1965

A Historian Looks at School Segregation

Harvey Wish

Follow this and additional works at: https://scholarlycommons.law.case.edu/caselrev

Part of the Law Commons

Recommended Citation
Harvey Wish, A Historian Looks at School Segregation, 16 W. Res. L. Rev. 555 (1965)
Available at: https://scholarlycommons.law.case.edu/caselrev/vol16/iss3/9
A Historian Looks at School Segregation

Harvey Wish

I. The Pre-Civil War Caste System

A. The Stubborn Battle Against School Segregation

The OLD SOUTH tightened its caste system after each of the bloody slave insurrections of 1800 and 1831. State after state forbade masters to teach their slaves to read, although the racially mixed "Big House" made exceptions in favor of bright domestic servants at the expense of the field hands. Thus, it was possible for a promising boy like Frederick Douglass to master the written language from his mistress, and to go on after his escape to become an influential journalist and race leader.

Even in the free North which had emancipated thousands of slaves in the Eighteenth Century, black codes prevailed, supported by a heavy influx of Southerners across the Ohio River. Ohio and the Old Northwest denied Negro children access to white public schools and forbade Negro migration, intermarriage, suffrage, and black jurors. In addition, Ohio, like the average Southern state, did not permit Negroes before 1850 to testify against whites. Churches too usually excluded Negroes or relegated them to the crude "nigger pew."

The stubborn battle against school segregation was a phase of the war against the entire caste system. It was waged by patient free Negroes like the half-forgotten William C. Nell and their white antislavery allies — some of them ex-Southerners. In Ohio as elsewhere, Negro clubs, often employing eminent white lawyers, made some progress toward racial equality. Oberlin Collegiate Institute broke the segregationist pattern by becoming the first college to admit Negroes without restriction. This provoked the state legislature to order an inquisitorial investigation into the af-

1. The "Big House" is commonly used to designate the planter's home.
2. Western Reserve College was also antislavery.
fairs of that school. Although antislavery forces won the repeal of certain segregationist practices, they failed to open the door of the little white schoolhouse.

B. The Siege of the School Citadel of Boston

Even humanitarian Massachusetts did not tear down its caste survivals without a struggle during the decade before the Civil War. Here the gifted Negro historian and idealist, William C. Nell, toiled for twenty-six years to end segregation in the public schools. Repeated reverses or delays merely spurred him on to victory, at least in the smaller Massachusetts towns of Salem, Lowell, and New Bedford. Finally, in 1848 and 1849, Nell, Benjamin Roberts, and others felt encouraged by the state's Antislavery Society to besiege the school citadel of Boston. To accomplish their mission they hired the brilliant, eloquent antislavery counsel, Charles Sumner, the future United States Senator. This initiated the famous case of Roberts v. City of Boston. It was introduced after the integrationists had succeeded in desegregating small town schools; they had witnessed the rescinding of the 1843 law prohibiting intermarriage and the voluntary action of the railroads in ending Jim Crow cars.

Benjamin Roberts, a Boston Negro, needed no urging to assume the plaintiff's role in behalf of his five year old daughter who he had refused to register in Boston's segregated private Negro elementary school, an old, broken-down, badly equipped building. On four occasions Roberts had tried to enter the girl in a nearby white school instead of the distant Smith Negro school, but his petitions failed to move the Boston School Committee. Their majority report clearly expressed the racism of that day: "It is one of races, not of colors, merely. The distinction is one which the All-wise Creator has seen fit to establish; and it is founded deep in the physical, mental, and moral natures of the two races. No legislation, no social customs, can efface this distinction."

This dictum, making the Negro virtually an untouchable, tended to arouse antislavery meetings and newspaper comment while Bos-

Wish debated the Roberts case. The antislavery and desegregationist champion, Charles Sumner, appeared in the Massachusetts Supreme Judicial Court well prepared with arguments and research. He was then only 38, but already well-known as a brilliant graduate of Harvard College and Harvard Law School where he frequently lectured. Although a regular contributor to the American Jurist and a legal textbook writer, he did, however, lack practical law experience. His clients of course knew that he was a champion of the slaves and the oppressed, a pioneer in the peace movement to which he contributed the advocacy of a League of Nations and a World Court, and recently an outspoken foe of the War with Mexico as a product of the slavocracy.

Sumner's keen and informative arguments presented before Justice Lemuel Shaw deserve careful reading, for they were to furnish fuel to the integrationists of the future and — by a process of reaction — to the segregationists who discovered a highly plausible reply for meeting Sumner's plea for "equality before the law" with the long-lasting "separate but equal" facilities doctrine. He began with the proposition: "According to the . . . Constitution of Massachusetts . . . all men, without distinction of color or race, are equal before the law." Americans were then reading the newspapers about the liberal revolutions of 1848 in Continental Europe, but in contrast they were also hearing the doctrines of human equality derogated by John Calhoun, Rufus Choate, and other proslavery propagandists as "glittering generalities."

Ever thorough and imaginative in tracing the origins of ideas, Sumner discovered the meaning of his phrase "equality before the law" in an article entitled "Equality" in the 1755 edition of the famous Encyclopédie of Diderot and the Philosophes. This idea of a legal equality transcending class inequities and segregation was most clearly stated in this French Revolutionary document. The Declaration of Rights of 1793 affirmed the principle that "the law ought to be equal for all whether it recompense or punish, whether. it protect or repress." Furthermore, the Declaration rejected segregationism by stating that "all citizens are admissible to all public places, employments, and functions."

Sumner could not find this phrase of legal equality in the common law. Jeffersonian liberals had preferred the French civil law

---

6. The complete address appears in SUMNER, EQUALITY BEFORE THE LAW: UNCONSTITUTIONALITY OF SEPARATE COLORED SCHOOLS IN BOSTON 51-100 (1890).
8. SUMNER, op. cit. supra note 6.
to the expensive technicalities of the common law, and the "mercenary lawyers" were hated by the frontiersmen who feared for their land titles. Other Jeffersonians disliked the tendency of the common law to treat unions as conspiracies. Curiously enough, Justice Shaw had only recently shaken this interpretation of trade unions in Commonwealth v. Hunt.\(^9\) But this was only a peripheral consideration in the Roberts case. Sumner went on to find equalitarianism in the Massachusetts Bill of Rights as well as the Declaration of Independence; thus, he concluded that the principle was obviously embodied in the public school. The races were not equal before the law because of these violations of principle. They were made to suffer the inconveniences of sending their children across miles of wintry snow, bypassing several white schools to reach a distant and inferior segregated school.

Sumner went on to use the then novel analogy between segregation and the Hindu caste system. He also pointed to the Frankfurt Jewish ghetto with its human degradation. The idea of hereditary racial distinctions had been explicit in the school committee report.\(^10\) He thus advanced his argument a step further: Even if the Smith Negro School had been generously endowed, it could not be held to be an equivalent of the white schools because it violated the Negro's right of equality before the law. In this manner he had attempted to dispose of the doctrine of equivalents — though segregationists have never surrendered it. He tried to undermine the shifty logical basis of the right to use a reasonable classification according to race such as that employed by the Boston School Committee. Why not go on to classify Irishmen and Germans, Catholics and Protestants, the rich and the poor? He appealed to his auditors to observe the current desegregationist trend in Massachusetts and to follow it. But Chief Justice Shaw and his associates joined unanimously in rejecting Sumner's plea for equalitarianism. A much more creative opinion might have been expected from Shaw, a distinguished jurist who has been warmly praised by Zechariah Chafee for the permanent quality of his decisions, as well as for his courage and integrity.\(^11\) But this

\(^9\) 45 Mass. (4 Met.) 111 (1842).

\(^10\) See note 5 supra and accompanying text.

\(^11\) CHAFEE, DICTIONARY OF AMERICAN BIOGRAPHY IX, 42-43. Shaw's influential opinion in Commonwealth v. Hunt, 45 Mass. (4 Met.) 111 (1842), broke down much of the common law prejudice against labor unions by ruling that combinations of workmen, even of a closed shop effort, are not necessarily guilty of criminal conspiracy. Judge Shaw was actually and vigorously antislavery and, although it is questioned, had a courageous record on behalf of fugitive slaves whom he refused to release to their masters.
day, Shaw created an anti-equalitarian principle that lived on to 1954 — the doctrine of "separate but equal" facilities. He met head on with Sumner's chief proposition of equality of men before the law, and while not denying its truth argued that this general proposition was subject to an infinite variety of social circumstances and conditions. He denied the argument that prejudice grew out of legal segregation, for it seemed to him that prejudice was not created by law and probably could not be changed by law — an interesting anticipation of the perennial conservative adage of the sociologist William Graham Sumner — "stateways cannot change folkways." Therefore, he upheld the school committee's classification of pupils by race as reasonable and for the good of both races. This principle of racial classification meant in effect the justification of "separate but equal" accommodations and became the explicit basis for the United States Supreme Court's sanction of segregation of almost all types in Plessy v. Ferguson. Even distinguished jurists like Chief Justice William Howard Taft cited Shaw's opinion in the Roberts case as authoritative.

However, the desegregationists did win their battle in 1855 when Massachusetts desegregated its public schools, forbidding racial or religious restrictions for admission to any school. But the events of the next century proved that this was an illusory victory.

II. DESSEGREGATION EFFORTS AFTER THE CIVIL WAR

A. The Southern Attitude

The Civil War of course freed the slaves; but the South had in effect won the War since it had attained by 1876 its chief prewar objective — the complete control over its race relations. Slavery had been the means by which Southern whites, including the four-fifths who had no connection with slave ownership, could effectively police four million Negroes, especially in those numerous counties of the Black Belt where Negroes held a majority of the population. Now the Southerner learned that various ingenious informal controls could keep the Negro in his place as thoroughly as slavery had done. Segregation, after all, had been recently practiced by the Union Army itself when its officers frequently used thousands of Negro volunteers for menial tasks rather than battles. Relatively

12. See generally SUMNER, FOLKWAYS chs. 1 & 2 (1906).
13. 163 U.S. 537 (1896).
few radicals like Thaddeus Stevens, who dominated the House and was a leader of the Committee of Fifteen that wrote the fourteenth amendment, showed deep interest in the Czar's experiment of freeing the serfs and converting them into small farmers.

Overoptimistically, the freedmen, encouraged by missionaries, philanthropists, and the federal Freedman's Bureau, took up a crusade for popular education. Even when Southern whites refused to teach Negro children for fear of losing caste, the gap was partly filled by Negro teachers of any degree of literacy and by a dedicated band of Yankee "schoolmarms" who left their homes for years to teach the children of ex-slaves and endured ostracism by the local whites. Booker T. Washington, one of the beneficiaries of the post-war crusade for Negro education, later wrote: "Whenever it is written . . . the part that the Yankee teachers played in the education of the Negroes immediately after the war will make one of the most thrilling parts of the history of this country."16 Radical legislatures of 1868 to 1876, propped up by Negro votes, scalawags,17 and Northern bayonets, initiated Negro public schools, but even their vast power did not incline them to insist on desegregated schools. Besides, segregationism in the schools of most Northern states would have made mixed Southern schools difficult to explain.

For the Negro and his friends, the gigantic task of creating schools for the children of nearly four million ex-slaves in a war-devastated country seemed too great to attempt a frontal attack on school segregation. After all, Negro illiteracy stood at 90 per cent immediately after the War. Enthusiastically, nevertheless, Negroes embarked upon a search for total literacy at both adult and child levels. They crowded into improvised day schools, night schools, and overworked Sunday schools, convinced that reading and writing were evidence of a real free status.18

But the persistent Southern belief that education unfitted the Negro for the only work that he could do — or be permitted to do — soon dispelled the high hopes of the Negro educational crusade. Racist ideas stiffened Southern resistance to the influence of the Union Army of occupation. General Lee was now a college president and his armies had been dispersed into civilian occupations; but a new powerful underground army of the Ku Klux Klan arose to intimidate ex-slaves and white equalitarians. To the ex-Confer-

16. WASHINGTON, UP FROM SLAVERY (1906).
17. An invidious public term for pro-union, white Southerners.
ates, the real issue was the threat of Africanization and the danger of creating white minorities in the old Black Belts, especially in the Deep South.

B. Racial Conservatism

(1) Northern Emphasis on Economics.—While the North made some progress toward desegregation, it had its full complement of racists, especially in the Old Northwest which fought the adoption of the fourteenth amendment. Even within the radical-dominated Reconstruction Committee of Fifteen, some members were far more concerned with the protection of the emerging corporations against unfriendly state legislation than with Negro equality. John A. Bingham of Ohio, for example, who was the architect of the equal rights section of the fourteenth amendment, showed only perfunctory interest in Negro equality. Although Bingham shared the antislavery and pro-Negro views of the radicals, he admitted that he was no less interested in protecting corporations as "persons" from discriminatory state legislation, thus remedying a defect in the fifth amendment as seen by Chief Justice Marshall, his idol, in *Barron v. City of Baltimore.* However, historians have long forsaken the conspiracy theory of the fourteenth amendment once expressed by Professor Charles A. Beard.

Radicals in Congress and in the committee took issue with Bingham's economic emphasis. They wanted to insert the civil rights clause in a constitutional amendment, intending it primarily to protect Negroes, because they feared that the existing statutory provisions would not survive a political overturn.

Reconstruction ended formally with the victory of the conservative Democrats and the concessions for the South won at the time of the disputed election of 1876 that ushered in President Rutherford B. Hayes. The United States Supreme Court, reflecting the new atmosphere of racial conservatism both here and abroad, especially among the colonial powers, soon whittled down the equalitarianism of the fourteenth amendment in the *Civil Rights Cases,* where it showed a tendency to adopt the economic viewpoint of John Bingham. Northern spokesmen, convinced that racial justice through

legislation and military force had been a heinous mistake, showed no enthusiasm for civil rights force bills such as that proposed by young Henry Cabot Lodge. Thus, the legal status of the Negro declined.

(2) Overthrow of the Bourbons.—Worse yet for the cause of equal rights were the consequences for Negro welfare, including schooling, of the overthrow in 1890 of the so-called Bourbons (the new industrialists and commercially minded planters) from their seats of power as governors, senators, and legislators. Since they were often dependent on the Negro vote, they had hesitated to undo completely the enfranchisement laws of Reconstruction. In addition, they tended to maintain the Negro schools, and generally exercised a relatively paternalistic control over the Negro. They were far from soft in their methods, and their economic conservatism expressed itself in such budget-balancers as the chain gang. But their alliance with the Negro angered small farmers (except when they too could use the Negro vote) who regarded the black as the tool of the Bourbons. Therefore, when the “demagogues” led the farmers to victory by 1890, they disfranchised the Negroes, intimidated them through a benevolent neutrality towards lynchings, and passed state and municipal segregation laws. Some prominent Southerners even felt that the creation of a legalized ghetto was a step toward Negro self-government.

(3) Dual School System.—The dual school system became the focus of racial issues as the demagogues diverted state funds from Negro public schools to the education of whites. While white teachers continued to avoid Negro schools, white politicians or white officials chose Negro teachers so indifferently and cheaply that Negroes protested the low moral character as well as incompetence of the candidates. Florida tightened school segregation in 1913 by forbidding white teachers to serve in mission schools for Negroes on pain of a heavy fine or six months imprisonment. Georgia’s legislators invented a new method of weakening Negro schools by cutting state funds for those schools in proportion to tax collections from each race.

Negro children in these segregated schools must have learned from their parents that there were many more jobs closed to them than in slavery days such as barbers, waiters, coachmen, and even private domestics. They used textbooks written for white children that told them about a charming world that they could never hope to enter. Incompetent teachers struggled with classes of a
hundred children or more in ancient schoolhouses converted from
dilapidated churches and fitted with broken down equipment. A
white South Carolina supervisor reported to the federal commis-
sioner of education in 1912: "Among the Negro rural schools which
I have visited, I have found only one in which the highest class
knew the multiplication table." While Southern white rural
schools were no paragons of excellence, they towered in intellectual
stature over the colored schools.

The wizened fruits of the dual school system were partly a
product of sectional poverty as well as prejudice, but, as already
suggested, the final results for the Negro were worsened by the
maldistribution of school funds. The Southern white liberal novel-
ist, George Washington Cable,23 as well as the Negro sociologist
and historian, Dr. W. E. B. Du Bois,24 agreed that the Negro more
than paid his share of school taxes if one reckoned the various
sources of school revenue. It seemed insulting therefore to urge
that school funds be cut in proportion to tax collections among
the races. It is also of course obvious that the dual school system
was very expensive compared to the integrated Northern school be-
cause of duplication of functions and service to poorly and unequally
populated racial areas.

Southern school segregation also had its de facto equivalent of
the neighborhood school attended by the children of nearby Negro
residents. Decades of the country-to-city movement drove innum-
erable whites out of racially-mixed areas, leaving behind huge isolated
Negro communities to their own meager resources to build schools
and other institutions. The financial gap was partly met by aid
from rich Northern philanthropists and missionary agencies which
provided teachers, supervisors, school buildings, and entire colleges.
Sometimes this afforded an excuse for Southern legislatures to skimp
on their budgets for Negro schools. In 1904, Governor Vardaman
of Mississippi greatly pleased the racists by vetoing a modest ap-
propriation for $10,000 intended for a Negro normal school at
Holly Springs, Mississippi. Yet the myth that the South had sacri-
ficed itself for Negro education persisted; it was echoed by the
Southern white director of the Slater Fund for Negroes, Jabez
Curry: "[N]othing in the history of civilization is comparable to
this sublime self-denial and this work of enlarged patriotism."25

22. JONES, REPORT OF THE COMMISSIONER OF EDUCATION 243-56 (1912).
23. Cable, Does the Negro Pay for His Education? 13 THE FORUM 640 (1892).
25. See Wish, supra note 20, at 184.
Governor Vardaman struck at the very foundation of any hope for racial integration in schools or anywhere else. He and his followers insisted that the Negro was simply uneducable. A noted Virginia historian, Philip A. Bruce, not only supported this line of argument, but observed that the great error of the reformers had been to assume that the Negro was "simply an ignorant white man in a black skin."  

Southern writers cited current rape cases to justify even tighter segregation rules. Two leading New Orleans newspapers praised Vardaman's racism, and commended the city school board for restricting Negro schools to primary grades. They condemned the misguided friends of the Negro in the North for providing higher education for New Orleans Negroes, thus unfitting them for the only work that they could do.

(4) Industrial Education.—One of the great educational debates of the 1890's was over industrial education for both races, but the Southern discussion over Negro education reflected the desire to keep Negro training down to the simplest skills tempered by moral injunctions. While even the rebellious Dr. Du Bois agreed that industrial education along practical lines was necessary for the Negro masses, he insisted upon a parallel and immediate concern over the higher education for race leaders — for the Talented Tenth. The very eminent philosopher, William T. Harris, Commissioner of Education, urged a combination of industrial and liberal education for the Negro, but added that this goal could be realized only in an atmosphere of increasing integration. He argued that the growing wave of segregation of the 1890's would return the Negro to African primitivism. The inner consciousness of the Negro, he wrote, was American and Anglo-Saxon, not African, and reflected centuries of contact with white civilization.

Did Booker T. Washington's controversial Atlanta Exposition Address of 1895 set into motion new forces of segregation, particularly in education? He did of course please conservative Southerners by offering the segregationist analogy of the separate yet cooperative fingers of the hand. He did call upon Negroes for ever more patience in spite of the growing provocations of lynchings, mobbings, job discrimination, and daily humiliations. But he did not create these crises of the 1890's and afterwards, nor did he accentuate them. Recent studies indicate that he was working

26. Letter from Philip A. Bruce to William T. Harris, Education of the Negro, 69 ATLANTIC MONTHLY 721, 723 (1892).
27. For a further discussion of this subject see Wish, supra note 20, at 184-200.
behind the scenes against segregation while organizing the working alliance of Negroes and the white middle class which continues to function despite the seductions of leftist and rightist extremists. His friendships with the great industrialists helped to offset the monolithic resistance of labor unions to Negro members and apprentices. These discriminations seemed to justify Negro strikebreaking while employers were happy to hire non-union workers. Wealthy industrialists and bankers from George Peabody to Julius Rosenwald poured millions into Negro schools and welfare projects — perpetuating segregation, perhaps, but responding to a conservative historical milieu when practical alternatives were difficult to find. Less successful was Washington’s design for a large elite of Negro businessmen, landowners, and professionals. Even the craftsmen turned out by his Tuskegee Institute had difficulty fitting into a world in which new complex skills and racial segregation operated.

III. PRE-WORLD WAR I PROGRESSIVISM

A. Era of the New Imperialism

The concessions to segregationism that Tuskegee made could hardly have been averted in that era of the New Imperialism of 1890-1914 when colonial offices of London, Paris, Berlin, and elsewhere were extolling the civilizing benefits that accrued from the white man’s burden. Admiral Alfred Thayer Mahan, President Theodore Roosevelt, and Senator Albert J. Beveridge of Indiana were the expansionist prophets of that day. Roosevelt, like McKinley, made Booker T. Washington the spokesman for the Negro, although the “rough rider” showed no softness for the Negro soldiers who were accused of complicity in the Brownsville, Texas riot. The old antislavery men, like the historian James Ford Rhodes, had been frightened away from equalitarian experiments by the reconstruction specter of Africanization. In history classrooms, the increasingly dominant “revisionist” professors taught that the Civil War had more to do with planters and industrialists locked in combat than with Negro freedom. Increasing respect was shown for the lost cause, while the textbook image of Charles Sumner declined. One former history professor from the South, Woodrow Wilson, even applauded the White House showing of the motion picture, Birth of a Nation, which glorified the old Klan as the shield of white womanhood, as an excellent way to teach history.

The President's Southern cabinet appointees fired Negroes from that small island of job security that they enjoyed within the federal civil service.

B. Effect of the Jim Crow Laws

Quite neglected as an important explanation of school segregation until the last few years has been the fact that racial separation had accelerated force after 1899 when state after state in the South adopted a vast array of Jim Crow laws affecting parks, hotels, trains, libraries, depots, and other public facilities. By 1910, municipal segregationists in Baltimore and other cities designated specific residential blocks for each of the races. Restrictive housing covenants proved so successful as to invite imitation by Northern cities. A few cities in Dixie even set up curfew laws for Negroes. Several states required that used public school textbooks be kept apart in racially separated storage and classrooms. Even the report of Jim Crow bibles in the Atlanta courts was no myth.

Thus, as stated by Professor C. Vann Woodward, the new formal prohibitions separated the races far more than historic custom and prejudices had done. As a historian even though a Southerner, Professor Woodward demonstrates anew the falsity of Sumner's dictum in his book Folkways that “legislation cannot make mores” and that “stateways cannot change folkways.” So the Twentieth Century opened with a unique Jim Crow system that made school segregation an inevitable part of the current racist philosophy.

(1) The Berea College Case.—Northern newspapers expressed alarm as Jim Crow crossed the Ohio River and inspired riots in Illinois and Ohio. The so-called Joan of Arc in the Springfield mobbing of Negroes in 1908 attributed some of her inspiration to the spectacle of the new separate but equal Jim Crow cars that she saw in Kentucky. Especially influential was the major Kentucky school segregationist case, Berea College v. Kentucky, that was argued before the United States Supreme Court. Here the plaintiff was a private chartered college which admitted both races freely; it had been so required by a donor until it was challenged by a state statute of 1904 forbidding mixed schools. Berea’s lawyers assailed the state’s interference with the

31. 211 U.S. 45 (1908).
daily affairs of a private college as a violation of the equal protection clause of the fourteenth amendment. On the other side, Kentucky’s Attorney General defended the school segregation law on the same presumably self-evident basis as the recent laws against racial intermarriage, the inheritance by children of mixed marriages, and mixed seating on public carriers — laws all frankly motivated by “one common purpose and end — to preserve race identity, the purity of blood, and prevent an amalgamation ...” Furthermore, the state pointed out that similar segregationist laws or interpretations existed in Missouri, Indiana, West Virginia, Ohio, and New York, denying that legal separation abridged the rights and privileges of citizens under the fourteenth amendment. Kentucky’s law was not thoroughly examined by the Supreme Court, for the federal judges considered only the validity of state laws as applied to corporations. In a vigorous dissenting opinion, Justice Harlan, though himself a Kentuckian, went beyond the arid technical questions to basic moral issues, suggestive of Charles Sumner’s argument in the Roberts case:33.

Have we become so inoculated with prejudice of race that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between such citizens in the matter of their voluntary meeting for innocent purposes simply because of their respective races?

He concluded that the entire statute should be held void.

(2) A New Battle for Integration.—The Berea College case together with the Springfield Riot of 1908 became the immediate occasion for the “call” which liberals of both races issued for the formation of the NAACP, and later for the Urban League. A new battle for integration had begun in the effort to recover the original intent of the Congress which had passed the fourteenth amendment in the hope of protecting equal rights for both races.

Thus pre-World War I progressivism not only failed to alleviate the caste system, but actually worsened it, for racial segregation had become mandatory by law. Too many of the progressives saw economic injustices clearly enough, but were color-blind to racial injustices. In the South, the small farmers disliked the exploitative industrial-commercial class of Bourbons, but hated the Negroes much more and even adopted at least one progressive device —

the primary — as an infallible method of disfranchising Negroes. A few like Jane Addams, John Dewey, and Ray Stannard Baker (the Muckraker) fought the battle against racial prejudice, but most of the followers of La Follette or Wilson looked upon this struggle as peripheral. Also, the Supreme Court was reputedly conservative in those days because of its economic individualism; others noted that it had been conservative on race as well, going as far back as the *Dred Scott*

decision and continuing the trend in the *Civil Rights Cases* and *Plessy v. Ferguson* with its reaffirmation of the separate but equal principle of the *Roberts* case. Some found comfort in the fact that the high Court in 1915 had voided the notorious grandfather clause which disfranchised Negroes by re-establishing conditions existing prior to 1868. When the same end was achieved by the white primaries, the Justices did try to overthrow the system.

Liberals, like the Southerner Walter Hines Page, did not usually choose to fight the battle for the Negro along the lines of school desegregation — an effort that seemed hopeless under the conditions of *de facto* segregation in the North and legal segregation reinforced by custom in the South. Instead, they demanded larger expenditures for Negro schools at all levels. Numerous first-rate Northern colleges admitted Negroes — aside from the medical schools which did not. Within the segregated framework, Rockefeller’s General Education Board and Julius Rosenwald’s princely philanthropies for Negro schools greatly helped to supplement the modest appropriations of Southern legislatures.

IV. NEGRO DESEGREGATION SINCE WORLD WAR I

A. Effects of the War

World War I attracted attention to the anomalies of a war for democracy while perpetuating a caste system; and the grossly imperfect Alpha tests of the psychologists gave aid and comfort to those who had always held that the Negro was uneducable. The Northern trek of Negroes during the war was accompanied by severe race riots, notably in East St. Louis, Chicago, and a score of other cities, as the newcomers advanced into formerly all-white areas and took employment once restricted to whites. Segrega-

36. 109 U.S. 3 (1883).
37. 162 U.S. 537 (1896).
tionism of almost all types remained during the 1920’s, especially due to the growth of the second Ku Klux Klan, formed in 1915 but reaching the five million mark in membership by 1924 when the effort to denounce the Klan by name split the Democratic Convention. Thus contact between the races became more formalized than ever. Harlem became a Negro city, although the economic strings were downtown. The segregated Chicago South Side benefited at least from the political power to elect a Negro to Congress and some aldermen. But the "Black Bourgeoisie," as the Negro sociologist Franklin Frazier saw this phenomenon, struggled along to maintain shaky enterprises, including banks, insurance companies, personal service, and retail stores. Negroes usually preferred to buy where prices were lowest, even if all the clerks and owners were white.

Yet it must be noted that despite segregation the Negro communities of the 1920’s and 1930’s showed remarkable elements of vitality, notably in the diffusion of the music of the Jazz Age and the novels and poems of the Harlem Renaissance. Even weak Negro high schools and colleges could boast of distinguished alumni, although those who had the opportunity to go to Harvard, Oberlin, the University of Chicago and other notable schools were apt to rate even higher in achievement. Howard University, though open to both races, was essentially a Negro college of a very high level, noted for the calibre of both faculty and students; and Fisk College too had its quota of nationally-known social scientists and writers.

B. Developments Since World War II

The story of Negro desegregation since World War II, especially in education, is a familiar one. By this time, various intellectual, social, and political pressures were at work — the influence of the ideology of a war against Nazism, the growing effect of Negro voting power in the North as an incident of a new wave of internal migration, the taunts of Communist diplomats who used the facts (and myths) of racial discrimination to hamper America's leadership abroad, and the challenge of the national liberation movements in the new non-white nations, especially in Africa, all contributed to the attitude of this time. One incident of the War had been the concession won by Negroes and their allies with respect to fair employment — the Federal Fair Employment Practices Commission. Although it was temporary, it furnished a blue-
print for an entire progeny of state and local FEP laws. War and postwar labor shortages helped to break down the segregationist barriers by providing new vocations and the opportunities for upgrading Negro supervisors.

School desegregation grew partly as an incident of the federal executive power over the armed forces and federal projects. While Congress was slow to act, the liberalized Supreme Court of Justices Black and Douglas cut down segregation in public transportation and education. Texas legislators fought a rearguard action to keep their famed law school lily white and even devised the ingenious experiment of declaring some old buildings and a part-time staff lacking a full-time librarian to be a separate but equal Negro law school. Since even the segregationist Plessy standard had not been met, the Court ordered the University of Texas Law School to admit Negroes. Other evasions were struck down by the equalitarian justices.

But the full application of the equal protection clause of the fourteenth amendment was to come in the famous case of Brown v. Board of Educ. Most remarkably, that case marshalled an entire array of the newer social sciences as well as history and law to bolster the argument against separate but equal accommodations. Psychologists, for example, contributed the vital idea that segregated education implied an inferior social status for the pupil because it inculcated a feeling of inferiority and hence hampered the learning process. Thus, the social jurisprudence exemplified by Holmes, Brandeis, Pound, and others could claim its greatest victory. "Separate educational facilities are inherently unequal," said Chief Justice Earl Warren, thus finally answering Judge Lemuel Shaw's contrary principle announced in the Roberts case. But ahead lay Virginia's "massive resistance," the mobs of Little Rock seeking to prevent nine Negro children from entering the Central High School, the Deep South which had only begun to fight and was ready to consider the abolition of public schools if the deseg-

39. For a further discussion of this development on the national, state, and local levels, including the impact of the Civil Rights Act of 1964 on these laws, see Note, Employment Discrimination: State FEP Laws and the Impact of Title VII of the Civil Rights Act of 1964, 16 W. Res. L. Rev. 608 (1965).
41. Sweatt v. Painter, supra note 40.
42. 347 U.S. 483 (1954).
43. Id. at 495.
ationist pressed them too hard, and the bewildered Northern cities facing the charges of *de facto* segregated schools being urged to try “busing” children around town to bring about a more proportionate ratio of the two races. Inevitably, the advance of Negro political power, strengthened by the Civil Rights Act of 1964 and vigorous federal enforcement, will have its effect on the desegregation of the schools.

The latter-day victory of Charles Sumner over William Graham Sumner obviously does not mean that the entire concept of folkways is unsound. While few scholars echo any longer the dictum that stateways cannot change folkways, it is clear enough that an abiding custom or social inheritance retains too much vitality to be lightly brushed aside except at one’s peril. Effective social education above the level of platitudes must be accompanied by the fullest cooperation of many responsible volunteer groups and the training of many more Negro social scientists. Common sense dictates the use of educative and opinion-forming means to supplement the power of the law to direct and reassure fearful people trapped by the shibboleths of insecurity in their relations to the Negro.

School desegregation is indeed but a facet of the entire race problem and depends upon parallel gains in other sectors of race relations. The challenge is a sobering one when one considers the failure of Europeans to solve even lesser problems in race relations. Race divides the two chief communist powers despite their formal allegiance to internationalism; and it has that same divisive tendency in Africa as well as in Asia and elsewhere. Black nationalism is no prettier than the ideas of the citizens councils. The years ahead will undoubtedly show even greater inventiveness by the racists to convert the great legislative and judicial gains into empty formulas. They may win easy victories if their despairing foes resort to violence. Here again, education is pitted in the proverbial race against catastrophe.

45. 78 Stat. 241.