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De Facto Segregation and Civil Rights, Edited by Oliver Schroeder, Jr., and David T. Smith

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INTRODUCTION

De Facto Segregation and Civil Rights is a series of twelve essays by twelve authors. Each article deals with some phase of de facto segregation as it affects the civil rights of Negro citizens of the United States.

In his introduction, Professor Schroeder, one of the editors, says, "Regretfully, the common law system in America failed the Negro even as a slave. We must be sure it does not fail him as a citizen." The authors unanimously seem to be in accord with Professor Schroeder in this assertion. However, the methods to be used in guaranteeing the Negro his rights as a citizen and indeed what constitutes full and equal rights are matters on which there is considerable disparity of opinion.

THE JUDICIAL DIALOGUE

The first article is by the Honorable J. Skelly Wright, Judge of the United States Court of Appeals for the District of Columbia. His article is entitled "Public School Desegregation: Legal Remedies for *De Facto* Segregation."

Judge Wright, after tracing the actions of Congress and the Supreme Court in the struggle for equality by Negroes following the Civil War, discusses the effect of the separate but equal doctrine enunciated by the Supreme Court in *Plessy v. Ferguson*[1] and the deluge of state laws in the South which followed, designed to segregate the Negro in almost every phase of his activity. He then points out the gradual change in the attitude of the Supreme Court with respect to the separate but equal doctrine culminating in its now historic decision in *Brown v. Board of Education*[2] in 1954 which declared de jure segregation unconstitutional.

The author then turns to the de facto segregation problem that exists in many northern school systems because of housing patterns resulting in the schools in Negro neighborhoods being populated almost entirely by Negroes. He concludes that such a school is an inferior school and inherently unequal compared with the schools populated primarily by Whites. He argues that the neighborhood school concept has outlived its usefulness, and that educational parks where there are concen-

1. 163 U.S. 537 (1896).
2. 347 U.S. 483 (1954).

trated all of the educational facilities for the whole city, or for one segment of a metropolitan city, is the best suited for modern educational purposes.

He is quite critical of the courts in the cases of *Bell v. School City of Gary*[3] and *Downs v. Board of Education*[4] for not holding that the constitutional rights of Negro children in Gary, Indiana, and Kansas City, Missouri, had been violated because they were required to attend neighborhood schools that were racially unbalanced. The author argues that public education is the responsibility of the state and that school boards and administrators are an arm of the state charged with carrying out the educational policy of the state. Therefore, it is compulsory that the state see that inferior (segregated) schools do not exist in the cities with large Negro populations, while the more affluent White children in the suburbs are provided better educational opportunities. The suggestion is that where corporate boundary lines exist, it is the constitutional duty of the state to see that they are crossed, if necessary, to provide racial balance in the schools.

The second essay is by Robert L. Carter, General Counsel for the NAACP. Mr. Carter calls attention to the racial imbalance in the schools in many northern cities and contends that many of the predominately Negro schools do not even meet the old "separate but equal" requirement. Like Judge Wright, Mr. Carter thinks the neighborhood school concept is antiquated and in many cases is becoming a euphemism for northern segregation. In Mr. Carter's opinion, racial balance in the public schools is mandated by the fourteenth amendment. He says that "if legal action is to have an effective impact, school authorities must be required to reduce, minimize or eliminate racial imbalance without regard to intent, motivation or deliberateness." He suggests a number of measures to obtain racial balance in the public schools but states that no one formula will fit every community. He therefore suggests that the remedy must be designed to meet the needs of each school system.

Mr. Carter and Judge Wright agree generally on the problem of de facto segregation in the public schools. Mr. Carter would win in Judge Wright's court.

We now have a look at the other side of the coin. Charles J. Block, an attorney in Macon, Georgia, and editor of the *Georgia Bar Journal,* contends that the fourteenth amendment does not forbid de facto segregation. He traces the decisions of the federal courts as well as many

3. 213 F. Supp. 819 (N.D. Ind. 1963), *aff'd,* 324 F.2d 209 (7th Cir. 1963), *cert. denied,* 377 U.S. 924 (1964).
4. 336 F.2d 988 (10th Cir. 1964), *cert. denied,* 380 U.S. 914 (1965).

state court decisions interpreting the fourteenth amendment, from the time of its adoption down to the present and concludes that the language, history and repeated construction of the fourteenth amendment prohibit state action which segregates the races but does not compel affirmative state action to integrate them.

The dispute between lawyers and judges concerning the role that the courts should play in de facto segregation is the old debate between judicial activists who believe that the courts should take the lead in enforcing social reform and those who believe that the function of the courts is to interpret laws and decide cases leaving reforms to the legislative and executive branches of the government. Judge Wright is a self confessed judicial activist who believes that it is the function of the courts, particularly the Supreme Court, to foster reform. Mr. Block takes the position that it is not the function of the courts to re-interpret the Constitution to meet every social problem that may arise but that it is the function of the legislative branch primarily to foster reform by appropriate legislation where reform is needed.

The Educational Dialogue

William B. Levenson, professor of education in the graduate school of Western Reserve University and former superintendent of the Cleveland schools, discusses the educational implications of de facto segregation. Mr. Levenson points out the emerging approaches to the desegregation of the schools which include modification of attendance districts to include both Negroes and Whites; the open enrollment plan; bussing of students from one part of the city to another to balance the races; the Princeton Plan of combining contiguous White and Negro districts and accommodating all students in the new consolidated districts of certain grade levels in one and the remaining grades in another, and the educational park system where all students from a large area are transported to a college campus-type institution which provides all the educational facilities for all students. He then briefly discusses the advantages and disadvantages of each approach from a cost and educational point of view.

Mr. Levenson also points out that racial integration will not solve the problems of public education. The great need is to increase the quality of the urban school. To attain this quality he suggests the reduction of class size, employment of high quality teachers, wide-spread establishment of pre-school centers, modernization and expansion of school facilities, greater supply of instructional material, more classes for maladjusted pupils, increase in special staff, an extended school year,

and an expansion of vocational education. He points out that all of these improvements will cost money and asks the very disturbing question—is the American taxpayer willing to pay the bill?

The Historical Dialogue

Dr. Harvey Wish, distinguished professor of history, Western Reserve University, traces the history of segregated education in America from slavery to the present. Until recently at least, it is a sordid story; one which should make every White American blush with shame. He reminds us that in the old South, state after state forbade masters to teach their slaves to read. After emancipation, although Negroes were anxious to learn, little opportunity was afforded them in the South and even in the North where Negroes had always been free, most states provided by law for segregated education. Even in Massachusetts, where freedom and equal rights movements flourished, segregation of educational facilities was the rule and when challenged in the courts, the result was the first pronouncement of the "separate but equal" doctrine in the case of *Roberts v. City of Boston.*[5] This essay should be required reading for every White American.

The Sociological Dialogue

The next three essays constitute a rather heated debate between Dr. A. James Gregor, professor of social and political philosophy at the University of Hawaii, and Ovid C. Lewis, professor of law at Western Reserve University. Dr. Gregor in his first article entitled "The Law, Social Science and School Segregation: An Assessment," states as his main contention that courts in recent de jure school segregation cases, principally *Brown v. Board of Education,* have considered social arguments bearing on the "fact that segregation prejudices and discriminations, and their social concomitants potentially damage the personality of all children." He contends that the sociological and psychological data presented to the Supreme Court in *Brown* (1) were not relevant to the issues before the court; (2) did not meet the minimal requirements demanded by the canons of scientific inquiry, and (3) were not subject to precise interpretation. Moreover, he says that such social science material as is available tends to support racial separation in the schools, at least through adolescence under conditions approximating equality of plant and instruction.

Dr. Gregor then analyzes the sociological brief filed in the *Brown* case in support of the argument that segregated education is harmful and

5. 59 Mass. (5 Cush.) 198 (1849).

damaging to the personality of the child and concludes that while the available material is inconclusive, when studied as a whole in its proper context, just the opposite is indicated. Using the vernacular, Dr. Gregor asserts that a snow job was done on the Supreme Court and they bought it. Instead of segregated education being harmful to the child he asserts that "during the period, essentially childhood and adolescence, when the self-system is being articulated, integration gives every evidence of creating insurmountable tensions for the individual Negro child and impairing his personality in a manner never likely to be undone."

Professor Lewis in his reply, while admitting that the sociological brief filed with the Court was advisory in nature, says nevertheless that the material does justify the contention that discrimination is damaging to the Negro personality. Furthermore, he says this is not the main thrust or motivating force that caused the Court to strike down segregated public education but rather the Court was acting on the concept of simple justice and equality that should be afforded to all citizens. He then discusses the sociological material in the briefs and concludes that it does demonstrate that segregation and discrimination is damaging to the Negro.

In rebuttal, Dr. Gregor disclaims any attempt to analyze the chief motivation of the Supreme Court in arriving at the *Brown* decision. He points out however that the Court did state that segregated education was damaging to the personality of the Negro child and that such a finding was not justified by the evidence. With reference to Professor Lewis' analysis of the sociological material Dr. Gregor says that it is true that the analysis does demonstrate that the whole gamut of discrimination in housing, job opportunity, public accommodations, etc., is damaging to the Negro personality. However, he says, this was not the issue in *Brown*. The issue there was what is the effect of separate but equal education on the personality of the Negro child? On this issue, he contends, the answer is that it is beneficial and not detrimental.

Dr. Sidney M. Peck, associate professor at Western Reserve, and Dr. David K. Cohen, assistant professor at Case Institute, collaborate in the discussion of the "Social Context of *De Facto* School Segregation." They describe the migration of the Negro from the southern farms to the northern factories due to the change in agricultural technology, their concentration in the metropolitan areas of the North; their displacement as factory workers by automation and other technological changes, their inability to find other employment due to lack of skills and their impoverished plight in the ghettos of the North.

The resulting frustration, the authors say, is transmitted from adult to child resulting in self-rejection and fundamental conflict at an early age. Thus, the Negro child takes on the poses of defiance, negativism, resistance, and indifference. The one institution which should serve to reverse this trend is the public school. However, the authors contend, in too many instances, the schools, provided for Negro children, tend to promote and extend this social cancer because of their segregated nature and inferior quality.

In order to reverse these trends, it is necessary that immediate changes be made in public education along lines suggested by the authors, designed to desegregate the schools and improve their quality. The annual cost of such a program according to one authority will be 33 billion dollars by 1970 compared to 18.2 billion in 1962.

The remaining essays are not directly related to education. Gary L. Bryenton, an attorney, discusses employment discrimination and the function and inadequacy of state fair employment practices laws in solving the problem. He also discusses Title VIII of the Civil Rights Act of 1964, and expresses the hope that it will be more effective in insuring equal employment opportunities for the Negro.

Harry L. Quick, an attorney and former editor of the *Western Reserve Law Review,* discusses discrimination in public accommodations and the impact of Title II of the Civil Rights Act of 1964.

Finally, Edward F. Marek, another former editor of the *Western Reserve Law Review,* discusses civil disobedience in the civil rights movement. The author reviews the decisions of the Supreme Court in the sit-in cases[6] and others dealing with alleged civil disobedience in the civil rights movement. While acts of civil disobedience have gained limited sanction by the courts, the author warns that such acts must be kept within the bounds of order and that violence and destruction cannot be tolerated no matter what the motivation may be.

Conclusion

The impression gained from reading this series of essays is that racial segregation is one of the most serious social problems facing this generation of Americans and that every effort should be exerted to solve it. The cure will not be easy, primarily because we have allowed the condition to become chronic without proper diagnosis and treatment. Its solution is made all the more difficult because of the feelings of passion

6. See Peterson v. City of Greenville, 373 U.S. 244 (1963); Shuttlesworth v. City of Birmingham, 373 U.S. 262 (1963); Lombard v. Louisiana, 373 U.S. 267 (1963); Gober v. City of Birmingham, 373 U.S. 374 (1963); Avent v. North Carolina, 373 U.S. 375 (1963), and Garner v. Louisiana, 368 U.S. 157 (1961).

and prejudice that have been engendered on both sides. As Dr. Gregor puts it, "when issues are raised concerning the interpretation of civil rights and the law, even the most reasonable men may cease to behave as men must if justice, in any sense of the word, is to prevail."

While the editors are to be commended in compiling in one volume thought provoking discussions of several aspects of de facto segregation, they have failed to present the one fundamental and basic aspect of the problem, namely, segregated housing. Solve that problem and you have eliminated de facto segregation in the public schools. Solve that problem and persuade men of all races to live together as neighbors and you have eliminated most, if not all the objections to working together in factory and office. Solve that problem and there will no longer be any objection to sharing public accommodations. Why is it that those who discuss the problem of segregation of the races attack it obliquely rather than head on?

From the emphasis placed on de facto segregation and the public schools in this compilation the authors and editors seem to follow the modern trend of unloading all the social frustrations of society on to the shoulders of the already overburdened and underpaid school teacher and school administrator.

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