Black I'm the guy that will swear that the glass is three quarters full when it's damn near bone dry. So let me put that out there to begin with. With that said, right? You know, you look back over this long history and you've seen all of the instances in which public education could have maybe should have failed, and its ability to make it through. There's no doubt that Mississippi and South Carolina wanted to crush African American education didn't want to fund their education. Didn't really want to fund the education of poor white folks either, right? But there's a

segregationist, right? who stands up at the Mississippi convention and people had been saying let's just take education out of the constitution altogether. And you got to figure that there may very well have been a majority who, for a moment, might've been attracted to that idea. And he said, that's too far. Let's, let's not do that. It had caught hold. That is part of our inner fiber of democracy. Even if that democracy is racist.

Berkshire I asked Derek what lessons we should take from his book. And I couldn't help myself. I had to ask him if he's been able to hold onto his sense of optimism given everything that's going on right now - the pandemic and the budget slashing and all those well-funded claims that we don't actually need public education any more. Well, you get where I'm going.

Black This isn't just about policy. It isn't just about test scores. It isn't just about what's the convenient school and what's convenient for me. It's really something much bigger than that. And it's always been something bigger than that. I hope that we can see that. And the pandemic certainly puts that at risk because you know, when the pandemic first hit, I thought this is, there's this magic moment. All of a sudden everyone realized how important public school is and how hard it is to teach kids. And that shouldn't be blaming the teachers for everything in the world that this is not easy. And I thought, wow, this is a magic moment.

But crisis most of the time forces us to look at what's immediately in front of our face and forget those larger ideas. And so I do think the immediacy of like, what does my child need today and how can I best get it does put these larger ideas at serious risk. So I, you know, I'm a little bit less optimistic today than I was when I wrote the book, I have to say.

Berkshire That was Derek Black. He is the Ernest F. Hollings Chair in Constitutional Law at the University of South Carolina Law School. And he's the author of the fantastic new book *Schoolhouse Burning: Public Education and the Assault on American Democracy*. I can't recommend it highly enough. If you have time to read only two books on the threat to public education this season make this one of them. And Jack and I will be right back to tell you how you can get your hands on the other one.

[Music]

Berkshire So Jack, enough about Derek's fine book. Now it's time to discuss the other publishing event of the season.

Schneider Are you talking about the dual release of our book and Barack Obama's book, which I assume has been coordinated so people can just pick up both of them at the same time?

Berkshire How to choose...Derek's book with his relatively optimistic outlook and what I think of as our more pessimistic outlook really got me thinking of you and I have been doing some press conversations around the book. We talked to Maureen Downey at the Atlanta journal constitution, and she interviewed us separately. And her last question for me was, you know,

something like, wow, this was a really pretty depressing book. What can I feel good about? And as I was answering, I thought to myself, I wonder what Jack said.

Schneider She didn't ask me that. She was ready to just step into the darkness with me for awhile. As we talked through the fact that, you know, this isn't a story about Betsy DeVos, right? That Betsy Devoss is the headline right now, but that this is a much deeper story. That's actually far scarier than if it were simply about the current secretary of education who not only is limited in terms of the powers that she has because of limited, limited federal authority. But who also may not be in office for much longer. This is a story about what's happening at the state level and about how Devoss has simply acted as the bully in chief at the federal level, normalizing a kind of radical policy discourse, but that the real threat will continue unfolding at the state level for years to come. And I actually think that our book is an optimistic book and that the scary part is the part that produces the optimistic part, right. That once people realize what's going on they're not going to have it. I don't see that as a pessimistic outlook. I see that as a fairly optimistic outlook. I think you and I are optimists, right? That we're just trying to paint a very bleak picture for people so that they understand what's at stake.

Berkshire I imagined you sort of standing by in a glass box on the stage and then are, are two answers would be compared. And of course mine would turn out to be the better one. So do you want to know what I said?

Schneider No, I don't like, you're going to tell me anyways, so yes, yes I do. I can't wait.

Berkshire So my take is actually similar to what you just laid out, Jack, that I've been continuing to report on Arizona, which was the topic of our last episode. And what you see there is that as the, as the Republican party splits and you see this energy extreme energy on the far, right, that the way that they talk about schools is so alien to their own constituents who send their kids to public schools. Like it makes no sense at all to people that, you know, to hear that their teacher is grooming, you know, little Sally for Sharia marriage, or, you know, for sex trafficking, like they need that. They talk about schools is so alien to their own constituents who send their kids to public schools. Like it makes no sense at all to people that, you know, to hear that their teacher is grooming, you know, little Sally for Sharia marriage or, you know, for sex trafficking, like things space that I'm hoping that our book will fill. So Jack, this seems like an appropriate place to plug our forthcoming book. And since you are so notoriously averse to doing anything that smacks of capitalism on this show, as your karmic penance, I'm going to give you that job, please proceed now.

Schneider Great. okay. Everybody. So we wrote this book and if you listen to the show, you're probably actually going to love it. If you want more information about it, there is a website www.wolfattheschoolhousedoor.com. You can also just Google it or Bing it, or, you know, whatever your search engine of choice there is. It's available through all of the usual retailers. I would suggest not being lazy and ordering it on Amazon because you can actually get it for the same price and support your local bookseller.

And one of the things that Jennifer and I have talked about, and Jennifer, I'm just going to go for this so jump in and tell me if you think this is a bad idea is organizing virtual book clubs. And we happen to have a few copies of the book here as advanced copies, we can probably arrange to sign those. So if you go to the www.wolfattheschoolhousedoor.com website, there's a form there that you can fill out. And if you organize a book club with nine or more friends and if you're one of the first people to do that, we will drop a signed copy of the book into the mail for you. And get you started maybe a little bit ahead of other people. Since the book technically hasn't hit bookstores yet but we'll be shipping any day.

Berkshire Jack, I just love that idea. And I think that our listeners will too. People seem very excited about the book. And I know that when my copies arrived this week, there was a scene of great celebration at my house. In the meantime, if you are interested in throwing a couple of dollars our way each month to support your favorite podcast, you can do that by going to Patreon.com/haveyouheardpodcast. You'll see a list of all the cool extras you can get just by supporting us things like a custom reading list. You'll get smarter each time you listen to the show and an area that we call In the weeds where we talk, we go in depth on some related topic. And today we're talking about an idea that Jack had. He's been arguing that this is the first election in our lifetime where public education is really on the ballot, that we have somebody running for the highest office in the land who doesn't believe in it at all. And like many of Jack's ideas, when I first heard about it, I was "meh." But over time, I've thought about it and you know what I think he's right. And I would like to discuss it more In the Weeds. So if this interests you, all you have to do is go to Patreon.com/haveyouheardpodcast.

Schneider Well, before you do that, before you, you know, begin salivating over premium content that has been kept away from ordinary. Let me say that there are lots of ways to support the show. So go on, give us a rating wherever you've downloaded the podcast, make sure that you're a subscriber to it. Go on and let us know via the show's Twitter handle at, have you heard pod, if you have any ideas for future episodes, and I'm gonna add one more to this list inspired by a friend of the show, Mira Debs, who said that she bought an extra copy of the book so that she could place it in the Little Free Library in front of her home. I think the coolest way to support the show is do bulk order copies of this book and send it to friends and enemies. I just think that that would be what a delight that would be. You can do it anonymously.

Berkshire What a great idea. Well, thank you, Jack, for all of your excellent pitching this episode,

Schneider That's it though. I'm done. I'm done for the season

Berkshire On that note. I'm Jennifer Berkshire. This is, have you heard.

