1956

The School Segregation Decision by James C. N. Paul

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Book Review


A REVIEW

By C. ARNOLD ANDERSON*

One cannot avoid being impressed by the statesmanlike discussion of legal aspects of school desegregation in the recent monograph by James C. N. Paul.1

Professor Paul would seem to have demonstrated that none of the policies proposed in various states by which the force of the Supreme Court decision might be evaded can withstand legal attack. Professor Paul also reviews alternative proposals for carrying out the new policy gradually in order to avoid traumatic upheavals in southern society. This writer is not competent to evaluate the merits of the assertion that there is adequate precedent for following the principle of gradualness in effecting desegregation and thereby "give the State time to allay the threat of serious disturbance which might disrupt the functioning of the schools" (p. 79). Professor Paul gives us a clarifying analysis of the arguments for and against the various means for allaying such potential disturbance. Of particular interest to the present writer is Professor Paul's hope (p. 87) that the Court may permit a State to take "limited but appropriate measures to prevent enforced mixed attendance from resulting in such conditions as: a) Racial antipathies seriously impairing the proper functioning of the schools, b) Serious impairment of the academic standards of the schools, and c) Threats to the health or psychological security of individual students who might be affected by a change in schools."

One need be no profound observer of American society to point out that these last three stipulations if taken too seriously would set up a circular process that would indefinitely delay desegregation—and by analogy prevent the adoption of any sweeping social reorganization. In this note, however, the writer wishes to focus upon one main point: many of the arguments for temporizing in desegregating are equivocal. It is suggested that these temporizing pleas logically support a policy of rapid desegregation for at least a portion of the pupils. Insofar,

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moreover, as these arguments for delay stem from non-legal sources they are in large degree erroneous or inconsistent. Only one or two of these two-edged arguments will be commented on here. It may be pointed out also that the controversy that has raged about this problem during the past two years reveals a clear disinclination to think coherently about the merits of the argument for gradualness. Professor Paul's summary of the case for gradualness is so effective that many readers will fail to perceive its ambiguity and will rely upon this plea in order to produce what he calls "delay, dodges, and litigious confusion" (p. 71).

In one section Professor Paul focuses upon the undeniable problem of "taking account of differences in academic backgrounds between Negro and White students" (pp. 81-2). 2 If local authorities could demonstrate that pupils of one race in a given grade could not be expected to participate and keep up with students of the other race in the same grade level, then it is arguable that immediate integration of the two classes would be unreasonable and delay justifiable. (p. 81).

One need not explore the mental test archives in order to recognize that in any school class in the nation a certain proportion of pupils are seriously unable to 'keep up with' their fellow pupils. It is equally certain that application of either intelligence or achievement tests within southern schools would reveal that a by no means negligible proportion of white students in any school system are unable to keep up with a certain proportion of Negro students in the same school system. If, then, we scrupulously apply this criterion of 'ability to keep up with' as our guide to desegregation we must immediately put into the same classrooms White and Negro students of equivalent ability and separate the divergent levels of ability within each race.

Paul restates the 'ability' argument for delayed desegregation (on p. 111). "Thus, some schools might wish to conduct separate classes for some or all Negro students where it becomes evident that these students are insufficiently prepared, by way of training and academic background, to participate in the white class."

To speak of "the white class" gives the argument away. White children are not even approximately homogeneous, and there will always be found some Negro students of at least median white ability. Those who rely upon the 'ability' argument for gradualness of desegregation should revise the above quotation (from p. 81) to conclude: "then it is arguable that immediate integration of the equally able and

2 He fails to point out that Negroes may question the principles by which Negro students who have been made inferior academically by previous southern educational discrimination should now be asked to acquiesce indefinitely in further segregation on the grounds of this very inferiority.
equally skilled pupils from both races should be effected, the problem of the less prepared Negro and white children being dealt with in due time.” And the first part of the same statement might read: “If some of the pupils of each race in a given grade could not be expected to participate and keep up with certain students of the same or of the other race in the same grade level...”

A parallel argument on grounds of health is summarized (p. 82): “... the State should certainly be free to isolate or exclude from its schools a child who is a carrier of contagious disease.” The same fallacy exists in this as in the previous argument. The appropriate policy would be either exclusion of diseased pupils of both races or a merging of the healthy of both races into one class and the diseased of both races into another class. No disease is peculiar to either race. Hence this argument, too, is in fact an argument for immediate desegregation and not an argument for continued segregation.

It is clear that those conscientiously supporting either of the foregoing arguments are guilty of the same simple logical fallacy as that used to justify moving all Japanese from the West Coast a few years ago. Failure of otherwise intelligent men to perceive the clear implications of these arguments—immediate desegregation, not indefinite segregation—suggests that the arguments are rationalizations.3

At a later point Professor Paul alludes to the possibility that a Negro teacher might have difficulty “in establishing effective contact with white students in many situations” (p. 114). What we know of the traditional child-care customs in the South and of the emergence of racial prejudices among children suggests that this worry may be quite needless.

Professor Paul points out (p. 79) that a plea for gradual desegregation might be supported by requiring that “reference be made to whether the community was predominantly rural or urban, to the community’s history of racial relations, to the bona fide beliefs of responsible citizens, to the degree of social organization that pervades within the community, to its economic background, and to other relevant considerations demonstrating the likelihood of strife; and, above all, reference should be made to the population factor, a consideration which sociology and common sense indicate is of paramount importance.”

Amidst this plethora of factors, any community desiring not to desegregate can find a good reason for its reluctance. One would be more impressed by these arguments if one heard of communities using

3 There is no implication that Professor Paul believes these fallacies; his publication was presumably written as counsellor.
them to justify prompt desegregation. On the other hand, one can sympathize with a community that objects to being called upon to undergo the trauma of desegregation (if it is going to be traumatic) merely because it happens to have few Negroes or to have been more statesmanlike in handling racial tensions in the past.

There is in fact some reason to doubt that the foregoing social conditions are closely related to rigidity of racial attitudes. There is no feasible way to determine the attitudes of a community toward desegregation except to carry out the policy and observe the results. Already we have evidence that the attitudes of school officials toward desegregation is a major factor affecting a community's reactions to desegregation.

The argument of this note has been a simple one: the alleged logical grounds for gradualness of desegregation are equivocal. The same arguments support a policy of prompt desegregation and integration for at least a sizeable fraction of pupils.

COMMENT ON A REVIEW

By Richard D. Gilliam, Jr.*

This Journal welcomes the foregoing sociologist's review of a legal article. The lawyer and the judge need the assistance of all the sciences in solving all legal problems, and more especially, in solving such complex problems as those involved in the School Segregation Cases. Perhaps, however, a lawyer's comment on some of Professor Anderson's points may not be inappropriate here.

In considering the adequacy of legal precedent for "establishing a principle of gradualness" we should remember that the School Segregation Cases are equity cases in which the plaintiffs are seeking the extraordinary remedy of injunction. Persons whose legal rights are violated have other sanctions available, and they are entitled to have

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2 These are, in these cases, the tort and criminal sanctions of the Civil Rights Acts. 42 U.S.C. Sections 1981 to 1986, inc., (1952); 18 U.S.C. Sections 241-242 (1952). See Legal Sanctions to Enforce Desegregation in the Public Schools: The Contempt Power and the Civil Rights Acts, 65 Yale L.J. 630 (1956). But note that it is an open question whether the "right" recognized by the Brown decision is "an immediate right to attend an integrated school," an immediate

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4 See the writer's "Inequality in Schooling in the South," American Journal of Sociology, 1955, 60:547-61.