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## The Supreme Court Must Be Curbed

James F. Byrnes

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*Former Justice Byrnes Says—*

# "THE SUPREME COURT MUST BE CURBED"

The only living ex-Justice of the U. S. Supreme Court now files a dissent from the decision that declared segregated schools to be a violation of the Constitution.

In an article submitted to "U. S. News & World Report," James F. Byrnes speaks out on the decision which was handed down two years ago. Former Justice Byrnes takes the Court sharply to task for overturning legal precedents that had prevailed for 75 years.

Mr. Byrnes holds the Court usurped powers of Congress and the States to amend the Constitution and warns that, unless stopped, there may be no limit to the Court's power.

*By*

## JAMES F. BYRNES

*Former Justice of the Supreme  
Court of the United States*

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TWO years ago, on May 17, 1954, the Supreme Court of the United States reversed what had been the law of the land for 75 years, and declared unconstitutional the laws of 17 States under which segregated public-school systems were established.

The Court did not interpret the Constitution—the Court amended it.

We have had a written Constitution. Under that Constitution the people of the United States have enjoyed great progress and freedom. The usurpation by the Court of the power to amend the Constitution and destroy State governments may impair our progress and take our freedom.

An immediate consequence of the segregation decision is that much of the progress made in the last half century of steadily advancing racial amity has been undone. Confidence and trust have been supplanted by suspicion and distrust. The races are divided and the breach is widening. The truth is, there has not been such tension between the races in the South since the days of Reconstruction.

One threatened consequence is the closing of public schools in many States of the South.

A further consequence is the harm done to the entire country by the demonstrated willingness of the Supreme Court to disregard our written Constitution and its own decisions, invalidate the laws of States, and substitute for these a policy of its own, supported not by legal precedents but by the writings of sociologists.

Today, this usurpation by the Court of the power of the States hurts the South. Tomorrow, it may hurt the North, East and West. It may hurt **you**.

Though there was no dissenting opinion from any member of the Court, the South dissents. That dissent is reflected in State legislation and in the day-by-day occurrences throughout the South, developments which portray the feeling of the people.

Only now do people living elsewhere begin to comprehend the determination behind the dissent of the South. Only now is an effort being made in the Northern press to give thoughtful, balanced and reasonably impartial presentation of what might be called "the Southern point of view."

The suppression of that viewpoint outside the South has caused much of the nation to suppose that such dissatisfaction as existed with the Supreme Court's decision was due to petty prejudice and would soon disappear. That theme has been further developed by the publication of "encouraging" reports of school-integration experiences here and there below the Mason-Dixon Line. Those reports may be true of some Border States and of predominantly white areas in mountain sections of the South; it is not true of

any section where negroes constitute as much as 10 per cent of the population.

The problem is numerical as well as legal, educational, and—in recognition of the Supreme Court's concern—sociological.

The corruption of the Reconstruction era is a matter of recorded history. The memory of the sufferings endured by the white people of the South is an inheritance. It was during this "tragic era" that the Fourteenth Amendment was literally forced upon the helpless States of the South.

When the white people finally wrested control of the State governments from the carpetbaggers and newly freed slaves, and the army of occupation was withdrawn, the South started on the long road to recovery. Agriculture and industry were gradually restored. A public-school system was developed.

No one then seriously asserted that mixing the races in the schools was contemplated by the Fourteenth Amendment. In the constitutions of most of the States of the union, not just those of the South, provisions were adopted for the segregation of the races in the schools.

In 1896 in a case known as *Plessy v. Ferguson*, involving a statute providing for segregation of the races on railroad trains, the United States Supreme Court held that a statute providing for separate but equal facilities was not in violation of the Fourteenth Amendment to the Constitution. Thereafter, the Supreme Court in several cases involving schools upheld this doctrine.

Later, the Court, when it included such great judges as Chief Justice Taft and Justices Holmes, Brandeis and Stone, unanimously said that segregation in public schools had been "many times decided to be within the constitutional power of the State legislatures to settle without interference of the federal courts under the Federal Constitution."

### **SOUTH'S STAKE IN SEPARATE SCHOOLS**

Relying upon the stability of the law of the land, and upon the guarantee of State sovereignty in the Federal Constitution, the people of the South invested hundreds of millions of dollars in separate schools for the races. Under this segregated school system, the Southern negro made greater progress than any other body of negro people in the history of the world.

The facilities for negro students in many States were not equal to the facilities provided for white students. The degree of equality differed not only in States, but in counties within a State. The situation in South Carolina was typical of the South. As a rule, the facilities for negro students in the urban centers were superior to the facilities provided in rural areas. The same was true of facilities for white students. Schools were dependent upon local taxation, and

much of the inequality was due to the greater value of industrial property and higher income of the city dweller.

A realization of the inequality that existed between rural schools and urban schools, as well as between the races, influenced me greatly to become a candidate for Governor of South Carolina in 1950.

In my inaugural address I advocated a bond issue of 75 million dollars and the levying of a sales tax of 3 per cent for the purpose of equalizing the school facilities. In presenting this, I said:

"It is our duty to provide for the races substantial equality in school facilities. We should do it because it is right. For me, that is sufficient reason."

Of the 75 million dollars authorized, 70 per cent was allocated to negro schools even though the negro-school enrollment constitutes but 39 per cent of the total school enrollment.

Subsequently, the bond issue was increased until it is now 137.5 million dollars. In every school district there is a high school for negroes and more than one elementary school. On the whole, the negro school buildings are superior to the white schools because they are modern. The number of negroes transported by bus to those schools was increased 450 per cent in three years.

Similar educational programs have been under way in other Southern States.

In South Carolina, with a negro population of 823,622, there are 7,500 negro schoolteachers, whereas in 12 States east of the Mississippi and north of the Mason-Dixon Line, with a negro population of 3,351,402, there are only 7,712 negro teachers. There is no difference in the scale of pay for white and negro teachers.

About the time the educational program was inaugurated in South Carolina, there was pending in the United States court a case from Clarendon County, asking equal facilities for negro schools. Later, that suit was withdrawn, and a suit was brought by the same complainants, asking the court to declare unconstitutional all segregation laws.

The three-judge court, presided over by Judge Parker, senior judge of the Fourth Circuit, held that under the decisions of the United States Supreme Court from 1896 to that date, the segregation provisions of the Constitution and statues of South Carolina were not in violation of the Fourteenth Amendment. The lawyers for the National Association for the Advancement of Colored People appealed the case to the United States Supreme Court.

In that Court, the case for Clarendon County was argued by the late Hon. John W. Davis. He was so convinced of the soundness of the decision of the

three-judge court that he agreed to argue the case and declined to accept compensation for his services.

Had the Court been unanimous in the view that segregation statutes were in violation of the Fourteenth Amendment, such an opinion would have been written within a few months.

Instead, after many months, the Court announced that the cases should be re-argued, and counsel should direct their arguments to certain questions.

The first question was:

“What evidence is there that the Congress which submitted and the State legislatures and conventions which ratified the Fourteenth Amendment, contemplated, or did not contemplate, understood, or did not understand, that it would abolish segregation in public schools?”

Such a question would not have been asked if a majority of the Court was already satisfied that Congress and the State legislatures DID contemplate that the amendment would prohibit segregation in public schools.

Attorneys representing the parties involved and the attorneys general of many States having segregation statutes filed briefs. The overwhelming preponderance of the legislative history demonstrated that abolishing segregation in schools was not contemplated by the framers of the Fourteenth Amendment, or by the States.

We can only speculate as to how the Court reached its decision. In that speculation, it is interesting to read in the “Harvard Law Review” of November, 1955, an article entitled, “The Original Understanding and the Segregation Decision,” written by Alexander M. Bickel, who, according to the “Review,” was the law clerk to Mr. Justice Frankfurter during the October term, 1952, when the case was first argued. After a lengthy resume of the evidence, the writer states:

“The obvious conclusion to which the evidence, thus summarized, easily leads is that Section 1 of the Fourteenth Amendment, like Section 1 of the Civil Rights Act of 1866, carried out the relatively narrow objectives of the moderates, and hence, as originally understood, was meant to apply neither to jury service, nor suffrage, nor antimiscegenation statutes, nor segregation. This conclusion is supported by the blunt expression of disappointment to which Thaddeus Stevens gave vent in the House.”

The Court, in its opinion, did not admit, as did Mr. Bickel, the conclusiveness of the evidence that the Fourteenth Amendment did not apply to school segregation. The Court said the evidence was “inconclusive.”

## PREVIOUS DECISIONS WERE REVERSED

Our Constitution is a written instrument. The Fourteenth Amendment does not specifically mention public schools. Having decided unanimously that the legislative history was not "conclusive" that the Congress or the States intended it should apply to schools, one would think the Court would have stopped there and upheld the previous decisions of the Court. Instead, it proceeded to reverse those decisions and legislate a policy for schools.

An explanation of this extraordinary decision is offered by Mr. Bickel in his "Harvard Review" article on page 64, where he said:

"It [the Court] could have deemed itself bound by the legislative history showing the immediate objectives to which Section 1 of the Fourteenth Amendment was addressed, and rather clearly demonstrating that it was not expected in 1866 to apply to segregation. The Court would in that event also have repudiated much of the provision's 'line of growth.' For it is as clear that Section 1 was not deemed in 1866 to deal with jury service and other matters 'implicit in . . . ordered liberty . . .' to which the Court has since applied it."

If this law clerk is correct (and I can assure you the law clerks in the Supreme Court are well informed), it means that the Court, having previously interpreted the Fourteenth Amendment to apply to jury service and other matters not specifically delegated by the Constitution to the Federal Government, felt that the soundness of those decisions would be questioned unless the Court held the Fourteenth Amendment to apply to schools.

But there was a distinction. Previously the Court had held that State laws providing separate but equal school facilities did not deny a constitutional right. The control of schools had been proposed by some framers of the Fourteenth Amendment and rejected. There was no legislation by Congress prohibiting segregated schools. The only change in conditions was that several million negroes had migrated to the big cities in Northern States and constituted the balance of political power in several States.

Once the Court becomes committed to a course of expanding the Constitution in order to justify previous expansions, there is no turning back. When next the Court is called upon to "read into" the Constitution something which was never there, another segment of the people may be the victim. It may be YOU.

The Constitution provides that any amendment submitted to the States must be ratified by three-fourths of the States.

Change was purposely made difficult by the framers, who jealously guarded their liberties. They

knew "the history of liberty is the history of limitations on government."

### "COURT IGNORED A WARNING"

In amending the Constitution, the Court ignored the warning of George Washington in his "Farewell Address":

"If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Frequently, the Court has applied a constitutional principle to subjects not specifically mentioned in the Constitution, and not conceived of by its framers. That has been done, for instance, in applying the "commerce clause" to congressional legislation affecting forms of transportation and communication not in existence when the "commerce clause" was adopted. Material progress, which could not have been anticipated, justified the Court in applying the principle of the "commerce clause" and sustaining the laws affecting commerce between the States.

Ordinarily, the Court has been controlled by legal precedents. In the segregation opinion, it could cite no legal precedent for its decision because all the precedents sustain the doctrine of separate but equal facilities.

In 23 of the States that ratified the Fourteenth Amendment, the courts of last resort held it did not abolish segregation. The Supreme Court itself, in six cases decided over a period of 75 years, upheld the doctrine of equal but separate facilities.

The Court ignored all of these legal precedents and the Constitution and said, "We cannot turn the clock back to 1868 when the amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written."

Why not? The function of the Court is to interpret the Constitution, not amend it. Heretofore, whenever in doubt about the proper interpretation of the Constitution or a statute, the Court has turned the clock back to the time of adoption to ascertain the intent of the draftsmen. When the Court states, "We cannot turn the clock back to 1868," will it ever consider the intent of the framers of the Constitution in 1787?

If the age of a constitutional provision is to be held against its soundness, what about the age of our religion? If time invalidates truth in one field, will it not do so in another?

If the Court could not turn the clock back in these cases, why did it ask counsel for the litigants and the



attorneys general of all interested States to file briefs as to the intent of the Congress in 1868, in submitting, and the States, in ratifying, the amendments?

And why were counsel asked to argue whether the Court was bound by its previous decisions, such as *Plessy v. Ferguson*?

It is apparent that, when the Court found the legislative history it requested was overwhelming against the conclusion it had reached, it declared the evidence "inconclusive," disregarded the Constitution and—invading the legislative field—declared that segregation would retard the development of negro children.

That was a terrible indictment of the negro race. Because—whether a person be black, brown or yellow—whenever the Supreme Court says he cannot develop unless while in school he is permitted to sit by the side of white students, the Court brands that person an inferior human being.

Now mark this well! The Court not only ignored the Constitution and its own decisions, but, in establishing a policy for schools, ignored the record in the case.

In support of its decision, after citing K. B. Clark, who was employed by the National Association for the Advancement of Colored People, it cited the writings of a group of psychologists who had not testified in the trial court. Counsel for the States had no opportunity to rebut the opinions of these psychologists. In such procedure there lies danger for all of us!

And the Court was guilty of what it has frequently condemned. As late as 1952 in the case of *Beauharnais v. Illinois* (343 U. S. 250) the Court said:

"It is not within our competence to confirm or deny claims of social scientists as to the dependence of the individual on the position of his racial or religious group in the community."

Counsel had no opportunity to cross-examine these psychologists as to their qualifications as well as their affiliations. However, in the United States Senate on May 26, 1955, Senator Eastland, chairman of the Senate Judiciary Committee, submitted an amazing record of several of the authorities cited by the Court. He said:

"Then, too, we find cited by the Court as another modern authority on psychology to override our Constitution, one Theodore Brameld, regarding whom the files of the Committee on Un-American Activities of the United States House of Representatives are replete with citations and information. He is cited as having been a member of no less than 10 organizations declared to be communistic, communistic-front, or Communist dominated."

As to E. Franklin Frazier, another authority cited by the Supreme Court, Senator Eastland said, "The

files of the Committee on Un-American Activities of the United States House of Representatives contain 18 citations of Frazier's connections with Communist causes in the United States."

In support of its findings, the Court said, "See generally Myrdal, 'An American Dilemma, 1944.'" I have seen it. On page 13, Professor [Gunnar Karl] Myrdal writes that the Constitution of the United States is "impractical and unsuited to modern conditions" and its adoption was "nearly a plot against the common people."

On page 530, Myrdal states, "In the South the negro's person and property are practically subject to the whim of any white person who wishes to take advantage of him or to punish him for any real or fancied wrongdoing or insult."

Millions of people, white and colored, know this is absolutely false. Members of the Supreme Court know it is false. It is an insult to the millions of white Southerners.

Senator Eastland also listed some of those who were associated with Myrdal in writing his book. He stated that the files of the House Committee on Un-American Activities show that many of Myrdal's associates are members of organizations cited as subversive by the Department of Justice under Democratic and Republican Administrations.

I am informed by the Senator that no member of the Senate and no responsible person outside of the Senate has challenged the accuracy of his statements on this subject. Loyal Americans of the North, East, South and West should be outraged that the Supreme Court would reverse the law of the land upon no authority other than some books written by a group of psychologists about whose qualifications we know little and about whose loyalty to the United States there is grave doubt.

And loyal Americans should stop and think when the executive branch of the Federal Government brands as subversive organizations whose membership includes certain psychologists, and the Supreme Court cites those psychologists as authority for invalidating the constitutions of 17 States of the union.

### **RIGHT TO CRITICIZE COURT**

Some advocates of integrated schools shudder to think of anyone's criticizing a decision of the Supreme Court or, certainly, this decision of the Court. Well, whenever a member of the Court dissents from the majority opinion, he expresses his views and criticizes — sometimes in vigorous language — the Court's opinion.

In recent years there are many examples. But a case in point is the dissent of the late Justice Owen J. Roberts, who differed with his colleagues on the Court in the case of *Smith v. Allwright*. The Supreme

Court in that case reversed prior decisions and declared the Democratic Party in Texas was, in effect, an agency of the State and that its actions (in conducting white primaries) was "State action." Said Mr. Justice Roberts:

"I have expressed my views with respect to the present policy of the Court freely to disregard and to overrule considered decisions and the rules of law announced in them. This tendency, it seems to me, indicates an intolerance for what those who have composed this Court in the past have conscientiously and deliberately concluded, and involves an assumption that knowledge and wisdom reside in us which was denied to our predecessors."

The decisions of the Supreme Court must be accepted by the courts of the United States and the States, but not necessarily by the court of public opinion. The people are not the creatures of the Court. The Court is the creature of the people.

One hundred representatives of the people in the United States Congress have issued a "manifesto" criticizing this decision. Such criticism is nothing new. There is precedent for criticism by the people.

After the decision in the Dred Scott case, Abraham Lincoln criticized the Court, declaring the decision erroneous and pledging the Republican Party to "do what we can to have it overruled."

President Franklin D. Roosevelt, on March 9, 1937, commenting on a decision of the Supreme Court, said:

"The Court in addition to the proper use of its judicial functions has improperly set itself up as a third house of Congress—a superlegislature, as one of the justices has called it—reading into the Constitution words and implications which are not there.

"We have, therefore, reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself. . . .

"Our difficulty with the Court today rises not from the Court as an institution but from human beings within it."

### ENFORCEMENT OF DECISION

The fifth section of the Fourteenth Amendment authorizes Congress to enforce that amendment. Congress never legislated to require integrated schools because the Fourteenth Amendment did not embrace schools. On the contrary, Congress specifically appropriated for segregated schools in the District of Columbia. Now that the Supreme Court has amended the Constitution to embrace schools, Congress could legislate on the subject but the Supreme Court knows the representatives of the people will not legislate. Therefore, it calls upon the States of the South to enforce its new policy for schools.

The people of the South are law-abiding. They do not talk or even think of armed resistance. They realize the United States Government has the power to enforce a decision of the Supreme Court. But they believe the decision will close many schools, and think that the Court that ignored the Constitution and rendered the decision should assume the responsibility for its enforcement.

It is unrealistic to expect local school officials to destroy the public schools. With few exceptions, school trustees in the South are white men. They are highly respected in their communities. They serve without compensation. Do you think they will force the children of their neighbors into mixed schools? Many trustees will resign. Negroes will not be selected to succeed them. The schools will be closed.

When Northern newspapers criticize local officials who will not co-operate in the enforcement of this decision, they should recall the prohibition era. There were few Northern newspapers clamoring for the enforcement of that law by local authorities.

The so-called "best people" of many States did not hide their violations of the prohibition law. They regarded it as "smart" to boast of making gin in the bathtub and carrying whisky in a silver flask to public places. They fought the law until it was repealed.

However, there was this difference: The prohibition law was enacted as a result of an amendment to the Constitution which was adopted in the manner provided by the Constitution. It was not, as in this case, a decision of nine men on the Supreme Court—in effect—amending the Constitution.

The National Association for the Advancement of Colored People, financed by tax-exempt organizations and some well-intentioned but misguided people, for years demanded the reversal of the "separate but equal" decisions of the Supreme Court, even though 40 years ago Justice Charles Evans Hughes, speaking for the Court, said the question could "no longer be considered an open one." Now these same people would deny to the people of the South even the right to criticize the recent decision in the school case.

### **"PRACTICAL DIFFICULTIES" AHEAD**

A statement of some of the practical difficulties certain to follow enforcement of the segregation decision demonstrates the seriousness of the problem.

The case from South Carolina originated in a school district in Clarendon County where there were approximately 2,900 negro students and 290 white students. The goal of educators is to limit a class to 30 students. In the Clarendon District, all classrooms have more than the standard.

No white student will ask to go to a negro school. But suppose some negroes in the tenth grade of a

negro school ask for a transfer to the tenth grade of a crowded white school and the trustees decide it is unwise to further increase the enrollment in that school. Will the Court decide the rejection was on account of race, instead of efficiency, and cite the trustees for contempt?

Suppose the negroes are admitted: It is agreed that the average negro child, having had little training at home, does not possess the training of the average white child in the same grade and age group. Shall the white children be held back to help the negroes progress?

The white parents in the District of Columbia can answer that question. They have had some sad experiences in the last year. As a result, approximately 60 per cent of the students in the public schools of the capital of this nation are negroes. Many white families have moved to Virginia; many, though they can ill afford it, have placed their children in private schools.

If the negro students are not able to do the work of the white students, can the races be segregated in the classroom and assigned different class work? Would not the scars inflicted upon the negro child by such segregation be far deeper than the harm done him by associating with only negro students in segregated schools?

Should the races be mixed in a school, will a board of trustees composed of white men in a Southern State employ negro teachers? If not, what will happen to the negro teachers now employed in the South?

Today, high schools in the South are more social institutions than in the past. There is a cafeteria where all students lunch together. There is a gymnasium where students of both sexes engage in various sports.

Athletic contests, as a rule, are held at night. Students, following the team, travel in school buses. When the races have been accustomed to separation in buses, who can assure there will not be serious consequences?

These are only a few of the problems.

There is a fundamental objection to integration. Southerners fear that the purpose of those who lead the fight for integration in schools is to break down social barriers in childhood and the period of adolescence, and ultimately bring about intermarriage of the races. Some negro leaders deny this. Others admit this objective. Because the white people of the South are unalterably opposed to such intermarriage, they are unalterably opposed to abolishing segregation in schools.

Disraeli said, "No man will treat with indifference the principle of race. It is the key to history."

Pride of race has been responsible for the grouping of people along ethnic lines throughout the world.

Race preservation is the explanation of the political unrest in South Africa. In the United States, it is not peculiar to the white people of the South. For many years, fear of the Japanese influenced legislation in California.

Today, in 23 of the States, intermarriage of the races is prohibited by law. These laws reflect the fear of mongrelization of the race. To prevent this, the white people of the South are willing to make every sacrifice.

It is useless to argue whether the racial instinct is right or wrong. It exists. It is not confined to any race or to any country. It cannot be eliminated from the minds and hearts of people by the views of psychologists or by the order of a court.

The degree of tension between the races depends upon the percentage of negro population. In Vermont, where there are few negroes, there is little tension. But in Detroit, Chicago and Washington, where the negro population is increasing, tension is increasing.

Frequently it has been asked why the white man of the South who owned no slaves fought in the Confederate Army as bravely as the slaveowner. He had no financial interest. It was not greed. It was to preserve the rights of the States and thereby preserve his race. For this he fought and died. His grandchildren have the same racial instincts.

Abraham Lincoln was not charged with racism, but he said, "While the races remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race." He further said, as to political equality, "My own feelings will not admit of this, and if mine would, we well know that those of the great mass of the whites will not. Whether this feeling accords with justice and sound judgment is not the sole question, if indeed it is any part of it. A universal feeling whether well or ill-founded cannot be safely disregarded."

Since Lincoln's words were uttered, the negro living by the side of the white man of the South, under segregation laws, has made great progress—educationally, culturally and economically. The white man of the South wants to help the negro continue to progress, first because it is right and, second, because it is to his own advantage. Unlike Lincoln, he does not say there must be the position of superior and inferior. He says in State-supported facilities there should be equality but he also says "equal facilities" does not mean the same facilities.

### **"WHERE DO WE GO FROM HERE?"**

Frequently, the question is asked:: Where do we go from here? Solomon, with all his wisdom, could

not give a positive answer. We do know that the approximately 40 million white Southerners will do everything that lawfully can be done to prevent the mixing of the races in the schools.

The hope is for voluntary segregation. As the negro has progressed educationally and economically, a constantly increasing percentage of them have developed a pride of race. That negro does not want his children forced into schools where they will not be welcomed. He prefers to have them attend schools for negroes, taught by negroes. However, recent events indicate such men will be coerced by the National Association for the Advancement of Colored People and Northern negroes to demand admission to white schools. Therefore, there is fear for the future.

Plans vary. In some States, the legislature has repealed the statute requiring children to attend schools. When the overwhelming majority of the people of a State are opposed to integrated schools, they could not be expected to enforce laws requiring children to attend mixed schools.

In most States, the law now requires trustees or other school officials to assign children to schools. In the cities where the negro population is usually concentrated in two or three areas, schools have been placed in those areas. It is reasonable that negroes should be assigned to schools nearest their homes. In the rural districts there is no such segregation of homes. There the problem will be more difficult, and—more dangerous.

In South Carolina and in some other States, laws have been enacted providing that if—by order of any court, State or federal—a student is assigned to a school different from that to which he is assigned by school officials, all appropriations for the school to which that student is assigned and all appropriations for the school from which he comes shall immediately cease. Similarly, it is provided that funds appropriated for operation of school buses shall be available only for segregated buses.

The theory of this legislation is that under the Constitution there are three branches of Government **which shall forever be kept separate**. It is the function of the legislative and executive branches of State governments to appropriate for and administer school funds. If a State or federal court shall arrogate to itself the right to assign children to schools different from the assignment made by the officials designated by the legislative and executive branches of the State Government, no funds shall be available for such schools.

It is predicted by counsel for the National Association for the Advancement of Colored People that the United States Supreme Court will declare these appropriation laws unconstitutional. In view of the

segregation decision, no man can say positively the prediction will not come true.

If the Supreme Court shall declare unconstitutional all State statutes having, in its opinion, the effect of continuing segregated schools, then as a last resort many States will discontinue public schools. Some financial assistance would be provided for parents, white and colored, sending children to private schools. Such a plan is proposed in Virginia.

By an overwhelming vote in South Carolina in 1952, there was eliminated from the State Constitution the provision that public schools must be provided for "all children between 6 and 21 years of age." The purpose was to permit the Legislature to be free to discontinue public schools should all other efforts fail.

### **NEGROES COULD SUFFER MOST**

Should this happen, it will be unfortunate for both races. It would be particularly unfortunate for negroes because they do not have the financial ability to purchase or to build and equip schools. That fact does not deter the reckless leaders of the National Association for the Advancement of Colored People from jeopardizing the continued existence of negro schools as well as of white schools.

Should the public schools close, the white people of the South will see that an education equal to that given white children is available to the negro children who are being used as pawns by the National Association for the Advancement of Colored People in an effort to solve overnight a great social problem.

Integration is now demanded in other fields. In South Carolina, for example, there are recreation parks, supported by public funds and equipped with vacation cabins, lakes and other facilities. For the maximum enjoyment of all, and for the preservation of good order, the parks are operated on a segregated basis—some for whites and some for negroes.

Recently, a suit was brought in a federal court to force the admission of negroes to a park set aside for white people. The General Assembly, rather than wait for another race-mixing decree, promptly and unanimously ordered the park closed. The suit was dismissed by the court. For the future, money is appropriated only for segregated parks. Similar suits have been brought in other States. All parks may soon be closed as a result of litigation inspired by the National Association for the Advancement of Colored People and some Northern sentimentalists who do great injury to their fellow man. Woodrow Wilson once said:

"It will be a bad day for society when sentimentalists are encouraged to suggest all the measures that shall be taken for the betterment of the race."



## THREATENED: POWER OF STATES

Tragic as may be the consequences in destroying the public-school system in the South, more frightening are the consequences of the trend of the present Court to destroy the powers of the 48 States.

In the case of *Pennsylvania v. Steve Nelson*, decided April 2, 1956, the same Court that declared unconstitutional the segregation statutes of 17 States invalidated the laws of 42 States prohibiting the knowing advocacy of the overthrow of the Government of the United States by violence, as long as there is a federal law against sedition.

The Department of Justice protested to the Court that the State laws did not interfere with the enforcement of the federal statute. But the Court struck down the laws of 42 States. Justices Reed, Burton and Minton vigorously dissented.

One week later the Court declared unconstitutional a provision of the Charter of New York City under which Professor Slochower, an employe, was dismissed for failure to answer a question in an authorized inquiry, on the ground that his answer might incriminate him. It is encouraging to the people that the same three Justices dissented and were joined by Justice Harlan.

Power intoxicates men. It is never voluntarily surrendered. It must be taken from them. The Supreme Court must be curbed.

The Constitution authorizes the Congress to regulate the appellate jurisdiction of the Supreme Court. Loyal Americans who believe in constitutional government appeal to the court of public opinion in the hope that you will urge the Congress to act before it is too late.

The present trend brings joy to Communists and their fellow travelers who want to see all power centered in the Federal Government because they can more easily influence one Government in Washington than the 48 governments in 48 States.

But the trend of the Court is disturbing to millions of Americans who respect the Constitution and believe that in order to preserve the republic we must preserve what is left of the powers of the States.

You may be unconcerned today. You may "Cry Tomorrow"!

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