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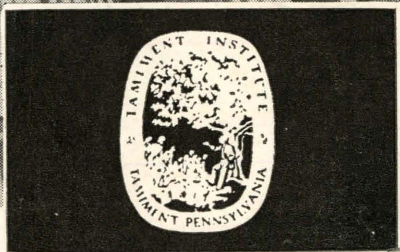
By SIDNEY HOOK

Democracy and Desegregation

EQUAL JUSTICE UNDER LAW



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ABOUT THE AUTHOR

SIDNEY HOOK, Chairman of the Department of Philosophy at New York University, is the author of many books on philosophical, educational and political subjects. Among these are *The Metaphysics of Pragmatism* (1927), *Towards the Understanding of Karl Marx* (1933), *From Hegel to Marx* (1936), *John Dewey—An Intellectual Portrait* (1939), *Reason, Social Myths and Democracy* (1940), *The Hero in History* (1943), *Education for Modern Man* (1946), *Heresy, Yes—Conspiracy, No* (1953), *The Ambiguous Legacy: Marx and the Marxists* (1955) and *Common Sense and the Fifth Amendment* (1957). He has also edited *American Philosophers at Work* (1957) and *Determinism and Freedom in the Age of Modern Science* (1958).

Professor Hook was an organizer of the Conference on Methods in Philosophy and Science and of the American Committee for Cultural Freedom. He has been a frequent contributor to THE NEW LEADER, the New York *Times Magazine* and *Book Review, Commentary, Partisan Review* and several philosophical journals, as well as numerous periodicals in Europe. In 1945, Columbia University awarded him a Butler Silver Medal for distinction in philosophy.

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Democracy and Desegregation

By Sidney Hook

IT IS commonly agreed that the United States Supreme Court's decision on integration in education is one of the most important rulings in its long and controversial history. For four years now, the decision has been subjected to a steadily mounting barrage of criticism on all sorts of grounds and from almost all points of the ideological compass. What has been most surprising is the absence of a principled defense of desegregation and the program of school integration from the point of view of the ethics of democracy. Most defenses of the decision, particularly since Little Rock, have consisted in shifting the issue by insisting that the supreme law of the land, whatever we may think of its wisdom, should be obeyed. Although this is a justifiable position with respect to the laws of a democracy, which, if unwise and unjust, are modifiable and reversible, it evades the basic moral issues that in the last analysis underlie every fundamental conflict of values and social policy.

The opposition to desegregation comes from various groups. The old-line Southerners, who represent the majority of the opposition, hardly deign to offer reasons for their opposition except that laws against desegregation destroy their traditional "way of life." They are more convinced of the validity of their way of life than of the abstract rights of man and of citizens in whose name such ways of life may be condemned. That their way of life has a history; that it involves the use and abuse of other human beings who are bitterly opposed to this way of life; and that, unless they have some other justification for the *status quo* than that it is a *status quo*, a new *status quo* may be imposed upon them with the same warrant—all this they are content to ignore. For they hope to reverse the decision or transform it into a dead letter not by argument or reason but by delaying tactics and sporadic outbursts of recalcitrance.

A second group opposes desegregation on constitutional grounds. Some regard this area of human relations as one in which the Supreme Court is really legislating and therefore usurping the functions of Congress and state legislatures. Others believe that education is exclusively a matter for state jurisdiction and no concern of the Federal Government. A third group pro-

tests against the clear violation of previous controlling precedents—especially *Plessy vs. Ferguson*—which established the "separate but equal" doctrine. These constitutional questions are not really germane to the basic argument. It is true that the Supreme Court "legislates." It always has. The ultimate question is the character, grounds and wisdom of its legislation. Education may be exclusively a matter for state jurisdiction. Yet the effects of some state actions may have consequences affecting the rights and privileges of citizens. Aside from this, the moral issue of segregation in education still remains, whether it is a question for the states or the Federal Government. That the Supreme Court decision overturns earlier precedents is true. This is not unusual. The real question is: Should the precedents be retained or overturned? I shall, therefore, avoid the strictly legalistic aspects of the question.

Finally, I come to the criticism made by some conservative liberals and liberal conservatives who see in the legal prohibition of segregation in educational facilities (as in employment and in housing) a violation of one's personal freedom or private right to choose one's associations, companions, neighbors and fellow workers. There is some written criticism of desegregation along these lines, but the volume of spoken criticism is much greater. Even before the Supreme Court decision, some exponents of discrimination as a personal right related it to the defense of free enterprise. Natural law as well as Judeo-Christian ideals have been invoked to prove that man is essentially a discriminatory creature because he is capable of choice. The greater his knowledge, the greater his range of discrimination. According to this argument, many of our difficulties arise from attempts to curb by law the exercise of a discrimination which is ours by natural right and which is justified in addition by the greater power it gives us to advance the arts of civilization. Thus, F. A. Harper, in a pamphlet on *Blessings of Discrimination* published a few years ago by the Foundation for Economic Education, asserts: "Many of the leading problems of our day stem from a thought-disease about discrimination. It is well known that discrimination has come to be widely scorned. And politicians have teamed up with those who scorn it, to pass laws against it—as though morals can be manufactured by the pen of a legislator and the gun of a policeman."

Since the desegregation decision, this note has been struck with increasing frequency by critics who believe that discrimination in education lies in the field of private morals and is thus beyond the reach of law. They are prepared to defend the human rights, they tell us, of all minorities, but they insist that the right to discriminate in education, even if this results in segregated schools, is one of the basic human rights. The more liberal among these critics make a distinction between the public and private domain according to which it would be wrong to *permit* segregation on buses and railroads because these lie in the public domain but wrong to *prevent* segregation, on the ground of

personal freedom, in private life. Education, they say, is one of those areas of personal life that are by their very nature outside the purview of law in a democratic society.

Parents' Rights and Public Schools

THE CASE against Negro segregation in any area of public life, whether enforced by law or by custom, rests upon simple ethical principles which are implicit in the Declaration of Independence and which later guided the adoption of the Thirteenth and Fourteenth Amendments. These principles of equality and freedom are expressed in the language of natural rights, but they are best defended in terms of their empirical consequences: The Negros are part of the human race and as such should enjoy the same human rights of freedom and the same protection of our laws as any other group of human beings in the United States. The Thirteenth Amendment abolished their slavery and involuntary servitude generally. In so doing, we sought to redress a crime—one perhaps even greater than those committed in some settlements against the Indians. If slavery is abolished, then all the institutional restraints and indignities which constituted servitude must be abolished, too. There can be no justification for first- and second-class citizens derivative from a previous condition of servitude. Morally, Negroes are entitled to life, liberty, property, and equal protection of laws on the same terms as the rest of us. This is independent of vicissitudes in the Supreme Court's interpretations of these rights we enjoy as citizens of our individual states or as citizens of the Federal Republic.

Atoning in part for the long history of moral evasion by previous Courts, the Supreme Court in *Brown vs. Board of Education of Topeka* declared that segregated public educational facilities are "inherently unequal." Despite the obscurity of the Court's language, this was not based on a discovery of a new fact or on recovery of an old law, but on the reaffirmation of a moral principle that led to a new law in the land. The moral principle is the same one which justified the abolition of slavery. In the light of the *historical* situation which has developed since the abolition of slavery, segregated educational facilities are "inherently unequal," not because of the actual differences in facilities, great as they are, but because they are inherently cruel, unjust and degrading to the group discriminated against. They are degrading in the same way that the yellow patch or badge of inferiority, the mark of the pariah, the stigma of the outcast, are degrading. Even if the physical facilities of Negro schools (or buses) were physically better than those set aside for the whites, segregation would still be degrading for the same reason that we regard a well-fed slave as still a slave.

Prejudice is sometimes distinguished by psychologists and sociologists from discrimination. Prejudice is an antipathetic feeling or attitude against some person or group not rationally justified by objective evidence. Discrimination is a pattern of behavior in which one acts against others by excluding them from opportunities commonly enjoyed. At the moment it is experienced, one can't help feeling prejudiced. But one *can* help discriminating unless under some compulsion. No one chooses to be prejudiced. But one chooses to discriminate. And because one does, one's choice can be inhibited or influenced by many things besides his prejudice. In a sense, everyone has a right to his thoughts or feelings. But not everyone has a right to discriminate. Neither the state by law nor society by custom has a moral right to discriminate prejudicially against individuals and groups in public life. Such a pattern of discrimination is segregation.

Has the individual ever a right to discriminate, and if so, where?

More than a decade ago, in a review of *To Secure These Rights*, the report of the President's Committee on Civil Rights (THE NEW LEADER, March 13, 1947), I pointed to the necessity of establishing a principle which would guide us in drawing a line between "justifiable" and "unjustifiable" discrimination: "The presence of a justifying principle with respect to legitimate and illegitimate discrimination is necessary in order to allay fears that, under the cover of social welfare, individual freedom and the rights of privacy may be abridged." I no longer believe that the principle I then too briefly formulated in terms of the needs of *personal growth* is adequate. But it seemed to me that it enabled us to condemn all types of community segregation and at the same time permit a man to choose his friends and control the pattern of his personal and family life. I mention this merely to indicate that critics of laws against segregation are not alone in their concern for personal freedom and the right to privacy. But the unfortunate thing is that their argument so interprets the right of privacy that it embraces the entire realm of the social or public, if not the narrowly political. It is as if someone were to define personal property, without which there could be no privacy or personal freedom, in such a way that ownership of a steel mill, which gives power over the lives of those who live by it, is a piece of personal property, necessary for the owner's sense of privacy and freedom. The fact is that extreme Southern segregationists have defined *their* right of privacy, their right to live according to customs and folkways they call the Southern way of life, so as to deny the equal protection of laws to all but native whites.

Opponents of integration do not contest the right of every child, Negro or white, to receive an education in the public schools. They know that the public schools are supported by tax money levied directly or indirectly upon all citizens irrespective of race. They contend, however, that it is wrong to force parents to send their children to an integrated school. For this deprives

them of rights which clearly belong to them in all free societies—the private right over their children and the social right to free association. At most, these spokesmen hold, the state may prescribe some of the content of education but not the context of association and social life which invariably develops out of attendance at school.

It is instructive to explore some of the implications of this position and observe to what it commits anyone holding it. If it is wrong to force white parents to send their children to an integrated school because of *their* private right over their children, it is wrong to force Negro parents to send *their* children to segregated schools, and wrong to force white parents who do not object to *their* children associating with Negro children to do the same. The same principle obviously obtains with respect to the feelings of parents toward the children of *any* minority. It is wrong to force parents to send their children to legally unsegregated public schools if they do not wish *their* children to associate with the children of religious, racial or ethnic minorities. Since most of these critics do not propose to abolish our compulsory education laws, and rule out private education as economically unfeasible, they must require the state or community to build separate schools for any group of parents who wish to safeguard their children from any kind of context and association they regard as seriously undesirable.

Educational context and association, however, extend far beyond the classroom into school buses, lunchrooms, playgrounds, pools, gymnasiums. If desegregated schools violate the personal and social rights of parents to discriminate against undesirable associates and contexts for their children, so do desegregated buses and all other public educational facilities where context and association are prolonged for hours. Since these are normally incidental to public education, special facilities would have to be provided for the entire gamut of parental fastidiousness. What holds for public education must by these principles also hold for public health and medical facilities. Parents may object to having Negro physicians or nurses treat their children in public hospitals to which Negro children are admitted. And it is surely obvious that public housing projects which legally bar segregation also violate the private rights of white parents not to have their children associate with undesirables.

Actually, parents are *not* forced to send their children to an integrated school. Parents may choose to send their children to private schools which are not integrated. Or, in most states, they may provide education at home. This the law permits *(Pierce vs. Society of Sisters)*. To be sure, they have to pay a certain economic price for it, even though in its tradition of tolerance the community subsidizes these private schools by giving them remission from taxes and allowing those who contribute to their support to deduct contributions from their income tax. One would think that this was a generous,

even over-generous attitude toward individuals whose prejudice against permitting their children to associate with Negroes was so overwhelming. But—the objection runs—it will not do to tell parents they can educate their children at home or send them to private schools. This involves another kind of discrimination. Since private education requires the possession of means, it would make the safeguarding of certain private rights dependent upon economic status and consequently underprivilege those who are forced to send their children to public school.

In other words, unless we can guarantee the equal economic status of the prejudiced, segregation would be a privilege of the rich! But why should we be concerned with economic equality here? Why not make the segregationists pay the costs of their prejudices? If the cost is sufficiently high, they may give up their opposition to integration if not their prejudices. In time even their prejudices may wither.

What a strange state of affairs! These opponents of school integration tell us they really are not opposed to equality. But equality can be legislated only in the political sphere; all we can enforce is the right to vote, *political* equality. The numerous ways in which economic inequalities affect the political realm, especially in the winning of consent, bother this school of thought not at all. But with respect to the exercise of the private right of sending children to segregated schools, they become economic equalitarians. Is it not more humane to fortify the principle of political equality by equality of educational opportunity, which is negated by segregated schools, than by invoking the principle of economic equality to justify perpetuating such schools?

Consider the meaning of this concern for economically underprivileged bigots in another sphere in which we recognize private rights. One has a right to have his wife and children treated by a physician of his choice. If he regards membership in a certain race or religion as a *sine qua non* of professional suitability, no one can morally or legally compel him to believe or act otherwise (barring emergencies). The public hospitals are unsegregated and therefore objectionable to him. His neighbor, similarly prejudiced, can afford the services of a private physician or segregated hospital, but he himself cannot. Is there not here, too, a manifest injustice on the basis of the above principle? Are not his private rights to see that his wife and offspring get tender and loving care from racially or ideologically qualified physicians and nurses, and to insure the proper contexts and associations for his children, likewise dependent upon his economically underprivileged status? Should we therefore, reasoning *pari passu,* insist that public hospitals and facilities not be legally integrated or desegregated? I can see no reason why the community should be concerned about this man's prejudices unless he could show that his wife and children were going to suffer unjust discriminatory treatment. But the situation we are discussing presupposes hospitals

(and schools) in which irrelevant and therefore unjust discrimination is legally forbidden. To be sure, there are great differences between public schools and public health facilities, even when the latter have mainly preventive and remedial functions. They are not relevant, however, to the principle invoked by anti-integrationists in discussing a possible injustice to the economically underprivileged segregationist.

So far I have not been criticizing the argument against legal desegregation so much as exploring the consequences of some of the principles and distinctions on which it rests in order to see where they lead. It seems to me that they would lead not only to the abolition of laws which *compel* segregation in about twenty states but to the abolition of laws which *prohibit* discrimination in public education and allied fields in about as many states. It would take us back to the days, with respect to education at least, of *Plessy vs. Ferguson* and the Civil Rights Cases of 1883 when the Supreme Court nullified Congressional legislation of which Professor Milton Konvitz has said that "it was probably the first attempt in the history of mankind to destroy the branches of slavery after its root had been destroyed."*

I regard this as a *reductio ad absurdum* of their argument. The difficulty with this kind of analysis, however, is that it cannot convince those who are prepared to swallow one absurdity to defend another. I therefore focus directly on some of the basic premises of their position.

Privacy, Social Custom and Law

ONE of the main premises is contained in the explicit acceptance of William Faulkner's declaration that "enforced integration is no better than enforced segregation." This is a very curious statement. Leaving aside the strictly legal questions created by the most recent interpretations of Section I of the Fourteenth Amendment, particularly the provision extending the equal protection of laws to all citizens, this equation in condemnation seems to me completely inadmissible morally. It assumes either that integration and segregation are, morally, on all fours, or that the evils of enforcement *always* outweigh any alternative good to be derived therefrom. This is not necessarily true and in the case in hand—the historical situation of the Negro in the United States—patently false. To deny children equal public educational opportunities and possibilities of proper vocational fulfilment merely because of the color of their skin or their religion or national origin, whether enforced by law or by social custom, is manifestly unjust. On the other hand, to require students, if they wish a public school education supported by tax

* *The Constitution and Civil Rights,* New York, 1947—an invaluable book!

monies levied upon all alike, to attend unsegregated schools is not unjust.

There are situations in which legally to compel certain practices is as bad as legally to prohibit them. This is so when the practices in question are equally evil, or when they are morally indifferent. Legally to compel us to consume bananas is as bad as legally to prohibit us from doing so. But what is true for bananas would not be true for habit-forming drugs, or for smoking in a powder plant. To enforce vaccination or the medical segregation of children with contagious diseases is certainly not as bad as preventing it even if we admit it is always deplorable to compel parents to comply with school and health laws.

Some anti-integrationists make a distinction between segregation as a "social custom" and segregation as "discrimination enforced by law." They oppose the latter—but then, just as resolutely, oppose the legal prohibition of such discrimination as a social custom. They do so on the ground that this violates the personal freedom of those who discriminate to act as they please "within the four walls" of their own home.

There are social customs and social customs. A social custom which violates human rights, and imposes unfair and cruel penalties upon individuals, hurts no less even if it is not enforced by law. It is enough that it is enforced by habit, custom, use and wont. Suttee was a social custom, too—as was child marriage, infanticide, dueling, and quite a number of other quaint practices described in anthropological texts. If there is any relation between morality and law, the existence of certain evil social practices *may* (not must) justify us in taking legal action to prevent them. And if this is of necessity an abridgment of some human freedom, as is true of every law, it is taken in behalf of other human freedoms. The human freedoms we safeguard by legal action against segregation and unfair discrimination are more important than those we restrict. Some Southern moderates see this in the case of certain public facilities, such as transportation. But surely the social discrimination which prevents a Negro student from attending a medical or engineering school, which bars him from certain vocations even after he has spent years of his adult life in preparing himself for it, which denies him housing in restricted communities without even providing him with the separate and equal facilities of the segregated bus, is a much crasser violation of his rights as a human being. The classification which puts transportation in the field of the political, and education and employment in the field of the personal, is completely arbitrary as well as irrelevant. For the moral question is primary and it cuts across all categories.

It is on moral grounds that we are justified in adopting a Fair Education Practices Act prohibiting certain discriminatory practices not only in public schools but sometimes even in private schools which are dependent upon the public largesse in various ways. It is on moral grounds that we are justi-

fied in adopting a Fair Employment Practices Act. If it is morally wrong for a trade union to exclude from membership individuals of certain racial or religious groups, when such membership is essential to continued employment, it is just as morally wrong for an employer, except in some highly special circumstances of personal service, to deny people work on the same grounds. Finally, it is on moral grounds that we are justified in adopting a Fair Housing Law the exact provisions of which we need not specify here. I believe I am as much concerned with preserving the rights of privacy as any segregationist, but I cannot see how the right of every person to do as he pleases within the four walls of his own house is undermined by legislation designed to make it possible for our colored neighbor to live within *his* four walls. For make no mistake about it: Social discrimination in housing in effect confines Negroes and other minority groups to ghettos where they must share their four walls with multiple families and are in consequence denied their own sacred rights of privacy. Actually there are both moral and legal limits to what a person can do in the privacy of his own home; but, even if the right of privacy were absolute, it would not carry with it the right to push out one's walls until they encompassed the public neighborhood, school and factory.

Many inconsistencies and confusions in this position flow from vague distinctions between the political, the public, the social, and the personal or private. According to this view, only the political sphere is the sphere of equality. Focal to it is the right to vote. The social sphere is the sphere in which discrimination is legitimate even if unwise. The public sphere includes both. The private sphere is one of exclusion. But to what sphere, then, belong the inalienable human rights "to life, liberty, and the pursuit of happiness"?

A moment's reflection will show that they have mixed everything up. Equality "exists" *first* in the field of human rights. It is the premise from which we derive the most powerful argument against slavery. Political equality, especially equality in voting, is only one form of equality. Negroes desire political equality in order to enforce recognition of their human rights, which they believe they have even when they lack political equality. They were liberated and admitted to citizenship even before the Fifteenth Amendment specifically forbade abridgment of the right to vote on account of race, color or previous condition of servitude. Under certain historical conditions, restrictions on the right to vote—age, literacy, residence—provided they are *equitably* applied to all, may actually lead to inequality in the exercise of the vote. It is manifestly improper to confuse the political realm with one very special form of political life—a democracy of universal suffrage. It is clear that sometimes we may wonder whether a people is ready for universal suffrage but never whether they have human or social rights, no matter how primitive they are.

The social realm, the locus of most of our associations with other human beings, is the sphere in which the questions of justice arise in their most complex as well as most acute form. The social realm is emphatically not in the first instance the realm of discrimination and inequality, although they are found there. That would automatically and necessarily make it one of injustice. It is precisely here that, as moral creatures, reflecting upon the consequences of our actions on others, we are called upon to apply appropriate rules of equality and, where differences are relevant, rules of equitable inequality in the light of some shared ideal, even if it be no more than the ideal of peace or mutual sufferance. The nub of many an error here is the confusion, where social relationships and membership in social groups are involved, between "discriminating *against*" and "discriminating *between*" and treating them as synonymous expressions. In identifying the social world with discriminating *against*, one is describing it as it appears to the eyes of the snob with vestigial cultural longings for feudal hierarchy.

One writer of this school of thought, in characterizing the social sphere, asserts flatly that what matters here is not at all personal distinction. He maintains that, in the social sphere, people are identified by their membership in a group and by their differences only insofar as they symbolize group difference. He caps this by proclaiming that their very identifiability as members of a group *demands* that they discriminate against other groups.

Could group snobbery find a more perfect expression? Why, to begin with a trivial matter, must owners of Cadillacs discriminate *against* me, driving a more modest car? Have I not the same human right to use the road as they? I do not feel discriminated against merely because they ride in comfort while I ride in enjoyment and economy. To go on to the discriminations some believe are legitimate within the social sphere, why, if I am a Negro, should I be required by custom to attend segregated schools or to sit in the back of school buses or be fenced in whenever I use educational facilities? Why should differences *not* bound up with personal distinction lead to humiliating discriminations? What these critics declare does not matter—personal distinction—is precisely the only thing that should matter where discriminations operate in the social sphere. If I am to suffer from legitimate discrimination in school, it should be only because I lack certain relevant gifts, knowledge or qualifications, not because of the color of my skin or my religion! In fact, if the discrimination is reasonable and equitably enforced, it does not appear as objectionable discrimination at all. It is discrimination *between* and not discrimination *against;* it marks the degree to which a society has been morally organized into a genuine community.

Finally, there is an ambiguity in the category of the private. In one sense, the opposite of the "private" is the "public," as when we contrast private societies with public ones; in another, the opposite of the "private" is the "social."

In the second sense, the "private" means the "personal." The personal realm is not merely the solitary: It involves our friends and families. Because our associations here have no consequences that extend beyond those who are engaged in them, we owe no one an accounting for our choices, however arbitrary, biased, prejudiced or unwise. We may walk, dance, drink, talk philosophy, quarrel or pray with whomever we please. And we *must* not prevent others from doing the same except where, as sometimes is the case in private quarrels, the consequences affect the lives of others. It is evident that since many kinds of private associations, in the first sense of private, have their locus in social space and not in the space within one's four walls, situations may arise which require some kind of public regulation. By arbitrarily extending the realm of the personal and delimiting the realm of the public, the segregationists would give those in possession of power justification to impose their way of life, subtly if possible, brutally if necessary, on any minority and (crowning irony) to do it in the name of personal freedom. Morally, no set of principles will be sufficient to determine by themselves in which cases the law should intervene when private prejudices result in public discrimination. The consequences in each situation must be considered. But we are not without knowledge about the kind of consequences that some types of action have. And at some point, after consultation and negotiation have run their course, the law must be applied.

The Meaning of Little Rock

IT IS a hateful thing to enforce laws in education, where ideally there should be no coercion except the inescapable cogencies encountered in the quest for truth and beauty. But ideal societies exist only in heaven. It is commonly acknowledged that the state may not only enforce compulsory attendance but prescribe the content or subject matter of instruction in order to insure an education appropriate for the exercise of citizenship. The content of education has some fixed elements, but its variables depend on the *kind* of society in which instruction is given and on its history. The mode of association within a school may have a definite bearing on the content and values of the education it gives. This has always been true of the American public school, which has played a great and unique role in the creation of the modern American nation. It not only provided a ladder of opportunity on which millions climbed out of poverty, but by virtue of its integrated classrooms, in which students studied and played in common, unified the most diverse ethnic groups that elsewhere lived together in snarling hostility. It never even tried to do this in the South, because the pattern of segregation prevailed from the beginning in the schools, which were late in getting founded. The require-

ments of citizenship in a *democratic* community require the integration of the public classrooms even more than integration in the armed services. Unassailable evidence shows that Negro students, especially in high schools, smart under the restrictions of the segregated school. The more willingly they accept the promised heritage of American ideals, the more they resent their educational conditions. A typical study among Negro high school students in Dade County, Florida shows that, when asked to state the changes they most desired in their way of life, they named most frequently changes in the area of education. Can the democratic state be indifferent to this?

Some assert that the desegregation decision would probably have caused no great furor if it had not been followed by enforced integration. This is really saying that there would have been no trouble at Little Rock if nothing had been done about the matter, if the nine Negro children had not sought to go to the high school. True, there never is any trouble if a law is not enforced, except to those who suffer from its lack of enforcement. One might argue that a more gradual approach might have met with less opposition. This is beside the point to those for whom the issue is not the time and manner of enforcement but the *fact* of enforcement. No matter how gradual, sooner or later the moment comes when the readiness of the community to accept the law of the land is tested by the exercise of the Negro child's right to attend the public high school of his district. Once tested, the law cannot abdicate before the interference of mob violence without making a mockery of the Negro child's constitutional right to the equal protection of the laws.

Is it any different from the situation in which the Negro's right to vote is protected? The state does not actually compel him to vote, any more than it compels parents, black or white, to send their children to a public school. But if he chooses to exercise his right to vote and is prevented from doing so by others, the state would be enforcing his *right* to vote, not actually compelling him to vote against his will.

In reflecting on Little Rock, we must not lose sight of the fact that the people of Little Rock, although opposed to the desegregation decision, voted in effect twice to accept the gradual integration plan, once in election for the city officials, once for a local school board. They were not hard-core segregationists resolved to defy government by force rather than yield to an unpopular court decision. We must note also the willingness of the local officials from the Mayor down to comply, as well as the peaceful illustrations of compliance in neighboring states where the Governors did not predict and thereby invite violence. Some Northern liberals have been caustic about the failure of the town's law-abiding citizens, black and white, to enforce the law against the mob and see the Negro children safely to school. I find this attitude explicable only in terms of unfamiliarity with the South. Had the law-abiding citizens of Little Rock, black and white, been as brave as

some writers expected them to be, a fracas would have flared into a race riot or small-scale civil war. One does not enforce law by mobs, except in Westerns. Enforcement is the function, first, of the local law officers. If they are on the side of the mobsters and hoodlums, the responsibility rests with the Governor, and, when the Governor is a Faubus, with the Federal authorities.

It is true that law-abiding citizens are rarely heroes. This is so even when they approve the desegregation law, as the people of Little Rock admittedly did not. They desert the streets when the mob takes over, even a small mob. In this respect, law-abiding Southerners are no different from law-abiding Northerners and Europeans. Something else again is the deafening silence of the two Arkansas Senators. No one asked them to fight, but only to open their mouths in safety as widely as they did on vote-risky occasions of lesser moment. Nonetheless, it is false to gauge the true sentiment of a community by the behavior of a hate-crazed minority. One can easily misread the significance of the picture of white students—also a small minority—jeering at Negro children. These children are a product of segregated schools. They reflect the unreasoning authority and hysterical feeling of their homes and parents, which they may come to challenge if only they stay long enough in desegregated schools to test their prejudices against their experiences.

What happened at Little Rock is a national disgrace, but it does not tell the whole story. It does not tell the story of successful integration on a much larger scale in many other communities of the South. It does not tell the story of the great strides that have been made in reducing discrimination all over the country since 1940. It does not tell the story revealed in the most recent and most intensive poll conducted by Professor Tumin and his Princeton associates on "Readiness and Resistance to Desegregation" in Guilford County, North Carolina. This shows that there is considerable variation in the attitude toward segregation among Southern whites. Those who, although opposed to integration, were prepared to live with the Court decision and eschew all violence numbered more than 75 per cent. The hard-core segregationists are found mainly among the poor whites, not among the individuals who have high status and vested interest in a stable community. Together with the better educated and always less prejudiced elements, the latter are more likely to be the opinion-makers in the long haul than the hard-core intransigents. It remains to be seen how representative polls of this character are for the South as a whole, even when their reliability has been tested in local areas. But, together with the record of integration to date, it presents impressive evidence for the belief that a fairly large spread exists in the attitude of Southerners toward desegregation.

Although gradualness and patience are a *sine qua non* of peaceful enforcement, once the law is openly flouted it must be enforced. Worse in such situations than the risks of a firm and rapid enforcement would be the

abandonment of the legal position already won or the indefinite postponement of further integration until such time as God softens the hearts of the hard-core segregationists. Beyond a certain point, the longer the delay, the more costly in tears and suffering will be the process of desegregation for everyone concerned, but especially for those who have so far endured the greatest indignities. For a basic human right is violated wherever segregation is practiced, no less in public education than in public transportation, and the denial of this right to Negroes in education seriously affects the expression of their basic political rights as well.

I conclude as I began. The same argument which opposes slavery opposes the perpetuation of the discrimination that continues in another form some of the practices of slavery. If slavery was a crime, segregation is the still open and unhealed wound it left on the body of the Negro. It bleeds afresh every time the pattern is imposed upon him. Freedom opened the doors not only to citizenship for Negroes but to personhood and brought them into the kingdom of moral ends. In a way, those who oppose legal desegregation in the name of personal freedom were answered a long time ago by Mr. Justice Harlan, grandfather of the present Justice, in his famous dissent in the Civil Rights Cases, with which the present Court is only now catching up. [See appendix, page 17, for excerpts from his opinion.] Their argument, were it accepted widely, would help pin the badge of servitude upon our Negro fellow citizens in their vocations, their education, their housing, and even their use of public accommodations. Generalized, it is an argument against razing by legal measures the walls of the ghettos by which a local majority arbitrarily and unfairly keeps any minority—racial, religious or ethnic—fenced in and deprived of the benefits of their rights as American citizens and as members of a democratic community.

The history of America has been not only a history of promises made but of promises redeemed. For a long time, American Negroes were excluded from even the promise of American life. After the Civil War, they were cruelly denied the fulfilment of the promise implied in their liberation. For the greater part of the near-century since the Emancipation Proclamation, progress was slow, uncertain and gained through bitter struggle. Since the war against Nazism and its racial ideology, however, enormous gains have been made in integrating Negro citizens into the pattern of democratic life. Little Rock is a severe defeat in a long war which the American people are winning—a war which must be won if we are to survive as a free culture the assaults of Communist totalitarianism. The processes of education work gradually but effectively in eroding the bigotry of fanaticism. That is why the lawful spread of integrated education in South and North is our best hope for making the promises of American life come true. The tide of its advance measures the authentic growth of the democratic idea.

Appendix JUSTICE HARLAN'S DISSENT IN THE CIVIL RIGHTS CASES OF 1883

After the Civil War, the states ratified the Thirteenth, Fourteenth and Fifteenth Amendments, which abolished slavery, gave the Negro national and state citizenship, and guaranteed his right to vote. Congress also passed numerous anti-bias laws, including the act of March 1, 1875, which outlawed race discrimination by inns, public carriers and places of public amusement. But after the South secured the victory of Republican Rutherford Hayes in the disputed election of 1876, the Washington climate changed. In 1883, the Supreme Court declared the 1875 law unconstitutional. Justice John Marshall Harlan dissented, framing the issues in a manner as appropriate today as it was 75 years ago. Excerpts from his opinion (109 U. S. 26) *follow:*

The first section of the Thirteenth Amendment provides that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." . . . The terms of the Thirteenth Amendment are absolute and universal. They embrace every race which then was, or might thereafter be, within the United States. No race, as such, can be excluded from the benefits or rights thereby conferred. . . .

The Thirteenth Amendment . . . did something more than to prohibit slavery as an institution, resting upon distinctions of race and upheld by positive law. . . . It established and decreed universal civil freedom throughout the United States. But did the freedom thus established involve nothing more than exemption from actual slavery? . . . Was it the purpose of the nation simply to destroy the institution, and then remit the race theretofore held in bondage to the several states for such protection in their civil rights . . . [as those states] might choose to provide? Were the states . . . to be left free, so far as national interference was concerned, to make or allow discriminations against that race, as such, in the enjoyment of those fundamental rights which, by universal concession, inhere in a state of freedom? . . .

I do not contend that the Thirteenth Amendment invests Congress with authority, by legislation, to define and regulate the entire body of the civil rights which citizens . . . may enjoy in the several states. But I hold that since slavery . . . [was the] principal cause of the adoption of that amendment, and since that institution rested wholly upon the inferiority, as a race, of those held in bondage, their freedom necessarily involved immunity from, and protection against, all discrimination against them because of their race, in respect of such civil rights as belong to freemen of other races. . . .

It remains now to inquire what are the legal rights of colored persons in respect of the accommodations, privileges and facilities of public conveyances, inns and places of public amusement. . . . [Discriminations in such facilities against Negroes] are burdens which lay at the very foundation of the institution of slavery as it once existed. They are not to be sustained, except upon the assumption that there is in this land of universal liberty a class which may still be discriminated against—even in respect of rights . . . so necessary and supreme that, deprived of their enjoyment in common with others, a freeman is not only branded as one inferior and infected but, in the competitions of life, is robbed of some of

the most essential means of existence; and all this solely because they belong to a particular race which the nation has liberated. The Thirteenth Amendment alone obliterated the race line, so far as all rights fundamental in a state of freedom are concerned. . . .

The citizenship . . . [acquired by the Negro in the Fourteenth Amendment] may be protected, not alone by the judicial branch of the government, but by Congressional legislation. . . . Citizenship in this country necessarily imports at least equality of civil rights among citizens of every race in the same state. It is fundamental in American citizenship that, in respect of such rights, there shall be no discrimination by the state, or its officers, or by individuals or corporations exercising public functions or authority, against any citizen because of his race. . . .

It can scarcely be claimed that exemption from race discrimination, in respect of civil rights, . . . is any less . . . [a] constitutional right . . . than is exemption from such discrimination in the exercise of the elective franchise. It cannot be that the latter is an attribute of national citizenship, while the other is not essential in national citizenship or fundamental in state citizenship. . . . Exemption from discrimination in respect of civil rights is . . . a right which the nation conferred. It did not come from the states in which those colored citizens reside. . . .

I agree that if one citizen chooses not to hold social intercourse with another, he is not and cannot be made amenable to the law for his conduct in that regard; for . . . no legal right of a citizen is violated by the refusal of others to maintain merely social relations with him. What I affirm is that no state, nor the officers of any state, nor any corporation or individual wielding power under state authority . . . can, consistently either with the freedom established by the fundamental law or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens in those rights because of their race. . . . The rights which Congress, by the act of 1875, endeavored to secure and protect are legal, not social, rights. The right, for instance, of a colored citizen to use the accommodations of a public highway, upon the same terms as are permitted to white citizens, is no more a social right than his right under the law to use the public streets of a city or a town . . . or a public market or a post office, or his right to sit in a public building with others, of whatever race. . . .

What the nation, through Congress, has sought to accomplish in reference to . . . [the Negro] is—what had already been done in every state of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more. . . . The difficulty has been to compel a recognition of the legal right of the black race to take the rank of citizens, and to secure the enjoyment of privileges belonging, under the law, to them as a component part of the people for whose welfare and happiness government is ordained. At every step in this direction, the nation has been confronted with class tyranny, which a contemporary English historian says is of all tyrannies the most intolerable, "for it is ubiquitous in its operation and weighs, perhaps, most heavily on those whose obscurity or distance would withdraw them from the notice of a single despot." Today, it is the colored race which is denied . . . rights fundamental in their freedom and citizenship. At some future time, it may be that some other race will fall under the ban of race discrimination. If the constitutional amendments be enforced . . . there cannot be in this republic any class of human beings in practical subjection to another class, with power in the latter to dole out to the former just such privileges as they may choose to grant. The supreme law of the land has decreed that no authority shall be exercised in this country upon

the basis of discrimination, in respect of civil rights, against freemen and citizens because of their race, color, or previous condition of servitude. To that decree . . . everyone must bow, whatever may have been, or whatever now are, his individual views as to the wisdom or policy either of the recent changes in the fundamental law or of the legislation which has been enacted to give them effect.

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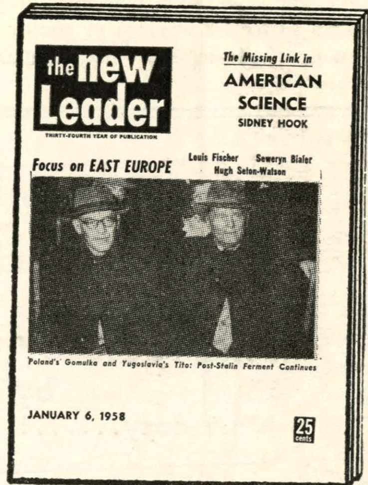

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