Louisiana Law Review

Volume 15 | Number 1
Survey of 1954 Louisiana Legislation
December 1954

Constitutional Law - Segregation In Public Schools

Huntington Odom

Congress' property power, the Court either failed to take note of the questions so presented, or, by remaining silent, resolved them in the petitioners' favor. In upholding the power of Congress to determine the submerged lands issue the Supreme Court has apparently recognized the essentially political nature of the question. The Court may, however, still be called upon to interpret the Submerged Lands Act since the extent of control granted to the states remains to be determined.[24]

Charles M. Lanier

CONSTITUTIONAL LAW—SEGREGATION IN PUBLIC SCHOOLS

Plaintiffs, Negro children, sought admission to public schools restricted by law[1] to the use of white children in Kansas, South Carolina, Virginia, Delaware, and the District of Columbia. In all of the state cases the plaintiffs alleged that the separate facilities provided for Negroes were unequal and that by being required to use the unequal facilities they were being deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. In the District of Columbia case the plaintiffs claimed that requiring them to use any separate facilities denied them due process of law guaranteed by the Fifth Amendment.

The Federal District Court in Kansas found the facilities to be equal for both Negro and white children and refused to order the Negroes' admission to white schools.[2] The Federal District Court in South Carolina found the facilities to be unequal, and ordered South Carolina to provide equal facilities but did not

24. Sen. J. Res. 145, 83d Cong., 2d Sess. (April 1, 1954), was one attempt to earmark the revenues from such lands for educational purposes. The United States Department of Interior has recently decided to lease the lands beyond the limits stated in the Submerged Lands Act.

1. (a) A Kansas statute permits, but does not require, cities of more than 15,000 population to maintain separate schools for white and Negro students. KAN. GEN. STAT. § 72-1724 (1949). (b) The South Carolina Constitution and statutes require segregation in public schools. S.C. CONST. Art. XI, § 7; S.C. CODE 21-751 (1952). (c) The Virginia Constitution and statutes require segregation in public schools. VA. CONST. § 140; VA. CODE § 22-221 (1950). (d) The Delaware Constitution and statutes require segregation in public schools. DEL. CONST. Art. X, § 2; DEL. CODE § 14-141 (1953). (e) District of Columbia statutes require segregation. 18 STAT., pt. 2, p. 33 (1873).

2. Court relied on the separate but equal doctrine of Plessy v. Ferguson, 163 U.S. 537, 544 (1896), from which it quoted: " 'The object of the [fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color. . . .' " Brown v. Board of Educ., 98 F. Supp. 797, 798 (D. Kan. 1951).

order the admission of the Negroes to the white schools.[3] The Federal District Court in Virginia found that the facilities were unequal but that equal facilities were being established and refused to order that the plaintiffs be admitted to white schools.[4] The Delaware Supreme Court found the facilities to be unequal and ordered that the plaintiffs be admitted to white schools.[5] The Delaware Court refused to stay the injunction pending the creation of equal facilities and questioned the entire "separate but equal" doctrine. In the District of Columbia, the district court dismissed the Negroes' complaint.[6] The United States Supreme Court *held*, "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[7] Segregation enforced in the District of Columbia public schools denies Negroes due process of law.[8] *Brown v. Board of Educ.*; *Briggs v. Elliott*; *Davis v. County School Board*; *Gebhart v. Belton*, 74 Sup. Ct. 686 (1954); *Bolling v. Sharpe*, 74 Sup. Ct. 693 (1954).

In *Plessy v. Ferguson*, decided in 1896,[9] the Court held that a "statute which implies merely a legal distinction between white and colored races . . . has no tendency to destroy the legal equality of the two races,"[10] that the Fourteenth Amendment was not designed to achieve social equality for the Negro, and that segregation was permissible if facilities were equal. In support of its position the Court said, "The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by Courts of states where the political rights of the colored race have been longest and most earnestly enforced."[11]

---

3. In refusing to grant the injunction the district court said: "The members of the judiciary have no more right to read their ideas of sociology into the Constitution than their ideas of economics." Briggs v. Elliott, 98 F. Supp. 529, 537 (E.D.S.C. 1951).

4. Davis v. County School Bd., 103 F. Supp. 337 (E.D. Va. 1952).

5. It should be noted that this is the only one of the present cases in which the lower court granted the relief sought by the plaintiffs. This relief was granted on the basis of inequality of separate facilities and not on the ground that separate facilities were unequal *per se*. Gebhart v. Belton, 91 A.2d 137 (Del. 1952).

6. The case does not appear to have been reported, but see Bolling v. Sharpe, 74 Sup. Ct. 693, 694 (1954).

7. Brown v. Board of Educ., 74 Sup. Ct. 686, 692 (1954).

8. Bolling v. Sharpe, 74 Sup. Ct. 693 (1954).

9. 163 U.S. 537 (1896).

10. *Id.* at 543.

11. *Id.* at 544.

In *Berea College v. Kentucky*,[12] the Court followed the *Plessy* rule and held that a state statute which prohibited the teaching of Negro and white students in the same institution was a valid exercise of the police power. In *Gong Lum v. Rice*, [13] it was held that no rights of a Chinese citizen had been denied by requiring him to attend a Negro school. Referring to the state's power to assign him to a Negro school, the Court said, "The decision is within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment."[14]

In later cases, however, the Court has prohibited racial discrimination in cases involving interstate commerce,[15] ownership and occupancy of real estate,[16] labor union activities,[17] voting privileges,[18] competency of witnesses,[19] regulation of businesses and occupations,[20] and jury selections.[21]

The later cases in the field of higher education have also weakened the "separate but equal" doctrine. In *Missouri* ex rel. *Gaines v. Canada*,[22] decided in 1938, a Negro had been denied admission to the law school of the University of Missouri because of his race. There was no separate law school for Negroes in the state but a state statute authorized the state to pay Negro applicants' tuition at law schools of adjacent states. The Court

12. 211 U.S. 45 (1908).

13. 275 U.S. 78 (1927).

14. *Id.* at 87.

15. Segregation is unlawful if it interferes with interstate commerce. Hall v. DeCuir, 95 U.S. 485 (1877). Equality of separate facilities is increasingly harder to prove. See Mitchell v. United States, 313 U.S. 80 (1941); Henderson v. United States, 339 U.S. 816 (1950).

16. State statute or local ordinance imposing racial restrictions on the purchase of real estate is deprivation of property without due process and a denial of equal protection. Oyama v. California, 332 U.S. 633 (1948); Richmond v. Deans, 281 U.S. 704 (1930); Buchanan v. Warley, 245 U.S. 60 (1917). Judicially enforced private covenants constitute state action and are subject to the limitations of the Fourteenth Amendment. Shelley v. Kraemer, 334 U.S. 1 (1948).

17. A labor union which is the exclusive bargaining agent of a craft or class of employees is precluded from discriminating against Negroes. Graham v. Brotherhood of Locomotive F. & E., 338 U.S. 232 (1949); Tunstall v. Brotherhood of Locomotive F. & E., 323 U.S. 210 (1944); Steele v. Louisville & N.R.R., 323 U.S. 192 (1944).

18. Right to vote guaranteed by Fourteenth Amendment in primary elections, Nixon v. Herndon, 273 U.S. 536 (1927); and municipal elections, Myers v. Anderson, 238 U.S. 368 (1915). *Accord*: Smith v. Allwright, 321 U.S. 649 (1944); United States v. Classic, 313 U.S. 299 (1941).

19. Fong Yue Ting v. United States, 149 U.S. 698 (1893); Blyew v. United States, 13 Wall. 581 (U.S. 1871).

20. Yick Wo v. Hopkins, 118 U.S. 356 (1886).

21. Exclusion of Negroes from grand and petit juries denied Negro defendants in criminal cases of equal protection of the laws, Strauder v. West Virginia, 100 U.S. 303 (1879). *Accord*: Hill v. State of Texas, 316 U.S. 400 (1942); Pierre v. Louisiana, 306 U.S. 354 (1939).

22. 305 U.S. 337 (1938).

held that such a provision was not in compliance with the separate but equal rule because each state is obligated to give the protection of equal laws where its laws operate, within its own borders.

On the authority of the *Gaines* decision, in 1948 Oklahoma University was ordered to admit a Negro applicant to its law school. The Court said that the state must provide a legal education for the Negro if it provides a legal education for any other applicant.[23] In a subsequent case the Court upheld an Oklahoma district court order that Oklahoma University admit a Negro or refuse to admit any applicants until a separate colored law school had been established.[24]

After the *Gaines* decision, Missouri had established a law school for Negroes at Lincoln University. Negroes sought admission to the state university law school, alleging that the facilities of the Negro school were not equal to those offered at the state university law school, but this case never reached the Supreme Court.[25] However, twelve years later, in 1950, the same issue did reach the Court in *Sweatt v. Painter*.[26] The Court closely scrutinized the facilities of both the Texas University Law School and the newly established Negro law school. It considered the reputation and abilities of the faculty, the absence of a law review, the size of the library, the outstanding alumni, and "those qualities which are incapable of objective measurement but which make for greatness in a law school,"[27] and concluded that the facilities in the colored school were greatly inferior. In effect, the Court had said that facilities in a law school could not be separate and yet equal. In *McLaurin v. Oklahoma State Regents*[28] it was held that the Negro plaintiff had been denied equal protection because, after being admitted to the state university's graduate school, he was assigned to a special desk in the classroom, a special seat in the library, and a special table in the cafeteria. In this case the equality of the facilities furnished was not open to question.

These cases reveal the Court's increasing reluctance to follow the "separate but equal" doctrine. In the present decision the

23. Sipuel v. Board of Regents of University of Oklahoma, 332 U.S. 631 (1948).

24. Fisher v. Hurst, 333 U.S. 147 (1948).

25. See Comment, *Recent Cases and Trends Involving the Issue of Racial Discrimination*, 19 Mo. L. REV. 57, 65 (1954).

26. 339 U.S. 629 (1950).

27. *Id.* at 634.

28. 339 U.S. 637 (1950).

Court held that "separate educational facilities are inherently unequal"[20] in public schools.

In the instant case the Court has ordered re-argument on the questions of whether it should formulate specific standards to govern the transition from segregated to non-segregated school systems or whether it should formulate only a few guiding principles and return the cases to the lower courts to fill in the details.[30] It has invited the attorneys-general of the various states affected by the decision to file *amicus curiae* briefs prior to the issuance of a decree.

Decrees Which Might Be Issued

There are several alternatives from which the Court might choose in rendering its decree:

(1) It might order immediate admission of the persons who brought these suits.

(2) It might order their admission within a specified time.

(3) It might order admission within a reasonable time and allow the lower courts to determine what time is "reasonable."

(4) It might remand the cases for further finding of facts and thus postpone the issuance of a final decree.

The alternatives will be discussed in the above order.

(1) *Decree ordering immediate admission.* If such a decree were rendered it would provide, theoretically at least, the most rapid enforcement of the decision. The period of delay in obtaining total integration in other areas would be only so long as it would take the various district courts of other jurisdictions not directly affected by these cases to grant injunctions in similar cases. However, as a practical matter, the public reception of such a decree in the South might cause certain delays. Immediate relief is usually given where the Court finds a denial of constitutional rights. Immediate cessation of the deprivation of equal protection has been ordered in cases involving restrictive covenants in real estate contracts, trade unions, primary elections,[31] and graduate schools.[32] However, the instant cases could be

29. Brown v. Board of Education, 74 Sup. Ct. 686, 692 (1954).

30. For complete text of the questions assigned for re-argument in the Fall Term, see *id.* at 692.

31. See notes 16-18, *supra.*

32. See discussion page 206 *supra.*

distinguished because of the many administrative difficulties which the states must solve in order to eliminate segregation. The reapportionment of teachers and re-assignment of students, the availability of physical facilities in a particular locality, and the standardization of curricula present problems of great complexity.[33] Even if public sentiment in all southern states were in accord with the Court's order, it is doubtful that an immediate transition could be made without disrupting an efficient public school system. Because of the Court's recognition of the "complexity" of the problems involved, an "immediate integration" decree may not be issued if it is shown on re-argument, and in the *amicus curiae* briefs, that the Court may "in the exercise of its equity powers, permit effective gradual adjustment. . . ."[34]

(2) *Decree ordering admission within a specified time.* The Court might render such a decree in one of two ways: (1) It might designate a particular deadline for each case and direct the lower court to administer the decree; or (2) it might set a final deadline for all five cases and allow the lower courts to order compliance at an earlier time if the local situation warranted such a decree. Either of these alternatives would afford the states affected a period of time in which to prepare for the transition; and either would cause less disruption of the school system than would a decree ordering immediate integration.

(3) *Decree ordering admission within a reasonable time.* A decree such as this would seem to be the most desirable because there would be varying periods of adjustment depending on the size of the Negro population, available facilities, and other factors existing in a particular area. This type of decree would also relieve the Court of the task of determining what particular time would be reasonable for the many cases that are certain to follow. It is submitted that the various lower federal courts are in a much better position to determine such matters because of their familiarity with the area involved, and for that reason, it is submitted that a decree of this type would be the most practical and workable. However, because there are no precedents, the Court may be reluctant to delegate such a broad discretionary power.

(4) *Decree remanding the cases to the lower court for a*

33. In requesting the "full assistance" of the states, the Court recognized that "the formulation of decrees in these cases presents problems of considerable complexity." Brown v. Board of Educ., 74 Sup. Ct. 686, 692 (1954).

34. *Id.* at 692, n. 13.

further finding of fact. By delaying the decree in this manner the Court would, in effect, allow the segregated states an extension of time in which to prepare for whatever decree it might issue. Thus, by delaying the decree, the Court would not have to decide whether it has the power to issue a gradual integration decree. It is possible that a delay such as this would encourage the states to take steps toward a gradual integration program rather than have a more rapid program of de-segregation forced upon them. On the other hand, it is quite possible that the affected states might do nothing at all toward integrating the school program until ordered to do so. Undoubtedly, if the states are given such a delay period, there will be efforts to provide Negroes with equal facilities in the hope that the Negroes will, for the most part, practice "voluntary segregation" even after the final decree is issued. It is submitted that this will be workable in most instances, despite the efforts of "advancement" organizations to arouse dissatisfaction with a voluntary segregation program.

Attempts to Continue Segregation

Any decree which the Court might render is likely to cause some legislative or administrative reaction among the states which now enforce segregation. It is probable that the more rapid the transition which the Court imposes, the more extreme will be the countermeasures adopted by the states in an effort to circumvent the decree.

Abolition of the public schools. The most publicized of the proposed countermeasures is the abolition of the public school system and the creation of segregated private schools. There have been two general suggestions as to the most effective method of creating such a system: (1) the establishment of private schools supported by direct grants from the states; and (2) the abolition of the compulsory school attendance law and the abolition of the public schools entirely, and subsidization of education by grants to the pupil rather than to the school. Under either plan, supposedly, the state would be completely divorced from the administration of the schools. During its recent session the Louisiana legislature considered a proposal similar to the latter plan.[35] The proposed bill provided for the sale or lease of public school buildings for private school use and for grants to individual pupils to enable them to attend the private schools. The bill

35. H.B. 1139, 1954 La. Legislature.

further stated that "after selling or the leasing of said school property, the School Board shall have no control over the operation thereof."[36]

Would the maintenance of segregation by either type of private school system constitute a denial of equal protection of the law under the present interpretation of the Fourteenth Amendment? In the restrictive covenant cases, the Court held that private covenants excluding the colored race from a certain area do not violate the Fourteenth Amendment, but a state court's upholding such an agreement is state action and a violation of the Fourteenth Amendment. Since no court action would be necessary to enforce segregation in the private schools, *Shelley v. Kraemer* would present no obstacle.[37]

However, in *Kerr v. Enoch Pratt Free Library*,[38] a federal appellate court held that a private library partially supported by public funds could not validly exclude Negroes from its library school. In *Lawrence v. Hancock*,[39] a federal district court held that exclusion of Negroes from a private swimming pool built by and leased from a city was state action and the action invalid. Under the reasoning of the *Enoch Pratt* case, if direct support is given by a state to a private school, the action of that school is state action subject to the restrictions of the Fourteenth Amendment. Under the reasoning of the *Hancock* case, even if a state makes no financial contribution to a private school, if the school occupies a building built by and leased from the state, the action of the school will be considered state action. However, though the Court denied certiorari in the *Enoch Pratt* case, these are the decisions of lower courts and may not be followed by the Supreme Court.

In the primary election cases, the Court held that the delegation of all powers to conduct primary elections to a private "club" renders the action of the "club" state action, and the exclusion of Negro voters by such "clubs" is a contravention of the Fifteenth Amendment.[40] It was held that where the function of a

36. *Ibid.*

37. "State action . . . refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands." Shelley v. Kraemer, 334 U.S. 1, 20 (1948).

38. 149 F.2d 212 (4th Cir. 1945), *cert. denied*, 326 U.S. 721 (1945).

39. 76 F. Supp. 1004 (S.D. W.Va. 1948).

40. Terry v. Adams, 345 U.S. 461 (1953) (the conducting by the "Jaybird Democratic Association" of a preliminary straw vote was state action); Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948).

political party is to select a party nominee in primary elections, and where a victory in the primary is tantamount to election, then the action of the political party is state action and the designation of private groups or clubs to perform these functions is no less state action. In other words, the Court has held that the delegation of an important governmental function to a private group makes the action of the private group "state action" subject to the restriction of the Fourteenth Amendment. The Court in the present decision said that "education is perhaps the most important function of state and local governments,"[41] and it might hold that the actions of private individuals or groups exercising this important function are subject to the limitations of the Fourteenth Amendment. From the election cases, it seems that the more a private organization owes its existence to the state, and the more important the governmental function it performs, the more likely it is that its actions will be considered state action and thus restricted by the fourteenth Amendment. A system of private schools might therefore be prohibited from practicing segregation unless state support and control is very slight.

If a system is devised in which state control is sufficiently slight to prevent the action of the private schools from being labelled state action, will the public tax moneys used to pay tuition fees to these private schools be serving a "public purpose"? If the state has no control over expenditures by the schools or the students, the Court might declare that these grants are serving no "public benefit."[42] There are substantial precedents for upholding such a program against this attack. The Court has upheld direct payments to parents of children in private schools when the funds were earmarked to defray transportation costs;[43] it has also upheld Louisiana's public grants to private school students for textbooks.[44]

Even if a successful plan for the creation of private segregated schools can be devised, however, it is submitted that such a plan would be the least desirable of all the plans advanced to maintain segregation because of the difficulties involved in the maintenance of a high standard of education without a pub-

41. 74 Sup. Ct. 686, 691 (1954).

42. Schuler v. Board of Education, 370 Ill. 107, 18 N.E.2d 174 (1938). See dissent of Jackson, J., in 5-4 opinion of Everson v. Board of Education, 330 U.S. 1, 18 (1946).

43. Everson v. Board of Education, 330 U.S. 1 (1946).

44. Cochran v. Louisiana State Board of Education, 281 U.S. 370 (1930).

licly supervised and coordinated school system. There would be problems concerning uniform curriculum, adequate plant facilities, placement of teachers, acceptance of diplomas in institutions of higher education, and others, all of which would tend to weaken the whole educational system. The writer suggests that this system should definitely be a "last resort" measure.

Individual school placement for each student. Another proposed countermeasure would have local school superintendents assign each individual student to a particular school. Louisiana has recently enacted a statute of this type[45] which provides for individual assignment and an intricate prolonged method of appeal from any assignment. The dissatisfied parents may request a hearing which must be held within a reasonable time; if the assignment is not altered to their satisfaction, the aggrieved person may appeal to the parish school board and then to the district court. The act requires that the applicant pay the costs of transcribing the record of the hearing held by the parish school board, and permits a delay of more than ninety days before an appeal can reach the court.[46] If the result sought by this statute is attained—the necessity of taking each complaint through the designated chain of command before reaching the court—then the integration of white and colored students will be a very slow, prolonged process in Louisiana.

Of course, the Court might look at the intent of the legislature and invalidate the act as an arbitrary denial of equal protection. The Court declared a similar type of statute invalid in *Davis v. Schnell.*[47] Alabama had passed a constitutional amendment which required all prospective voters to demonstrate to the registrar that they could read and write, and understand and explain any article of the Federal Constitution. The Court held that the statute was invalid because it was "broad" and "vague," even though it contained no discriminatory provisions.[48] If the amendment is used to discriminate the Court will look to the end and disregard the means. From this it would seem that the administration, not the text, of this Louisiana act will determine its constitutionality. It is submitted that this act, if admin-

45. La. Acts 1954, No. 556, LA. R.S. 17:81.1 (Supp. 1954). See page 112 *supra.*

46. *Ibid.*

47. 336 U.S. 933 (1949), *affirming* 81 F. Supp. 872 (S.D. Ala. 1949).

48. "While it is true that there is no mention of race or color in the Boswell Amendment, this does not save it. The Fifteenth Amendment nullifies sophisticated as well as simple-minded modes of discrimination." Davis v. Schnell, 81 F. Supp. 872 (S.D. Ala. 1949), *aff'd*, 336 U.S. 933 (1949).

istered reasonably, will serve at least as a temporary answer to Louisiana's problem of how to institute a system providing for a very gradual integration.

Exercise of the police power. Another countermeasure proposed by Louisiana is a constitutional amendment which does three things: (1) it authorizes the legislature to pass acts which establish requirements for admission to public schools; (2) it authorizes the legislature to submit other constitutional amendments affecting the public education provisions of the Constitution[49] (under the present Constitution, amendments can be submitted only once in two years);[50] (3) it requires that all public elementary and secondary schools be segregated. The amendment states: "This provision is made in the exercise of the state police power to promote and protect public health, morals, better education and the peace and good order in the State, and not because of race."[51]

The validity of the third provision of this proposed amendment will probably be questioned. The Joint Legislative Committee on Segregation[52] stated that "although a racial classification is still maintained, this amendment places segregation itself on a different basis. It requires segregation as a function of the inherent right of the state to protect all of its citizens and provide for their general well being and good order."[53] The present decision outlawed segregation in public schools on the basis of race; will the Court uphold segregation on any other basis? The Court has repeatedly upheld state action designed to maintain the public health, morals, peace, and good order.[54] However, the result of the present decisions is to deny the states the power to segregate students "because of race." This power is, in effect, no longer reserved to the states under the Tenth Amendment as a result of the present decisions. Since the Court has invalidated public school segregation under the Fourteenth Amendment, it is not

49. La. Acts 1954, No. 752, proposing amendment of LA. CONST. Art. XII, § 1. See page 93 *supra.*

50. LA. CONST. Art. XXI, § 1.

51. La. Acts 1954, No. 752, proposing amendment of LA. CONST. Art. XII, § 1.

52. Committee appointed pursuant to House Concurrent Resolution No. 27, 1954 La. Legislature, Sen. W. M. Rainach, Chairman.

53. JOINT LEGISLATIVE COMMITTEE ON SEGREGATION, EXPLANATION OF SEGREGATION BILLS PASSED BY LOUISIANA LEGISLATURE, GENERAL SESSION (1954).

54. Buck v. Bell, 274 U.S. 200 (1927) (sterilization of insane woman upheld); Jacobson v. Massachusetts, 197 U.S. 11 (1905); Reynolds v. United States, 98 U.S. 145 (1878) (statute prohibiting polygamy upheld); People v. Pierson, 176 N.Y. 201 (1903) (statute requiring parents to have sick children treated upheld despite a conflict with religious beliefs).

likely that the Court will sustain it as an exercise of the state's power under the Tenth Amendment.[55]

Another act of the recent Louisiana legislative session puts the segregation provision of the above amendment into effect.[56] The act makes it a misdemeanor to operate a public school where both white and colored children are enrolled,[57] and it forbids the state board of education to provide free school supplies to "mixed" schools. The validity of this act would seem to depend upon the validity of the amendment itself.

Gerrymandering of school districts. The last countermeasure is the re-districting or gerrymandering of school districts. In the gerrymandering cases in the political rights field, the Court has never ordered a lower court to redraw the boundary lines[58] because of the administrative problem of determining the fairness of the new boundaries. The Court might maintain the same hands-off policy that was prevalent in the political rights cases because of the problem of investigating the facts in each case to determine whether the state action is arbitrary. A re-districting plan on a local option basis might be very effective in large urban areas where Negroes and white persons are frequently already separated into fixed districts; however, the appearance of "arbitrary districting" would arise in the fringe areas of the urban centers and throughout the rural areas where Negroes and whites live in close proximity and are often interspersed.[59] Because of the probable ineffectiveness of this plan in rural areas, it is submitted that such a measure is ill-suited for Louisiana.

Possible Implications of the Decisions

What are the implications of these decisions? Will the Court limit its rejection of the "separate but equal" doctrine to the public school system? Or is this merely a stepping stone for

55. *Cf.* Takahashi v. Fish & Game Comm., 334 U.S. 410 (1948), in which the Court disregarded the alleged purpose of a statute forbidding the issuance of a commercial fishing license to aliens ineligible for citizenship.

56. La. Acts 1954, No. 555. The legislature also passed another proposed amendment to the Constitution which allows each school district to vote additional bonds (present limit is 20% of the assessed value of the property; amendment raises maximum to 25%) so that more funds can be made available to equalize the existing separate school facilities. La. Acts 1954, No. 764, proposing amendment of LA. CONST. Art. XIV, § 14(f). See page 95 *supra.*

57. Penalty for violation of this act is a fine of not more than $1000 and/or a jail sentence not to exceed six months.

58. Colegrove v. Green, 328 U.S. 549 (1946).

59. For a complete discussion of this plan and others of similar nature, see PAUL, A REPORT TO THE GOVERNOR OF NORTH CAROLINA (1954).

similar rulings in other areas of community life? The Negro plaintiffs in the present cases relied heavily upon the contention that the maintenance of separate public schools developed in Negro children an "inferiority complex." Is this a point of distinction in regard to cases alleging denial of equal protection to Negro adults? There is strong support for such an argument; however, it is difficult to say that the Court will not extend its views to encompass adults. The only certain conclusion that can be reached is that the "separate but equal" doctrine is still valid in regard to every type of state action not involving the public school system; exactly how long the weakened doctrine will withstand litigation in the future cannot be determined now.

Huntington Odom

CRIMINAL PROCEDURE—INDICTMENT—INTERRUPTION OF PRESCRIPTION BY PRIOR INDICTMENT

In January 1952 defendant was indicted for manslaughter. More than a year later, he was indicted again, this time for simple battery. In the second indictment, the state alleged that the charge was based on the facts forming the basis of "the indictment heretofore found," reciting the title and docket number of the prior indictment. Defendant entered a plea of prescription, which the trial court overruled. The Supreme Court granted writs of mandamus, prohibition and certiorari. *Held*, the indictment for simple battery did not negative prescription and was fatally defective in its failure to state what offense the prior indictment had charged or to show what disposition had been made of the prior indictment. *State v. Dooley*, 223 La. 980; 67 So.2d 558 (1953).

The pertinent provisions of Article 8 of the Code of Criminal Procedure allow the state a period of one year after receiving notice of the commission of a crime to file an indictment. If an indictment or information is filed within that period, prescription is interrupted.[1] Interpreting this provision, the Supreme Court has held that where the state seeks to negative prescription by

1. Article 8 further provides that if an indictment or information is filed, and the state fails to act on this indictment or information for three years in felony cases or two in others, then the district attorney must enter a nolle prosequi. See page 196 *et seq. supra.*