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# SOUTHWEST REVIEW

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## SEPARATE BUT NOT EQUAL

### *The Sweatt Case*

CHARLES H. THOMPSON

ON MAY 16, 1946, Heman Marion Sweatt, a Negro citizen of Texas and a resident of Houston, filed an application for a writ of mandamus in the 126th District Court of Travis County, Texas, against the Board of Regents of the University of Texas, the then Acting President, the Dean of the School of Law, and the Registrar of the university. The cause for the action was the refusal of the university officials to admit the plaintiff to the law school of the university, solely because of his race or color and in violation of the Constitution and laws of the United States and of the state of Texas.

The legal principle upon which the Sweatt case was brought in the first instance was that the state should provide equal educational opportunities for all of its citizens. If the state elected to require the separation of the races for educational purposes, as in Texas, then the state must furnish "separate but equal" opportunities for Negroes and whites. The state had provided a law school for white students at the University of Texas, but did not make similar provisions for Negroes. Accordingly, the

Court ruled on June 26, 1946, that the action of the university in denying admission to Sweatt was a denial of his constitutional right. Issuance of the writ was held in abeyance for six months to permit the state to establish a separate law school for Negroes.

The state immediately set up a makeshift law school for Negroes in Houston, on premises adjacent to the offices of two Negro lawyers, and employed these lawyers as a faculty. The Court on December 17, 1946, denied the writ of mandamus. Sweatt then appealed to the Court of Civil Appeals, which on March 26, 1947, set aside the lower court's judgment in denying the writ and "remanded the cause generally"—thus sending the case back to the lower court for trial. The case was heard in the lower court during the week of May 12-17, 1947.

By the time the second trial began, the state had abandoned the Houston "school" and had set up, in the basement of a building adjacent to the state capitol grounds in Austin, a law school for Negroes which was alleged to be equal to the law school of the University of Texas and which was to be a part of the

newly authorized Texas State University for Negroes, located in Houston. Thus the issue had shifted to the question of whether the law school in Austin provided for Negroes a legal education equal to that afforded non-Negro\* students at the University of Texas, with the burden of proof upon the state. Before the trial was concluded, however, the issue came to involve the validity of the "separate but equal" principle per se—hence, in great part, the unusual significance of this case.

It is unnecessary to go into a discussion of the state's contention that the Negro law school in the basement of the two-story building occupied by a firm of petroleum engineers was equal, or even substantially equal, to the law school of the University of Texas. All of the evidence adduced showed that the Negro law school suffered greatly by comparison on every point. I would venture the conclusion that not a single spectator in that overcrowded courtroom, not even the most obtuse or biased, was convinced otherwise. In fact, one of the young students at the trial (some fifteen or twenty law students from the university were present each day) remarked during one of the recess periods: "Hell, anyone can see that that Negro school isn't equal or even substantially equal to our law school!"

Additional evidence presented indicated that the Negro law school was of the same inadequate character as other provisions made for the higher and professional education of Negroes by the state. Statistics showed that among state-supported schools the total institutional

\*The term "non-Negro" is used here advisedly, because there are non-white students regularly enrolled in the University of Texas.

assets (plant, endowment, etc.) in Negro schools, even including the appropriations for the new Texas State University, amounted only to \$6.40 for each Negro in the population as contrasted to \$28.66 for each white person, or 4.47 times as much proportionately for whites as for Negroes. A similar situation obtained relative to current educational expenditures: Negroes 98 cents per capita, and whites \$2.01, or twice as much. Curriculum offerings in the Negro schools were extremely limited as compared with those of the white schools, or even nonexistent: white institutions presented two to three times as many undergraduate fields of specialization; all the white four-year schools offered graduate work and two of them had work leading to the doctorate, whereas graduate work in the Negro institution was both limited in quantity and questionable in quality, and no provision was made for work leading to the doctorate; no work at all was available for Negroes in engineering, medicine, and dentistry, although four white schools offered work in engineering and the University of Texas had a medical school and a dental school. Despite the fact that approximately 10 per cent of the Negro professors had doctor's degrees, in only one instance did any Negro professor receive a salary as high as that of the lowest-paid professor in any one of the thirteen white state-supported four-year institutions. One white state teachers' college had more books in its library in 1945 than did all of the Negro colleges, public and private, in the state. And so on. The total added up to the indisputable fact that the provisions made for the higher and professional education of Negroes in Texas were not only woefully inadequate

as compared with those made for whites, but were relatively inferior to those provided for Negroes in segregated schools in many other southern states.

**B**UT EVEN MORE IMPORTANT than the fact that the state of Texas has never made equal or even substantially equal provision for the higher and professional education of Negroes was the contention of Sweatt's attorneys that there could be no such thing as "separate but equal" training in law, or in any other area of education. Expert testimony was introduced to show that there is no valid rational justification for segregation in education based upon race, and that discrimination is an inevitable and necessary consequence of segregation—in other words, that the very act of racial segregation is per se an act of discrimination.

We need not go into the details of this testimony here. Suffice it to note that both the President's Committee on Civil Rights and the President's Commission on Higher Education, whose reports have recently been made available, not only came to the same conclusions but recommended the discontinuance of segregation as a matter of civic justice and public welfare. The Committee on Civil Rights declared:

The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to

live and work together. There is no adequate defense of segregation.\*

In fact the Committee emphasized that ". . . not even the most mathematically precise equality of segregated institutions can properly be considered equality under the law."†

Herein lies the chief significance of the Sweatt case to Texas and the nation. This is the first time that the validity of the "separate but equal" dictum, upon which the legality of separate schools has been based, has been directly challenged in the courts. From the time that the "separate but equal" doctrine was promulgated in the case of *Plessy v. Ferguson* in 1896, all of the litigation has hinged on the question of mere compliance with the principle. But as a matter of fact, as Sweatt's attorneys, W. J. Durham and Thurgood Marshall, state in their Brief for Appellant, "The doctrine of 'separate but equal' treatment recognized in *Plessy v. Ferguson* was arrived at not by any study or analysis of facts but rather as a result of an *ad hominem* conclusion of 'equality' by state courts . . . the United States Supreme Court has never passed directly upon the question of the validity or invalidity of state statutes requiring the segregation of the races in public schools."

It is both timely and necessary that Texas in particular and the South in general should examine objectively and dispassionately the policy and practice of segregation now obtaining. Few if any of the southern states where segregation is the policy by law have yet approached this question in the statesmanlike man-

\**To Secure These Rights* (Report of the President's Committee on Civil Rights). Washington: U. S. Government Printing Office, 1947, p. 166.

†*Ibid.*, p. 82.

a still smaller but also rapidly growing group of Negroes who are convinced that segregation can be eliminated now and that it must be eliminated not only or even primarily as a matter of expediency but as a matter of principle. And they are committed to an uncompromising fight to this end.

Probably one of the most frequent, and in many respects the most reasonable, arguments advanced in support of the continuance of segregation, or rather against its elimination, is that segregation has been with us for eighty-five years; accordingly, any attempt to eliminate it would occasion such violent repercussions as to result in consequences much more serious than the evils experienced from the present system. This would be a cogent argument if it were valid; or even if facts were produced to support it. Those who make the argument generally rely upon oracular pronouncements as if their validity were axiomatic; and even when they infrequently do attempt to support the argument, they go back to the Reconstruction period—the facts concerning which are questionable at best—ignoring all of the progress which has been made either in race relations or in public morals in the past sixty years.

An excellent and recent example of this type of rationalization, and of the fallacies and lack of factual support characterizing it, is seen in the dissent of four of the twenty-eight members of the President's Commission on Higher Education, in regard to the question of eliminating segregation in education in the South:

The undersigned wish to record their dissent from the Commission's pronouncements on "segregation," especially as these pronouncements are related to education in the South. We recognize that many conditions

affect adversely the lives of our Negro citizens, and that gross inequality of opportunity, economic and educational, is a fact. We are concerned that as rapidly as possible conditions should be improved, inequalities removed, and greater opportunity provided for all our people. But we believe that efforts toward these ends must, in the South, be made within the established patterns of social relationships, which require separate educational institutions for whites and Negroes. We believe that pronouncements such as those of the Commission on the question of segregation jeopardize these efforts, impede progress, and threaten tragedy to the people of the South, both white and Negro. We recognize the high purpose and the theoretical idealism of the Commission's recommendations. But a doctrinaire position which ignores the facts of history and the realities of the present is not one that will contribute constructively to the solution of difficult problems of human relationships. Arthur H. Compton, Douglas S. Freeman, Lewis W. Jones, Goodrich C. White.\*

Attention is here called to the oracular character of the statement, and the assumption of its validity without any attempt to support it in terms of "the facts of history" or "the realities of the present." The fact of the matter is that the facts of history and the realities of the present all indicate a directly opposite conclusion. There is overwhelming evidence to the effect that not only have there been no untoward consequences attendant upon the elimination of segregation, but on the contrary, in most, if not all, instances where it has been eliminated, as pointed out by the President's Committee on Civil Rights, "tension and conflict begin to be replaced by co-opera-

\**Higher Education for American Democracy* (A Report of the President's Commission on Higher Education). Washington: U. S. Government Printing Office, 1947. Vol. II, p. 29.

tive effort and an environment in which civil rights can thrive.”

AS FAR AS I have been able to ascertain, in the past ten or more years there has not come to public attention a single instance of the elimination of segregation in the South which has been attended by any untoward results. To cite at random a few instances of successful integration: (1) Ten years ago when the appellate court of Maryland ruled that Negroes should be admitted to the law school of the University of Maryland, they were admitted. They have since been treated just as other students. Nineteen Negro students were registered in the school last year. (2) Negroes have been enrolled in the graduate school and certain undergraduate departments of the State University of West Virginia for several years, and so little attention was and is paid to the fact that it is not generally known outside West Virginia. (3) For an equally long time, Negro students have gone to the Union Theological Seminary in Richmond, Virginia. Workers' education classes including both whites and Negroes have been conducted under the shadow of the state capitol building. The Richmond Public Library last year eliminated segregation entirely and is now according Negro readers the same privileges as whites. In no one of these instances have there been any abnormal difficulties. (4) At Black Mountain College in North Carolina Negro teachers are serving on the faculty and Negro students are attending the college, without reported incident. (5) During the war (when the one exception was the segregated training of pilots at Tuskegee), and even more important, *at the present time*, all officers' training schools of the armed forces are integrated: infantry, at Fort Benning,

Georgia; aviation, at Randolph Field in Texas; field artillery, at Fort Sill, Oklahoma; armored infantry, at Fort Knox, Kentucky; and airborne, at Fort Bragg, North Carolina—all in the South, and without any unusual occurrences.

In Texas, Negro and white nurses are being trained in the same classes, without incident. A (known) Negro was admitted to and was permitted to complete the four-year course at a white technological school in west Texas, but received his degree from the Negro college at Prairie View because of some apprehension over legal technicalities which might invalidate his degree. After the first Sweatt trial a Negro student from one of the Negro colleges in Austin went over to the University of Texas to borrow a book from the library, and as he was waiting in line to have his book charged, a number of students came up and congratulated him, thinking that he was Sweatt who had been admitted to the university.\* And on New Year's Day, 1948, two Negro members of the visiting Penn State football team which met Southern Methodist University's team in the Cotton Bowl at Dallas—the biggest football event of the year in Texas—not only played, but were accorded every courtesy by opposing players, spectators, and citizens in the community at large.

Many additional instances in the field of education and in other areas as well might be mentioned. These examples are sufficient, however, to demonstrate that

\*It is interesting and instructive to note that the reaction of students is much more progressive and constructive than that of their elders. In several instances in southern universities where student polls have been taken, only a few students were seriously opposed to having Negro classmates. Most of them were either favorable or indifferent.

whenever and wherever the leaders in any community decide that segregation is to be eliminated and are willing to stand by their decision, no untoward consequences occur. These are "the facts of history and the realities of the present." Statements from some white southern leaders, in commenting on the two reports cited above, would lead one to believe that what they object to is the prospect of a drastic and wholesale elimination of segregation in all areas immediately, which they feel would be too great a shock to take at one time. But examination reveals that both of the reports recognize the necessity of allowing a reasonable interval for a complete change. What is most significant, however, is that such leaders are unwilling to begin at all, unless they are absolutely forced to do so by court action or some similar pressure; and even then, they do so with poor grace.

Texas is faced with the dilemma of continuing the pretext of providing for Negroes equal educational opportunity in separate schools when it is clear to any impartial observer that such equality is not possible, or of beginning immediately a program of eliminating racial

segregation in education and thereby meeting the issue in the only way in which it can be resolved legally or morally. The facts indicate that Texas can eliminate segregation immediately in her graduate and professional schools without untoward incident, if the leaders of Texas so decree and are willing to stand by their decision. And the program of elimination can be continued, with the college next, high school next, and so on, until segregation is wiped out entirely.

The alternative to such a program is the continuation of the hypocrisy and chicanery which are the pillars of the present system. But even more important is the fact that in the past ten years we have developed a national climate of public opinion which is going to make it more and more difficult for Texas or any other state to evade or ignore with impunity the civil rights of any segment of its population. The United States is in a death struggle for the moral leadership of the world. Texas can aid materially in this fight by showing the world that we are able and willing to protect those rights which democracy guarantees and on the basis of which we proclaim its superiority to other ways of life.