

WHAT'S WRONG WITH BUSING*

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It is my great pleasure to have to answer one of the easiest questions that can be asked of an American citizen today. In the nature of my profession I am often asked to lecture on one topic or the other, anything from the “ethical rigor of melodrama” to the “defect of education in Plato’s *Republic*” to the meaning of “democratic nationalism in the American founding.” In all these cases my hearers are generally uncertain of the truth and I am required to discuss as much of it as I feel able to understand. But “what is wrong with busing?” is something all of you already know only too well.

Racial balance busing is against the fact that the Constitution is color blind. Not only do you and I not require to be persuaded of that, but there is hardly anyone else in the country who doesn’t know it. It is, therefore, a great mystery why wherever we turn our eyes we find our governmental institutions practicing what we know to be wrong. Why is this so?

We must place the issue in historical perspective before we can answer this question. Two issues are involved: one is the value of neighborhood public schools and the other is the matter of integrated education. But it is a mistake to imagine that neighborhood schools are defended only as a means of avoiding integration. Long before racial conflicts wracked America, long before there was any public school system in fact, American founders began to preach the virtues of neighborhood public elementary schools. Before Washington had retired from the presidency, Tench Coxe had written a pamphlet, setting forth the idea of neighborhood schools established and supported by law. He recommended:

a plan for the Education of all classes of youth of the country, not only to make good citizens but to cultivate the true principles of National Equality among a people whose Republican form of government demands a knowledge and adherence to those principles.

The neighborhood school system from the beginning has been on the right side of the question of freedom. Interest in neighborhood schools is based on their educational value and on their value as instruments for forming community attachments.

America’s interest in integrated education, on the other hand, is a specific result of the legacy of slavery and its aftermath. It stems from the desire to eliminate every vestige of the government-sponsored dual school system which sprung up after the abolition of slavery. Integrated education is not a different kind of education than every one always wanted. It is education without regard to trivial distinctions of race. The idea is that the minds and characters of the young are what we have to deal with, not their skin colors.

But something seems to have gone wrong. We hear people insisting that the minds and characters of the young are formed by their skin colors. And that that process needs to be directed by government. Right here in Claremont we find the public schools operated on that theory. The same is true elsewhere in the country. And that is a paradox: while everyone agrees that the Constitution is color blind, some people believe that the government set up under the Constitution must see colors. And nothing we can say or do seems to shake their faith.

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The very fact that the Constitution is color blind is a case in point. That phrase comes out of the most famous dissenting opinion of a Supreme Court judgment in our country's history. It is Justice Harlan's phrase, from his dissent in the case *Plessy v. Ferguson*. That case some four score and four years ago (to recall him whose date of birth today is) authorized the dual school system, under the doctrine of separate but equal.

Separate but equal came under attack almost from the beginning. Justice Harlan attacked it first. Others began slowly to follow in this century. And starting about 1947 the doctrine began to meet storms of criticism. In that same year people began to remember John Marshall Harlan's phrase. Since, his dissent has been cited in at least sixty-four judicial decisions at all levels of the judicial system throughout this country. Twenty-seven of those cases involved public education. The Constitution is color blind, he said, and it has been much repeated since. Still, we have racial balance and other government programs based on race.

That's not the whole story. The 1964 Civil Rights Act (Title IV) declares that "desegregation means the assignment of students to schools without regard to race and shall not mean assignment of students in order to achieve racial balance." But what else are state and local school boards trying to do? The U. S. Supreme Court, very recently, in *Swann v. Mecklenburg*, declared that "the constitutional command to desegregate does not mean that every school in every community must reflect the racial composition of the school system as a whole." Yet, the Claremont School Board has taken just this purpose, this unconstitutional purpose, as its goal. In that same case the courts added that where there was "no history of (state imposed) discrimination, it might well be desirable to assign pupils to schools nearest their homes." And in the famous *Keyes* case, which lay the groundwork for eliminating the *de jure-de facto* segregation distinction, a similar statement is made.

Against this lengthy and clear background we still have state imposed racial school assignments. I could add more. In the very cases that led to California's present concern with desegregation of public schools the state Supreme Court struck down racial balance formulas. In 1972 the voters of this state struck down racial school assignments and this was one of the very few race-related initiatives which has been upheld by the state Supreme Court. Yet, one still hears from every side today that school assignments by race are necessary.

In the court of opinion more than one plea must be heard. Who is it that insists that busing to achieve racial balance—a great evil—is yet somehow right? Why do they believe so? And how are they to be answered?

Defenders of racial balance busing, aka exponents of multi-cultural education, believe that the community in which they live cannot operate on lines of freedom until all citizens have been specifically trained how to deal with one another. For them, freedom is something Americans may enjoy in the future, after their hearts have been set ticking in the right time pattern. Their idea comes from the belief that we are so different in different ethnic groups that only a force as powerful as the state can overcome our tendency to disintegrate and to exploit one another. They believe, therefore, that the power of the state must be used to alter our fundamental perceptions of one another. And this is best done with the young, in the controlled environment of the school. Thus, racial balancing is the specific program they adopt, and that often requires transportation to be effective.

This whole lecture is a response to that argument. But in the narrow sense, too, I can respond. For I believe that, even if their premise were true, the idea that state power used in this way can produce freedom is false. It is rare indeed that people enter into a society, without guaranteeing their freedom, but manage to get it in the end without revolution. If Americans were not to be free until later, they would never be free.

This is the spirit in which I answered one of our local preachers of this modern form of salvation two years ago. This intention to design purity of conscience, armed with the power of government, becomes corrupt. I cannot accept Jefferson's idea that it "makes no difference whether a man believes in one God or twenty." Good and decent citizens—moral and religious—are the backbone of republican life. But arming the state to design purity of conscience is far worse than Jefferson's toleration of radically diverse beliefs. Racial balance busing is just another way of trying to give the state a power to mold men's consciences.

You can see that we have a problem much bigger than the problem of racial balance busing. Racial balance busing is destroying school systems. Racial balance busing, like affirmative action, poisons wells of racial good will that have been built up but slowly over long ages and at great sacrifice. It is all too easy for the victims of racial injustice to blame people of different races for their problems, when these others seem to benefit at the expense of the exploited races. Nothing is more clear than that the innocent children of white Americans are being exploited in every case of unnecessary busing. While it is not true that minorities are profiting from these programs, that does not prevent their reaping the harvest of ill-will and bitterness that they cause. After all, society's managers are claiming to do these things for the sake of the disadvantaged. And presumably one aids the disadvantaged only by removing the "dis" from their "names."

The problem is bigger than racial balance busing and the poisoned race relations it fosters. The problem is the erosion of law-abidingness and respect for constitutional principles. When those who govern refuse to accept, and live by clearly stated and long-developed constitutional principles, is it to be wondered at that everyone else begins to weaken? It is perhaps true that none of the sponsors of Claremont's racial balance busing has ever read Justice Harlan's stirring dissent. Even Judge Paul Egly, who now is ruling the Los Angeles and San Bernardino schools, may never have read it. But I remain convinced that all of them know that the Constitution is color blind. They only refuse to accept it.

It is time to ask why, and I can find no other explanation than their attachment to an ideological fetish which they hold higher than all else, including their responsibility to their constituents. Many things point this way. But I will mention only one argument which, in its paradox, shows where they stand.

They claim that the U. S. Constitution's standard of equal protection of the laws is a minimum standard which the state of California may exceed in the interest of racial justice. Now what does this mean? According to them, racial justice standards are roughly like air pollution standards: California's are stricter than the federal government's. Hold this claim up to the light for a moment and examine it. What is meant by racial justice, and what does it have to do with equal protection of the laws?

They claim that the 14th amendment, a post-civil war amendment, was meant to assure racial justice. That was surely a hoped for result. But how did the authors of that amendment intend to achieve that? It was surely not by making the government the keeper of America's racial treasures, as is being argued today. The 14th amendment assured equal protection of the laws for all U. S. citizens, as *citizens*. On that basis the government can not distinguish one citizen from another.

Now comes the hard part: How can there be higher standards of equal protection for all citizens under all laws? Are Californians somehow more equally under all the laws than all other Americans? Well, the trick is this. The argument takes the 14th amendment not as meant for all citizens, but only for minorities so-called. So, these folk claim to be taking better care of their minorities than the federal government takes care of its minorities! It is just like pollution control.

The odd part of this idea is its origin. It comes right out of the opinion of the majority which decided *Plessy v. Ferguson*. That's right. The court that upheld separate but equal also decided that the 14th amendment was meant only to protect the rights of blacks and not the rights of all citizens. The states' rights argument was formed on a similar basis. Defenders of segregation and states' rights argued that, since the Constitution did not require public schools at all, they were within their rights to exceed minimal federal standards by erecting schools for all races. They also showed they knew how to take care of their minorities.

Modern day states' righters may be on the other side of the segregation and arrange people by race. And Justice Harlan's response applies to them as well as to their forebears. Of judges and legislators, he said:

I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved.

Of administrators and the policies they maintain, he said:

a discrimination requirement "interferes with the personal freedom of the citizen."

Of the habits of the people, he said:

"the white race views itself to be the dominant race in this country ... But in view of the Constitution, in the eye of the [best] law, there is in this country no superior, dominant, ruling class of citizens," whether for good or ill. "Our Constitution is color-blind."

And finally he addressed all who, whether by ideological commitment, habits of upbringing, or whatever, cannot stop themselves thinking, talking, and I guess even dreaming in color:

"What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed [from] the ground that colored citizens are so inferior and degraded" that all their relationships with white citizens must be prescribed by law.

I have refused to discuss the educational consequences of racial balance busing. There are two reasons for that. The first is that the thing itself is wrong. And nothing is more silly than trying to show how something morally wrong in itself ought not to be done because it causes incidental harm. That would be like speaking against murder because it can leave a child fatherless or motherless. That is a serious problem, but it is not the reason that murder is wrong. So, too, busing.

The second reason I have not discussed the educational consequences is because you can read expert testimony on that in your newspaper every day, and because that argument has been strangely unable to move the ideologically committed. Being unable to move those responsible for this crime, I think it crucial to show you how deeply offensive the idea is, and how great a threat the practice is to your freedom and the order and decency of this society.

You will see what I mean when I tell you that, before the Claremont School Board made its outlandish decision, I sent them quite a lot of material which discussed and questioned the psychological and educational validity of their ideas about integrated education. That material included evidence about the harm such programs can cause minority children under certain circumstances—especially the sense that their fate is utterly beyond their own control. The School Board was unmoved. Actually, I doubt that any of them read a single word of it.

So too the reports by Sociologist James Coleman. His earlier work provided much of the push for the present programs. Now that he questions the validity of pushing these programs in their extreme forms, he is no longer regarded as a suitable authority. Or, again, Harvard law professor Derrick Bell. He worked with the NAACP Legal Defense Fund to produce many of

these programs. He no longer believes they work. To his former colleagues he is not a man who is open enough to reconsider his prejudices. He has gone off the deep end. There are many others. The economist Thomas Sowell has made similar arguments for many years now. He is highly respected, but not listened to. The case is the same for all these critics. They show that the results of these balancing programs are not the predicted educational improvement but a serious worsening in many cases. Coupled with the overall educational decline in the country, that ought to be a case for panic.

But this does not panic those whose only idea is to deliver on a vaguely conceived promise of racial equality. For heaven's sake, they even deny that great abstract truth, that all men are *created* equal. What they intend to do is to make everyone come out equal in the end. And sometimes it really seems that they just don't realize how very little they have to say about that. They can't see that, and neither do they understand how far they need to go to reach *their* idea of race equality. Unless they change their minds, they won't be able to stop short of enslaving us all, if they have to, in order to guarantee that every white American can have one minority person close to him every day. Happily, in addition to its being unconstitutional, there aren't enough of us to go around. Sooner or later they *must* recognize *that*.

No, I don't talk about the educational harm of racial balance busing. For I want you to get the idea that you must do something. You must somehow recapture, or steal if necessary, the sense of being free republicans who will not accept to be pushed around by petty tyrants. You must recognize the great investment you have in the decency of this society. And, yes, you must defend racial justice against the present-day descendants of yesterday's bigots. Not for yourself alone but for yourself among a community of equals must you preserve constitutional principles intact. America has come so close to realizing a way of life to be envied by mankind, a way of life in which Adam's descendants master the social and political oppositions of past ages. Americans don't need to live a life of name-calling and categorizing. They have all the tools they need to preserve freedom to all: a sound Constitution and a preponderance of moral, responsible citizens. The first must be remembered and used; the second must be called upon, as I now call upon you.

It is time to respond to the Supreme Court, which ruled in 1938 that minorities needed special protection.¹ Not minorities but the rights of citizens, period, need special protection. Tell them what they do not know: The United States was never meant to be the united ethnic groups of America. It was meant to be and is the united free citizens of America. The way to deal with our ethnic heritages is to treat them like the myths of ancient civilization. For ancient Greeks, those myths set their particular experiences in a universal context. Not all peoples' myths served this function, for not all peoples succeeded in recognizing a universe apart from their particular experiences. A modern man's respect for his ethnic heritage is useful as a means of making universal sense of the particular American experience. But it can become a substitute for the American experience only at the cost of sacrificing the American way of life.

Let those who say, "It's not the bus it's us," rethink their position. It's not just them, it's everybody. Ethnic heritages ought not to be turned into citadels of parochialism. If Americans are to think of themselves as ethnic loyalists, who look upon their various backgrounds not out of mere respect for a simpler but less just past, but as the body and soul of their modern existence, then they shall ever be segregated in fact if not in law. These ethnic heritages would be the source of undying social and political contradictions. Only as free citizens are Americans able to unite in defense of right.

This is a good place for me to declare that when I say racial balance busing is against the

¹ The Carolene Products Company Case footnote.

fact that the Constitution is color blind, I say nothing against the school bus. That should be obvious. But I say it now so that no one may waste time later with trivial questions about people who never objected to school buses before they were used for integration. I agree with the Escondido parents in the Committee for Rides to Education. The school bus can very well be a ticket to education and a brighter future. And it goes without saying that, insofar as I think all state imposed racial designing is wrong, dead wrong, so too do I agree that that wrong can only be removed in some cases by means of transportation. But racial balance busing, the most prevalent form today is wrong, all wrong.

Our situation is a difficult one. We need to know not only what is wrong with busing, but how to do the right thing. We are very unlike Abraham Lincoln. He knew well what was wrong with slavery, and he addressed himself to fellow-citizens whom he took to know the course of right as well as he did. When Harriet Beecher Stowe celebrated the deeds of Lincoln in the moral drama of the last century, she went out of her way to tell the reader that Lincoln had not read *Uncle Tom's Cabin*—a most telling fact. For that book grew out of the belief that the American people needed to find out what was wrong with slavery.

We have had no *Uncle Tom's Cabin* to tell us what is wrong with busing (though, ironically, babes are still being torn from the arms of mothers). And we have had no Lincoln whose trust in our sense of right could guide us. But let us go from here determined to be right and we will erect a memorial to Lincoln's great deed, from which we may rekindle that love of freedom we need to guide our sense of right.

Do not forget: the surest and safest protection for any minority is protection for all citizens. Freedom for all and not for some is still the watchword of American democracy. And the capacity of democratic government, the people's self-government, to deliver on this promise is still the greatest test of American principles. It is unacceptable to try to teach "to the test" by taking away the people's power and coaching them, with the intention of later setting them free. The only real test, the only true test of American principles is the exercise of real authority by the actual raw material of democracy, the free citizens of a republic.