SCHOOL SYSTEMS, SEGREGATION AND THE SUPREME COURT

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It is not the purpose of this paper to discuss the whole problem of federal intrusion into the field of public education. The difficulties which will be presented if federal funds for public education are granted on large scale will not be considered.[1] Nor will there be discussed judicial intrusion into local rules relating to patriotic exercises[2] or locally desired "released time programs."[3] Only the matter of separate education will be dealt with, and that in outline.

The problem has three aspects: (a) from the standpoint of the United States Constitution, (b) from the standpoint of state constitutions, and (c) from the standpoint of state statutory laws and necessary and proper private action. Some reference should also be made to legislation on the federal level.

FROM THE STANDPOINT OF THE UNITED STATES CONSTITUTION

The difficulties arising under the Federal Constitution have been

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1. Present federal contributions are relatively insignificant. By the last General Appropriations Act the State of Georgia appropriated from state funds for common school education the sum of one hundred million six hundred thousand dollars. County and city governments will spend approximately thirty million dollars during the current fiscal year, making the expenditure by the state and local governments total at least one hundred thirty million six hundred thousand dollars. Georgia schools are operated by state and local money. The federal government contributes nothing to the State School Building Authority, and has no connection with the erection of any school buildings, and can make no contribution thereto, except under Chapter 14, Title 20, United States Code, entitled "School Construction in Areas Affected by Federal Activities." The federal government does however appropriate $2,427,406.00 to the school lunch program. Federal school lunch money is available, under Title 42, Chapter 13, United States Code, to students attending both public and private schools. In addition to the school lunch money, the federal government makes the following contributions: vocational education $720,643.56; vocational rehabilitation $1,274,633.82; also $2,005,187.95 is appropriated for veterans' farm trainnig, and $863,602.45 for veterans' on-the-job training. The total federal appropriation for these items, including the school lunch program is $7,291,473.78. As to "Financial Assistance for Areas Affected by Federal Activities," see Chapter 13, Title 20, United States Code.
2. West Virginia State Board of Education v. Barnette, 319U.S. 624,63S.Ct. 1187, 87 L.Ed.1628 (1943) overruling Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375 (1940). See Leoles v. Landers, 184 Ga. 580, 192 S.E. 218 (1937), 302 U.S. 656, 58 S.Ct. 364, 82 L.Ed. 507 (1937).
3. Illinois *ex rel.* McCollum v. Board of Education of School District No. 71, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1947), Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1952).
4. Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

exaggerated in the public mind. This is understandable. The *Oliver Brown* decision against the public schools of Virginia, South Carolina. Delaware and Kansas[4] purported to overturn all the law on the subject.[5] It indicated a spirit of wantonness in the Court which dismayed many of those who believe in constitutional government. On the other hand, those who have long pressed for a completely centralized State and for national socialism in America attempted to give the impression that this decision was of legal force throughout all fields of education, and that it was of moral force in all the activities of life. These people realize that destruction of individuality is necessary for their objective, and a completely "integrated" society is with them a means to that end. It was to their interest to propagate the ideas that "nothing could be done about it"; "the 'Court' has spoken": "citizens must obey the 'law,' " etc.

No decision of the Supreme Court of the United States is entitled any greater moral weight than its context merits. Adoration of official decrees is only in accord with totalitarian concepts. If a decision of the Federal Supreme Court announces correct doctrine, if it is in accord with the fundamental law of the Constitution, it is of great moral force. If, on the other hand, it undertakes to announce a rule contrary to the Federal Constitution, contrary to the dual system which is the foundation of the national government, and clearly indicates in text and holding that the law and facts have been ignored, it proceeds to teach error, and should receive stern disapproval from both officials and the general public.[6]

The legal force of such decision is of course a different matter. The *Oliver Brown* decision, like any other, will bind the parties before the court when the decrees issue in proper form. It now binds no one. When decrees are issued against the school districts in litigation the officials of those districts will be bound by the terms of those decrees. No one else will be in anywise included. But the primary legal force and effect of the case is that the district and circuit courts will follow it in later cases, and the Federal Supreme Court will decide subsequent litigation upon its authority.

5. At least five Federal Supreme Court decisions, thirteen decisions of other federal courts, and fifty-nine state and territorial court decisions were put aside. See list in 100 Cog. Rec. 6384 (1954). Report of Georgia Commission on Education 74-79 (Dec. 1954).

6. Such a decision is not "the law." It is simply an enforceable pronouncement of the Court. As was said by Justice Cardoza in *The Nature of the Judicial Process*: "Judges have, of course, the power, though not the right, to ignore the mandate of a statute, and render judgment in despite of it. They have the power, though not the right, to travel beyond the walls of the interstices, the bounds set to judicial innovation by precedent and custom. None the less, by that abuse of power, they violate the law."

In the *Oliver Brown* case the Court stated that it applied the equal protection of laws clause of the fourteenth amendment. It held itself unable to determine whether the Congress submitting the amendment, or the ratifying state legislatures, intended that the amendment upon ratification would be effective to prohibit state-operated separate schools. No attention was given to contemporaneous acts of Congress setting up separate schools in the District of Columbia, or state legislation for separate schools both before and after ratification. It considered the writings of certain "psychologists" (contrary to other writers in this field and the facts as found by the three-judge federal courts in South Carolina and Virginia)[7] and concluded that colored children could not learn and study as well in their own schools as in mixed institutions, and that therefore, these children were discriminated against educationally when they attended schools which the state operated for them. Finding this discrimination to exist as fact, the Court held it prohibited by the equal protection of laws clause forbidding the states to deny any person within their jurisdiction the equal protection of their laws.

Thus the *Oliver Brown* case applies to state-operated public schools, and its holding is that whatever schools are conducted by the state or its political subdivisions must be open to both races alike; and that the state cannot operate separate schools for white and colored children, because, as the Court claimed to have found factually, the colored children cannot learn and study as well in their own schools as in mixed schools.

This case does not govern or pretend to govern educational insti-

7. The three-judge federal court deciding the Virginia case found these facts:
"It indisputably appears from the evidence that the separation provision rests neither upon prejudice, nor caprice, nor upon any other measureless foundation. Rather the proof is that it declares one of the ways of life in Virginia. Separation of white and colored 'children' in the public schools of Virginia has for generations been a part of the mores of her people. To have separate schools has been a part of her people. To have separate schools has been their use and wont.***"
"So ingrained and wrought in the texture of their life is the principle of separate schools, that the president of the University of Virginia expressed to the Court his judgment that its involuntary elimination would severely lessen the interest of the people of the State in the public schools, lessen the financial support, and so injure both races. . . With the whites comprising more than three-quarters of the entire population of the Commonwealth, the point he makes is a weighty practical factor to be considered in determining whether a reasonable basis has been shown to exist for the continuation of the school segregation."
"In this milieu we cannot say that Virginia's separation of white and colored children in the public schools is without substance in fact or reason. We have found no hurt or harm to either race. This ends our inquiry. It is not for us to adjudge the policy as right or wrong—that, the Commonwealth of Virginia 'shall determine for itself.'" Davis v. County School Board, 103 F. Supp. 337 at 339 (E.D. Va. 1952).

tutions operated by private persons, whether individual, associate or corporate.

Is there anything in the Federal Constitution by which the announced sociological views of the Court may be applied to privately operated schools, so as to permit the Court in subsequent decisions to bring them under its coercion? If so, such will have to be found in the first paragraph of the fourteenth amendment.[8]

The first paragraph of that amendment does the following:

(a) provides that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. It gives constitutional recognition and declaration to the dual citizenship of persons born or naturalized in the United States and subject to the jurisdiction thereof, such persons being declared to be citizens both of the United States and of the state of their residence.

(b) provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. It does not establish any privileges or immunities which appertain to United States citizenship, but declares that those privileges and immunities which otherwise so appertain shall not be abridged by enactment or enforcement of state law.

(c) provides against state deprivation of the life, liberty or property of any person without due process of law.

(d) provides for the equal protection of the laws of the state as to all persons within the jurisdiction of a state, prohibiting the state from denying to them the equal protection of its laws.

"There is in our political system a government of each of the several States, and a government of the United States. Each is distinct from the others, and has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State; but his rights of citizenship under one of these governments will be different from those he has under the other. The government of the United States, although it is within the scope of its powers, supreme and beyond the States, can neither grant nor secure to its citizens rights and privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be

8. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

so granted or secured are left to the exclusive protection of the States."[9]

"The first section of the Fourteenth Amendment . . . is prohibitory in its character, and prohibitory upon the States. . . . It is State action of a particular character that is prohibited. [Private action] is not the subject matter of the Amendment. . . Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect. . ."[10]

"Sovereignty, for the protection of the rights of life, and personal liberty within the respective States, rests alone with the States . . . The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States, except such as the government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States."[11]

"Since the decision of this Court in the Civil Rights cases, the principle has become firmly imbedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the State. The amendment erects no shield against merely private conduct."[12]

The fourteenth amendment therefore cannot be made the vehicle for extension of the personal notions of the present Justices into the field of private education.

The Federal Constitution does not refer to education and does not prescribe that any educational advantages of any kind shall be provided by reason of United States citizenship. The citizen derives from that Constitution no rights or immunities of any kind as to education in respect of his status as a citizen of the United States, nor is the Congress authorized to legislate nor has it undertaken to legislate in that regard.

Such privileges as the citizen has in respect of educational advantages or opportunities are conferred solely by state law and are possessed

9. United States v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588 (1876).
10. Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883).
11. United States v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588 (1876).
12. Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). See also Barrows v. Jackson, 346 U.S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953).

by the citizen in virtue of state citizenship alone. These privileges and advantages are defined by state law, and may be granted, withheld, expanded or contracted at the will of the state. The *Oliver Brown* case applies the equal protection of the laws clause of the fourteenth amendment to such state privileges and advantages when afforded by the state through the medium of schools operated by it.

The case against the District of Columbia schools[13] was decided against those schools upon the basis of the due process of law clause of the fifth amendment[14] which is applicable to the Congress. If the due process clause of the fourteenth amendment, applicable to the states should be construed in like manner, the states, under such a ruling of the Federal Supreme Court, would then be prohibited by the due process of law clause, as well as the equal protection clause, from operating separate schools. This would not extend the *result* of the *Oliver Brown* case. For construction of the words "life, liberty or property," appearing in the due process clause of the fourteenth amendment, so as to embrace educational advantages or privileges, would nevertheless leave this clause prohibitory only on the states.

While in the *Oliver Brown* case the Court departed from the principles elemental to the judicial process, it made no holding contrary to the language of the first paragraph of the fourteenth amendment that the prohibitory provisions of the amendment are directed only against action by the states. The words of Paragraph 1, "No State shall make," "nor shall any State deprive," "nor [shall any State] deny," are beyond the power of the Federal Supreme Court to "construe" away. Privately operated institutions are on solid ground when they select their student personnel on any basis desired.

So far as the Federal Constitution is concerned, therefore, the problem of separate education is solved. The states cannot operate separate schools. The people can operate separate schools. States in which the people desire separate education will eventually have to get out of the business of operating schools; and the people will have to operate their own schools.

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13. Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L.Ed. 591 (1954).

14. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

FROM THE STANDPOINT OF STATE CONSTITUTIONS

The rule is that state constitutional provisions with respect to taxation constitute a limitation on the legislative power and not a grant of power.[15] In the absence of limitation the legislature of a state would have the right to tax generally and for any public purpose. The constitutional situation probably varies from state to state in respect of the taxing power.

The Georgia Constitution expressly authorizes taxation only for specified purposes. Article VIII, section II, paragraph I provides: "The power of taxation over the whole State shall be exercised by the General Assembly for the following purposes only:" (Nine stated purposes follow and paragraphs II and V add two others). Article VII, section IV, paragraph I provides: "The General Assembly shall not have power to delegate to any county the right to levy a tax for any purpose, except:" (Sixteen stated purposes follow).

The operation of mixed schools for white and colored children is not one of the purposes for which the Georgia Constitution authorizes taxes to be levied. Indeed, as has been pointed out by the Attorney General in an official ruling,[16] the above cited provisions of the Georgia Constitution and article VIII thereof forbid taxation to support any public schools except those which provide separate education for the two races. In any state where this situation obtains under the organic law of the state, decrees of federal courts enjoining the maintenance of a separate system will result in the termination of public education in the locality against which the decree is issued. This will be an automatic result consequent upon the decree and the resultant lack of money for the operation of schools consistent with the decree; and will follow just as an automobile stops when it runs out of gasoline.

The people of Georgia have looked ahead and provided for this situation, amending their fundamental law so that the people may be able to educate their children in schools of their choice. The people placed in the education article of the Georgia Constitution at the last general election the following paragraph: "The General Assembly may by law provide for grants of State, County or Municipal funds to citizens of the State for educational purposes, in discharge of all obligation of the State to provide adequate education for its citizens." Article VIIII, section XIII, paragraph I.

15. 84 C.J.S.Taxation § 4. (1954).
16. REPORT OF GEORGIA COMMISSION ON EDUCATION 24 (Dec. 1954).

FROM THE STANDPOINT OF STATE STATUTORY LAWS AND NECESSARY AND PROPER PRIVATE ACTION

Privately operated educational institutions are beyond federal coercion. The quoted amendment of the Georgia Constitution authorizes the General Assembly to provide money with which all the children may attend such schools where available.

Obviously a sufficient number of schools must be provided to house the school population. The equally obvious source of these accommodations is the existing public school plant, which can be made available on lease or by sale to private institutions as they may from time to time hereafter be established and placed in operation by competent, reputable and trustworthy school people. The technique for obtaining betterments and new plants exists in the Georgia State School Building Authority.[17]

Sufficient money and sufficient schools will make education available for all the children of the state. The state should not stop with these provisions for her youth, but should insure that the schools are suitably conducted, that the teachers are well qualified and competent and are paid suitable salaries, and that the courses of instruction conform to minimum recognized standards.[18] Licensing and regulatory laws in this respect should be enacted, and privately operated educational institutions placed under the careful supervision of the state and local school administrative authorities.

As the quality of teachers largely determines the quality of the school, these institutions should not only be required to pay adequate minimum salaries, but none should be licensed which do not provide for their teachers an acceptable pension program. The Teachers Retirement System law[19] should be amended so as to permit teachers instructing in private schools to enter the system and receive its benefits.

17. Ga. Laws 1951, p. 241, GA. CODE ANN. C. 32-14a (1952 Rev.).

18. It is within the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition; that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. Pierce v. Society of Sisters, 268 U.S. 510, 534, 45 S.Ct. 571, 69 L.Ed. 1070, 1077 (1925). The state as parens patriae of immature children, may legislate for their safety, health, morals and general welfare, and under such power may prescribe regulations as to buildings, equipment, financial resources, safety appliances, sanitary conveniences, hours of study and training, and the like, and the minimum scholastic training standards, including qualifications for teachers for private schools. Packer Collegiate Institute v. University of State of N.Y., 273 App. Div. 203, 76 N.Y.S. 2d 499 (1948).

19. Ga. Laws 1943, p. 64, GA. CODE ANN. § 2-5502 (1948 Rev.); GA. CODE ANN. § 32-29 (1952 Rev.).

The difficulties which an educational change-over will present are not now in Georgia so much of law as of organization. The basis of the organization and operation must be entirely private as distinguished from governmental. This means that the schools must be set up just as churches, clubs, and other private organizations are formed and put underway. Civic and community leaders will have to unite in this endeavor.

It must be kept in mind that the state will have withdrawn from the operation of schools. The state will make an educational grant for the benefit of all children of school age, without any distinction of race, under the terms of legislation providing the grant. In the public interest the state will license, supervise and regulate all educational institutions. But these activities mark the outer limits of the state's participation in education. It is the people who must found and operate their children's schools.

Doubtless the present just resentment of the Supreme Court's unnecessary and illegal pronouncement necessitating the change-over will be intensified. The Court will have destroyed in Georgia a publicly operated educational system, which originated with the Georgia Constitution of 1777. It would be well if this could be avoided, but such is not possible under the *Oliver Brown* case. The state must be blind to the fact that two entirely different races live in her midst, and that it is better for both that the children be separately educated. Only the people as individual citizens, says the Federal Court, can observe the obvious. In their corporate capacity as a sovereign state, they are not permitted to see.

In many instances corporate organization and operation of schools will be found desirable. These corporations must be eleemosynary and beyond the suggestion of private profit. In some counties and cities one educational corporation will be organized for the operation of schools for white children and another for the operation of schools for colored children. Elsewhere the leaders of the community may prefer to commit the education of both races to a single educational corporation, and in the larger cities and counties it may well be that a number of corporations will be founded. The local needs in some places may be best met by utilization of the services of unincorporated associations of individuals. Close study of the structure of existing privately operated schools in this and other states will be of benefit in determining the structure most suitable to community requirements.

The extent of organizational difficulties will depend in a substantial measure upon the methods employed for the destruction of

the present system by the federal judicial establishment. The Supreme Court doubtless considered itself astute in announcing its decision against the public schools and withholding decrees pending further argument as to methods to be employed for enforcement. It thought thereby to soften the public mind. In Georgia the result has been to firm the public will to whatever steps are necessary to preserve the social structure.

If a technique should be devised whereby all the public schools throughout the state are simultaneously subjected to federal coercion and a state-wide change-over precipitated, the multiplicity of organizational difficulties simultaneously arising will require the exertion of every effort to prevent an educational lapse. If the accepted judicial process is followed, and individual school districts are individually brought under the power of the federal courts, with simultaneous termination of the present system in only one or a few districts, localization of organizational difficulties will make for smoother change-over. The procedure followed in those districts will serve as patterns elsewhere, and their experiences can be profitably drawn upon in other districts in which the public schools are knocked out in later litigation.

Solution of problems always brings opportunities. Privately organized and operated schools will afford, of necessity, the corresponding advantage of full parent and community participation. A somewhat greater flexibility of curriculum than exists in a state-operated system could be educationally advantageous. Subject to the minimum standards prescribed by the state for all schools, local communities will have freedom in relation to the subjects taught and the emphasis which is placed upon various phases of the school program. Substantial adjustment may be made to local conditions. For example, one community may desire to place emphasis upon instruction in the mechanical arts, another upon agricultural training, and yet another upon the more formal classical subjects; and some communities may desire classes with smaller enrollment than would otherwise obtain in order to afford a considerable amount of individual instruction.

As private institutions, the schools will be free to devote themselves respectively to the education of white children and colored children. Separate education being earnestly desired throughout the state and it being the firm resolve of the people, as formally declared by them at the ballot box, that there shall be no mixed education of white and colored children, the people will see that the schools which they establish for the education of white children are devoted exclusively to such education, and that the schools which they establish for the education of colored children are likewise exclusively devoted to that

purpose. No mixed institutions would be entitled to exemption from taxation.[20] If the General Assembly should desire to enact statutes providing that no educational corporation may conduct schools other than those which are separate for the two races, it may do so, for the state has the authority to prescribe whatever conditions it wishes in respect of activities of corporations which it creates or authorizes to transact business within its territorial limits.[21]

LEGISLATION ON THE FEDERAL LEVEL

The constitutional authority of the Congress to withdraw from the Federal Supreme Court all or any portion of its appellate jurisdiction is a check which must be retained. The existence of this congressional power serves as some kind of balance notwithstanding infrequent use.[22]

During the 83rd Congress and before announcement of the *Oliver Brown* decision, Senate Joint Resolution 44 sought to amend the United States Constitution so as to remove this check. This resolution received little public attention and passed the Senate by the requisite constitutional majority. It was publicized as an amendment providing for retirement of the members of the Court at seventy-five years of age. Section III of the proposed amendment however revised Article III, section II, of the Federal Constitution. Under Article III, section II, the only jurisdiction which the Supreme Court has by virtue of the Constitution and beyond the control of Congress is original, and extends only to "all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party" The appellate jurisdiction, both as to law and fact, is provided by the Constitution to be "with such exceptions and under such regulations as the Congress shall make." The joint resolution proposed to eliminate the power of Congress over this appellate jurisdiction in respect of constitutional questions, providing, "In all cases arising under this

20. Ga. Laws 1945, p. 95, GA. CODE ANN. § 2-5404 (1948 Rev.); Ga. Laws 1946, p. 12, as amended by Ga. Laws 1947, p. 1183, GA. CODE ANN. § 92-201 (1951 Supp.).

21. Berea College v. Kentucky, 211 U.S. 45, 29 S.Ct. 33, 53 L.Ed. 81 (1908).

22. United States v. Moore, 7 U.S. (3 Cranch) 159 at 173, 2 L.Ed. 397 (1805). Durousseau v. United States, 10 U.S. (6 Cranch) 307, at 313, 3 L. Ed. 232 (1810). *Ex parte* Vallandigham, 68 U.S. (1 Wall.) 589, 17 L.Ed. 243 (1864). United States v. Young, 94 U.S. 258 at 259, 24 L.Ed. 258 (1876). *Ex parte* McCardle,, 74 U.S. (7 Wall.) 264, 18 L.Ed. 506 (1868). United States v. Boisdore's Heirs, 49 U.S. (8 Howe.) 112, 12 L.Ed. 1009 (1850). McNulty v. Batty, 51 U.S. 10 How.) 71, 13 L.Ed. 333 (1850). Railroad Co. v. Grant, 98 U.S. 398 at 400, 25 L.Ed 231 (1878). The Frances Wright, 105 U.S. 381 at 386, 26 L.Ed 1100 (1881). The most recent case is De La Rama v. United States, 344 U.S. 386, 390, 73 S.Ct. 381, 97 L.Ed. 422 (1953).

Constitution the Supreme Court shall have appellate jurisdiction, both as to law and fact."

This joint resolution died in the Judiciary Committee of the House of Representatives. Had it passed the Congress and been ratified by the states, the United States Constitution would have ceased to exist as a written instrument. That Constitution, both in law and fact, would in reality have consisted only of that which five members of that Court might thereafter from time to time have declared. Victor Hugo's classic story of the cannon loosed upon the deck of a rolling ship would have been perfect analogy.

Congressman E. L. Forrester's recent bill to provide that the jurisdiction of the federal courts, including the Supreme Court of the United States, shall not extend to interfere with state-operated educational institutions, would solve the problem of separate education as well as the whole problem of federal judicial intrusion into public education. It remains to be seen what success will attend this proposal. Had it been considered by the Congress which adopted the original Judiciary Act it would have been overwhelmingly approved unless the members of that Congress had felt the danger so remote as to be beyond consideration. Far seeing indeed they would have been had they been able to perceive through the mist of time the work of the ingenious minds who labor to destroy what our forbears wrought.