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The Law, Social Science, and School Segregation: An Assessment

A. James Gregor*

INTRODUCTION

One of the most significant changes of our time has been that which characterizes our thinking about the judicial process. It is a change described by Dean Roscoe Pound as being a change "from the analytical to the functional attitude."¹ In essence, the emphasis has shifted from the concept of law as supplying interstitial interpretations covering instances of "gaps in the law"² to assessing whether the administration of the law accords itself with the ultimate end of the law as it is conceived

at the time of review. Not the origin of law, nor established precedent, but rather the goals or purposes of law thus conceived ultimately define judicial responsibility. This means, essentially, that the contemporary juristic philosophy of law is at bottom the philosophy of pragmatism, whose organon is sociology.³

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As early as 1908 the first sociological brief, prepared by Louis Brandeis and Felix Frankfurter,⁴ had its test. The brief did not rely primarily on legal reasoning or precedent, but rather supported its central theses with an impressive array of historic, economic, statistical, and sociological data.⁵ After 1937 sociological jurisprudence became "all

* Professor H. E. Garrett, Emeritus Professor of Psychology, Columbia University, Former President of the American Psychological Association; Professor R. W. Erickson, Chairman of the Department of Psychology of Mississippi State College for Women; and Dr. C. P. Armstrong, Former Chief Psychologist, Psychiatric Division, Bellevue Hospital, acted as consultants and are in substantial agreement with the foregoing conclusions.

1. Pound, *The Administrative Application of Legal Standards*, 44 A.B.A. REP. 445, 449 (1919).

2. Cf. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 221 (1917) (O. Holmes, J., dissenting.)

3. Cf. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 102 (1921).

4. *Muller v. Oregon*, 208 U.S. 412 (1908).

5. Cf. Frankfurter, *The Hours of Labor and Legal Realism In Constitutional Law*, 29 HARV. L. REV. 353 (1916).

but the official doctrine of the Court."⁶ Sociology is today conceived as providing, by and large, the data by virtue of which assessment of law can be significantly undertaken. Moreover, sociology is, in effect, charged with the responsibility of suggesting programs implementing the values implicit in the law. The law, in much of contemporary theory, is conceived as a device for inculcating appropriate habits by compelling appropriate behavior.⁷ Thus, sociology operates in a regulative and prescriptive manner in contemporary juristic philosophy.⁸ Sociology, social science in general, consequently bears an enormous responsibility. The judges of our courts cannot be expected to be trained social scientists, and yet they are expected to weigh sociological considerations in their deliberations and assess sociological action programs. It therefore becomes incumbent upon social science itself to marshal its facts with care, formulate its hypotheses with responsible regard for the canons of scientific procedure, and advance its programs only when its hypotheses are credibly confirmed and its programs possessed of a reasonably high order probability of success.

MAIN CONTENTIONS

In recent decisions concerning *de jure* school segregation the courts have considered social arguments bearing on the "fact that segregation, prejudices and discriminations, and their social concomitants potentially damage the personality of all children. . . ."⁹

The contemporary concepts of judicial review motivate the courts to consider relevant sociological and psychological data in assessing the administration of law which, in this case, involves laws concerning *de jure* school segregation. Without tendering an analysis in depth of the implications of the contemporary philosophy of law, it is certainly legitimate to require that the social science data weighed in deliberation be (1) relevant to the issues before the court, (2) substantive in nature, meeting the minimal requirements demanded by the canons of scientific inquiry, and (3) subject to tolerably precise interpretation. The contentions here advanced are: first, the social science material brought to bear on the issue of *de jure* school segregation in *Brown v. Board of Educ.*¹⁰

6. COMMAGER, THE AMERICAN MIND — AN INTERPRETATION OF AMERICAN THOUGHT AND CHARACTER SINCE THE 1880's 381 (1950). Cf. Vose, *NAACP Strategy in the Covenanted Cases*, 6 W. RES. L. REV. 101, 112 (1955).

7. DEUTSCH & COLLINS, INTERRACIAL HOUSING — A PSYCHOLOGICAL EVALUATION OF A SOCIAL EXPERIMENT 128 (1951).

8. Cf. BERGER, EQUALITY BY STATUTE — LEGAL CONTROLS OVER GROUP DISCRIMINATION ch. 5 (1952).

9. Appendix to appellants' briefs, p. 4, *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (MICRO CARD 3647, 3651 MATTHEW BENDER & CO.).

10. 347 U.S. 483 (1954).

met none of these requirements and consequently did not merit the consideration of the court; and second, where social science material is available *it tends to support racial separation in the schools, at least through adolescence under conditions approximating equality of plant and instruction.*

THE BROWN V. BOARD OF EDUC.

SOCIAL SCIENCE APPENDIX

The Social Science Appendix to appellants' briefs, which contained the "social science statement" considered by the court in *Brown v. Board of Educ.* commenced with a loosely argued statement, taking as its point of departure K. B. Clark's *Effect of Prejudice and Discrimination on Personality Development*.¹¹ Clark concerned himself with the problem of how "racial and religious prejudices influence the development of a healthy personality."¹² His principal thesis was that "segregation, prejudices and discriminations, and their social concomitants potentially damage the personality of all children. . . ."¹³ The reference here is obviously to a study concerned with a total or global social situation. Whatever else it might have been, the Clark study referred to was *not* an investigation into the effects of school segregation *per se* on the development of the individual personality. The Appendix consequently never succeeds in isolating the critical variable. No argument is offered to indicate that the "self-hatred" and "in-group rejection" evinced by Negroes was the consequence of school segregation *per se* — the issue before the Court. If anything, such personality impairments are the result of a multiplicity of variously weighted variables: segregation, prejudices, discrimination as well as their "social concomitants." These variables remain, in the Appendix, vexedly ill-defined. Does "segregation" refer to "restrictions of opportunities" for inter-racial association in nursery, elementary, or secondary schools, in housing or on public conveyances, in parks or places of recreation, or in public eating places or in *all* of these? Does the impact of such segregation have an age-conditioned impact, *i.e.*, is its effect more deleterious when experienced in infancy, in childhood, in adolescence, or at maturity? Does "prejudice" refer to "cognitive" prejudice, *i.e.*, the disposition to stereotype members of an identifiable out-group, or to "emotional" prejudice, *i.e.*, the ascription of negatively toned affective values to members of the out-group?

11. THE FACT-FINDING REPORT OF THE MID-CENTURY WHITE HOUSE CONFERENCE ON CHILDREN AND YOUTH, CHILDREN'S BUREAU, FEDERAL SECURITY AGENCY (1950) (mimeographed). For edited form, see PERSONALITY IN THE MAKING — THE FACT-FINDING REPORT OF THE MID-CENTURY WHITE HOUSE CONFERENCE ON CHILDREN AND YOUTH 136 (Witmer & Kotinsky eds. 1952) (hereinafter cited as Witmer & Kotinsky).

12. Appendix to appellants' briefs, *supra* note 9, at 3-4.

13. *Id.* at 4.

Further, does "prejudice" refer to "action orientated" prejudice, which can take the form of withdrawal, rejection, exclusion, enforcement of status differentials, or aggression?¹⁴ "Discrimination," no better defined, can either be conceived of as a consequence of "prejudice" or a function of a formally or informally structured inter-group situation.¹⁵ To add to this general confusion, "social concomitants" were introduced: these included "social disorganization," "high disease and mortality rates, crime and delinquency, poor housing, disrupted family life and general substandard living conditions."¹⁶

The mandate of the Court could *only* be interpreted to mean that it would consider the effects of school segregation on the personality formation of children within the age-range of those whose petition the Court had under consideration. Invariably in the Appendix to appellants' briefs, recourse is made to the "effects of prejudice, discrimination *and* segregation;"¹⁷ "segregation, prejudices *and* discriminations;"¹⁸ "racial frustrations"¹⁹ *and* "segregation and its concomitants;"²⁰ "racial segregation *and* related practices;"²¹ and "the total society complex of which segregation is one feature."²² It is not even sufficient to isolate "segregation," in general, as an independent variable.²³ What is required by the logic of the mandate before the Court is isolating the purported effect of *de jure* school segregation *within a relatively specific age-range*. Thus the bulk of the Appendix herein considered was simply *not* relevant to the issue of school segregation *per se*.

Social scientists are admirably candid with respect to the status of race relations research. Research is "obviously incomplete and in many respects confused. . . ."²⁴ "Those who have attempted to evaluate action programs in race relations since the war are almost unanimous in repeating this fundamental point: we simply do not know which premises are standing up and which deserve to be jettisoned."²⁵ Theoretical development in social science is in a "confused and youthful stage. . . ."²⁶

14. Cf. Kramer, *Dimensions of Prejudice*, 27 J. OF PSYCHOLOGY 389 (1949).

15. Cf. Rose, *Intergroup Relations vs. Prejudice: Pertinent Theory for the Study of Social Change*, 4 SOCIAL PROBLEMS 173 (1956).

16. Appendix to appellants' briefs, *supra* note 9, at 3.

17. *Ibid.* (Emphasis added.)

18. *Id.* at 4. (Emphasis added.)

19. *Id.* at 5.

20. *Id.* at 6.

21. *Ibid.* (Emphasis added.)

22. *Id.* at 8.

23. *Ibid.*

24. Bradbury, *Evaluation of Research in Race Relations*, 5 INVENTORY OF RESEARCH IN RACIAL AND CULTURAL RELATIONS 99, 100 (Winter-Spring, 1953).

25. *Id.* at 102, citing Freeman, *Theory and Strategy in Race Relations*, 30 SOCIAL FORCES 77 (1951).

26. Bradbury, *supra* note 24, at 113.

Edmond Cahn²⁷ and Ernest van den Haag²⁸ have tendered closely argued criticisms of the social science testimony in the desegregation cases and it is not necessary here to reconsider their studied judgments. For our purposes it is sufficient to indicate that in van den Haag's considered opinion, the testimony of Kenneth Clark, which was central to the Appendix to appellants' briefs, "misled the courts."²⁹

As long as the generalizations advanced are as artless and as broad as those contained in the Appendix herein referred to, they have little relevance for a court attempting to assess the impact of *de jure* school segregation. The psychodynamic impairments suffered by Negroes³⁰ can be the consequence of any or none of the poorly defined variables included in the Appendix. Some of the variables can conceivably have no deleterious effects; some could even have positive effects. As long as causes are not assessed with greater specificity, such questions cannot be answered. Professor van den Haag, in assessing the social science material presented to the Court, concluded: "the evidence presented is so flimsy as to discredit the conclusion. . . ."³¹ K. B. Clark paraphrases Professor Bruno Bettelheim with the statement that "there is no scientific evidence that segregation damages the human personality."³² Clark himself candidly admitted that "there is little in the scientific literature on the precise effects of prejudice and discrimination on health of personality."³³ He further stated that "unfortunately for scientific accuracy and adequacy, thoroughly satisfactory methods of determining the effects of prejudice and discrimination on health of personality have not yet been devised. . . ."³⁴ Curiously enough, in the same work (indeed, on the same page!) where he tenders these disclaimers, Clark reports "nearly all . . . social scientists stated that, in their opinion, segregation has detrimental psychological effects on members of segregated groups even if equal facilities are provided. . . . Professional experience and scientific research were claimed as the basis of these opinions."³⁵ Now if no scientifically satisfactory methods have been devised for just such assessments, one wonders what kind of experience and scientific research sup-

27. Cahn, *Jurisprudence*, 30 N.Y.U.L. REV. 150 (1955).

28. van den Haag, *Social Science Testimony in the Desegregation Cases — A Reply to Professor Kenneth Clark*, 6 VILL. L. REV. 69 (1960).

29. *Id.* at 77.

30. Cf. KARDINER & OVSEY, *THE MARK OF OPPRESSION — A PSYCHOSOCIAL STUDY OF THE AMERICAN NEGRO* (1951); KARON, *THE NEGRO PERSONALITY — A RIGOROUS INVESTIGATION OF THE EFFECTS OF CULTURE* (1958).

31. ROSS & VAN DEN HAAG, *THE FABRIC OF SOCIETY* 165 (1957).

32. Clark, *The Desegregation Cases: Criticism of the Social Scientist's Role*, 5 VILL. L. REV. 224, 236 (1960).

33. Witmer & Kotinsky, *op. cit. supra* note 11, at 136.

34. *Id.* at 139.

35. *Ibid.*

ports this opinion of "nearly all . . . social scientists." The Appendix repeats the same *non sequitur*.³⁶

Hindeman reports that "it seems to have been assumed by most . . . writers and investigators that the prejudices and anti-social feelings of Negro youth result from actual experience with segregation and discrimination. Although this is a reasonable assumption, probably experientially derived by the writers in some instances, there is an obvious lack of systematic, organized evidence in the literature to support the assumption."³⁷

These general disclaimers have been forthcoming from a number of internationally respected social scientists. Most of the arguments in the Appendix are suppositions and traffic on the promissory notes of vague hypotheticals and surmise. Little if any direct evidence of the impairments attributable to school segregation *per se* is tendered.³⁸ There is little in the social science material presented in the Appendix to *Brown v. Board of Educ.* which has relevance to the specific issue before the Court. The closest approximation to the real issue before the Court is in the discussion of "segregation," which in itself covers a host of ill-defined situations: housing, recreational facilities, public conveniences, transportation, and eating places as well as nursery, grammar, secondary schools, colleges, and universities. Whatever material was introduced did not possess substantive character and did not meet the most elementary formal requirements of a scientific account, *i.e.*, linguistic and theoretical precision.

FACTORS SUPPORTING RACIAL SEPARATION IN SCHOOL DURING CHILDHOOD AND ADOLESCENCE

Positive Evidence

The evident disposition to avoid any discussion of the available evidence with respect to school segregation *per se* is conceivably the result of an awareness that whatever evidence *is* available *tends* to support racial separation in the schools at least throughout childhood and adolescence. While there is admittedly only a circumscribed body of data available, some tentative conclusions can be drawn.

The principal concern of the authors of the Social Science Appendix is with the Negro child's awareness of status differential, with his "feel-

36. Appendix to appellants' briefs, *supra* note 9, at 10. Cf. Deutscher & Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. OF PSYCHOLOGY 259 (1948).

37. Hindman, *The Emotional Problems of Negro High School Youth Which are Related to Segregation and Discrimination in a Southern Urban Community*, 27 J. OF EDUCATIONAL SOCIOLOGY 115 (1953).

38. Appendix to appellants' briefs, *supra* note 9, at 11.

ings of inferiority and . . . sense of personal humiliation;"³⁹ his confusion about his own "personal worth" and "sense of personal dignity;"⁴⁰ his "conflict with regard to his feelings about himself and his group;" and his "self-hatred and rejection of his own group."⁴¹ If school segregation is a significant cause of such psychodynamic impairments, there should be some evidence that these impairments do not manifest themselves in integrated school situations. Such is simply not the case. Not only do these impairments manifest themselves in integrated school situations, but the evidence suggests that there are *more* serious impairments of this kind precisely in "*integrated*" situations.

In considering whatever evidence is available, the first appeal can be made to evidence that minority children of high social visibility enjoy positive advantages at critical periods of personality formation in a racially insulated environment. K. B. Clark's studies of Negro preschool children indicate that in projective tests Negro children in segregated schools tended to prefer their own race, *i.e.*, 80 per cent of southern Negro children showed a preference for brown skin color, while northern Negro children in integrated situations showed a marked preference for white skin color, *i.e.*, only 20 per cent of the northern Negro children indicated brown as their skin preference.⁴² Eleven and twelve year old Negro children attending a non-segregated school were more likely to prefer light skin color than children of the same age attending an all-Negro school.⁴³ The pattern seems remarkably consistent. Hill's studies of Negroes educated and raised in an all-Negro community indicate that such a Negro tends to have a "much higher regard for Negroes;" he

39. *Id.* at 4.

40. *Ibid.*

41. *Ibid.*

42. K. B. Clark & M. P. Clark, *Racial Identification and Preference in Negro Children*, in READINGS IN SOCIAL PSYCHOLOGY 551 (Swanson, Newcomb & Hartley eds. 1952). "[I]t is clear that the southern children in segregated schools are less pronounced in their preference for the white doll, compared to the northern children's definite preference for this doll. . . . [A] higher percentage of southern children, compared to northern, prefer to play with the colored doll or think it is a nice doll." *Id.* at 559. "A significantly higher percentage (71) of the northern children, compared to southern children (49) think that the brown doll looks bad. . . . Also a slightly higher percent of the southern children think that the brown doll has a 'nice' color, while more northern children think that the white doll has a 'nice' color. In general, it may be stated that northern and southern children in these age groups [three to seven] tend to be similar in the degree of their preference for the white doll — with the northern children tending to be somewhat more favorable to the white doll than are the southern children. The southern children, however, in spite of their equal favorableness toward the white doll, are significantly less likely to reject the brown doll (evaluate it negatively), as compared to the strong tendency for the majority of the northern children to do so. That this difference is not primarily due to the larger number of light children in the northern sample is indicated by more intensive analysis presented in the complete report." *Id.* at 560. Cf. K. B. CLARK, PREJUDICE AND YOUR CHILD 44 (1955).

43. K. B. CLARK, PREJUDICE AND YOUR CHILD 48 (1955).

tends to have a "higher opinion of Negroes," and is "more favorable in [his] expression toward [his] race."⁴⁴

B. Dai is quite specific in his assessment of the situation:

The most obvious, but none the less detrimental, obstacle to the growth of a secure self-system among Negro children is the blind acceptance of white racial prejudices and measuring of one's personal worth by the degrees of proximity to white complexion or other Caucasian features. These evaluations of skin color and other physical features, however, do not affect the Negro child directly before he comes in close contact with the white children. . . .⁴⁵

Under such considerations it is evident that in critical periods of personality formation, racial separation may materially enhance the formation of a coherent self-system on the part of the Negro by reducing the psychological pressure to which the child is subjected. Davis is explicit on this point:

Where the social group of the racially subordinate individual is highly organized and integrated as in the Little Italies or Chinatowns, or in many southern Negro communities, its members will usually have relatively less psychological conflict over their racial status.⁴⁶

Negative Evidence

Negative evidence concerning the amelioration of Negro disabilities as a consequence of "congregation" or "integration" must be added to the direct positive evidence available. Studies conducted in "well-integrated" school environments (where *de jure* segregation does not obtain and where the incidence of Negroes is considered "optimum") indicate conclusively that Negro children not only suffer those psychodynamic personality impairments ascribed to *de jure* school segregation, but suffer them in greater measure and intensity. M. E. Goodman's studies⁴⁷ indicate that in integrated pre-school situations, Negro children between the ages of 2.75 and 4 years of age evince an out-group orientated value preference scale. Statistically, 74 per cent of the Negro children have a marked preference for whites; 57 per cent of the Negro children display inferiority feelings with respect to the white group; and 24 per cent have a marked antagonism toward their own race.⁴⁸ Negro subjects in these integrated situations gave evidence of uncertainly and negatively affective

44. Hill, *A Comparative Study of Race Attitudes in the All-Negro Community In Oklahoma*, 7 PHYLON 260, 268 (1946).

45. Dai, *Some Problems of Personality Development Among Negro Children*, in PERSONALITY IN NATURE, SOCIETY AND CULTURE 545, 559 (Kluckhohn & Murray eds. 1953).

46. Davis, *Racial Status and Personality Development*, 57 SCIENTIFIC MONTHLY 354, 358 (1943).

47. GOODMAN, RACE AWARENESS IN YOUNG CHILDREN (1952); Goodman, *Evidence Concerning the Genesis of Interracial Attitudes*, 48 AMERICAN ANTHROPOLOGIST 624 (1946).

48. GOODMAN, *op. cit. supra* note 47, at 62; Goodman, *supra* note 47, at 626.

tone on matters concerning their racial status: they equivocated; they dissembled and fantasized.⁴⁹ They systematically assessed their color as lighter than it was in actuality; they deluded themselves with the fantasy that they could "wash out" their excessive pigmentation⁵⁰ or that they would "grow out of it." They made preferential value judgments concerning white physical attributes; whites were "nice," "pretty," and "clean."⁵¹ The Negro child, in the process of developmental identification, assimilated the values of the majority reference group. Berenda, in a study of group influence on the judgments of children reports that "there was a strong tendency on the part of the minority children to change their judgments to those of the majority. . . ."⁵²

The evidence available indicates that the Negro child's conscious rejection of his race, and consequently of himself, is a function of early childhood experience integrated as a minority member of a white community.⁵³

Where Negroes are represented in "optimum" numbers, they do not constitute a majority. As a minority they tend to accept majority (white) preference norms. In accepting these norms they tend to reject themselves. The impairments which result can only be speculated upon. The basic problem, however, is evident to the least adequately informed social scientist. An adequate self-system can only be the consequence of a positive self-appraisal. 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.

Indirect Evidence — Psychodynamic Impairments

The less direct evidence available to social science supports this principal contention. There seems to be a generic tendency on the part of children to identify with those like themselves.⁵⁴ In integrated situa-

49. Cf. Horowitz, *Racial Aspects of Self-Identification in Nursery School Children*, 7 J. OF PSYCHOLOGY 91, 97 (1939).

50. "There were days when she [a Negro child] vigorously lathered her arms and face with soap. After one of these efforts, she said triumphantly to Peter: 'This morning I scrubbed and scrubbed and it came almost white.'" GOODMAN, RACE AWARENESS IN YOUNG CHILDREN 38 (1952).

51. *Id.* at 37.

52. BERENDA, THE INFLUENCE OF THE GROUP ON THE JUDGEMENTS OF CHILDREN 52 (1950). Cf. Rosner, *When White Children are in the Minority*, 27 J. OF EDUCATIONAL SOCIOLOGY 69 (1954).

53. Cf. Brenman, *The Relationship Between Minority-Group Membership and Group Identification in a Group of Urban Middle Class Negro Girls*, 11 J. OF SOCIAL PSYCHOLOGY 171, 195 (1940).

54. Cf. Fiedler, Warrington & Blaisdell, *Unconscious Attitudes as Correlates of Sociometric Choice in a Social Group*, 47 J. OF ABNORMAL AND SOCIAL PSYCHOLOGY 790 (1952).

tions children will conform to institutionalized norms of behavior as long as they are in institutionally structured situations. But wherever⁵⁵ they are permitted to make personal preferences, cleavages develop along racial lines.⁵⁶ Kupferer, in reporting on efforts to promote positive interracial attitudes through integrated physical education classes (long considered particularly effective in engineering "positive" interracial attitudes), stated: "The situation in the school under examination was not characterized by overt hostility, yet each racial group tended to go its own way with little social interaction."⁵⁷ Similar results are obtained in a variety of studies. The consequence is a real sense of rejection on the part of Negro adolescents, amounting to systematic interracial hostility,⁵⁸ out-group orientation, and self-rejection. This may occur even in situations where overt rejection is not made manifest.

Racial self-preference on the part of white children and consequent Negro avoidance is evident in varying measure and intensity in interracial situations as early as nursery school and kindergarten. The existing racial contact is largely the consequence of Negro out-group orientation. Mutual withdrawal of racial groups becomes consistent at grade five.⁵⁹ Under such "integrated" circumstances the Negro child faces systematic and regular rejection. The result can only be serious personality deficits for Negro children in such situations. Studies indicate that a child subject to such systematic rejection develops ambivalent feelings toward himself, and that a "definite relationship exists between the way an individual feels about himself and the way he feels about other persons. An individual who holds negative feelings toward himself tends to hold negative feelings toward other people in general."⁶⁰ All of which suggests that forced integration of Negro children may result in their suffering gross personality disabilities.

White children systematically reject Negroes in integrated situations.⁶¹ Negro children, being minority group members, tend to accept white value assessments.

55. Cf. Davitz, *Social Perception and Sociometric Choice of Children*, 50 J. OF ABNORMAL AND SOCIAL PSYCHOLOGY 173, 175 (1955).

56. Cf. LASKER, *RACE ATTITUDES IN CHILDREN* 45 (1929); Neprash, *Minority Group Contacts and Social Distance*, 14 PHYLON 207 (1953).

57. Kupferer, *An Evaluation of the Integration Potential of a Physical Education Program*, 28 J. OF EDUCATIONAL SOCIOLOGY 89, 93-94 (1954).

58. Lundberg & Dickson, *Selective Association Among Ethnic Groups in a High School Population*, 17 AMERICAN SOCIOLOGICAL REV. 23 (1952).

59. Cf. Criswell, *A Sociometric Study of Race Cleavage in the Classroom*, 33 ARCHIVES OF PSYCHOLOGY No. 235 (1939).

60. Stock, *An Investigation into the Interrelations between the Self Concept and Feelings Directed Toward Other Persons and Groups*, 13 J. OF CONSULTING PSYCHOLOGY 176, 180 (1949). Cf. Berger, *The Relation Between Expressed Acceptance of Self and Expressed Acceptance of Others*, 47 J. OF ABNORMAL AND SOCIAL PSYCHOLOGY 778, 781 (1952).

61. Cf. K. B. Clark & M. P. Clark, *op. cit. supra* note 42; Horowitz, *The Development of Attitude Toward the Negro*, 28 ARCHIVES OF PSYCHOLOGY No. 194 (1936).

Clark, in reporting the results of his studies conducted in integrated and segregated schools, states:

It is clear . . . that the majority [approximately two-thirds] of these Negro children [in non-segregated schools] prefer the *white* doll and reject the colored doll. . . .

Their responses . . . show that this preference for the white doll implies a concomitant negative attitude toward the brown doll. Fifty-nine percent of these [Negro] children indicated that the colored doll "looks bad," Only thirty-eight per cent of the children thought that the brown doll was a "nice color,"⁶²

[I]t is clear that the southern children in segregated schools are less pronounced in their preference for the white doll. . . .⁶³

These studies suggest that as a result of integration the Negro child's self-concept is substantially impaired, and his subsequent efforts at establishing meaningful inter-personal relations is negatively biased.

The argument that such psychodynamic impairments will be minimized in some future situation in which "ideal integration" obtains has little empiric evidence to recommend it. In those areas of the world where groups of high social visibility are brought into sustained contact, value judgments are systematically made on the basis of those differences. "Ethnophaulisms" or group disparagements always turn primarily on overt physical differences and, where these are not in evidence, upon gross cultural dissimilarities.⁶⁴ Social distance, in a critical sense, is the function of overt dissimilarity. "This means . . . that this basic sociosensory perception of difference in physique plays a . . . role in the unconscious, group identification."⁶⁵ In every complex society men reach selectively to their fellows. Preferential association is based upon observable differences,⁶⁶ among them overt physical dissimilarities affording a ready index to group identification.⁶⁷ Whatever empirical evidence is available indicates that children as young as three years of age make discriminations between their own "kind" and others.⁶⁸ Nursery school children of about four years of age in the North clearly give evidence of these dispositions, awareness being plotted on a continuum from low (involving something like 15 per cent of the group) to high (involving some 32 per cent of the group).⁶⁹

62. K. B. Clark & M. P. Clark, *op. cit. supra* note 42, at 557.

63. *Id.* at 559.

64. Palmore, *Ethnophaulisms and Ethnocentrism*, 67 *AMERICAN J. OF SOCIOLOGY* 442 (1962).

65. Ichheiser, *Sociopsychological and Cultural Factors in Race Relations*, 54 *AMERICAN J. OF SOCIOLOGY* 395, 396 (1949).

66. Cf. Lundberg, *Some Neglected Aspects of the "Minorities" Problem*, 2 *MODERN AGE* 285, 286 (1958).

67. Cf. Gregor, *On the Nature of Prejudice*, 52 *EUGENICS REV.* 217 (1961).

68. GOODMAN, *RACE AWARENESS IN YOUNG CHILDREN* 19, 20 (1952).

69. *Id.* at 55-68.

[W]e see among children around five years of age recognition of racial differences in individuals, with an emotional bias in favor of his own and adverse to some other race. No cases are reported in which children become aware of racial difference without a feeling about the matter.⁷⁰

Children, *before they enter school*, evince attitudes which could only create an atmosphere of tension for minority children of high social visibility. It is unreasonable to assume that the personality impairments minority children suffer will be reduced by congregation as long as majority children assign positive value to their own and negative value to the physical appearance of minority children. Whatever we know of this attitudinal bias indicates that it is extremely resistant to change. In Brazil, for example, where racial tolerance has been fostered as a public and private policy for decades, and where *de jure* racial segregation has not obtained, Negroid traits — prognathism, skin color and wooly hair — still foster attitudes of rejection. Negroes and mulattoes are preoccupied with their *aparência*. "To have a *boa aparência* (to be good-looking) means to look like white people."⁷¹ There is little reason to believe that such attitudes, which antedate school attendance, can be reduced by either education,⁷² protracted contact, propaganda, or a combination of these elements. Minority children of distinctive appearance can only suffer serious personality disabilities as a consequence of congregation. If the evidence available to the Court in *Brown v. Board of Educ.* demonstrates anything at all, it demonstrates that the personality impairments suffered by Negro children is less in a racially insulated environment than with congregation — at least during critical phases of personality formation.⁷³

Myrdal called specific attention to this compelling dilemma:

Their color valuation is only one instance, among many, of the much more general tendency for the Negro people, to the degree that they are becoming acculturated, to take over the valuations of the superior white caste. In other spheres this process can, on the whole, be regarded as a wholesome and advantageous adjustment. . . . In this particular respect, however, a conflict emerges which is unsolvable, as the average Negro cannot effectively change his color and other physical features. If the dark Negro accepts the white man's valuation of skin color, he must stamp himself as inferior. If the light Negro accepts this valuation, he places himself above the darker Negroes but below the whites. . . . The conflict produces a personality problem for practically every single

70. LASKER, *RACE ATTITUDES IN CHILDREN* 4 (1929).

71. Willems, *Racial Attitudes in Brazil*, 54 *AMERICAN J. OF SOCIOLOGY* 402, 405 (1949). Cf. Bastide & van den Berghe, *Stereotypes, Norms and Interracial Behavior in Sao Paulo, Brazil*, 22 *AMERICAN SOCIOLOGICAL REV.* 689 (1957).

72. Cf. STEMBER, *EDUCATION AND ATTITUDE CHANGE — THE EFFECT OF SCHOOLING ON PREJUDICE AGAINST MINORITY GROUPS* (1961).

73. van den Haag, *supra* note 28, at 77.

Negro. And few Negroes accomplish an entirely successful adjustment.⁷⁴

If such is the case with the mature Negro, the problem is manifestly more urgent with respect to the Negro child.

Under conditions prevailing in the United States at this time, and if our evidence is correct, for the foreseeable future congregation of the races does not offer any significant promise of ameliorating the psychological impairments suffered by Negro children.

Psychometric Factors

To further complicate the circumstances attending desegregation, available psychometric studies of school achievement indicate that Negro children, as a group, perform on a significantly lower level than white children as a group.⁷⁵ This places them, collectively, at a competitive disadvantage irrespective of what the causes of this reduced efficiency are conceived to be. A Negro child who systematically observes his group performing at a lower level of efficiency in integrated situations, where the specific group differences become manifest, can hardly avoid assessing it as inferior in some significant sense. This leads to the characteristic negative evaluation of his own group on the part of the Negro child which persists into maturity with remarkable resistance to change.

Negro children so circumstanced during their formative years can only suffer serious personality impairments. They tend to reject their group as well as themselves. They adopt, through the fairly well understood mechanisms of development identification, the values of the group with whom they have protracted interaction. In a mixed group they tend to more systematically adopt Caucasian values: whites are "good," "pretty," while Negroes are "bad," "ugly." They harbor gross feelings of inferiority and a deep sense of personal humiliation. This nucleus of self-rejection is further developed as a consequence of the gross competitive disadvantages Negro children suffer, whatever the ultimate reason.

74. MYRDAL, *AN AMERICAN DILEMMA — THE NEGRO PROBLEM AND MODERN DEMOCRACY* 699 (5th ed. 1944).

75. Cf. Osborne, *Racial Differences in Mental Growth and School Achievement: A Longitudinal Study*, 7 *PSYCHOLOGICAL REPORTS* 233 (1960); Osborne, *School Achievement of White and Negro Children of the Same Mental and Chronological Ages*, 2 *MANKIND Q.* 26-29 (July-Sept. 1961). For an exhaustive amount of psychological test results of Negro performance see SHUEY, *THE TESTING OF NEGRO INTELLIGENCE* (1958); Dreger & Miller, *Comparative Psychological Studies of Negroes and Whites in the United States*, 57 *PSYCHOLOGICAL BULL.* 361 (1960).

Special Problems

That these considerations are known to the Negro community is evidenced by the fact that there is mounting Negro protest against racial congregation in the schools. Among the Black Muslims in America⁷⁶ there is an insistent demand for racially separate schools in the effort to instill in the minority child a pride in self, conceived as a function of pride in his group. Such groups assess the education of their children in an insulated environment as a compelling necessity if such children are to develop a coherent self-system, a pride in self which will sustain them in their life tasks.

Contemporary social science has not been able to accurately assess the circumstances prevailing. This seems to be a consequence of an ideological or philosophical bias. Dr. Bernard Rosenthal, Division of Social Sciences of the University of Chicago, has recently admonished the social science community:

I realize that there is a profound need today to obtain certain conclusions in social science because we have a certain program of social action. Most social researchers are liberals, and this is the wave of the future, but one must clearly distinguish between scientific research and social value; and it seems to me that in much research going on in this area, this distinction has not been made clearly.⁷⁷

Action programs formulated by social scientists are all too frequently well-intentioned, but ill-defined and ill-conceived, with their possible results not clearly assessed.⁷⁸ Certainly there is no clear evidence that *de jure* racial separation in schools through adolescence works to the detriment of either Negro or white children. Rather, there is some evidence to indicate that more personality disabilities result from forced congregation of the races at this level. This is certainly the case with respect to Negro children.

It is difficult to assess with scientific precision the weight of each of the multitude of variables which negatively affect the personality. All those factors cited in the Social Science Appendix to *Brown v. Board of Educ.* obtain in intergroup relations in Guatemala, for example. Yet the lower "caste" Indian who suffers status inferiority evinces none of the syndrome of traits which characterize the lower "caste" American Negro.

76. Cf. ESSIEN-UDOM, *BLACK NATIONALISM — A SEARCH FOR AN IDENTITY IN AMERICA* (1962); LINCOLN, *THE BLACK MUSLIMS IN AMERICA* (1961).

77. Rosenthal, *Discussion on Deutsch, Problems and Progress of Research in Housing in its Bearing Upon Race Relations*, 5 *INVENTORY OF RESEARCH IN RACIAL AND CULTURAL RELATIONS* 88, 89-90 (Winter-Spring 1953).

78. "The working assumptions of action programs are subject to definition and specification, but these assumptions generally have not been validated by research. In particular, the possibilities and limits of given methods of control have not been scientifically delimited; and the comparative effectiveness of various actual and potential approaches to the control of inter-group relations is unknown." Williams, *The Reduction of Intergroup Tensions*, 57 *SOCIAL SCIENCE RESEARCH COUNCIL, BULL.* 105 (1947).

The Guatemalan Indians seem to suffer no personality impairments as a consequence of their inferior status. This is because they are sustained by a coherent sense of possessing an integral and significant culture of their own. They do not attempt to identify with the upper caste and consequently do not suffer status frustrations, self-rejection, and its attendant disabilities.⁷⁹ Race relations involve such a host of ill-defined variables, each apparently of substantially different, but as yet undetermined weight that to advocate specific action programs is hazardous at best. What has become obvious is that an action program of integration of the public schools, forced at deliberate speed, seems destined under present circumstances to increase the disabilities it is ostensibly designed to reduce.

Desegregation, finally, is attended by another special problem. A white parent faces the issue of permitting his children, hitherto attending a racially homogeneous institution, to attend an institution where his children will be exposed to members of a group possessed, whatever the ultimate cause, of a higher index of delinquency, immorality, and communicable disease as well as a lower index of academic performance. A parent will only reluctantly permit his child to be the subject of a social experiment of obscure and seemingly ill-considered purpose as long as such an experiment involves such real hazards. Real differences between the two racial groups exist as a concrete fact. That such differences may be ameliorated in time may be a fervent hope — but such a faith is not well calculated to reduce the anxieties of a parent who must see his child daily exposed to a group characterized by negative attributes. Reluctant compliance to the law cannot be construed as assent. Such compulsory acquiescence breeds a free floating hostility which threatens discharge at the least provocation.

CONCLUSION

In addressing attention to the *specific issue* before the Court, *i.e.*, *de jure* school segregation, the relevant social science data tends to indicate that integration not only does not ameliorate the psychodynamic tensions to which a minority group child of high social visibility is subject but, in fact, aggravates them.

Finally, in assessing action programs, it is necessary to weigh the sentiments of parents who will be forced to make their children subject to a perhaps well-intentioned but apparently ill-considered, social experiment which will bring them into regular and intimate contact with a group suffering significant social and psychological disabilities. What-

79. Cf. Gillin, "Race" Relations without Conflict: A Guatemalan Town, 53 AMERICAN J. OF SOCIOLOGY 337 (1948).

ever the ultimate causes of reduced academic performance and the high incidence of venereal disease, immorality, and delinquency among Negroes as a group,⁸⁰ those differences do exist. To force such contacts can hardly lead to anything more than a real sense of inferiority on the part of the minority children and hostility on the part of their majority counterparts and their parents.

80. "For nearly a half century, it appears that Negro boys and girls have constituted a disproportionate number of cases of juvenile delinquency in the cities of the country." FRAZIER, *THE NEGRO IN THE UNITED STATES* 649 (1949). "The Department of Health reported 854 cases of gonorrhea alone among school children in 1955 — 97.8 per cent were Negroes." Investigation of Public School Conditions, *Report of the Subcommittee to Investigate Public School Standards and Conditions, and Juvenile Delinquency in the District of Columbia of the Committee on the District of Columbia*, H.R., 84th Cong., 2d Sess. 33 (1957). Cf. *id.* at 33-38; FRAZIER, *THE NEGRO IN THE UNITED STATES* 576 (1949). See also FRAZIER, *THE NEGRO FAMILY IN THE UNITED STATES* ch. VI (1951); WBYL, *THE NEGRO IN AMERICAN CIVILIZATION*, ch. 18 (1960); Axelrad, *Negro and White Male Institutionalized Delinquents*, 57 *AMERICAN J. OF SOCIOLOGY* 569 (1952); Fox & Volakakis, *The Negro Offender in a Northern Industrial Area*, 46 *J. OF CRIM. LAW, CRIMINOLOGY AND POLICE SCIENCE* 641 (1956).