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SCHOOL INTEGRATION — FOUR YEARS AFTER

The South *vs.* the High Court's 1954 Ruling

By JAMES J. KILPATRICK

IT HAS BEEN four years now, come May 17, since Chief Justice Warren gazed upon a packed courtroom and began reading the brief opinion we have come to know as *Brown vs. Board of Education.* In the whole history of the Supreme Court of the United States, no single decision has had an immediate impact more profound than this one, or created more controversy over a wider area, or fostered more bitter resentments. Those who support and defend the Court's opinion might accept those superlatives, but would contend that no decision ever has accomplished greater social good. However the School Cases are viewed, pro or con, few persons would question their surpassing place in the judicial history of the United States.

The point merits brief elaboration. Ask any freshman law student to name a dozen great landmark cases, and he probably would begin with *Marbury vs. Madison,* touch upon *United States vs. Judge Peters,* lump together *Fletcher vs. Peck* and the Dartmouth College Case, then emphasize *McCulloch vs. Maryland, Gibbons vs. Ogden,* and *Martin vs. Hunter's Lessee.* Your student certainly would include Dred Scott in his list, and perhaps nominate the Slaughterhouse Cases from the Reconstruction Period. The NLRB decisions of April, 1937, followed a year later by the sweeping pronouncements of *United States vs. Darby,* and still more recently by the Tidelands decision and the Watkins case — all these surely are landmarks.

Yet none of these opinions quite matches *Brown vs. Board of Education,* and the reasons why this is so go to the heart of this essay. The people — the five and a half million American human beings of 1803 — really had no great interest in Mr. Marbury's appointment as a justice of the peace; the profound implications of Marshall's assertion of judicial authority did not affect them personally. In the same way, the Supreme Court's declaration of power to invalidate state laws, as in *Cohens* and *McCulloch,* touched few persons intimately. The man in the street of 1824, reading the Gibbons case, had no vast concern for new doctrines of interstate commerce. Questions of state contracts, fugitive slaves, Federal taxation, even the issuance of currency — momentous as these decisions were, they were largely impersonal in their application. Seldom did these opinions upset institutions of long standing; and in almost every case, cogent reasons of law were advanced to support them.

The school cases of May 17, 1954, fall in a class by themselves. Here the Supreme Court held that the Fourteenth Amendment prohibits to the states the power of maintaining racially separate public schools; and, in a companion case, the Court held it "unthinkable" that the Constitution imposes a lesser inhibition on the Federal Government in Washington. (As Judge Ralph Catterall has remarked, what the Court held to be unthinkable, until that day had been universally thought.) The effect of the opinion was to wipe out an understanding of the Fourteenth Amendment that had prevailed for 86 years.

The ruling struck down the school segregation laws of 17 states and the District of Columbia; it immediately, personally and directly affected the lives of millions of school children and their parents. And the Court accomplished all this not on the basis of law, but upon "the extent of psychological knowledge." Members of the Court, agreeing to the Brown opinion, jettisoned some of the oldest rules of judicial construction; they usurped the power reserved to the states to amend the Constitution, and they substituted their own notions of desirable public policy for the plain meaning of the Constitution they were sworn to uphold.

SO VIOLENT an explosion must cause vast changes. It is entirely too soon to appraise these consequences fully; and those of us in the Old South, attempting to cope with what is seen as the devastation of a social order, are doubtless the wrong ones to attempt an appraisal anyhow. For the South, these four years have been like the day after an earthquake: the ground still trembles, and the damage may be more or less severe than it seems. Looking back, one senses a blur of names and faces: Autherine Lucy, Martin Luther King, the bear-like bulk of Thurgood Marshall; Orval Faubus, and Judge Davies, and the Clinton Eleven. One remembers, too, the torrent of

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words that has flowed from the South's problems — pamphlets, books, interviews, speeches, 150 major laws and resolutions adopted in Southern legislatures. The file of magazine articles alone is overwhelming. We have wondered wearily when, if ever, our adversaries would stumble upon something else to write about; but the subject is so complex, and its implications so grave, that the flood of comment rolls on.

Let me suggest eight areas of impact that might be considered. I put them down in no special order: (1) the schools themselves; (2) the future of education and other public institutions in the South; (3) white and Negro relations; (4) population patterns; (5) public opinion; (6) politics; (7) international relations; and (8) law.

The 17 states and the District of Columbia affected by the School Cases have a public school enrollment of some 9,431,000 white pupils and 2,922,000 Negro pupils. Their school systems are subdivided into school districts, of which 3,000 districts are biracial. The fourth anniversary of the opinion finds approximately 760 of these districts "integrated," and 2,240 not integrated. I put the word "integrated" in quotation marks to suggest that, in some of these districts, integration has been accomplished in the barest token degree: one Negro pupil among 6,800 in Winston-Salem, N. C., four among 7,700 in Charlotte.

The statistics on this whole subject are deceptive, and need to be examined with care. When it is said that two million white children and 350,000 Negro children are now in "integrated situations," it should also be said that except for nine districts in Arkansas, three in North Carolina and three in Tennessee, all these integrated situations are in border states and in the District of Columbia. Four years after the decision, not a single public school is racially integrated in Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi or Louisiana.

WHAT CARRIES perhaps the greatest significance is the fact that the trend toward voluntary integration has all but stopped. Of the 760 school districts now classified as integrated, 537 were integrated by the fall of 1955, and 723 were integrated by the fall of 1956. The movement now has stalled. Except for a few mop-up districts in fringe areas, the advance of integration will move henceforth an inch at a time. Court orders, directed at resentful defendants and backed by Federal force, will be required, and these will have to be carried out in an atmosphere not of acceptance but of active or passive hostility. There is a maxim that no law can be effective when it is imposed upon a community against its will; and when such imposition is attempted, it is not called law; it is called tyranny. It is in this light that the Court's decrees are viewed over most of the remaining unintegrated districts.

How well has integration succeeded in the 760 districts where it now obtains? In some areas, surely, it appears to have worked quite well indeed. For the most part, these are border areas in which the Negro school population is relatively small, or they are areas having relatively little identification with a peculiarly Southern way of life. In other areas, such as Washington, D. C., it is difficult to weigh the picture because the picture changes so rapidly; the District's schools are now more than 71 per cent colored, and in lower elementary grades the figure approaches 80 per cent. Many of the District's schools, for reasons of residential geography, thus are virtually segregated all over again.

Elsewhere, in some of the more critical areas, the Court's social experiment is not going too well. Correspondents of the Southern School News, *interviewing white parents and teachers in integrated localities in Arkansas, Tennessee and North Carolina, found opinion still resentful, still unchanged. Even the minute degree of race-mixing that now obtains in these areas has been accepted with reluctance and with a helpless sense of resignation to a distasteful inevitability.*

It will be recalled that two of the school districts that figured in the original School Cases were Clarendon County, S. C., and Prince Edward County, Va. Notably, both districts remain fully segregated to this day, and for the same reason: if Negro plaintiffs wish to push their victory at court to a showdown at the schoolhouse, all public schools in the two localities will be abandoned. In each case, plans are far advanced for the establishment of private schools for white children. What would become of the Negro children is uncertain. The implications of so drastic a decision can merely be acknowledged here; it must suffice to say that the prospect of closing deeply cherished schools is a miserably unhappy one all around, and represents to the white parents and taxpayers only a final desperate choice between evils.

This willingness to abandon a public facility, as a last resort, in preference to seeing it integrated, is re-

flected elsewhere in the South today. I am advised that few municipal swimming pools, if any, have been constructed in the unyielding South in the past four years. No new municipal golf courses have been opened in these states, and several municipal courses, indeed, have been abandoned and sold. Greensboro, N. C., is the most recent city to take this step, and the decision is all the more notable in Greensboro because of the generally "liberal" political climate that obtains there. To replace such public facilities, private recreational clubs are multiplying across the South at a phenomenal pace. Instead of calling upon government for a swimming pool and a tennis court, these groups are providing their own, at their own expense. Wholly apart from the integration issue, this is a marvelously healthy trend.

What is not healthy at all, and is to be most keenly regretted, is the palpable decline in white and Negro relationships across much of the South. This decline is not to be charted in anything so measurable as interracial violence. We have experienced, thankfully, very little of this so far. Indeed, I would imagine there are more incidents of interracial violence on any Saturday night in Brooklyn than the whole of Virginia would experience in a year. We are too far apart down here for that. And this apartness is growing. The Brown decision served to snap old lines of communication; it swept away the social foundation on which white and Negro could dwell tolerably together.

PRIOR TO May 17, 1954, the Negro's status in the South was that of a subordinate. Now, it may have been wrong for the white Southerner to have thought of the Negro in such terms — probably it was; you grow up with such things — but at least a subordinate relationship is a familiar and normal relationship, known to every man who has a boss over him. There are ground rules in such a relationship; men know where they stand. In the South, that status has abruptly shifted; the Negro is seen now as plaintiff in a lawsuit, as party litigant, an antagonist. Where once we had thought of our society as Negro *and* white, now the judicial earthquake has tumbled up a new relationship of Negro *versus* white, as if we met in pleadings only. In individual cases, of course, a warm affection still binds countless whites and countless Negroes, but classwise, or group-wise, the dividing gulf grows wider.

The impact of *Brown vs. Board of Education* has not been felt in the South alone. Beyond question, the School Cases have contributed greatly to an acceleration of population movements. Here, again, many of the statistics are uncertain and deceptive, but it seems evident that thousands of Southern Negroes, motivated in part by an impression of their changed status, or by an awareness of mounting tensions, are moving from the rural South. For many of them, it has been a bitterly disillusioning experience, and some of them, weighing the open segregation of the South against the mean hypocrisy of the North, have come home again. They are few. If the massive migration has slowed, it remains impressive; and in such cities as Washington and St. Louis, white residents are fleeing before the tidal wave. In the past seven years, Chicago's Negro population has leaped from 277,000 to 740,000, St. Louis's from 108,000 to 235,000, and Washington's from 187,000 to upwards of 375,000. The census of 1940 found only 20,394 Negroes in Gary, Ind. Now there are 61,000.

Where public opinion stands on all this, I cannot say. Professional polls seldom ask the right questions. But I hope not to exhibit too much bias, hated word, by venturing the thought that the South's position is gaining sympathetic support on two fronts. It seems to me we are hearing far more informed criticism of the Court's ruling, as a legal opinion, than we were hearing two or three years ago; when so eminent a jurist as Learned Hand suggests, in the most thinly veiled terms, that the Court acted as a super-legislature in the Brown case, mere laymen in the South are bound to experience gratification.

Secondly, it seems to me that as Northern cities experience at first hand the social meaning of large Negro populations, more persons will come to understand something of the white Southerner's objection to placing his 14-year-old daughter in an integrated high school. What may come of this trend in opinion, if it is a trend, I have no way of predicting.

The confusion of sentiments and population changes most surely will be reflected, however, in the face of partisan politics. Whenever the Southerner hoists a tentative hand these days, feeling for rafters above him, he discovers he has no political roof over his head. That, too, has been blown away. Senators Paul Douglas and Hubert Humphrey, among others, are vocally willing to read the South out of the Democratic party. Mr. Eisenhower effectively read the South out of the Republican party at Little Rock. There is not a prospective candidate of any stature in either party for whom the South willingly or happily would cast its ballot now.

Senator Kennedy might be the most acceptable Democrat with a prayer of winning his party's nomination, but the prospect is that even Mr. Kennedy would be bound to a platform, and committed to a campaign, that would be anathema to the South.

The realities of partisan politics are such that with only two well-organized parties in the field, key Negro blocs in key states must be ardently courted. The South will have to be damned — regretfully damned, perhaps, but nonetheless consigned to outer darkness. Under these melancholy circumstances, the opportunity would seem to be at hand for Southerners to take the lead in forming a new conservative party. For a number of reasons, too complex to go into here, little is likely to materialize in this direction. The spark hasn't been struck.

The seventh area of impact in my notes is headed "international relations." The alleged consequences here rest largely upon hearsay evidence, or at least upon evidence I find it difficult to appraise. We of the South are constantly told what singular damage is done abroad by our dreadful customs; we are advised that *Brown vs. Board of Education* could have been justified, apart from law or sociology, in terms of diplomatic advantage. If the people of Little Rock were appalled by Mr. Eisenhower's army last fall, it is said the people of New Delhi were even more greatly aggrieved.

ALL THIS SEEMS to me unlikely, or at least irrelevant. Perhaps the people of India, or of Burma or Ceylon, are so ignorant, or so gullible, that the South's practice of school segregation is seen as an oppressive act far worse than anything which exists in Soviet Russia — or, for that matter, in their own caste-conscious backyards. Perhaps. But if these people are so blind to truth that they cannot distinguish between the land of the free in the South and the home of the slave in Siberia, nothing can be expected to open their eyes. More than this: the Southerner scarcely can be criticized very harshly if he places the conceived welfare of his own child above the supposed good opinion of Mr. Nehru. And most of all: it is a fair argument that it is infinitely more important to preserve the Constitution at home than to woo some doubtful friends abroad.

That leads me finally to the impact that seems greatest of all: what is happening to law. In retrospect, it may be seen that *Brown vs. Board of Education* set off a wave of judicial tremors unmatched in the Court's history. It was the first in a series of opinions that have placed the established rights of society, and the police powers of the state, at the mercy of the supposed rights of the individual. After Brown, the deluge: Nelson, Watkins, Sweazey, Schware, Konigsberg, Mallory, Yates, Slochower — the hooves of a roughshod Court have trampled over a dozen areas of law that once were thought inviolate. In this process, the reserved powers of the states have gone glimmering, and an attempt has been made to reduce Congress to a sputtering impotence. The Negro, the rapist, the Communist — these are the High Court's darlings now; and the white man, the law officer, the foe of subversion lie equally victims of the Court's encroachments.

These have not been happy years for the South — not for the white Southerner, and I suspect, not for his black brother either. But we survive. Both races in the South fortunately are characterized by a vast and almost boundless patience; we share a certain genius for procrastination, and facing what often seems to be a crisis, we sometimes are able to resolve the urgency by what John Randolph called a policy of judicious neglect. It may be, in time, that a new relationship of agreeable stalemate will provide us an acceptable *modus vivendi.* Each race needs the other, at least in terms of the Southern economy, and one day the process of gradual adjustment halted by the Court will have to be resumed.

But on this particular issue of public schools, the white South has not the slightest intention of yielding; and the Negro leadership seems determined to press its legal advantage at any consequence. Both sides, looking to the autumn, are a little apprehensive. We do not know what will happen, but we do know this: over the past four years, the apostles of integration have won the easy ground; and now, for good or ill, the easy ground is about used up.

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