

[1986]

One can say, without much fear of contradiction, that the last thirty years have seen more dramatic and positive change in the matter of racial equality than all of the 178 preceding years since the Declaration of Independence declared that "All men are created equal." One might also add that no other country in history has made similar progress in so short a span of time, especially considering our variegated population, and the generally peaceful way in which it was accomplished, without a bloody revolution.

There was momentary hope in all of those early years in America when Lincoln issued the "Emancipation Proclamation" in 1863 almost a hundred years after the Declaration. Then there were the Thirteenth, Fourteenth, and Fifteenth Amendments to our Constitution, but the Supreme Court soon enough invalidated their civil rights implications. The worst case was Plessy v. Ferguson in 1896 which established in law the dismal principle of "separate but equal," which gave us more than half a century of de jure segregated education from kindergarten to graduate and professional schools throughout the South. In the North, the story was de facto and not much better for blacks.

There were slight stirrings in the 40's when President Roosevelt in 1941 banned discrimination in defense industries. It was only after the war when President Truman eliminated discrimination in the Armed Forces and in federal employment. Jackie Robison became the first professional ball player. Earlier, when Jessie Owens upheld American honor by winning four gold medals in the Berlin Olympics in the presence of Adolph Hitler, President Roosevelt neither met him nor congratulated him on his return to America.

But 1954 was the banner year when the Supreme Court, under Chief Justice Earl Warren, unanimously reversed the "separate but equal" doctrine of its predecessors. *Brown v. Board of Education*, Topeka, Kansas, was the case and the date of the new decision was May 17, 1954.

As John Gardner remarks in his revised *EXCELLENCE* (Norton, 1984) pp. 37-8:

"To understand the tendency of blacks to be profoundly depressed by any loss of momentum in the struggle, one must first understand that the story is characterized by long periods of inaction."

At long last, 1954 was a beginning.

I am always surprised and a bit shocked when I teach as guest lecturer in Father Thomas Blantz's popular "Modern American History" course at Notre Dame each year, covering the thirty years of the civil rights struggle from 1954, to find that these very intelligent young students seem to think I am speaking about another country when I describe the situation blacks faced in America during the fifties. They just do not believe, or find it hard to believe, that until 1964 in America blacks throughout the South could not stop at the drug store for a coke at the counter; could not eat at most restaurants (only black ones); could not stay at most hotels or motels; could not enter restrooms unless marked "colored" and possibly a hundred miles apart; could not go to the theater or to church (unless all black); could not ride anywhere in the bus, except in the back; could not swim at public beaches or live anywhere, but in poor,

dilapidated segregated housing; were limited to menial "black" jobs; could not attend schools or universities, except those for blacks, inferior and much less financed than white public schools; of course, six million Southern blacks could not register or vote so none of them held public office, nor could they sit on juries; and, God help us, could not even be buried anywhere where whites were buried. And all of this was sanctioned by law.

Before the law itself finally stepped in to stop this, came the beginning of the modern Civil Rights Movement. In 1955, a heroine lit the fire. She was a simple black maid named Rosa Parks (I felt greatly honored to meet her in Atlanta years later). After a long day's work, she stepped on her bus and dropped into the front seat, the nearest. The bus driver, astounded, stopped the bus, demanded that she get up and move to the back where she belonged. She just said, "I'm tired and I'm here." The driver would not start the bus and threatened to call the police. Her answer, "You just do that." A young black Baptist minister was incensed at her plight, and the Montgomery bus boycott was born. So was a new charismatic leader. The minister was Martin Luther King.

During the long hot Summer of 1957, the Congress endlessly discussed the first Civil Rights Act since Reconstruction. The emphasis was on voting, but no one would agree on the factual situation and filibustering prolonged any action. Finally, in frustration, the Congress did what it generally does when faced with a situation for which

no one can agree on a solution. It constituted, for two years, a United States Commission on Civil Rights and gave it one simple power, the power of subpoena, so that it could hold hearings and demand the presence of witnesses and evidence. Following the certification of the factual situation regarding "equal protection of the law for all the citizens," the Commission was to advise the Congress and the President and suggest corrective legislation. The President was to appoint six Commissioners, three from each party, who would receive \$25.00 a day for their services (and pay for their own board and keep!)

President Eisenhower seemed to further confound the issue by appointing three Northerners and three Southerners to the Commission. (This turned out to be serendipitous, since it gave our recommendations more credibility.) Also to his credit, Eisenhower appointed from his own sub-Cabinet, a black, Ernest Wilkins. He appointed John Hannah, President of Michigan State University, as Chairman. The other members were John Battle, former Governor of Virginia, Doyle Carleton, former Governor of Florida, Robert Storey, Dean of Southern Methodist Law School, and myself.

We were a mixed bag, but respected each other. We came closer together after our first public hearing on voting in Montgomery, Alabama. Because Wilkins and one of our staff lawyers (from Yale) were black, no decent hotel in Montgomery would register us. Since we would not divide the Commissioners and staff in black and white hotels, we simply applied to stay at the B.O.Q. at Montgomery Air Force Base, since we were, after

all, a federal Commission. They wouldn't have us either, "Because the local community would never understand our housing a mixed group." Our appeal was denied by the Base Commander, the Secretary of the Air Force, and Charles Wilson, the Secretary of Defense, but we finally were admitted by Executive Order of the President of the United States! The year was 1958.

We used the Federal Courtroom of Judge Frank Johnson and promptly issued a subpoena duces tecum to the local judge to present the voter registration forms for the past two years, since they had to indicate why everyone was being denied. One was denied for "error in spilling" (sic). The local judge said he would burn them rather than give them to us. We asked Judge Frank Johnson to lean on him, which he did, so we obtained the records. (Johnson also became, after all the evidence that ensued, one of the toughest, and best Southern Judges on civil rights matters.)

The first two years of the Commission were exciting, exasperating, frustrating, satisfying, and anything but dull. Our last hearing was scheduled on voting in Shreveport, Louisiana, after which we were to take three days to produce the final version of our report to the President and the Congress (the first of more than 100 during the fifteen years I spent on the Commission). We had persuaded the Southerners, no easy task, to also consider education and employment in our report.

When we arrived in Shreveport on a blistering soggy day (staying at the SAC Base there), we were individually served papers by the Federal

Marshal enjoining us from holding the hearing by order of Federal Judge Dawkins, alleging that the Commission and its work was unconstitutional. Again, this was serendipitous because by October we had a positive statement of our constitutionality from the three judge appeals court and the Supreme Court of the United States. It subsequently became the frontispiece in all our subsequent reports!

The Commission was renewed for two years after the President and the Congress received our first report which was practically unanimous and strong. (Another story, but too long to recount here) In subsequent years, we expanded our venue to include totally: voting, education, employment, housing, administration of justice, public accommodation, eventually, sex and age discrimination, too.

Our finest hour came after the assassination of President John Kennedy, when President Lyndon Johnson took as a first order of business the monumental task of pushing the omnibus Civil Rights Act of 1964 through the Congress. Perhaps the President's death created a mood, but when Southerner Lyndon Johnson courageously addressed both Houses of Congress and concluded with the battle cry of the Civil Rights Movement, "We shall overcome," the battle was won. Johnson signed the Civil Rights Act on July 2, 1964, and in one stroke of a pen, apartheid was dead forever in America. The Voting Rights Act followed the next year 1965, and after being filibustered to death in 1967, the Housing Act was finally enacted in 1968. Never again would America be the same; it would now be better.

I remember calling two of our black attorneys in Jackson, Mississippi, the day after the passage of the '64 Act. "What did

you do yesterday?" I asked. "We celebrated." "How?" "Well, we checked out of our cruddy old hotel and checked into the best motel in town, then we went to the best restaurant in town and had a fine dinner. Finally, we went to the best play in town and had front row seats."

"Any trouble" I asked.

"No," they said. "Everyone was very friendly and courteous. Now that we are rid of segregation, the South is going to be a better place for a black to live and work than the North!"

The cost was great. The nation shuddered at the assassination of Medgar Evans, John Kennedy, Robert Kennedy, Martin King, the young registration workers in Philadelphia, Mississippi, and so many others. Using fire hoses and police dogs on innocent people demonstrating for their rights, as Bull Connors did, was not the American way of life and we all knew it, North and South, and, thank God, we eliminated the curse in what is the American tradition, by law. Yes, the country was ready to act fairly and it generally did.

Of course, there were still problems ahead and probably always will be, given the tenacity of racial prejudice, something none of us are born with, but somehow acquire.

After laws comes enforcement and all the problems that rise in the face of enforcement: busing, beyond segregation to integration, white flight to the suburbs, making urban school integration practically impossible, affirmative action and quotas, the growing number of new minorities, like hispanics, millions of whom are here illegally,

women, a new majority-minority, grey power, and new court decisions (like Bakke, the Supreme Court on Memphis firefighters, seniority versus affirmative action -- seniority winning), minority contract rights (N. Y. Court of Appeals v. Mayor Koch), and many analogous moves by the Justice Department (firefighters in New Jersey). This is a never-ending struggle, but one truth is clear: the movement during the past thirty years, while up and down at times, has been substantially up.

A few facts:

In 1964, blacks held few elected positions. Today they hold 5700. Blacks had five Representatives in Congress in 1964, today 21. Hispanics have gone from four to eleven. Blacks are mayors of more than 250 cities, including Los Angeles, Detroit, Chicago, Atlanta, New Orleans, and Washington, D. C. Hispanics are mayors of Denver, Miami, and San Antonio, with a governor in New Mexico. So much for getting the vote. More than ten million blacks and four million Hispanics are registered to vote today. That is systemic change and carries its own promise for future progress.

Ten years after the Brown decision, after innumerable court cases, only 2% of Southern black students attended schools with whites. In 1968, three years after the '64 Civil Rights Act, whose Title VI required the withholding of funds for schools not using "all deliberate speed" to desegregate, 32% of Southern blacks were in schools with whites. Ten years later, in 1978, the percentage was 91%.

I will never forget my dismay on July 4, 1969 when Robert Finch of HEW and John Mitchell of Justice declared, as I read in the Los Angeles Times on that day, that they were abandoning administrative

action to return to court action. Given the success in desegregation from '64 to '69 under administration action (Title VII) and the dismal record from Brown from '54 to '64 by court action, it was like trading in a Cadillac for roller skates. Fortunately, it did not happen and progress continued.

Blacks attending college increased from 4.9% in '64 to 13.5% in '81. Recently about the same proportion of black and white high school graduates attend college. The increased percentages of black enrollments in professional schools, law, medicine, and business, are spectacular, given past history. Again, education is the key to future progress because better education means better jobs, more income, better housing in better neighborhoods with better schools and so the spiral moves upward.

As to jobs, median income for black working couples rose by 50% from 1964 to 1982. The increase for white couples was 17%. Of course, there is still the negative side of unemployment: 15.8% for blacks, 10.5% for Hispanics, and 6.4% for whites. Again, I believe the key to progress here is education. Almost a half million teen-age blacks leave ghetto high schools, each without an education, and move into a highly technological society where their unemployment is 44% compared to 16% for whites.

As both the NCAAP and the Urban League have recently underlined, the key problem here is single parent families which have increased precipitously in recent years, leading to a new phenomenon: the feminization of poverty.

Housing remains a continuing problem, even though blacks living in suburban areas increased from 13.1% in 1964 to 21.2% in 1982. The ghetto must go. No matter how one considers it, the ghetto is bad news on all counts, housing, education, jobs, in a word, a quality of life unworthy of America and, especially, American children, whatever their race or color.

Granting the very real progress of the past thirty years, especially against systemic, institutionalized prejudice, despite the almost miraculous and instantaneous abolition of apartheid in America, one would have to say that we as a nation have a long way to go to realize the full promise of the Declaration of Independence and the Constitution's Bill of Rights, enlarged, but still needing further enlargement. Even so, law has its limits, and as I contemplate the extraordinary legal developments of the last thirty years, especially as compared to all the decades of inaction, I am more and more convinced that future progress will require creative leadership from every segment of American society, beginning, as always, with the President. Presidents always remark how impotent they are in the face of the Congress and the bureaucracy. Yet, as President Teddy Roosevelt said so well, the Presidency is a "bully pulpit." As a priest, I can appreciate the power of preaching. And especially I remember the magic moment when President Lyndon Johnson, in the face of his former colleagues in the Senate and the House, had the vision and courage to say, "We shall overcome." Indeed we shall, if only all of us have the courage to dream and to do, to think of what might be, if equality of opportunity becomes a reality for every American. E pluribus unum --

from so many races and colors, from so many nationalities and religions,
from so many cultures and classes, we derive and unleash the best to
form a most unusual nation that is talented and strong and beautiful
because from such great diversity, even despite of it, we incorporate
the best of all and we are one nation, under God, with liberty and
justice for all.

(Rev.) Theodore M. Hesburgh, C.S.C.
President, University of Notre Dame

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THE END OF APARTHEID IN AMERICA

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THE GEORGE WASHINGTON LAW REVIEW
Volume 54, Numbers 2 & 3, January & March 1986
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The End of Apartheid in America

Rev. Theodore M. Hesburgh, C.S.C.*

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January & March 1986 Vol. 54 Nos. 2 & 3

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