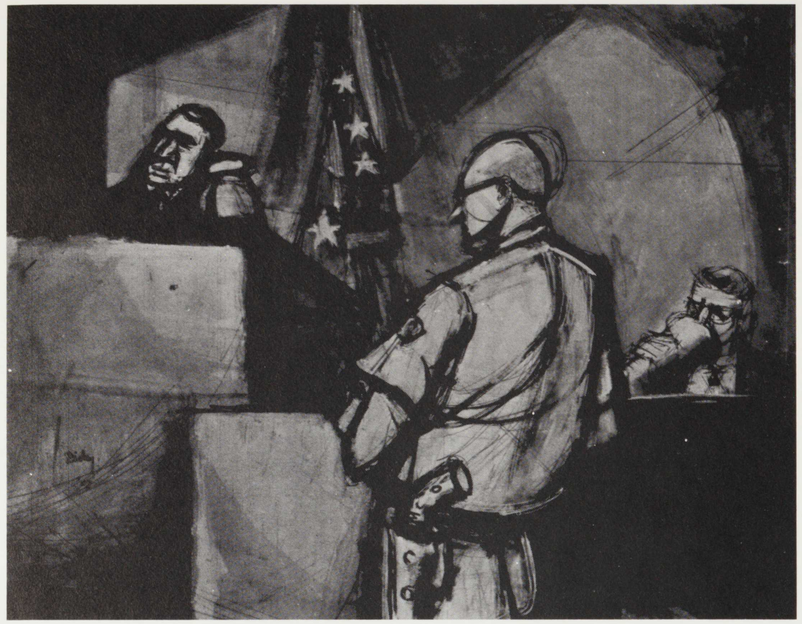

RACISM as justice

by

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Racism and reform are not mutually exclusive. In the American situation, racism and reform are intertwined in an extremely complicated and important dialectical way. The 1954 decision of the Supreme Court in the school desegregation cases has aspects of both. *Brown v. Board of Education,* 347 U. S. 483 (1954), constitutes a major revision or reform of American jurisprudence on questions of race. *Brown* modernized the racist idelogy of white supremacy. Under the guise of integration, a legal basis was created for the relaxation and adjustment of racist practices with respect to public education, transportation, parks and playgrounds, and hotels and restaurants.

In the post-World War II era, continued strict observance of the grossest forms of racism in places of general public intercourse had become inimical to America's internal security as well as its hegemony as the world's leading and strongest imperialist power. *Brown* was a judicial attempt to deal with the apparent contradictions and conflicts between the much touted melting pot theory and the actuality of enforced racial separation, but without disturbing the basic white supremacy ideology, which holds sway over the Nation's institutions.

To understand the relationship between racism and reform and appreciate the import of present trends, it is necessary to consider and analyze very closely significant old and new decisions of the Supreme Court relating to the human and civil rights of Black people. The portent is one of extreme intensifications of social conflict between the most conscious and oppressed elements of the Black-masses and the most reactionary elements of the white ruling class.

I shall omit any discussion of the decision of the Supreme Court on the foreign slave trade, interstate commerce in slaves, and fugitive slave laws and begin with the *Dred Scott* Case, 19 Howard 393.

Whether freed men or slaves, Dred Scott held that Blacks were not a part of the people of the United States. Chief Justice Taney wrote, "Neither that class of persons who had been imported as slaves nor their descendants, whether they became free or not, were a part of the people of the United States," and Blacks "therefore can claim none of the rights and privileges which the Constitution provides for and secures to citizens of the United States." The Dred Scott decision made the United States the first nation in modern history to deprive persons born on its soil of their birth rights.

Dred Scott created a duality of citizenship based on race, the vestiges of which remain today. If America is racially polarized, the Supreme Court has played no small role in that polarization.

Following the Civil War, the Constitution of the United States was amended to add the Thirteenth Amendment to abolish slavery; the Fourteenth Amendment to overrule the Dred Scott decision, and the Fifteenth Amendment to secure Black political power. The egalitarian gains of the Civil War Amendments were shortlived. The proverbial ink had hardly dried upon the infamous Hayes-Tilden Compromise in 1876, when the Supreme Court began to systematically strip Blacks of their hard-won rights.

Hall v. DeCuir, 95 U. S. 485, decided in 1877, was the first ominous sign of a return to the Dred Scott formula. *Hall* concerned the validity of an 1869 Louisiana statute granting power to common carriers to make rules and regulations regarding passenger service within the State, "provided said rules made no discrimination on account of race or color." Mrs. DeCuir, a Black woman, tried to buy a ticket for first class passage on an intrastate boat operating between New Orleans and other Louisiana cities. She was refused first-class accommodations. However, Mrs. DeCuir was able to buy a second-class ticket, but took possession of a first-class cabin set aside for whites. She was then forcibly removed from the white cabin; for that action, she sued for money damages. A Louisiana jury awarded her damages in the sum of $1,000.00, and the state courts upheld the verdict. But, on appeal to the United States Supreme Court, the verdict was overturned on the grounds that the law was a regulation of interstate commerce. The Court said, "While (the statute) purports only to control the carrier when engaged within the state, it must necessarily influence its conduct to some extent. . .throughout his voyage." The court continued, "A passenger in a cabin set apart for the use of whites without the state must, when the boat comes within, share the acaccommodations. . .with colored passengers." The Court added, "If the public good requires such legislation it must come from Congress and not from the States." This was either ignorance, sophistry, or both. As a matter of fact, such legislation had already come from the Congress. The 1875 Civil Rights Act forbids discrimination by public carriers. Therefore, it is reasonable to conclude that the Court used this ploy solely to mask its real purpose of emasculating state legislation favorable to Blacks.

In the area of public accommodations, the best post-Reconstruction opportunity presented to the Supreme Court to restore the slave system occurred in the Civil Rights Cases, 109 U. S. 3 (1883). Those cases involved the Civil Rights Act of 1866 which outlawed acts of discrimination or segregation in places of public accommodation, such as inns, restaurants, and lodges. The Civil Rights Act of 1866 was declared unconstitutional, because the Fourteenth Amendment did not authorize Congress to prohibit acts of racial discrimination by the general white Citizenry.

The next case involving accommodations to reach the Supreme Court was *L. N. O. & T. Ry. v. Mississippi,* 133 U. S. 587, in 1888. The Court took an opposite tack from that which it had taken in *Hall v. Decuir.* Mississippi enacted a law requiring railroads operating only within the state to maintain separate accommodations for white and Black passengers and to separate such passengers by race. Even though the legal situation was exactly the same as that presented in *Hall v. DeCuir* as far as interstate commerce was concerned, the Supreme Court, nevertheless, upheld the validity of the Mississippi statute on the grounds that it was narrowly limited to intrastate commerce. The restriction which Mississippi had imposed upon personal liberty was totally irrelevant. The Court said, "All that we consider is whether the State has power to require . . . .separate accommodations of the two races." And, of course, the State did have such power. This decision meant that a state could use the full panoply of its powers to force whites to discriminate racially. It also meant that a state could use the full fury of its powers to force hapless Blacks to suffer such discriminations without redress.

The stage was now set for what was an inexorable development, *Plessy v. Ferguson,* 163 U. S. 537 (1896). By the time *Plessy* reached the Court, state and federal laws which sought to protect Black rights had been emasculated. Blacks had become pinioned in the judicial systems of resurgent and un-Reconstructed state regimes.

Plessy involved a statute of the State of Louisiana which required Blacks and whites to be transported in separate but equal railroad cars. On occasions when Blacks and whites were to be transported in the same car, the statute provided that a partition be drawn between the two races. Mr. Plessy, who was seven-eighths white and one-eighth African blood with no discernible trace of African ancestry, decided that he would test this statute. In 1892, he bought a ticket from New Orleans to a place within the State of Louisiana. He attempted to ride in the car reserved for whites. The conductor promptly ejected him. Plessy sued out a writ of prohibition in the Supreme Court of Louisiana against John L. Ferguson, the Judge before whom he would be tried without a right of appeal. Mr. Plessy claimed that the Louisiana statute violated both the Thirteenth and Fourteenth Amendments. The Supreme Court upheld the validity of this statute and sanctioned separate but equal. More about Plessy later on.

At this juncture, I will skip over the developments from 1900 to 1938. This was a period of very little progress. Of course, there were occasional judicial victories, but none went so far as to even bend the yoke of bondage that had been fastened upon Blacks during the post-Reconstruction epoch.

Separate but equal begain to give away to a new racism in 1938 in *Missouri Ex Rel Gaines v. Canada,* 305 U. S. 337. That case involved the question of whether or not the State of Missouri could satisfy the separate but equal doctrine by providing legal education for its Black residents in adjoining states. The Court held that Missouri could not satisfy the doctrine by that means. It reasoned, "The white resident is afforded legal education within the state; the Negro resident having the same qualification is refused it there and must go outside the state to obtain it." The Court went further and held that Gaines was "entitled to be admitted to the law school of the state university in the absence of other and proper provisions for his legal training within the state."

The issue next arose in Oklahoma in 1948. Oklahoma, like Missouri, had no law school for