SPECIAL ADMISSION OF THE "CULTURALLY DEPRIVED" TO LAW SCHOOL

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In the past few years many law school faculties have adopted a policy of granting admissions to a limited number of applicants who do not meet the school's usual minimum standards. This policy is often described as applicable to the "culturally deprived," but "cultural deprivation" is seldom defined and neither a cultural opportunity test nor an economic status test is employed. The purpose of the policy, freely recognized within the law schools, is to increase Negro enrollment and, in some instances and usually to a lesser degree, enrollment of certain ethnic groups such as Mexican-Americans or Puerto Ricans. This has been the effect of the policy in operation.[1] At least one law school has gone further and directly established racial and ethnic group quotas.[2]

The number of applicants admitted to a law school partially on the basis of racial or ethnic considerations cannot usually be precisely determined. The admissions committee in most law schools has a range of discretion; that is, applicants who do not quite meet the minimum standards for "automatic admission" (nearly always a combination of college grade point average and score on the Law School Admission Test) may be admitted if their records show some exceptionally favorable factor, such as markedly higher grades in later college years. Under the new policy, all or nearly all Negro applicants falling within this range are admitted. These are not usually considered special admissions. Other Negro applicants falling below this normal range of discretion are also admitted. As to these, the only minimum objective standard either established or applied may be a college degree where this is otherwise required. Only this latter group can be readily identified or recognized as specially admitted, although all or nearly all Negro applicants may be admitted. Because no "cultural deprivation" test is in fact employed, Negroes may be specially admitted even though they are of middle class background, have professional parents, or otherwise appear to have had average or above average cultural opportunities.

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1 *See generally* Comment, *Current Legal Education of Minorities: A Survey*, 19 BUFFALO L. REV. 639 (1970).

2 Askin, *The Case for Compensatory Treatment*, 24 RUTGERS L. REV. 65 (1970) (editor's headnote).

Opposition to a policy so obviously well-intentioned and based on humanitarian considerations is no labor of love. I feel, however, that the justifications for the policy have not been so much analyzed and argued as simply asserted or assumed, that the principle involved is objectionable and the factual premises questionable. Special admission standards for Negroes will, I fear, disserve the cause of Negro equality, impair educational quality, and result in deviation of the schools from their educational function. In any event, because opposing considerations have not been adequately canvassed and weighed, further discussion seems desirable.

The basic principle underlying the new admissions policy is that because Negroes have been so long and so severely discriminated against in our society, merely ending this discrimination is not enough—discrimination in their favor is required.[3] That unjust, societally imposed disadvantages—such as those imposed by reason of race—should be not only removed but also compensated for is, I believe, entirely sound. I am disturbed, however, that this should itself be attempted by means of racial or ethnic discrimination. Discrimination in favor of some racial or ethnic groups necessarily is or appears to be discrimination against others. Perhaps discrimination in favor of a minority can be distinguished from discrimination against a minority,[4] but America consists of minorities and I fear the claims that could be made or conditions justified if this distinction should be generally accepted. True and complete elimination of racial discrimination is as close as I had hoped to see the approach of the millenium. Societally approved racial discrimination, even as a temporary expedient to rectify past racial discrimination, dilutes the purity of that goal and undermines our most basic ideal that individual merit and individual need should be the only relevant considerations for societally distributed rewards and benefits.

Further, discrimination in favor of particular racial or ethnic groups is largely or entirely unnecessary to achieve true equality in educational opportunity and is unjust to those who have been denied such opportunity on other grounds. Severe and unjust as have been

[3] *See* Hughes, *Reparation for Blacks?*, 43 N.Y.U.L. REV. 1063 (1968); Report of the Committee Set Up to Respond to Proposals Made by the Black American Law Students Association and the Student Bar Association, May 8, 1968 (New York University Interdepartmental Communication, Graham Hughes, Chairman) [hereinafter cited as Hughes Report].

> [S]ocial justice now requires discrimination in reverse in favor of minority groups and other disadvantaged groups in the United States. . . . Discrimination is an ugly word and it is only with a shudder that American institutions of education can make a deliberate decision to change their color-blind policy even for what seem to be the most laudable ends. But the times call for radical innovations; we must now energetically pursue prosthetic measures.

Id. 7.

[4] *See* P. FREUND, ON LAW AND JUSTICE 44-47 (1968).

the disadvantages of being born black, the overwhelmingly severe and unjust disadvantage in our society is being born poor. It is severe because economic advantage tends to bestow all other societal advantages; its effects are unjust because they are societally imposed without regard to merit. Being poor all your life in America may somehow be your fault, being born poor is not. With the recent invalidation of governmentally required, approved, or encouraged racial discrimination, and the growing recognition that all racial discrimination is evil, the disadvantages of being born black and the disadvantages of being born poor increasingly overlap. They can and should be removed and compensated for together. In education this can be accomplished by investing whatever resources are necessary to afford each individual as much education as he can and is willing to take. In terms of both economics and justice no better investment can be made—going to the moon is by comparison the building of pyramids.

My basic objection to the new admissions policy is that, insofar as it results in the admission of unqualified or unprepared students to law schools, it is likely to benefit no one and harm many. Whatever the validity, in general, of the principle that racial discrimination may be used as a means of compensation for past injustices, it can have no application to the admission of unqualified students to institutions of higher education. Inadequate grade school, high school, and college educational opportunities cannot be redressed by offering quality law school education. In quality education it is not possible to begin at the top. Denying admission to qualified students because they were black was a very great wrong; granting admission to unqualified students because they are black is not the remedy.

The new admissions policy, I fear, stems from a desire to "do something," even though all that is within our power to do as members of law school faculties is unsuitable or even counterproductive as a means of meeting the problem. Unjust cultural and economic disadvantages should be removed, but we cannot do that. Educational facilities from nursery school through graduate school should be improved, but we cannot do that. What we can do is ignore the inevitable effects of these disadvantages and deprivations and admit the deprived to our law schools. It at least shows where our hearts are.

Proponents of the new policy may answer that urging the removal of economic impediments to educational opportunity is merely wishing for utopia and serves no practical purpose in the present context except to frustrate steps that can be taken. The recent (March 1970) report of the Carnegie Commission on Higher Education, however, recommending the removal of all economic barriers to higher education by

1976, indicates that this utopia may be attainable. In any event, that the goal may be distant does not justify measures not directed toward reaching it and costly of other values. Proponents may further argue, however, that there is value in showing where our hearts are and that the new policy, however inappropriate or costly, may help create the political or social climate in which appropriate measures will be taken, if only to terminate or forestall inappropriate ones. I find more logic and candor in this argument than in most others offered for the policy, but I cannot accept it. I think it more likely that such a strategy will, when discredited, make it more difficult to gain the necessary consensus for valid solutions to the problems of the poor in general and of Negroes in particular.

The most specific and frequent argument for the new admissions policy is simply that there are too few Negro lawyers, that Negroes are "underrepresented" in the legal profession. As one proponent of the policy has stated, "All should recognize that the current shortage of Negro attorneys has reached crisis proportions." [5] The exact nature of this "crisis" is not made clear. We would undoubtedly all be happier if all definable groups were proportionately represented in all social categories, employment and other—it would be consistent with democratic ideals. When my child's new teacher turns out to be a Negro, I am very pleased; it permits me to think that the world, or at least the country, is on its way to being well. (This pleasure would not be possible, or would be much diminished, if I had reason to believe the Negro teacher less qualified than his or her white counterpart.) It is, however, even more consistent with, indeed required by, the democratic ideal that people not be classified—and neither taught nor expected to classify others—on the grounds of race. I do not know that Negroes do or should prefer that their attorneys be Negroes, or that Negro attorneys can more effectively represent their interests. To assume, accept, and even urge, otherwise seems to me to verge upon racism, to use that most common and forceful of epithets. Achievement of proportional representation of different groups is not a proper goal of higher education. It seems a small step from this to the argument (not unknown in our past) that certain groups are overrepresented in various professions. Society needs the best lawyers it can get, regardless of racial or ethnic derivation. The need of culturally or econom-

[5] Gellhorn, *The Law Schools and the Negro*, 1968 DUKE L.J. 1069, 1075 n.29; *Report of the Advisory Committee for the Minority Groups Study*, in ASSOCIATION OF AMERICAN LAW SCHOOLS—PROCEEDINGS, pt. 1, § 1, at 160 (1967) [hereinafter cited as *1967 Minority Groups Study*] (output of Negro graduates "painfully inadequate"); Hughes Report 5. The Hughes Report argued that New York University Law School should adopt a special admission program because (1) the rest of the University was doing it, (2) "other leading law schools" were doing it, and (3) to do otherwise would have been "unfair to the minority group students presently in the School." *Id.* 6.

ically disadvantaged groups is the same: the best representation they can get. This representation can and does come from all races. Similarly, effective leadership both in democratic ideal and in fact does not require racial identity of the leader and the group, as Senator Brooke of Massachusetts demonstrates. Nor are the problems of poverty and of racial and ethnic discrimination solely or even distinctively matters of concern for members of minority groups; they are inescapably the most important problems for us all, and particularly for all lawyers.

Even assuming that particular minority groups have problems distinct from the general social problems of poverty and discrimination, it would be unwise and unfair to ask or expect law school graduates from particular minority groups to confine their practice to the problems of those groups if they are not so inclined. These graduates, meeting normal standards, will, I believe, have opportunities today equal to those of other graduates with similar records. The potential for social service, influence, and leadership exists in Washington, on Wall Street, and in major corporations as well as in the slums. If law schools were specifically looking to develop minority group organizers, they might give preference to militant activists from those groups, as has been done in some cases. Experience has apparently shown, however, that these often make the least effective and most disruptive students.

It is further argued that minority group lawyers are important beyond their individual merits because of their visibility—they are living evidence that minority group members can advance and participate in all levels of our society. I agree,[6] but only insofar as the minority group lawyers are effective, able lawyers, the equals of their "majority group" peers. The abstract question whether Negroes can compete and succeed in this country has, I believe, been answered in the affirmative; there are few positions short of President and Vice President that Negroes have never attained. At the very highest level of the legal profession, the United States Supreme Court, Negroes are "represented" almost exactly in proportion to their share of the population.[7]

Ineffective minority group lawyers will disserve the cause of minority group equality and recognition. In the short run disserving the interests of their clients, they will in the long run reinforce stereo-

[6] Indeed, I sometimes think the chief disadvantage of being born poor is not that you are poor but that everyone you know is and has the horizons of the poor.

[7] On this basis, certain other minority groups might have reason to complain about their representation in the governing processes of the United States. For example, no Italian-American has ever served on the United States Supreme Court and only one has ever served in the United States Senate. I am not concerned about an "Italian-American problem," but if racial or ethnic "representation" should be accepted as legitimate, many can seek such representation to the detriment of all. Although other claims are not as valid as the Negro's, the departure from principle is so apparent that strong resentment is inevitable and justification difficult.

types of incompetence. It will soon come to be believed that to get a *real* lawyer he had better be very white.[8] The point is important on a much wider scale: one of the most serious disservices done by lowered academic standards for Negroes in institutions of higher learning is to call into question the legitimacy of every Negro graduate. Neither individuals nor institutions should become accustomed to believe that Negroes cannot meet usual standards. As the prominent Negro psychologist Kenneth P. Clark has stated:

> Racism emerges in both blatant and in more difficult to answer, subtle, manifestations. In the academic community, it began to be clear in the 1960's that apparently sophisticated and compassionate theories used to explain slow Negro student performance might themselves be tainted with racist condescension. Some of the theories of "cultural deprivation," "the disadvantaged," and the like, until recently popular in educational circles and in high governmental spheres, and still prevalent in fact, were backed for the most part by inconclusive and fragmentary research and much speculation. The eagerness with which such theories were greeted was itself a subtly racist symptom. The theories obscured this orientation, but when challenged, some of their advocates posed more overt racist formulations.[9]

Apart from the implication of inferiority, consideration and treatment of a student not as an individual but as a representative of his race necessarily imposes upon him burdens and responsibilities no one should be expected to bear. As described by a recent Negro law school graduate:

> There were seventeen black students in my law school class, and we were all scared; perhaps more than the white students. Traditionally, first-year law students are supposed to be afraid, or at least awed; but our fear was compounded by the uncommunicated realization that perhaps we were not authentic law students and the uneasy suspicion that our classmates knew that we were not, and, like certain members of the faculty, had developed paternalistic attitudes toward us. The silence, the heavy sense of expectation, fell on all of the blacks in a classroom whenever one of us was called upon for an answer. We waited, with the class, for the chosen man to justify the right of all of us to be there. . . .

[8] Thurgood Marshall, in his early days of law practice, "overheard a Baltimore court clerk . . . speaking contemptuously of a 'nigger brief' filed by a Negro lawyer. [He] vowed then never to give even the most bigoted judicial functionary cause to use such an epithet in connection with his own work." MacKenzie, *Thurgood Marshall*, in 4 THE JUSTICES OF THE UNITED STATES SUPREME COURT 1789-1969, at 3063, 3070 (L. Friedman & F. Israel eds. 1969).

[9] Clark, *The Social Scientists, the Brown Decision, and Contemporary Confusion*, in ARGUMENT xxxi, xli (L. Friedman ed. 1969).

> I cite this not as an example of the black student's inability to compete successfully with his white classmate, but rather, as an example of the psychological pressures on him to work even harder than his white classmates and to take every minor defeat much more seriously than it ought to be taken; to invest in it certain racial implications. There were many white students who could not give adequate answers to questions put to them; but I suspect that none of their white classmates felt that their own intellectual equipment was being measured by the performance of these people.[10]

If a student is admitted to a school not as an individual but as a Negro, he will be judged as a Negro. It is burden enough to be accountable only for oneself. To insist that each human being be treated as an individual, even when preferences are intended for people who have suffered severely because we have not insisted on this in the past, is not a ruse to avoid appropriate corrective action. Classification by race is as unwise, even if not as unjust, now as it was then. It may be difficult or impossible for some to consider a man's race irrelevant to his individual humanity, but our best hope for racial justice and respect lies, I believe, in making the attempt.

At the beginning of the movement for special admission programs—and usually today when such a program is first proposed for a school—it was generally insisted that only admission standards should be lowered and that performance standards in the schools should be maintained. Proponents were emphatic that "[i]t is to be hoped that law schools never compromise their standards of performance for Negro youth, particularly during the last year or two of enrollment. Whatever their needs, this is not one of them." [11] An Association of American Law Schools committee on the question stated, "[w]e support adherence to a single standard of performance in the law school and of admission to the profession." [12] By selectively and sufficiently lowering admission standards, "representation" of various groups in the student body can be achieved in any proportion desired. The difficulty, of course, is that students not meeting a school's minimum admission standards cannot reasonably be expected to meet its performance standards. The major factual premise (or hope) of proponents of special admissions is or was that the "culturally deprived" are more likely than others to perform in law school beyond the level indicated by their objective academic achievements and test scores. I find this premise intrinsically implausible and have seen no persuasive evidence

[10] McPherson, *The Black Law Student: A Problem of Fidelities*, ATLANTIC, Apr. 1970, at 99.

[11] Carl & Callahan, *Negroes and the Law*, 17 J. LEGAL ED. 250, 263 (1965).

[12] *1967 Minority Groups Study* pt. 1, § 1, at 163.

enhancing its plausibility. It seems to me an instance, not uncommon in this area, of the wish fathering the thought.

The objective admission criteria for nearly all law schools are performance on the Law School Admission Test (LSAT) and college grades. The LSAT strives to measure—apparently with a high degree of success—skills essential for law study, such as reading, writing, and abstract analysis. (A portion of the LSAT dealing with factual information has been found to be of little value in predicting success in law school and has been dropped by many schools.) If "cultural deprivation" means lack of exposure to and experience with difficult written material and abstract reasoning, it will undoubtedly adversely affect performance on the LSAT and in college. There is no reason, however, to think that it will adversely affect performance in law school any less. The effects of "cultural deprivation" will, if anything, accumulate and become more disadvantageous as the student reaches higher educational levels. It is difficult to accept that "cultural deprivation" results not in deficiency in essential law school skills but merely in ability to demonstrate them and that they are likely to appear for the first time in law school. Although a difference in motivation can make a difference in performance despite objective criteria, I know of no way to measure motivation other than performance and have no reason to believe that the "culturally deprived" are more highly motivated than others to succeed academically. Unusual motivation may help overcome obstacles to acquiring basic academic skills, but it is probably unwise to attempt law school without such skills.

The limited data available do not indicate that the "culturally deprived" perform in law school beyond what is indicated by objective standards. As the American Association of Law Schools committee, referred to above, stated:

> There has been no end of discussion in the law school world as to the relative reliability of the Law School Admission Test for the culturally deprived. A study has been made by a committee of the Law School Admission Test Council of the relation of Law School Admission Test performance to law school performance by the culturally deprived (of whatever race). It extended to some 8,000 persons who had attended sixteen law schools. The upshot was that the committee found nothing statistically to support the conclusion that the Law School Admission Test relationship was significantly different for the culturally deprived than for the rest. There were too few Negroes in the group to provide a basis for a statistical conclusion as to them.[13]

[13] *Id.* 166. The study referred to is THE INTERPRETATION OF LAW SCHOOL ADMISSION TEST SCORES FOR CULTURALLY DEPRIVED AND NON-WHITE CANDIDATES,

Some data may indicate that the "culturally deprived" perform below expectations.[14] As one strong proponent of special admissions has stated:

> While schools are reluctant to disclose specific figures, most major law schools which have enrolled substantial numbers of Negroes acknowledge that most Negro students, in general, have performed below the expectations suggested by their grade and test records.[15]

Nonetheless, one hears reports that special admissions programs are a "success" because many of the specially admitted have graduated or are passing their courses.[16] Concrete data are difficult to obtain,[17] but I find the available information, like my limited personal experience, not encouraging. The reports from the various schools are difficult to evaluate for several reasons. Some schools have in fact abandoned the factual premise on which the programs were originally based and no longer insist on undiluted performance standards—lowered standards are now justifiable.[18] At New York University Law School, for example, a special admissions program was first adopted in 1966 when the school employed an anonymous grading procedure under which the identity of the student was not known to the professor until after the grade was assigned. After two years, twelve of fifteen specially admitted students were not maintaining a passing average. A faculty committee reporting on the problem found that the special admissions program was being "crippled by the rigidity of the anonymous grading system" and that "[t]he preservation inviolate of traditionally narrow canons of academic excellence recedes into insignificance when confronted with the dimensions of the American crisis of social in-

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LAW SCHOOL ADMISSION TEST 1965-66 ANNUAL COUNCIL REPORT 81. *See also* LAW SCHOOL ADMISSION TEST 1968 ANNUAL COUNCIL REPORT 140; Comment, *supra* note 1, at 645.

[14] Pitcher & Schrader, *A Note on Professor Flickinger's "Law School Admissions and the Culturally Deprived,"* in LAW SCHOOL ADMISSION TEST 1968 ANNUAL COUNCIL REPORT 165.

[15] Gellhorn, *supra* note 5, at 1089.

[16] *See, e.g.,* Emory University School of Law Report to the Field Foundation, 1966-67 Pre-Start Program for Prospective Negro Law Students, Oct. 1967, copy on file in Biddle Law Library, University of Pennsylvania Law School.

[17] Comment, *supra* note 1, at 645: "Conceding the limitations of the survey, one might nevertheless become bothered by the suspicion that perhaps the reason so many schools failed to reply to the question [of the performance of the specially admitted] is a reluctance to discuss the problem."

[18] "There is a self-defeating, perverse and almost cynical aspect to admitting students who are below our usual standards and then expecting them immediately to meet standards of performance which have been evolved as being suitable for those who do meet normal admission standards." Hughes Report 11; *accord,* Gellhorn, *supra* note 5, at 1091: "[I]f the double standard is only a law school's recognition that its normal standards are unnecessarily high, then the second standard utilizing competency rather than excellence as the test of graduation seems temporarily acceptable."

justice." [19] It successfully recommended that the grading system be changed to permit a professor to take into account special admission when a student would otherwise receive a failing grade.[20] The view that special admissions programs, once adopted, should not be permitted to "fail" arises naturally. Some schools have admittedly adopted a "double standard" for performance and the practice is probably widespread; [21] at least one school has simply lowered its standards for all students. [22] Apart from school policy, many individual faculty members have undoubtedly found the temptation for special standards or generally lowered standards irresistible.

Comparison of the performance of the specially admitted with other students is also difficult because most schools with a special admissions program provide additional tutorial assistance, lighter course loads, and other advantages to specially admitted students. This approach sensibly recognizes that deficiencies in fact exist and attempts to remedy them. Unfortunately, the specially admitted often reject such recognition and such programs have generally been unsuccessful.[23]

A further consideration in evaluating reports on special admissions is that the programs are often administered by the faculty member or members most committed to them. Reports from these faculty members sometimes differ widely from reports of other faculty members. In this area, public and official discussions are typically favorable or optimistic, while private discussions are despairing.

Special admission programs, almost by definition, operate to insure that students are placed in schools for which they are not qualified. As a result, many students fully qualified for other schools, attend institutions for which they are ill-equipped. Law schools with the otherwise most exacting requirements recruit and accept students some of whom could in fact meet the requirements of average schools; average schools accept students who are qualified for our least demanding schools; and our least demanding schools accept students who would better serve themselves, their racial or ethnic group, and society in some capacity other than as lawyers. Frustration and humiliation are virtually insured.

Special admission programs must be evaluated in a wider context than whether specially admitted students are somehow graduating from law school. Apart from the general debasement of academic standards

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[19] Hughes Report 12-13.

[20] *Id.* 14.

[21] Comment, *supra* note 1, at 645; Gellhorn, *supra* note 5, at 1091.

[22] Comment, *supra* note 1, at 646.

[23] LAW SCHOOL ADMISSION TEST 1969 ANNUAL COUNCIL REPORT 155 ("any major attempt to provide special tutorial programs proved highly unsatisfactory"); Gellhorn, *supra* note 5, at 1090.

to which these programs irresistibly lead, the experience of many schools, as related to me by individual faculty members and corroborated in part by reports in the press, should be cause for deep concern. These reports seem to confirm that the "culturally deprived" have no advantage in overcoming deficiencies in basic academic qualifications, and that to admit to law school applicants not meeting the school's minimum academic requirements while asking them to try to meet as students the academic standards of the school is to invite frustration and failure. This does not benefit the student, and the resentment which results can greatly harm the school. Institutions of higher education, we have seen too frequently, are delicate and vulnerable; they are not designed to resist the concerted effects of resentment—and I hope they never will be so designed.

What are law schools to do when faced with the effects of the resentment and frustration engendered by admission of the unqualified, and with the inevitable demands for further abandonment of academic standards and goals? The response of many proponents of special admissions is not encouraging. Typically, they deny that any demand is intended to be unreasonable and urge that even admittedly outrageous demands be treated as pathetic, inarticulate pleas capable of mollification and appeasement. This approach, consistent with the principles of special admissions, seems to me condescending and unrealistic. It refuses to recognize that others can mean what they say and have the capacity to say what they mean. Spokesmen for groups making demands on our universities should be recognized as literate, articulate, and intelligent human beings, not patronized as incompetents. Outrageous demands cannot, merely because they are such and often carry implied or explicit threats of violence, be treated as innocuous or inept misstatements of reasonable complaints. Intimidation and extortion are not inconceivable; they are all too real and immediate in our universities today.

More importantly, having accepted a policy of special admissions on racial and ethnic grounds, what is an outrageous or improper demand? If the "underrepresentation" of certain groups is to be remedied by lowered admission standards, why not directly and completely, as is increasingly being done, by racial and ethnic quotas? If justice requires lowered standards for some members of these groups, should they not be lowered for all? Anything less can be and has been rightly denounced as tokenism. If lowered admission standards are appropriate, is the inevitable demand for lowered performance standards improper? If certain courses are not suited to this approach they can be made optional, changed, or eliminated. If some instructors might not be cooperative, students can be given control of their selection or

assignment. Argument by parade of horribles is not the most persuasive, but the true horrible here, I believe, is that each of these proposals is being seriously urged today and some have been adopted.[24]

After only a few years in the academic world following several as a practicing lawyer in the business world, I find myself often tempted to the view that among many academics the instinct to self and institutional preservation is unusually weak. Many seem so fundamentally dissatisfied with our society, including academic institutions, that they welcome or refuse to resist a radical restructuring. The reason may stem partly from the nature of the academic function, a most important part of which, at least in law school, is to examine critically all aspects of our society. Our proper function is to discern and point out wherein our society falls short of the ideal, as indeed it often does; we properly measure America against heaven. We serve America best by not leaving it to its lovers. Lovers are not noted for objectivity or rationality; they lack motive to seek improvement, without which there is decay. For this reason, among others, independent and effective academic institutions must be preserved. But virtues unrestrained become defects: in performance of our duty to compare America to heaven we can neglect to remember that it exists on earth, which, more often than not, has been hell. We can become so impassioned for the ideal—and to exorcise long established evils usually requires passion—that we jeopardize progress towards the ideal we have made. In the context of inhumanity and misery I read as history, I hold the American achievement high. This is not to fail to see that America has not been as good to some as to others or to deny that it must be improved. It is only to recognize that our society and our academic institutions have much to lose. I am grateful to those who work for a better society, but I will not be easily convinced that it will be brought about by the destruction or radical disruption of this one. It is far more likely that the remarkable degree of freedom and the hope for justice we possess will be diminished. Compassionate recognition of conditions that have existed in our society helps us to understand the impulse for radical change and some of the violence and disruption in our schools, but it does not lessen our responsibility to preserve what is

[24] Askin, *supra* note 2, at 65 (editor's headnote): "Rutgers Law School is one of an increasing number of educational institutions which has taken affirmative action to eliminate racial imbalance among its student body by establishing a minimum quota for black and other minority students."

Professor Gellhorn states that the challenge for law schools today in examining the "cultural bias, if any . . . in the law schools" is to "honestly examine and evaluate the fairness and utility of current practices, and, where necessary, adapt their methods to meet the needs of Negro students to provide them with adequate legal training while at the same time not destroying the quality education now made available to the student body as a whole." Gellhorn, *supra* note 5, at 1089.

worth preserving. Shame for the past and overflowing good intentions must not be allowed to displace reason or hamper our ability to appraise the consequences of what we do or permit.

As a final word, perhaps one who argues as I have must go beyond pro forma concession of past injustices. Our grounds for guilt in racial matters are great indeed; the reservoir of shame will be a long time emptying. A nation which has forced or permitted others to force a whole group of people to the back of the bus has much to repent. And it is no good to argue that the back of the bus is better than walking. To walk when others walk is no shame; to be permitted only the back of the most luxurious bus is degradation. Gratuitous destruction of self-respect is the ultimate inhumanity. Had I been kept at the back of the bus, it would not be wise, I hope, to place me unprepared in a fragile center of learning. Our society has paid, is paying, and will continue to pay for these injustices. They must be rectified by every rational means—not to expiate the sins of the past, but to make the present and future more tolerable, and to make irrational expedients to satisfy desperate needs resistible.