

Segregation: Three Important New Books Discuss Its Past and Future

1. The Legal Background

"Desegregation and the Law," by Albert P. Blaustein and C. C. Ferguson, Jr. (Rutgers University Press. 333 pp. \$5), is a study of the steps that led up to the historic decision of the Supreme Court on May 17, 1954. It is reviewed by Professor Philip Lee Ralph of Lake Erie College.

By PHILIP LEE RALPH

THE Supreme Court's decision of May 17, 1954, was historic in more than the ordinary sense of the term. Striking down the legal basis of segregation in the public schools, the decision called for a transformation in the educational pattern of the United States, marked a climax in the enlargement of the Court's role as the guardian of civil liberties, and opened the floodgates of controversy. But, far from representing a sudden inspiration on the part of the Court, this decision was the logical culmination of concepts which had long been maturing in the minds of the Justices and also the logical reflection of discernible changes in American institutions and public opinion.

Now, in "Desegregation and the Law," Albert P. Blaustein and C. C. Ferguson, Jr., two Rutgers University Law School professors have traced

with meticulous care the reasoning and the steps leading up to the momentous decisions of 1954 and 1955. By this means they have brought one of the most controversial issues of the decade into clearer perspective.

Among the major organs of government, the Supreme Court is probably the least perfectly understood by the majority of Americans. Its power to nullify the act of a state legislature or an act of Congress makes it "the most powerful judicial body in the history of man." It is scrupulously bound by the precepts of the Constitution, but it has the final say as to what the Constitution means. The Court has been revered as the repository of superhuman wisdom; yet the "nine men" have also been attacked as meddlers, usurpers of authority, or a millstone around the neck of progress. The Court's personnel is recruited from fallible human beings: lawyers, judges, sometimes ex-poli-

ticians. The Justices have not been guiltless of dilatory action and evasion. They have split hairs, indulged in *obiter dicta*, and occasionally uttered opinions which with the aid of hindsight seem ludicrously wide of the mark (as, for example, when Justice Miller in 1873 declared it very doubtful that the Fourteenth Amendment would ever be construed in any other way than to prevent discrimination against Negroes). But on the whole the Court has proved invaluable in the gradual resolution of crises. Although, as the authors point out, government by law rather than by men is an impossible ideal, the Court has unceasingly sought to keep legislative enactments within the framework of basic law while recognizing that the framework itself may change. And there is comfort in the author's demonstration of the latitude available within the law for advancing human and humane objectives.

Considerable argument, with overtones of approval and denunciation, has been directed at the question as to how much the Court was influenced by sociological scientific theories in reaching its conclusions on segregation. The same question is pertinent to many other crucial decisions in the Court's history. Cases are not argued or judicial opinions rendered in a legal vacuum without regard to prevailing convictions and sentiments. A strenuous responsibility rests upon the Justices because they must remain immune to demagogic pressure or the whims of the moment while, at the same time, taking account of changing situations which necessitate new approaches to problems.

IT HAS been precisely when the Court disregarded these changing situations that it has come closest to failure, as in the Dred Scott decision of 1857 and the strict-constructionist decrees of the 1930s. The *Plessy v. Ferguson* decision of 1896 which enunciated the famous "separate but equal" doctrine, long the rallying point of segregationists, actually embodied extralegal judgments, namely that transportation and education are "social" as distinct from "political" rights and that enforced segregation in public transportation does not imply the inferiority of one race. While admitting the importance of the testimony of experts in the 1954 cases, the authors do not believe this testimony was the decisive factor in the Court's decision. They show that "a long line of judicial utterances," beginning in 1941, had prepared the way for the invalidation of all classifications based on race.



—Wide World.

Central High School, Little Rock, September 25, 1957—Nine Negro students were escorted to school by the 101st Airborne Division.

The 1954 decision contained several remarkable features. It recognized the greatly enhanced importance of education in modern American society. While invoking the "equal protection" clause of the Fourteenth Amendment, it acknowledged an enlargement of the concept of equality. Unanimously and unequivocally the Court "declared that all classification by race is unconstitutional *per se*," affirming in substance the dissenting opinion of Justice Harlan in 1896, that "our Constitution is color-blind." And in rendering judgment, after months of deliberation, the Court exercised its highest function, that of a rule-making body. The Supreme Court "made new law on May 17, 1954." The decision was "radical," though not highhanded—"the symbol of the social revolution which marks mid-twentieth-century America."

Another remarkable aspect of the Court's action against segregation was that it provided no immediate remedy, but, in a separate decision on May 31, 1955, charged the lower Federal courts with the task of implementation. It opened the way for local boards of education to take the initiative, under the supervision of the lower courts, whose duty it is to see that "an effective gradual adjustment" is made "with all deliberate speed." Undoubtedly the Supreme Court's policy was both reasonable and practicable, but the specific steps to be taken in a given locality wait upon court prescription or approval, and some Federal district judges have fumbled their responsibility. The authors assert that the district courts could readily employ a type of decision which would make it "legally unprofitable for school boards to delay action."

Blaustein and Ferguson are optimistic regarding the ultimate consequences of the decisions. They are fully aware of the various stratagems, evasions, and delaying tactics employed in the South, but they believe it will be impossible to reverse the forward trend. Citing "a score and more of judicial decisions" within the period 1954-1956 which have cut a wide swath in the areas of transportation, housing, parks, and recreation, they foresee not only the equalization of school facilities—private as well as public—but "the end of racial discrimination by law in the United States." And they predict that, in spite of incidents of violence, the battle will be fought, and won, in the courtroom.

This is not a sensational book. The authors quote very sparingly from the lurid utterances of such racists as
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The Past: George Washington Carver shown in his laboratory.



—Wide World.
The Present: Autherine Lucy and NAACP Executive Secretary Ray Wilkins.

Since the Court Decision . . .

- THE THREE-YEAR PERIOD following the Court's 1954 decision saw a phenomenal growth of groups organized for the primary purpose of maintaining segregation. Some fifty have been in existence at one time or another. Their claimed membership, running into the hundreds of thousands, far outstrips their opposition. And it ranges from prominent politicians and "solid" business and professional leaders in certain groups to what some segregationists themselves condemn as rabblers, publicity seekers, and fastbuck boys who never had it so good before, what with selling five-dollar memberships and keeping their books to themselves.

- . . . The principal of a high school in St. Louis reported that the second year of integration, when Negro numbers had risen to about half the total enrollment, proved easier and smoother than the first, when whites had outnumbered Negroes two to one. . . . Teachers said the tensions accompanying a novel situation in the first year had almost disappeared in the second, so that students of both races worked alongside each other more relaxed, more matter-of-fact, more unselfconscious.

- A survey of [the eight most segregationist states in the South] over the three-year period following the Supreme Court decision discloses several factual developments which, more or less—and perhaps more than less—characterize the eight states: In every state of [this] region there was a far stronger pattern of legislation aimed at preserving racial segregation than there was in 1954, although the new pattern generally avoided any outward appearance of being based on race; in no state had there been admitted a Negro student to a public school on the elementary or secondary levels; and throughout the region there was a core of resistance which surpassed that in existence in 1954.

- College desegregation has not been followed by the regional blood-letting and unrestrained violence which some predicted would take place. But it must be noted that in the only instance in which a Negro entered a white university in one of the holdout states in which opposition to integration is most intense, stark violence erupted and a woman came very close to losing her life. This was the Autherine Lucy case.

- During a lull in the storm at Clinton, Tennessee, where court-ordered desegregation stirred a national as well as a community tempest, a team of sociologists interviewed a sampling of Anderson Countians about the incident. The interviewers received some unexpected responses to their questions. A number of those interviewed had never heard of the U. S. Supreme Court decision against school segregation. And a few of these had never heard of the Supreme Court itself.
—*"With All Deliberate Speed"* (Harper).

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A Declaration of Interdependence

EDITOR'S NOTE: *Ever since the end of World War II, this page has been concerned with the need for a universal design for world peace. In the following editorial, Elmo Roper, SR editor-at-large, advocates a design for the Free World.*

ONCE again we have heard a bold Proclamation from High Places of the critical need of the countries of the free world for each other. After last month's talks between President Eisenhower and British Prime Minister Macmillan, a "declaration of common purpose" was issued that included these brave words: ". . . The concept of national self-sufficiency is now out of date. The countries of the free world are interdependent, and only in genuine partnership, by combining their resources and sharing tasks in many fields, can progress and safety be found. For our part, we have agreed that our two countries will henceforth act in accordance with this principle."

It is a noble principle. In fact, the concept of interdependence, properly applied, may yet be able to save us and the world we know from destruction and chaos. The concept of national self-sufficiency, which has been out of date for some time now, could diffuse the power of the non-Communist world so that it might buckle under a bold Communist blow.

Over and over our leaders have urged the necessity for "close cooperation" among the free nations. Over and over our "interdependence" has been emphasized. The fault is not in the sentiment but in the lack of action to back it up. Too often in the

past "close cooperation" has amounted to no more than "keeping the others informed." This is not just because of the unwillingness of policymakers to share their functions with their opposite numbers in other countries. The reason lies far deeper. It lies in the way our governmental process is set up. We simply do not now have the mechanisms for genuine collective policy, so we are forced to resort to improvisation, to emergency meetings and agreements which lack enduring force.

The big question, then, is not whether we are "for" or "against" interdependence of the free nations any more than it is whether we are for or against survival. True, some arguments for national self-sufficiency are still heard, but they are proposed with less and less conviction. Like it or not, we are deeply involved with the rest of the world, and few see much hope of returning to a charmed isolation.

The central question is how we are to go about implementing this interdependence which everyone in high places knows confronts us. We must find now ways to establish close, lasting ties between the people of our country and the people of the other free nations. Treaties, alliances, pacts—all the old ways—have clearly shown their inadequacy, most dramatically a year ago when common policymaking between us and our main allies failed, information channels froze, and the result was the Suez fiasco—for which we probably will still have to pay.

I suggest that the best people to find these new ways are not the pro-

fessional diplomats, whose training is in the niceties of power relations, who are responsible to their governments and to policies and forms already established. If a new solution is to be found, it is most likely to be discovered by free and unfettered minds, operating without restrictions or commitments to established positions and policies. I suggest that the best approach to this problem is to call a citizens' convention, where the best minds in our country, with the aid of political, sociological, economic, and financial experts can meet with the best minds of those democracies with whom we will inevitably share a common fate and together work out what seems to be the best way of securing close and continuing cooperation among the democracies. This group should include all shades of representative opinion on this subject and be strictly bipartisan—and strictly "top drawer." They should be as close as we can find to the Jeffersons, Madisons, and Hamiltons of an earlier critical period in our history.

For some time we have been attempting to work together in the military sphere and the results of our efforts have been less than spectacular. With all our vast wealth and know-how, the West has been caught short by decidedly spectacular Russian advances that have brought new wonder and anxiety to our contemplation of outer and intermediate space. The Eisenhower-Macmillan statement emphasized that military security must today be collective, that "It is not within the capacity of each nation acting alone to make itself fully secure."

BUT the statement did not stop at the military sphere. It went on to say that "our collective security efforts must be supported and reinforced by cooperative economic action," and expressed gratification at the developing of a European free-trade area. Military coordination alone cannot bring our potential strength to its full capacity. In so many areas, wealth and efficiency are cut down by artificial and unnecessary barriers.

Many of these barriers can probably be eliminated, or at least lowered. Such a conference would have many problems to consider. A common currency, for example, among all the Atlantic countries, would greatly speed the flow of trade. But is this something we can have now or must we work toward it gradually? Loosening or eliminating immigration regulations would let labor flow where it is needed as well as bringing the countries of the West spiritually and culturally closer. But what would be

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