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Book Reviews

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BOOK REVIEWS

A SOUTHERN MODERATE SPEAKS. By Brooks Hays. The University of North Carolina Press. Pp. XI, 231 (1959). $3.50. This is a tragic book: bathetic in conception and execution. Brooks Hays, since Little Rock, has been recognized as the archetype southern moderate. His book painfully details the fate of his *genus*. This episodic narrative of the unsuccessful struggle of a deeply religious southern white lawyer with the concept of human equality is tragedy of a high order. The bathos of *A Southern Moderate Speaks* lies in the revelation that the appeal of the southern moderate is founded in large part on a tripartite myth.

The author begins his story with an account of his early political years — *From State House to Capitol Hill.* We are briefly told of two unsuccessful campaigns for the governorship of Arkansas in 1928 and 1932 and that in neither quest were "racial angles" involved. Then in 1933 the author was counted out of an apparent victory in a special congressional election. In one county the opposition garnered 1,850 votes out of a total registration of 1,632 voters. Fortune smiled, however, in 1934 when Democratic national committeeman Hays became legal adviser in the Arkansas office of NRA. The author subsequently served as a government lawyer on the staff of the Resettlement Administration and its various alphabetical successors in the Department of Agriculture until his election to Congress in 1942. At this point Brooks Hays began to live the role of his destiny.

As Congressman Hays he found his position on civil rights, mild as it was and stemming more from religious conviction than from political reality, estranged him from the members of the southern lodge in the House of Representatives. That the author was able to join the regional fraternity reveals in itself the fate of his civil rights program. In his maiden speech the author recalls that: "I deplored the agitation for dealing with the region's problems through ill-advised and hastily conceived national legislation based on 'the liberal line.' "[1] And this is the theme of Congressman Hays' quest for justice regardless of race. In his famed debate with Charles M. LaFollette of Indiana on the FEPC Bill of 1945, the author's argument was:

> It was my contention that until a greater degree of public support could be marshaled for enforcement of such a law it would crash, as some other federal measures have, upon the rock of popular resistance. I pointed out my lifetime interest in the problems of underprivileged people, particularly my efforts on behalf of better race relations, and then attempted to show how my attitude toward this legislation was consistent with that position. It was my firm belief that 'what the Negro really needs in the realm of civic and economic life, as distinguished from social pursuits, is the lessening of his race connection. How, then, in the name of simple logic, can anyone expect to help him with this bill? It would accentuate the race tie and would set in motion counter movements to retard him.'[2]

Congressman Hays concluded his case against an FEPC with a denunciation of those "self-appointed spokesmen for the race [who] had denounced the best friends the Negro has among the white people."[3] Congress, of course, failed to enact an FEPC or anything remotely resembling an FEPC.

While the author disclaims an active role in the bitter civil rights plank battle in the 1948 Democratic Convention, it seems fair to attribute to Mr. Hays the moderate position (a position he willingly assumed in the 1952 and 1956 Conventions) between the so-called Humphrey forces, which demanded a "strong" civil rights plank, and the southern conservatives. We are informed that in 1948:

> Democratic party leaders acting on behalf of the President were successful in getting the full 108-member Platform Committee to reverse its subcommittee's stand and

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1 HAYS, A SOUTHERN MODERATE SPEAKS 25 (1959).
2 *Id.* at 30.
3 *Id.* at 31.

> reject Humphrey's program. They thereby hoped to mollify the South, and thus they brought before the delegates a civil rights platform pledge which was restricted to the generalities sought by the moderates.[4]

The fate of that plank in the Convention is, of course, well known. Indeed, it may very well be that the "Humphrey victory" of 1948 marks the critical turning point in the history of civil rights in our nation — but that is matter for another book and another review. It is likely, however, that the author of *A Southern Moderate Speaks* does not share this view, for he returned to Congress "determined to do everything possible to bring the two wings of the Democratic party together again in the interest of the public welfare."[5] The Arkansas Plan for civil rights legislation proposed by Congressman Hays was, in the author's words, a compromise designed to meet two criteria: what was attainable and what was right. On segregation in the United States Army, Navy and Air Force Mr. Hays' position was that "it did not present difficulties at the federal level."[6] The author's anti-lynching proposal provided that the United States Attorney General might seek indictments against participants in a lynch mob, if after a reasonable time the highest law enforcement officer of the state was found not to be seeking "convictions" in good faith. The moderate's position obviously had not undergone change since the LaFollette debate in regard to federal FEPC. In Congressman Hays' words:

> I contended that if the Congress should set up a modest educational program we would acquire in time a body of experience that would be a guide to future legislation and would make available to all state officials the experience and results of legislation adopted by the states.[7]

On the poll-tax issue, the first Hays proposal was that all parties in interest agree on a constitutional amendment to eradicate the problem, but this position was soon abandoned —

> . . . since the five states which still retain the poll tax have all shown a preference for using this method of registering voters, there seemed to be no longer any reason for pressing for repeal of the poll tax.[8]

This, then, was the ill-fated moderate plan on civil rights in 1949-50.

Although the Arkansas plan died in Congress, its spirit lived on in the civil rights planks of the Democratic Party in 1952 and 1956 due largely to the conciliatory efforts of Congressman Hays and a northern moderate — Representative Dawson of Illinois (who incidentally happens to be a Negro).

The climax of *A Southern Moderate Speaks* arrives with the advent of *Brown v. Board of Education*,[9] and the anti-climax is reached with the defeat of Congressman Hays for re-election to Congress by a last minute write-in campaign growing out of the Little Rock crisis.

The Moderate's position on the decision in *Brown* is completely predictable.

> My own experience had made me increasingly aware that the 'separate but equal' doctrine of *Plessy v. Ferguson* — in its original rigidity, at any rate — was out of date. Yet I felt that the 1954 decision erred seriously in throwing it out completely. There had been the possibility of a decision by the Court that could have bridged the southern traditions, now solidified under the protection of the Plessy doctrine, and the requirements of the twentieth-century world.[10]

Surprising, however, is the assertion by a moderate and a lawyer that "it also seemed unfortunate that the 1954 decision had to rest so largely on the findings of social science rather than on legal foundations."[11] This reviewer and others have, it would seem, indicated the enormity of the misconception of the role played by social science in the decisional process leading to *Brown v. Board of Education*.[12] Moreover, in this

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4 *Id.* at 40.
5 *Id.* at 43.
6 *Id.* at 46.
7 *Id.* at 49.
8 *Id.* at 52.
9 345 U.S. 972 (1953); 349 U.S. 294 (1955).
10 HAYS, *op. cit. supra* note 1 at 93.
11 *Id.* at 94.
12 See, *e.g.*, BLAUSTEIN & FERGUSON, DESEGREGATION AND THE LAW 126-57 (1957).

reviewer's opinion the rather solid legal foundations of *Brown* are apparent in an unbroken line of cases extending from *Pearson v. Murray*[13] to *McLaurin v. Board of Regents*.[14] As this reviewer has argued elsewhere:

> The nine men of 1954 strove to act within the framework of prior precedents. While *Plessy v. Ferguson* gave Supreme Court acceptance to state-enforced segregation in transportation (and, inferentially, education), the Sweatt-McLaurin decisions denied the validity of racial classifications as applied specifically to state supported colleges and universities. On May 17, 1954, the Supreme Court had to decide whether the criteria of equality developed in the Plessy case or the criteria developed in the graduate school cases should be applied as the standard of measurement in the primary and secondary school disputes. Whatever decision was reached, the Supreme Court would be damned as inconsistent. Regardless of judicial rationalizations, the Court was bound to violate the spirit of either Plessy or the Sweatt and McLaurin cases.[15]

Mr. Hays is of the opinion, however, that *Brown* must be accepted as a constitutional landmark, "however imperfect it may be."[16] In this spirit, we are told, the author joined over 100 members of the delegations of eleven southern states in the "Southern Manifesto," which begins: "We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power."[17]

This, then, is the voice of moderation. This is the image of conciliation. This is the moderator who undertook to avoid "Little Rock" by a valiant effort to negotiate a peace without understanding, and paid for that effort with his political life. The tragedy of *A Southern Moderate Speaks* lies in the author's evident failure to grasp the reasons which lie behind the Negroes' drive for full equality under the law. In any other context a person espousing the views attributed to the southern moderates would be classed as either an outright opponent or a cynic. It is rather a sad commentary on the lack of general understanding of the so-called race problem that we can conceive of a moderate position at all. There can be no doubt, however, but that there is a position of moderation in regard to securing the negro minority equal justice under the law — and for "equal justice" we might well substitute "equal treatment." Equally certain is the fact that the voice of moderation in the struggle for civil rights must fail for it arises out of and is the child of what this reviewer chooses to call the tripartite myth of race relations. *A Southern Moderate Speaks* is replete with this mythology in its most unsophisticated form.

The first myth is that effective federal implementation of, for example, the right to vote or attend an unsegregated school violates the basic concepts of federalism and hence such implementation would be unconstitutional in the highest sense. In one and the same paragraph Mr. Hays asserts:

> When the Powell amendment to the school construction bill was approved by the House of Representatives, I was forced to vote against the entire bill because of my convictions on the desegregation issue. Defeat of this legislation was a tragic rebuff to those of us who worked hard to increase the amount of money available for additional classrooms throughout the nation, but the Powell amendment gave us no choice. Its provisions made the federal Office of Education the judge of whether a school district was complying with the Supreme Court's desegregation decision. Such a procedure would have opened the door for intrusions into the conduct and control of our state educational system. No longer could the bill be regarded as a financial measure to improve our school facilities, but rather it became another step in federal domination of local governments. No one who believed as strongly as I in our system of federalism could then vote for this measure.[18]

Thus, the teaching of myth number one is that federalism is a one-way street: grants of federal money are merely financial matters and do not upset the constitutional balance,

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13 169 Md. 478, 182 Atl. 590 (1936).

14 339 U.S. 637 (1950). The intervening cases between *Murray* and *McLaurin* are: Missouri *ex rel* Gaines v. Canada, 305 U.S. 337 (1938); Sipuel v. Board of Education, 332 U.S. 631 (1948); Fisher v. Hurst, 333 U.S. 147 (1950) and Sweatt v. Painter, 339 U.S. 629 (1950).

15 BLAUSTEIN & FERGUSON, *op. cit. supra* note 12 at 118.

16 HAYS, *op. cit. supra* note 1 at 95.

17 *Id.* at 88.

18 *Id.* at 93.

but insistence that these same grants of federal money be spent in conformity to the law of the land (or even federal law, if you will) necessarily subverts the proper federal balance. Of course, the two situations are distinguishable. Mr. Hays, moreover, makes the distinction patent: "I was forced to vote against the entire bill because of my convictions on the desegregation issue." Now we find that only federal implementation of recognized rights interferes with the proper state-federal relationship. The author asserts that he fully sympathizes with the Negro's impatience with denials of the right to participate in primaries wherein candidates for federal office are to be selected. Yet, he declares, "I deplore the fact that this gain was at the cost of impairing the principle that political parties should be granted maximum freedom in determining their procedures and policies even in so vital a matter as racial distinctions in membership."[19] This is perilously close to government of the people by the political parties for the political parties. There appears to be, in the constitutional theory of the southern moderate, little in the nature of a federal interest in the processes designed to select candidates for federal offices; just, as we were informed, segregation in the armed forces of the United States presented no difficulties on the federal level.

How, then, are these problems of non-federal injustice to be solved? Time heals all wounds.[20] Time becomes the mediator.[21] "So also the Negro must be prepared to take advantage of the opportunities to be offered him."[22] (Here apparently a negro pupil in the South must attend school to prepare himself to attend an unsegregated school. Thus, time will have successfully mediated the problem. For, by the time the pupil has completed his pre-education in the opportunities to be afforded by a nonsegregated education he will have received a separate-but-equal education and thus no longer be in a position to complain!) Thus, the second myth — time is all that is needed and in the meantime the Negro must prepare himself. Perhaps it will do to recall the words of a famed Democratic keynoter: "How long, Oh Lord, how long?" How long, for example, must a Ph.D. in Political Science educate himself in constitutional theory before he can satisfy a registrar of voters in Alabama that he "understands" the Constitution? How long must he wait if he happens to be a Negro? It may or may not be helpful to note that more than threescore and ten years — presumably man's allotted time — have passed since the ratification of the fifteenth amendment.

Obviously, if insistence now on effective equality presents such problems, the fact of insistence itself bears re-examination. Who are these people and what do they really want? Enter myth number three. One of these people was "Uncle Nelson."[23] Mr. Hays recognizes that this form of address is not now in favor with Negroes. In the period in which the practice grew up, Mr. Hays asserts "it was recognized by all as a device for showing respect and affection."[24] On this rather minor matter this reviewer must dissent. In the reviewer's family in North Carolina use of Uncle and Aunt was recognized as a rather crude attempt to avoid the use of such tokens of respect as Mr. and Mrs. But Uncle Nelson was not the type to cause trouble for southerners. (Incidentally, although Uncle Nelson was born, bred and probably died in the South, he is not a southerner. He is a Negro. Southerners, apparently, are all others either born or bred in the South.) One troublemaker is apparently the NAACP. While the author fully recognizes the right of this organization to exist, he avers: "It is unfortunate, however, that the decision of this private organization (not accountable to any public authority) not to litigate in certain states is all that stands between some communities and potential violence."[25] What is the antidote to the NAACP? That is simple. "The white leadership of the South must strengthen the hands of influential leaders within the negro community who, while fully alert to the Negroes' aspirations, are free from subservience to

19 *Id.* at 4.
20 *Id.* at 128-29.
21 *Id.* at 5.
22 *Id.* at 95.
23 *Id.* at 7.
24 *Id.* at 24.
25 *Id.* at 227.

national pressure groups. Such leaders are available, if white leaders would begin to enlist them in building bridges between the two communities."[26] Here, then, is myth number three in full development. A national pressure group is at the bottom of the immediate problem. Negro leadership ought to be local because national negro leadership is not to the taste of the local white community. And the identity of that local leadership is a matter to be left to the white leadership of the South. It is this very attitude of paternalism held by the leadership of the white community which makes the demand of the Negro the thing that it is — the insistence upon the opportunity to pursue his destiny as a fully responsible individual whose skin color is an irrelevance under the law. This concept appears to be beyond the grasp of the southern moderate. The consequences of this failure to understand were seen in Little Rock itself. At the very height of the crisis the leaders of the Little Rock community gathered to lay plans to ward off a violent eruption. "No one in the group knew what Daisy Bates of the local NAACP proposed to do, and no one volunteered to advise her."[27] The one person who should have been considered an indispensable party in such a situation was Daisy Bates. She, however, was absent and uninvited. There is a well-founded belief that on the critical day — Monday, September 23, 1957 — the group of Little Rock negro children had not intended to attempt to enter Central High. The children did, of course, attempt to enter. The author asserts: "How plans got changed remains as much a mystery to me as it does to Governor Faubus."[28] Daisy Bates, of course, knew and might perhaps have been of some assistance. Mrs. Bates, however, was not a local leader. Apparently, not even the southern moderator can accept a Negro who insists on being treated as a full person and as a full citizen as quite real. The myth requires a reasonably happy childlike Negro attuned to the interests of the local dominant group.

This, then, is the story of the struggle of a southern moderate and a description of his world and his realm of ideas. Bergen Evans instructs us that:

> In its primary sense *tragedy* means a dramatic composition of a serious or somber character, with an unhappy ending. There must be a sense of greatness in the person to whom the tragedy befalls and the unhappy ending must, at least in part, be the consequence of some fault — even though that fault be an excess of virtue — in the person.

A Southern Moderate Speaks is a tragic book.

*Clarence Clyde Ferguson, Jr.**

DESEGREGATION: RESISTANCE & READINESS. By Melvin Tumin et al. Princeton University Press, 1958. Pp. xv, 270. $5.00. Professor Melvin Tumin with the assistance of a number of graduate students has made a systematic examination of attitudes of 287 adult, white males in the working force of Guilford County, North Carolina to draw two social portraits: one of persons most ready for desegregation, the other of those most resistant to it. Five dimensions involved in either of the alternatives are the image, i.e., the conception that the white has of the Negro; the ideology, i.e., given the mental set of the individual white, what kinds of social relations would he prefer to have with Negroes; sentiment structure, i.e., how a white would feel if he did have close contact with a Negro; and the general and specific action sets which encompass respectively what a white would do if he had close contact with a Negro and what he would do about the school situation.

Social background factors which are believed to influence such attitudes were examined in detail such as years of formal education, "religiosity", i.e., how well one practices his religion, religious denomination, occupation, exposure to mass media and

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26 *Id.* at 228.
27 *Id.* at 169.
28 *Id.* at 173.

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such. Some findings are what would be expected. The more formal education a person has, and the higher his occupational rating, usually, the less negative his attitudes towards Negroes. Rural persons are more unfavorable in their appraisals of Negroes but persons who have lived in urban areas for five or more years have the most unfavorable image of the Negro but are most ready for school desegregation.

Those who attend church once a week or more often reveal a generally more favorable attitude toward Negroes but distinctions of groups on the basis of church attendance are conflicting. For example the weekly and the monthly church goers show about the same attitude toward school desegregation whereas those who attend more than once a month but not weekly are more opposed to school desegregation. On the basis of religious denomination Presbyterians have the most favorable attitudes toward Negroes but the degree of difference between them and Episcopalians, Methodist and Baptists is not striking. Since there were only three Catholics and one Jew among the respondents, nothing can be said of these denominations.

The study has been carefully, even painstakingly done. For the non-professional reader, despite the author's efforts to be clear, the numerous distinctions and statistical tables will prove puzzling if not irksome. Many of them have been placed in the appendices which run to sixty-three pages. As Professor Tumin admits, the results of this study cannot be projected onto the entire South. So what is really known are the attitudes of persons within the sample which may be very similar to others within the county.

But the book should not be dismissed on this basis. It clearly reveals that attitudes of southerners on Negroes and school desegregation are far from homogeneous. Furthermore certain hypotheses have been established which should prove fruitful in other and hopefully more widespread analyses. The detailed distinctions between prejudice and discrimination will perhaps amaze some readers as will the statement that legislation can reduce discriminatory practices. But the author notes that at best this is a short term business and continuous and stable traditions of non-discrimination require more than law. He pins most faith on education for the reduction and ultimate elimination, if possible, of prejudice and discrimination. But such education must be provided for both Negroes and whites. Under present conditions this does not occur and not only in the South. This study should inspire others which may speed the process of desegregation and thus permit the kinds and degree of education that will eliminate a long standing social problem in American society.

*John J. Kane**

THE NEGRO PERSONALITY: A RIGOROUS INVESTIGATION OF THE EFFECTS OF CULTURE. By Bertram P. Karon. Springer Publishing Co., 1958. Pp. 184. $4.50.* We no longer hold our fathers' truths to be self-evident. We try to test them. That all men are created equal was a proposition to which a number of slave-owners were willing to dedicate their lives, their fortunes, and their sacred honor. But they left to a Constitution, and to civil war and later generations of lawyers, legislators and judges, the expounding of a truth that was, by its self-evident contradiction of the facts of a slave-holding society, a question.[1]

For the founding fathers, who adopted a representation formula by which a negro slave counted as two-fifths property and three-fifths person, constitutional commands

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* This review is reprinted from 34 NOTRE DAME LAW. 286 (1959).

1 To Stephen Douglas's contention that the Declaration of Independence "referred to the white

were also questions. Freedom of speech, due process, commerce among the several states, the equal protection of the laws — these are necessarily questions to which no court can give final answers.

In *Brown v. Board of Education*,[2] the Supreme Court held that compulsory segregation of white and negro children in public schools had "a detrimental effect" upon the negro children and therefore deprived them of the equal protection of the laws under the Constitution. Referring to its now celebrated footnote number eleven,[3] the court said that this finding was "amply supported by modern authority" whatever "may have been the extent of psychological knowledge" in 1896 when the doctrine of "separate but equal" was approved. Dr. Karon's book is an amplification of that controversial footnote.

Through the Tomkins-Horn Picture Arrangement Test, Dr. Karon seeks to answer two fundamental questions: whether the Negro is in fact hurt by legally enforced segregation, and whether the inferior scores of the majority of Negroes on intelligence tests are caused by innate racial inferiority or by an unfair environment. Dr. Karon summarizes the caste sanctions under which the Negro lives, emphasizing the difference in racial status in the South and in the North. He reviews the previous studies of negro intelligence and personality, taking as the most suggestive fact not the generally higher intelligence scores for whites, but the fact that on the average northern Negroes score higher than southern Negroes.[4] That the average score of Negroes from some northern states on army intelligence tests was higher than the average score of whites from some southern states, and that the intelligence scores of Negroes in the North were found to vary consistently with the number of years they lived in the North, he recognized as significant, but the focus of his examination was the difference between northern and southern Negroes.[5]

From all this he constructed a working hypothesis:

> If, on the one hand, the effects of the caste sanctions account for the differences in the personalities of Negroes and whites as well as for the differences between northern and southern Negroes, then whites will differ from Negroes on the same characteristics that differentiate northern from southern Negroes. If, on the other hand, there are hereditary differences in personality between whites and Negroes, the differences will be found on characteristics which are *not* the same as those which differentiate northern from southern Negroes.[6]

From his tests he concluded that northern Negroes do in fact differ from southern Negroes in the same direction and on the same characteristics which differentiate northern whites from southern Negroes, and that caste sanctions and not heredity account for these differences.[7]

For a lawyer untutored in either the methods of psychological testing or the intricacies of scientific sampling it is difficult to judge the weight to be given to Dr. Karon's study. In this world of modern science and technology we will need to learn the mathematical language of probability and be able to handle the tools of sampling, and, like the Supreme Court, we must be ready for Brandeis briefs that rely on the

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race alone," Lincoln replied: "I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in which respects they did consider all men created equal — equal in 'certain inalienable rights, among which are life, liberty, and the pursuit of happiness.' . . . They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere." Springfield Speech, June 26, 1857. 2 COLLECTED WORKS OF ABRAHAM LINCOLN 405-06 (Basler ed. 1953).

2 347 U.S. 483 (1954).

3 *Id.* at 494.

4 Text, at 42, 52. See MYRDAL, AN AMERICAN DILEMMA 144-53 (1944).

5 Text, at 11, 52, 76.

6 *Id.* at 77.

7 *Id.* at 145.

evidence of psychology and sociology.[8] Dr. Karon carefully explains his statistical methods and safeguards, but this reviewer can only trust the adequacy of the representative cross-section of the United States population chosen by Dr. Gallup and the random sampling for groups of northern whites, and of northern and southern Negroes. Moreover, the significance of the Picture Arrangement Test (PAT) is itself outside the scope of this lay reader.

PAT is an objective test that can be machine-scored. Each question consists of three pictures that can be arranged in six different ways. Then one of a series of alternative descriptions of the arrangement chosen must be checked. The situations involved are supposed to measure some 150 different personality characteristics. PAT is based on the assumption that the individual will project his thoughts and feelings into the pictures placed before him, and that the technique of free association used in the highly individual Rorschach inkblot test or in psychiatric interviews can thus be adapted to a mechanical method of large-scale research.

Out of the 150 personality characteristics tested, a high level of significant difference between whites and Negroes was found in eleven characteristics, six of which were directly concerned with the area of aggression.[9] Negroes inclined more to feel that people would go out of their way to make trouble for them. Negroes strongly exhibited the psychological defense mechanism of denial of their suppressed anger. Negroes also showed a comparatively "weak affect," a deadening of affective relationships or of emotional life generally.

What is most interesting is that northern Negroes differed from southern Negroes on precisely the same eleven characteristics and in the same way as northern whites differed from southern Negroes.[10] In fact, Dr. Karon states that the average test score on these characteristics, corrected for age and vocabulary, is the same for northern Negroes as for northern whites.[11] Moreover, a northern Negro sample that included migrants from the South was more like the southern Negro samples and less like the white sample, than the northern Negro samples that did not include migrants. Also of special interest is the finding that aggression traits increase and "affect" weakens in Negroes from rural deep South areas compared not only with northern Negroes but also with Negroes living in southern urban areas.[12]

From this Dr. Karon does not conclude that the northern Negro suffers no psychological damage from the racial discrimination he experiences in many sides of his life. He suggests that the relatively small samples used, involving only several hundred persons, may show only relatively large differences, or that the personality disturbances of northern Negroes may be related to different kinds of problems not measured on this test. But he does find that Negroes living under the sharp, legally enforced caste sanctions in southern states are psychologically disturbed on a serious scale.[13] He hazards an explanation of what protects the northern Negro from the same kind of damage:

> Perhaps the southern Negro, whose whole society tells him he is wrong even to resent his treatment, can never be completely sure that he isn't wrong, nor can he bring himself to completely accept the treatment he receives. The northern Negro, on the other hand, may be made to suffer, but he feels that those who make him suffer are wrong, and he has a right to resent it. He is engaged in an unequal struggle which he may never win, but he knows he is engaged in a struggle which is not hopeless. Apparently, being able to face the fact that one is being mistreated preserves a sense of personal integrity which, in turn, serves to ward off much of the destructive impact of oppressive

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8 See Sorensen, *The Admissibility and Use of Opinion Research Evidence*, 28 N.Y.U.L. REV. 1213 (1953); SOCIETY OF BUSINESS ADVISORY PROFESSIONS, CURRENT BUSINESS STUDIES No. 19, *Symposium on the Role of Sampling Data* (Oct. 1954).

9 Text, at 171-72.

10 *Ibid.*

11 *Id.* at 174.

12 *Id.* at 172.

13 *Id.* at 175.

> experiences. It would seem that when we face the truth, the truth really does, to a large extent, set us free.[14]

What does all this prove? It can hardly prove as much as Dr. Karon claims. "Objective and rigorous answers," he says, "are now available" to questions about the effect of legally enforced segregation.[15] Without sharing his faith that "those matters which are closest and most important to human beings are as resolvable by scientific investigation as are the secrets of the physical universe,"[16] or his faith that with PAT the question "What does it mean to be a Negro?" is "no longer an unsolvable problem,"[17] the results nevertheless are suggestive.

For the Negro it should not be news that caste sanctions hurt.[18] But it should be encouraging to all concerned that there may be psychological benefits from the current turmoil and tension in the South. Even though the new law of desegregation may be massively resisted by southern whites, the educational, psychological effect of the Court's decision on southern Negroes may be of immeasurable value. If the depth of the wound caused by segregation depends on the degree to which the Negro is inflicted with self-doubt — with fear that he is in fact not created equal — then the Negro in the deep South may be fortified by the discovery that the Supreme Court and the Constitution are truly committed to the protection and realization of his equality.

In support of this possibility, Martin Luther King, the minister who led the negro bus boycott in Montgomery, Alabama, contends that as a result of the negro protest and of the court victory there is now increased self-respect among even the least sophisticated Negroes in that city, evidenced by better standards of cleanliness and a decline in heavy drinking, crime and divorce.[19] Who would dare say that the negro children and parents of Little Rock, despite their ordeal, are psychologically stronger and healthier because they have taken a stand and know that the federal government is on their side? But Dr. Karon's study encourages this hope.

There are many important questions that he does not touch. What, for instance, are the effects of segregation or integration on the whites? Does the feeling of racial superiority supported by enforced segregation damage the personality of whites, particularly in terms of the attributes of fair mindedness and mutual respect necessary for good citizenship in a republic? Or, assuming that enforced segregation does psychologically cripple the Negro, what about enforced integration? What happens to the negro children, taken out of culturally and economically deprived homes, segregated environments and inferior schools and placed in the midst of white children? Is it compounding the damage to place Negroes who already doubt their equality and who have serious personality disturbances and achievement disadvantages in competition with white children who for the most part will surpass them in school work? Or, assuming that the Negroes who are assigned to white schools are able to hold their own scholastically, how does a constant climate of hostility from their white schoolmates affect them?[20] How does all this affect the educational standards of a school undergoing integration?[21] Does the degree of damage done by racial discrimination go so deep that a far-reaching program of remedial education is required before there can be more than token integration in the deep South?

These are some of the questions that must be answered with all deliberate speed. These are some of the considerations, no doubt, that caused the parents of 95 percent of

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14 *Ibid.*

15 *Id.* at 6-7. For a discussion of the limitations in all tests of personality, see TRAVERS, EDUCATIONAL MEASUREMENT 209-50 (1955).

16 Text, at vi.

17 *Id.* at 75.

18 See GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, REPORT NO. 37, *Psychiatric Aspects of School Desegregation* (1957).

19 KING, STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY 187 (1958).

20 Anderson, *Clinton, Tennessee: Children in a Crucible,* N.Y. Times, Nov. 2, 1958, § 6 (Magazine), p. 12.

21 See the position of the Little Rock School Board in Cooper v. Aaron, 357 U.S. 566 (1958).

the negro first graders eligible this year for integrated schools in Nashville, Tennessee, to secure transfers to all-negro schools.[22]

Neither this book nor Dr. Karon's tests tell what it means to be a Negro. Perhaps even more than all his rigorous objective testing a chance remark by a Negro he was interviewing gives a glimpse into that problem: "You live in a city all your life, but you're never home. Maybe that's what it means to be a Negro."[23]

But this raises the question of what it means to be an American in the lonely crowd of modern industrial civilization. The equality protected by the Constitution is a corollary of the proposition that We the People shall govern ourselves. Self-government begins in the minds and hearts of people. If the personalities of large numbers of people are so warped that society seems alien or hostile to them, the public reasoning necessary to a republic will be impossible. Persuasion, the principle of a republic, requires minds and hearts that are free from crippling fears and hostilities.

White America has been testing the Negro, but in the eye of history it is the Negro who is testing America. For in this colony of mankind, among this uprooted people of immigrants none are more American than the sons of slaves who were torn from their primitive homes, thrust into a new industrializing world, and told they were free. If the American Negro can find himself, if through the equal protection of the laws he can make a home for himself in this strange new City of Man, then there will be hope for all of us and for this republic.[24] Yet as Montesquieu wrote in 1748, "Though real equality be the very soul of a democracy, it is so difficult to establish. . . ."[25]

*Harris Wofford, Jr.**

22 Southern School News, Sept.-Oct. 1958, p. 10.

23 Text, at 1. See also FRAZIER, BLACK BOURGEOISIE 237-38 (1957).

24 Equal opportunities for Negroes should reward this country in many ways. See GINZBERG, THE NEGRO POTENTIAL (1956).

25 MONTESQUIEU, THE SPIRIT OF LAWS Bk. V, § 5 (Nugent transl. 1899). "Weak minds exaggerate too much the wrong done to the Africans," Montesquieu also wrote in summarizing the case for slavery. From his argument in 1748 one can guess that the wounds to negro pride and to the white conscience must go very deep: "These creatures are all over black, and with such a flat nose that they can scarcely be pitied. . . . It is impossible to suppose these creatures to be man, because, allowing them to be men, a suspicion would follow that we ourselves are not Christians." *Ibid.*

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BOOK NOTE

REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS, Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C. 1959. In the welter of conflicting reports, slanted statistics, patriotic pleas, and newspaper editorials surrounding the civil rights issue, this report represents the first large scale, bipartisan, government-supported investigation of perhaps the most significant national issue of our time. Disturbed by conflicting but continuous reports of abrogation of civil rights in the areas of voting, housing, and public education, the Congress of the United States created an executive commission to find facts and make recommendations on a nation-wide scale in these three areas. The unanimous desire for bipartisanship resulted in the appointment of three southerners and three northerners to the Commission. The Chairman, John A. Hannah, President of Michigan University, Rev. Theodore M. Hesburgh C.S.C., President of the University of Notre Dame, and George M. Johnson, past President of Howard University, represented the North. Vice Chairman Robert G. Storey, Dean of Southern Methodist University Law School, John S. Battle, past Governor of Virginia, and Doyle E. Carlton, past Governor of Florida, represented the South. Although an exhaustive study was made of numerous problem areas of voting, housing, and public education, only that portion of the Report dealing with public education will be reviewed here.

The Commission proceeded on two stated premises: "1) that the American system of public education should be preserved without impairment, and 2) that the recently recognized constitutional right to be free from racial discrimination in public education is to be recognized." Its opening step was a detailed examination of the legal history of school segregation. The course of the "separate but equal" doctrine of *Plessy v. Ferguson*[1] is traced through *Brown v. Board of Education*[2] where it was overturned. The line of cases[3] which whittled away at the *Ferguson* rule and paved the way for the *Brown* decision is analysed. There then follows the factual report of the Commission on the progress toward integration achieved in the first five years after the *Brown* decision with a broad coverage of the numerous legal devices devised and employed by the "Resistance States" as the southern states are termed by the Commission. The segregation problem and the proposed solutions of the North and West are analysed in order to give the Report a genuine national scope and provide considerable material for a comparison of the problem to be dealt with in what Commissioner John S. Battle termed "the large areas of the country where the problem is most acute." The space given to a comparison of white and non-white population figures gives the impression that the Commission was impressed with the idea that the problem will be less acute, even in southern states, where the non-white population is quite small. One reason given is that integration will allow the closing of small uneconomic non-white schools and thus be a great encouragement to pursue the Supreme Court's mandate to proceed with all deliberate speed.

The Report proceeds with an examination of the more restricted areas of the problem such as the effect on the educational standards, voluntary choice of segregated schools and the effect on minority group teachers. Finally the Report presents the recommendations, proposals and personal observations of the Commissioners.

Although no conclusions are drawn by the Report itself, it is hard to ignore the existence of three significant findings of the Commission. The analysis of the occurrences

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1 163 U.S. 537 (1896).

2 347 U.S. 483 (1954).

3 Missouri *ex rel* Gaines v. Canada, 305 U.S. 337 (1938); Sweatt v. Painter, 339 U.S. 629 (1950); and McLaurin v. Oklahoma State Regents For Higher Education, 339 U.S. 637 (1950).

after the *Brown* decision show that there has been an overwhelming use of calm, deliberate, legal action by the "Resistance States" as to well-known, but less frequent, occasions of violence and coercion so prevalent in reports of the rocky course of desegregation which have caused the United States so much loss of prestige throughout the world.

Secondly, that portion of the Report which deals with the effect on education standards is particularly informative. Although Commissioners Battle, Storey, and Carlton viewed the facts as unrepresentative, the testimony of school board heads suggests that the fear of educational deterioration is something less than a certainty. In fact in the instance of Washington D.C. the Report indicates an increase in ability in one integrated grade, over a comparable group in a non-integrated school.

Finally, the Commission was quick to point out that the effect of the *Brown* decision was to demand that the states allow members of any race to enter public schools for which they were qualified. If the races chose voluntarily to remain separate, the Court would have no quarrel with separate schools. The Report presents a series of cases on a general scale which indicate that in a great number of instances the Negroes in the South chose to go to school with their own race. The Report cites one instance of a girl that transferred to an all-negro school because her parents thought that she could best develop her talents among members of her own race. Without explicitly stating it, the Report indicated that some of the generally conceived notions that the *Brown* decision was a single voice in a rock bound precedent of "separate but equal" rules, that integration will surely cause a general decline in white educational standards, and that the Negro is clamoring to enter white schools, while having some basis in fact are far from a certain conclusion.

In summary, the factual section of the Report is a much needed inquiry into the facts of school integration presented in such a manner that a proponent of either side of the controversy can glean useful information without having to struggle to maintain an objective point of view. Bipartisan commissions and committees are not rare in modern federal government, nor for that matter are bipartisan reports. Seldom, however, does a bipartisan report deal with so volatile an issue and report at such length with such uniform accord as does the Report of the Commission on Civil Rights. In the whole of the recommendations, only one specific dissent was expressed; that being in the area of withdrawal of federal aid to segregated schools of higher learning. The fact-finding section of the Report on Public Education strides through the areas of legal diversionary tactics by southern states, violence, lowering of educational standards due to integration, and voluntary segregation with a fairness and impartiality that must be a landmark of objectivity in writings published in this area since the school integration issue came to the fore in 1954.

At the very outset the whole tenor of the report is clear. Without explicit statement the Report carries the atmosphere of complete acceptance of the coming fact of school desegregation on a nation-wide scale. The problem seems to have shifted from the original question of "if" to the questions of "how and when." Notably only one Commissioner, John S. Battle, took the opportunity to expressly disagree with the tenor of the Report. This he does at the end of the main body of the Report. It is significant that the other southern Commissioners remained silent even though they are supposed to express the position of the southern states.

As thorough and objective as the fact finding of the Commission is, their recommendations are something less than ambitious or far-reaching. This might be attributed to a desire to make some sensible recommendations that would have unanimous support, or a belief, expressed in the Report, that integration proceeds much better on a voluntary basis on the local and state level without court action. The recommendations of the Commission suggest that it be continued in existence as a clearing house for solutions and court decisions that might be distributed to those facing the problem. In addition the Commission envisions itself as a form of mediation and conciliation board to aid in bringing opposing forces together in the search for a reasonable solution to obeying the law of the land. Finally the Commission suggests

that a census be taken of white and non-white students at the next census taking since accurate figures do not exist and such figures would, it is assumed, aid the Commission in fulfilling the tasks it proposes to assume. All of these recommendations had unanimous approval of the Commission. A proposal was made by the northern group that federal aid should be refused to institutions of higher learning which refused to integrate. The southern Commissioners specifically dissented from this proposal. This presented the one controversial suggestion made by the Commission and its reception by three of the Commissioners suggests that even in this successful and valuable bipartisan investigation, the old lines between northern and southern convictions are still drawn.

The full Report is supplemented by an abridgement under the popular title of *With Liberty and Justice for All: An abridgement of the Report of the United States Commission on Civil Rights.* (Again only the portion of the abridgement dealing with public education is reviewed.) Unfortunately, the objectivity that was the hallmark of the full Report is sorely lacking in the abridgement. Sections, such as that entitled "The Philosophical Basis of the Court Decision," have been added which do not appear in the full Report. Although issue may not be taken with the precise language of the abridgement, this language gives great weight to Commissioner Battle's charge that the factual report is "an argument in advocacy of preconceived ideas in the field of race relations." Considering that the abridgement is shorter and easier to get through it will probably be more widely read. This is unfortunate because it gives the impression that this is the actual report of the Commission in shortened form. Both northern and southern readers will be misled by reading only the abridgement and some of the excellent results of the Commission will surely be lost. It must be noted however, that a specific denunciation of this addition to the abridged fact-finding section is voiced by three of the Commissioners at the end of the abridged section.

As a whole the full Report is valuable mainly from its fair presentation of controversial facts with an eye to setting straight several preconceived ideas about the state of the school desegregation question. If the recommendations are none too dynamic and the personal expressions of the Commissioners indicative of still unswerving convictions it only goes to prove that the encouraging facts found by the Commission are merely a first step in the shifting of long-standing social structures and fulfillment of Constitutional objectives through rational and legal means.

John R. Martzell