


Summer 1962

Fifty-eight Lonely Men, by Jack Walter Peltason

Samuel Krislov
Michigan State College

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Civil Rights and Discrimination Commons](#), [Education Law Commons](#), and the [Legal Biography Commons](#)

Recommended Citation

Krislov, Samuel (1962) "Fifty-eight Lonely Men, by Jack Walter Peltason," *Indiana Law Journal*: Vol. 37: Iss. 4, Article 9.
Available at: <http://www.repository.law.indiana.edu/ilj/vol37/iss4/9>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.

FIFTY-EIGHT LONELY MEN. By Jack Walter Peltason. New York: Harcourt, Brace & World, Inc. 1961. Pp. xiii, 270. \$4.95.

No process of social change has ever proceeded with more prescience and self-conscious accumulation of data and observation than American desegregation. The initial decision, *Brown v. Board of Education of Topeka*,¹ in 1954 was self-diagnosed as opening up a generation of litigation. Since then the careful coverage of events by floods of *New York Times* reporter teams, the myriad of articles, the many books and the highly laudable yet typically American packrat archivism of the *Southern School News* and the *Race Relations Law Reporter*, have all focused minutely on this intricate and embroiled social context.

From the beginning a dichotomy developed between a small group of observers who viewed the process as a potential for value-free research, urging avoidance of commitment on the substantive issue; as opposed to a larger group who openly or inferentially believed in some particular outcome and subordinated social research to that end. It goes almost without saying that the value commitments of American social science and intellectual life generally are such that approval of desegregation is virtually demanded of individual professionals; to be a segregationist in any of the relevant subject matters of law and social science is to be a Neanderthal.

Perhaps for that reason the argument over value-commitment has proven of no deep significance, and few works have really acute positions on this question. Even taking a stand would not preclude many forms of objectivity, so that a still further point must be made—that most work in this area radiates a form of single-minded commitment that precludes depth of view. Weber's speculation that fresh religious insight tends to develop among peoples on the fringes of a great empire and Veblen's analysis of the role of marginal social groups in initiating

12. An important start in this direction is the book by Helen Shirley Thomas, *FELIX FRANKFURTER, SCHOLAR ON THE BENCH* (1960).

† Professor of Law, University of Chicago Law School.

1. 347 U.S. 483 (1954).

new points of view receive fresh impetus from the lack of the emergence of work of the scope of Myrdal's great book.² As the segregationists keep reminding us (not precisely in these terms), it took a Swedish social scientist to give us genuine perspective on our own racial problem.

Some of this dilemma is apparent in Jack Peltason's absorbing new book. The author tends to shift his point of view from cool analyst of human motivation to involved narration of events. The focus on the federal judges in the southern areas—on the firing line as the implementors of the Supreme Court's decision—tends to blur; indeed, the bulk of the book becomes a rather involved narrative covering the major crises involved in desegregation. The book is saved from this defraction of focus by two things: the ambition of the work is sufficient that it encompasses more than any other of its type; secondly, the author brings to the narrative portions a fresh and clever mind that makes for rewarding and absorbing reading. The result is a paradox: that no page disappoints the reader while many chapters do.

Mr. Peltason writes brilliantly and with empathy of the role of the "men in the middle," particularly in his opening and closing chapters. These chapters remind us of the human challenge in such a precarious and demanding role, where all eyes are fixed upon the decision and opposition inevitable. These two chapters, as well as a good deal of the material in the rest of the book, join the growing literature on the limits of judicial power. (Indeed, the outstanding result of the segregation decision is the development of a body of excellent analysis on the use and limits of court action in effecting social change.) Explored here are the relationships between the district courts and the state courts, the higher federal courts and various enforcement officials.

The background sketches of individual judges are often interesting, but presented in rather piecemeal fashion. Judge John E. Miller is introduced on page 75 as a "former Arkansas senator," but it is not until page 197 that we learn definitely that he was a United States Senator. One sympathizes with Mr. Peltason's problem; to go through a cast of 58 personalities in any mass treatment would be dull and approaching the fascination of a telephone directory; yet to scatter is to lose impact. This is particularly the case as the intervening chapters of the book tend to focus upon events and not men. The result is that the backgrounds of the judges in these chapters—and there are many—appear secondary and even impediments to the narrative, rather than as a major source of analysis.

2. MYRDAL, *AN AMERICAN DILEMMA* (1944).

Mr. Peltason's discussion of the politics of desegregation unfolds with an absolutely sure touch. His analysis is forthright, original and interesting. He sees the N.A.A.C.P. as lacking in aggressiveness in the early years after the *Brown* decision and outmaneuvered in good measure by the passage of time. The relative timidity reflected an unwillingness for action on the part of a Negro community. They were willing to receive the benefits of greater freedom, but slowly educated of the need to stand up for their liberties. The development of Negro assertiveness the author sees as linked in fact—not merely in sentiment—with the pattern of rising colonial peoples and the end of global Jim-Crowism. Yet the weakness of the American Negro community and the relative combativeness of southern whites in control of the premises has resulted in diminution of the apparent fruits of even the 1954 decision.

Judges, Peltason suggests, are not immune to, but rather reflect, social forces. So southern judges, often alone and cut off from supportive groups, play a complex role, seldom forthright or adventurous, weighing and balancing, tending toward formal compliance. They have been insistent on niceties to avoid conflict, *e.g.*, in Houston the judges refused to take judicial notice of statements made by electioneering school board members which belie their courtroom professions of good faith. They have often not only brooked, but even counseled delay; and older judges in particular seem fond of evasions. In Dallas, where Peltason points out no judge under eighty has heard a civil rights suit, probably the least progress relative to opportunity has taken place.

The author suggests the judges must so act in consonance with local opinion in order to preserve a community reputation for use toward further steps in the implementing process. For that reason, executive agents not rooted in the community, appointed for specialized purpose, should be utilized more often. This is more plausible since the most extreme forms of anti-federal action have been proven to be both ineffectual and to have side-effects of significance for the business community.

At present, Peltason sees token desegregation as a reflection of a temporary balance of forces, creating a spirit and reservoir for action in the Negro community, which will in the long run engulf that equilibrium. Future programs, however, will come more from executive action through administrative agents than from court decisions; and even from new legislation authorizing more court initiative. The judges, he thinks, already have enough problems on their hands.

This is a volume of charm and force, incredibly rich in ideas. A highly useful analysis of the past and future, it also offers continued

insight into the very nature of the judicial process—the sort of research which Professor Peltason himself inaugurated in his brilliant monograph on Federal Courts in the Political Process. It is to be hoped that it is a portent—both with respect to its substantive problem of desegregation and its research methods—of better things to come.

SAMUEL KRISLOV†

† Associate Professor, Department of Political Science, Michigan State University.