

BOOK REVIEWS

THE BUFFALO CREEK DISASTER. By Gerald M. Stern. New York: Random House. 1976. Pp. x, 274. \$8.95.

THE WATCHES OF THE NIGHT. By Harry M. Caudill. Boston: Little, Brown and Company. 1976. Pp. 275. \$8.95.

For a time quiet returned to the mutilated ridges . . . Some wild things ventured along the forsaken flat and an occasional bird flew down to investigate the manmade desolation. What they saw was convincing evidence that man, the greatest geologic cataclysm since the ice sheets, had vastly hastened the erosive processes that are relentlessly leveling the Appalachians.

The Watches of the Night, p. 108.

These are two histories of coal, and man's relationship through it to other men and the earth. The scene is Appalachia and the time is almost the present. However, neither Gerald Stern nor Harry Caudill is addressing a plea to our collective conscience to save the children of America's own distressed and poverty-stricken enclaves. Rather, we have two studies, diametrically opposed in construction, relentlessly driving to the same conclusion—when it comes to the destruction of the land for the sake of profits, the concomitant destruction of the people who live by it (and produce those very profits) is benignly ignored, where not indirectly plotted.

Harry Caudill is a lawyer who lives in and writes about the Cumberland Plateau of eastern Kentucky. This area constitutes the heartland of America's Appalachian coal production—"a Persian Gulf of coal in a coal-hungry world." He has written before of the travails of his neighbors, but in this book he reaches new anger and urgent admonitions. Caudill is first and foremost concerned with allowing us to view the complexity of the tragedy of those whose lives are engaged in "tearing" coal from the earth. Accordingly, his tone is balanced, his facts complete. He notes the agencies and individuals who have worked to help the miners, which is tantamount to cataloging records of futilities. Yet, he writes with a feeling not of scorn but of skepticism, careful to point out the small triumphs that may have helped a pitifully small number of workers in some villages along hidden mountain creeks buried in the hills. There is no need for irony in his tone, for the irony of the entire situation is omnipresent: in an area that is one of the world's richest in terms of buried natural resources and scenic beauty live the most downtrodden white people in the United States.

There are further ironies and outrages here, and Caudill's techniques of elucidation are effective, if uneven. He reviews his region's history with a look at the last fifteen years, focusing on the changes that came during the sixties and the beginning of the seventies. First, though, he directs our attention back

to ourselves, and our collective memory of the time we discovered Appalachia. The entrance of John Kennedy into the White House was the beginning of a new awareness of the people of that area. Kennedy's concern, impelled by a debt he felt he owed to the people of West Virginia, was expressed in a desire to learn about, and thereby educate America about the poverty of the miners. The result—inevitably—was media discovery. Caudill bemusedly relates the outpourings that reached the hills: so many tons of used clothing that the National Guard had to be called out to manage the flow; 12,000 pairs of shoes to a single small area. The next stage becomes unavoidable: the networks compete to find as yet undiscovered, unsaved villages, with ample supplies of wretched locals and unbearable conditions to stir the hearts of supping Americans. But these are precisely our collective memories, and once reconstructed for us by Caudill in his ironic retrospective, there is no lingering. In such lingering is both futility and distraction, as the reality is bared. The futility rests in the contemplation of "might have beens," which better belong only in an abstract realm of speculation. Here there is the futility of lost potential in terms of education and social regeneration. But Caudill points out that the chief culprits were the victims themselves—conservative people with equally conservative school boards, suspicious of out-of-staters eager to teach topics of "enrichment," such as literature and art. There was no political leverage to be gained by hiring such personnel, and no real desire by the potential beneficiaries to be so taught. Such practical politics also succeeded in ousting the outside helpers who were already in the villages under the auspices of VISTA.

There is a more important reason, however, for not lingering and concentrating our attention on the lost opportunities. To do so would distract attention from the conscious depredations being worked on these people in the name of coal production. Here Caudill is no longer bemused. Yet his tone remains so controlled as at times to be almost invisible—the facts speak for themselves. As America's lust for electricity grew, so did its need for coal. Simultaneously, new techniques developed which could satisfy this lust, while preserving any post-climactic problems for the unseen miners. The real embarrassment of riches was reserved for the Kentucky hills, as strip-mined ridges collapsed into black water lakes, and auger bits pulled out coal and coated men's lungs with silicone. These new techniques created another obvious advantage for the coal-owning employers—employment on their terms. As unemployed miners sought to re-enter a market with a substantially lower need for manpower, they could be made to do so at the expense of union membership. As a result, miners were denied even the minimal union benefits provided to alleviate some of the misery of their retirement years. This speaks, of course, of those miners lucky enough to make it to retirement. Caudill points out that according to European standards, coal mining in Kentucky is savage barbarism. The death rate in Kentucky mines in 1971 was 22 times the rate in Holland—*of twenty-one years ago*—before technological improvements! And it is four times the rate for the rest of the United States.

Caudill's approach is all-encompassing. There is no element of coal-mining that escapes his scrutiny, even if for one brief paragraph. And his knowledge is first-hand, a camera's eye observing his neighbors' rise and fall as the world decides it likes petroleum more than dirty coal (and as it decides the opposite in recent years). His organization is at times breathtaking. Witness his long

narration of the travails of one mining opportunist who misjudged the world's predilections and watched the business he started with \$8000 down and had built to the point where it earned that much a day collapse overnight as coal hoppers stood full and unwanted at railroad sidings. When his bankruptcy is settled, Caudill narrates, the court allows him to keep one Mack truck, so he can continue to support himself; but Caudill promptly explains how Mack trucks have symbolically and concretely contributed to the destruction of the lives of the Plateau people. This chapter, incidentally, provides us with a small example of the failure of law in this environment: fully loaded Mack trucks weighing over 50 tons, carting away the area's riches for the enjoyment and profits of absentees, grinding their way through the simple asphalt roads designed to link village with village and farmer with marketplace. As coal is taken out, bridges crumble, roadways return to mudholes, and state police give out tickets to out-of-state trucks bearing produce. Isolation returns to mountain villages and people, and the law remains a tool in the hands of those who rend the earth.

Caudill sees all, and reports the tragedies. He sees the perniciousness of welfare, as it reduces working men to "total disabilities" who are so classified merely because they think they are such, and end up on the dole and not minding it. Even more threatening (though less pervasive) is the influx of drugs, pushed by the white-jacketed doctors being paid off by the federal Medicare program, designed to relieve the anxieties that afflict those who once lived in villages and raised their own food and are now living in trailer camps, lining up for the dole and deadening their minds with television. All this Caudill sees, and his prognosis is not good.

The Watches of the Night is a warning, indeed, a jeremiad. Caudill tells us what had been done to the coal mining people and land of eastern Kentucky. He sees a solution for their ongoing crisis, but a solution whose proportions are ghastly to consider, for it involves the extrapolation of his experience to all of America. Caudill's gaze rests on the country, and he sees the myopia and scorn that is destroying Appalachia rampant throughout. Worse than the opportunities—to better the miners' lives and their work, to increase their happiness and desire to remain in a beautiful homeland, to keep the land scenic and productive of more than its entrails—worse than these are the catastrophes ahead. In an apocalyptic vision Caudill foresees the collapse of the west coast when water resources run out. With the dislocations and miseries that result from this abandonment of the land west of the Rockies will come the new hope of Appalachia, as men return in search of the rich soil and natural possibilities of this depredated region. Only then will a new kind of order in keeping with the natural priorities emerge. Caudill's warning is dire, his insights are frightening—and yet one hopes that a catastrophe theory of history will not be the saviour of his neighbors, for what will the Harry Caudill of the San Joaquin Valley write?

Perhaps it will be what a saviour of the Buffalo Creek Valley wrote. But this is too harsh a start for Gerald Stern, lawyer and author of *The Buffalo Creek Disaster*, who is candid enough to reveal the shortcomings of his experience and knowledge. Stern is precisely the kind of outsider by whom Caudill was so much bemused, at first. Stern senses this, and writes of his paranoia; yet he need feel no shyness, for he brought a modicum of beneficial change.

Sixteen small communities along a seventeen mile stretch of Buffalo Creek in West Virginia were wiped out by the Pittston Coal Company on February 26, 1972. On that day three dams (coal refuse piles thrown across Buffalo Creek to a height of 60 feet) collapsed, bringing black water, sludge, and mud crashing through the homes of hundreds of families in a tidal wave of devastation. Stern's story is one of legal reckoning, showing how Pittston was handed a setback to its policy of Appalachian arrogance. Given the scope of Caudill's history of the bringing low of a whole region and its people, however, Stern's story loses some of its impact. The background facts spell this out: Stern concedes that he is an outsider; his law firm, Arnold & Porter of Washington, D.C., might be accused of less than constant concern with social issues; the people of the region were as passive in Stern's hands as they were in Pittston's, only this time the outsider was benevolent, aiming to help them out in their struggle with their daily absentee enemy.

Representing more than 600 plaintiffs from over 4000 survivors, Stern demanded \$64 million from Pittston. That he settled for \$13.5 million should not be seen as a failure—and this seems to be one of the two points of this book. Stern's narration is along the lines of a "how-to" book. He provides us with the legally relevant facts and proceeds to illustrate what is involved in a big-time lawsuit involving high claims, high power law firms, and the intricacies of disaster litigation. Clearly, he knows his law and trial practice, and these details provide a most fascinating "read" for the lawyer. There is another aspect to this book—the importance of these individual plaintiffs to Stern and his personal involvement in their sorrows. One would have liked more on this in the book, for as the legal book described above it has the flaw of impotence at the critical moment when facing a mass market—there is no trial, no courtroom drama, no ticking of the clock as the jury reviews its neighbors' loss. Instead we have the peculiarly narrow tension of the depositions, the nervousness of Stern as he waits for a preliminary ruling and reads messages into each of the judge's words, and finally the joy of the attorney as he brings Pittston to settlement, a joy we share with a good degree of separation, hoping that Stern's report of the general satisfaction in Buffalo Creek has penetrated beyond superficialities.

Reading this book in isolation would be a much more satisfying experience. We could then focus in on Stern's detailed description of the legal processes involved in prosecuting such a suit. His explanations are good, never condescending and always relevant. Moreover, we are made privy to the processes he uses to flesh out his particular theory of recovery, one based on the concept of "psychic impairment," or survivor's syndrome. This concept is at the center of his book when discussing the actual experiences and claims of the victims, for it was both a controversial and a substantial element of the total claim. Awards were sought for people who were miles away from Buffalo Creek at the time of the disaster, yet who were most grievously damaged by the loss of family, or property, or neighborhood, in sum, by the loss of their whole private world. For this profound kind of loss, recompense was sought and gained.

Yet at this point one almost regrets learning what Caudill has taught us, or wishes that Stern himself were more familiar with the area itself. There are five elements to the survivor's syndrome, two directly related to death in such cir-

cumstances, but three that are more general. These latter Stern calls psychic numbing, impaired human relationships, and search for significance. They are interesting here because they describe precisely the disabilities related by Caudill that afflict people who have never faced a single catastrophe like Buffalo Creek's flood, but simply live their lives in the ongoing destruction of the coal mines of Kentucky. In short, these people are day-to-day survivors and victims, yet there is no one paying anything for their tragedy, their sorrow, their psychic impairment. As long as coal is king in those hills, displacing normal notions of right and wrong and the power of the law to strike the proper balance, then these "survivors" will remain a new class in American society and jurisprudence—crimeless victims.

Stern's triumph is real. The people of Buffalo Creek succeeded in forcing Pittston to drop its horrid mask of superficial concern and simultaneous exculpation by blaming nature and the custom of the mining companies, two claims proved untrue by Stern. Pittston's total lack of concern for the people's safety and well-being, much like the attitude of the colonial exploiter, was bared, and the company was made to pay its wages of sin. But Stern can tell us no more. His lesson is simple—when those without muscle are fortunate enough to hire themselves a lot of good muscle, their tragedies may be lightened. But what of those never lucky enough to have that single media-capturing disaster that will bring them that muscle? What of those villages and families not destroyed in an hour, but in the course of two generations, by the same wrongdoer, for the same reasons? Their lives will persist in the tedium of tearing the earth of its own resources so that those far away will be rich or warm. Caudill summarizes the Cumberland Plateau this way:

Its natural resources were squandered and its people were victimized and exploited in a manner that might have reddened the cheek of a Genghis Khan. It was done in the name of capitalism and free enterprise though, in truth, only the profits were capitalized; the losses were socialized. . . .

And the losses have not yet even been surmised. And when they are, will all the Pittstons be made to settle and pay their fair share? Such questions and thoughts haunt a reader of *The Buffalo Creek Disaster* and *The Watches of the Night*. And that is as it should be, for the triumphs are brief in this fight against King Coal, and the losses keep mounting just in the surviving.

J.D.F.

DISASTER BY DECREE: THE SUPREME COURT DECISIONS ON RACE AND THE SCHOOLS. By Lino A. Graglia. Ithaca and London: Cornell University Press. 1976. Pp. xi, 283. \$11.50

Compulsory integration through busing represents the twentieth century version of Reconstruction. Critics have attacked busing policy for promoting urban decay, racial polarization, school strife, flight of whites *en masse* from the cities and retarding the evolution toward racial equality in the United States, while failing to further progress in black education. Compulsory integration is alleged to have perverted both the limited purposes of the 1964 Civil Rights Act and the ultimate goals of the civil rights movement. It is opposed by

many black leaders and organizations and by a majority of Americans of all races.

Why does forced busing exist to plague America in this decade? Its causes as well as its effects are carefully examined by Professor Lino A. Graglia, formerly with the Department of Justice and now a professor at the University of Texas School of Law, in his study of the judicial formulation of school desegregation policy over the past two decades. Graglia traces the development of compulsory integration through analysis of key Supreme Court decisions from *Brown v. Board of Education*¹ to *Milliken v. Bradley*² and finds that it is the nurtured, somewhat illegitimate, child of the High Court. The author presents a thoughtful and well-researched critique not only of busing as a means for advancing black academic performance and racial balance in school systems, but also of the Supreme Court as an agency for the furtherance of social change.

Graglia's basic premise, reiterated throughout the work, is that the prohibition of state-approved segregation in public schools has improperly and unwisely been translated into judicially-mandated integration. While *Brown* merely decreed that assignment of children by race to segregated schools was a violation of the equal protection clause of the fourteenth amendment, by the turn of this decade the Supreme Court was, at least implicitly, compelling the affirmative use of discrimination by local governments to increase racial mixing. Graglia strives to demonstrate how an activist Court, through sophistry and self-serving interpretation of previous decisions, manipulated the *Brown* holding in order to implement its conception of proper school assignment policy without having adequately to explain it. Thus, he concludes, the Court, in a frightening display of power, bypassed the elected branches of government and enforced its own desegregation plan.

The study commences with a dissection of the unanimous *Brown* opinion. As with most of the Supreme Court cases Graglia scrutinizes in his book, the author takes pains to reveal the gap between the Court's rhetoric and its actual decision. *Brown* shook the nation by declaring unconstitutional those laws which permitted assignment of students by race. The Court apparently reversed its long-standing ruling in *Plessy v. Ferguson*³ that public racial segregation *per se* did not offend the equal protection clause. Yet the Court, in order to maintain a semblance of continuity, did not expressly overrule the *Plessy* holding, but instead attempted to distinguish it on the ground that *Plessy* did not involve education.

The manifest justification for the prohibition of discrimination was that segregation has an adverse effect on black students, by inevitably creating a feeling of inferiority that affects "their hearts and minds in a way unlikely ever to be undone." Over the years, many commentators have attacked both the validity of the psychological evidence used by the Court and the fact that such a premise was relied on to vindicate the constitutional rights of blacks. Graglia agrees that the social science rationale was, and still is, largely unsupportable and argues further that it was not the true reason for the decision. Rather, laws

1. 347 U.S. 483 (1954).

2. 418 U.S. 717 (1974).

3. 163 U.S. 537 (1896).

promoting segregation needed to be eliminated because "separate but equal" facilities were not attainable due to economic and geographic factors. Indeed, if the states with discriminatory laws had managed to provide objectively equal educational opportunities for both races, the Court would have had a dubious motive for invoking the fourteenth amendment and perhaps would have had to base its decision on the issue of freedom of association or on "badges or incidents" of slavery reasoning.

With *Brown* demystified, Graglia proceeds to unfold the ensuing tragedy. A decade of inaction and authorized delay by the Court followed *Brown II*,⁴ the implementation decision made upon reargument, which in turn was followed by a decade of furious compensating activity. Enforcement of the *Brown* ruling was left to the lower federal courts. Ambiguity arose as to the actual import of the *Brown* decision, with consequent misinterpretation, which Graglia surmises was fostered by the Court's incongruous course of action.

Desegregation, obviously, was not going to happen immediately everywhere as a result of *Brown*. In the South, "pupil placement laws," which compelled assignment of students on an individual basis, ostensibly utilized only nonracial factors; but, in fact, such laws were designed to avoid compliance with the *Brown* prohibition. When the Supreme Court awoke in the mid-1960's from its slumber, with a vigor renewed by the arrogant survival of segregation, its reaction was strong. Not only would the Court not tolerate further delays in conforming with *Brown*, however valid the reason for noncompliance, but it swung the pendulum in the direction of optimum racial mixture in every school system.

Graglia suggests that a sign of the determination of the Supreme Court was its defiance of Congress over the directives of the 1964 Civil Rights Act. Despite the legislative history of the Act, which clearly indicated that only a proscription of racial discrimination was acceptable to a majority of Congress, and the carefully worded definition of "desegregation," limiting it to nonracial assignment, "the Act became the essential means by which the prohibition of school segregation was converted to a requirement of school integration." The courts and the Department of Health, Education and Welfare's Office of Education, with the acquiescence of the Supreme Court, in Graglia's analysis, rewrote the Civil Rights Act, raising integration to the level of a constitutional requirement which could not be repealed by Congress.

Graglia considers *Brown* "less a traditional law suit than a call for a social revolution." The "second revolution" in the area of desegregation of the schools came in 1968 in *Green v. County School Board*,⁵ in which the Supreme Court invalidated widely used "freedom of choice" laws, which had allowed both black and white children to attend nearby schools rather than compel their attendance, for purposes of integration, at more distant schools. Those assignment laws were not declared unconstitutional *per se*; rather, they were viewed as perpetuating a separatist "dual system" and ordered replaced by affirmative government policy designed to create a "unitary nonracial system of public education," meaning, in effect, a system with a majority white population in each school.

4. 349 U.S. 294 (1955).

5. 391 U.S. 430 (1968).

Green and related decisions were revolutionary because the Court's emphasis shifted from what has been termed by one commentator, "purification of the decisional process" to "achievement of a certain result."⁶ Instead of preserving the means-oriented, passive approach which would bar any measures utilizing racial discrimination, whatever their purpose, the Court decided to permit the use of discrimination as a remedy for unconstitutional segregation. Graglia stresses that the Court never admitted that it was ordering integration for its own sake, claiming to advocate it only as a measure for countering delay in eradicating segregation. Unfortunately, in its desire to eliminate "dual systems," the Court lost sight of the difficulties and consequences of compelling integration solely to eliminate procrastination. Graglia indicates numerous factors which were ignored or paid lip service to in measuring the advisability of busing: size of the area, student population, ratio of blacks to whites, the financial and emotional costs to residents of affected communities, the confusion and bitterness engendered as challenges mounted on both sides of the issue and led to litigation, and the need for government to re-enter the field of racial classification and struggle with the intricacies of desegregation plans.

But there was no turning back. In 1971, in *Swann v. Charlotte-Mecklenburg Board of Education*,⁷ the Supreme Court found cross-district busing to achieve racial balance to be "a normal and acceptable tool of educational policy." Color-blind assignment of students alone was not necessarily nondiscriminatory if it failed "to counteract the continuing effects of past school segregation." Graglia sharply criticizes the upholding of the district court's desegregation plan, which had been loosely structured by mathematical ratios, arguing that the racial imbalance found in the southern metropolitan school system was no longer due to conscious segregation and that the implementation of the plan would have little effect on the racial mix. Moreover, despite its ostensible desire to limit busing to areas with dual systems, the Court delineated no practical limits for the use of busing to achieve desegregation, except that racial balance had to be accomplished only once.

As a result of the Supreme Court's command that "all vestiges of state-imposed segregation" be eliminated, school districts that had gerrymandered attendance zones and clustered school districts but had never used split zoning and busing were ordered to acquire the necessary facilities and begin. Neighborhood school assignment was *per se* inadequate where a greater proportion of racial mixing could be achieved otherwise. Support for public education waned and segregation increased as white parents removed their children from the public school system rather than send them to black schools. According to Graglia, despite the subsequent failure of busing to further racial balance in many areas, the effect of the Supreme Court decisions in *Swann* and similar cases "[on] many courts . . . was to remove all bonds of reason and restraint in ordering desegregation regardless of costs and consequences."

Busing rapidly spread north and west. The distinction between *de jure* segregation and *de facto* segregation became blurred as the Court provided criteria to be used to discover *de jure* segregation in areas that had never al-

6. Fiss, *The Fate of an Idea Whose Time Has Come: Antidiscrimination Law in the Second Decade After Brown v. Board of Education*, 41 U. CHI. L. REV. 742, 764 (1975).

7. 402 U.S. 1 (1971).

lowed state-mandated discrimination. Busing was imposed in Denver, a city that had prohibited assignment to separate the races well before *Brown*, although a finding of discrimination was limited to one portion of the city-wide school district. Not surprisingly, a large number of white students left the school system. More significantly, as a result of voter backlash, Denver lost its power to annex suburban land. As Graglia notes, "It was through this power that Denver had avoided the shrinking tax base and declining population that has spelled doom for others core cities and their school systems."

Even more regrettable, according to the author, was the Supreme Court's narrow majority opinion in *Milliken*, reversing a lower court busing order for metropolitan Detroit which would have affected surrounding white suburban school districts. Chief Justice Burger, writing for the majority, stated that an "inter-district remedy" could not be imposed where *de jure* segregation was found to exist only in one district, the city school district. Thus, while the Court did place a limitation on the applicability of compulsory integration, it effectively ended any chance for meaningful desegregation to occur by restricting busing to a public school system that was approximately 70 percent black. Moreover, notwithstanding the facts that the district judge praised the Detroit Board of Education for its "most advanced and exemplary" attempts to further integration, and that, as Chief Justice Burger admitted, there was slight evidence that state or local government officials had promoted segregation, the majority deemed justifiable the requirement of busing for urban Detroit alone, without expressly examining the finding of *de jure* segregation. The Court thereby applied its result-oriented approach so as to equate fully *de facto* and *de jure* segregation and demand the impossible, integration within a majority black school system, from a local school district. To Graglia, *Milliken* reaffirms the futility and insensitivity of the Supreme Court's attempt to legislate and implement a monumental change in social conditions in this country. A vision of an enduring public benefaction, in the guise of the eradication of the ghetto child and the bestowal of the merits of lily-white havens of education on all black children, had pervaded the federal judiciary and perverted its purposes.

In the last chapter, Graglia expounds his view of forced busing as an undesirable, self-defeating mechanism for the achievement of racial equality by analyzing the effects of the Court's desegregation decisions. He cites the intensity of the adverse reaction to busing. The inevitable flight of white students following a busing order often causes an increase in racial separation both in schools and neighborhoods. In areas where many whites do not flee, busing "has created a political issue of such overwhelming importance to many that it threatens to distort the political process and give rise to forces sufficient not only to eliminate the requirement but to halt or set back progress toward racial equality." Boston comes quickly to mind.

Yet the inherent bankruptcy of busing, if any, does not lie in the hostility of the resistance to it, which may readily be considered as bigotry to be overcome rather than yielded to. As Graglia points out, busing fails as a means of desegregation wherever widespread residential segregation exists. Its disadvantages as compared to neighborhood assignment more than nullify any temporary jump in percentage of racial scrambling. Children are deprived of the comfort of familiar surroundings; their parents lose interest in supporting schools that are miles away. The normally unavoidable initial conflict between the

racess necessitates emphasis on maintenance of discipline and conditions of physical safety at the expense of academic quality. Schedules need to be greatly staggered in order to make maximum use of available buses. The right of both parents and children to run their lives free from overbearing interference is impinged upon.

While the costs are high, at least in the initial stages, the benefits of busing have proven difficult to identify. According to Graglia, there is little empirical support for the notion that the mixing of races results in higher black academic ambition and performance. On the contrary, there is data indicating that the emotional and physical effects of busing and competition with whites lower black aspirations and embitter black perceptions of white society. Also, because of the breakup of black schools and dilution of the growing political clout of black civic leaders consequent to integration, busing tends to deplete rather than expand government funds for black education.

The result-oriented desegregation policy of the Supreme Court has, insists Graglia, led to other highly disturbing developments. He is most alarmed by the reintroduction of race as a factor to be used by government officials to affect individual rights. In a sense, claims Graglia, the Court has traveled full circle: from tolerance of racial discrimination under the *Plessy* "separate but equal" doctrine, to proscription of racial discrimination under *Brown*, to requirement of the use of discrimination to desegregate. However, adequate vindication for such racial discrimination may be found in the vital contrast in intention between utilizing the factor of race to segregate and employing it to enforce a constitutional mandate to desegregate. In certain situations, busing may represent the only means sufficient to overcome segregationist pressures. While there is a danger that the Court's requirement of compulsory integration may lead to unequal administration, there is no manifest reason why local governments and school boards, generally responsive bodies, should abuse their powers in this area.

More troublesome is the acceleration of the separation of black and white children in various metropolitan areas. Busing has led to the loss of many middle and upper class families from public school systems, along with their leadership and support, thus destroying, opines Graglia, "our best hope for achievement of educational and social equality." Extreme racial polarization in the form of black urban cores versus white suburbs has commonly occurred.

Yet such polarization has not been the universal trend. In various cities, such as Louisville, a promising level of integration has been achieved and maintained without widespread residential segregation. Graglia further neglects to consider the many towns and smaller metropolitan areas, notably in the South, where busing has promoted a more harmonious and just racial situation than had existed in years past.

On a political level, Graglia perceptively indicates how judicial policy-making had distorted our governmental process. In lieu of legislation by chosen representatives in Congress in conjunction with the Executive, we have had social leadership by unelected, untouchable justices. Such usurpation of power, however, is not entirely unwarranted. The Court's redefining of Congress' limited concept of desegregation expressed in the 1964 Civil Rights Act was ostensibly proper in light of its tacit interpretation of the demands of the equal protection clause. Distortion of government operation occurred when, as could

be expected given the inflammatory nature of the compulsory integration issue, detractors of busing sought out other sources of power sympathetic to their cause. In the hope that certain government officials would be able to arrest the onslaught of busing, many Americans have aided and voted for candidates who might normally not have been preferred. An example of this is the strong support received by Wallace in 1972 in diverse areas of the nation for his vehement anti-busing position alone.

Disaster by Decree presents a compelling argument that, had the Supreme Court refused to extend the *Brown* holding, desegregation would have taken root in the United States in a more beneficial and painless, albeit slower, manner. Yet, because the author renders a hindsight critique of the High Court in which he inadequately accounts for the social climate of the post-*Brown* years, some of the book's persuasive force is lost. Is it fair to expect the Supreme Court to interpret the Constitution in a vacuum, oblivious to a civil rights movement that had racked the nation and had gained the fervent support of the elected branches of government? Should a judicial body which in the past, contends Graglia, had "served to impede basic social change," be obliged to neglect the progressive values of its day? Writing in a decade when "benign neglect" aptly describes the prevalent attitude towards racism in America, it is unjust for Graglia to ignore the instinctive validity of the Court's efforts to amend the ills resulting from widespread acceptance of the "separate but equal" doctrine.

The cost-benefit ratio for busing, imagining that such a figure could be computed with reasonable accuracy, in the long-run may prove to be surprisingly favorable. The immediate failures of busing point to a crisis that is as ancient as racism itself. In the final analysis, optimum racial mixture in public schools cannot be achieved because the Court and other American institutions maintain the view that class inequality is acceptable. The Supreme Court's desegregation policy has underestimated a fundamental source of racial strife—economic stratification—and thus has been incapable of accomplishing meaningful progress. Busing was imposed primarily on the lower and low-middle income urban classes, with the higher income groups, embracing our judges and legislators, immune through geographic partitions. The lower-middle class was obliged to do the bulk of the sacrificing. From their vantage point, busing for racial integration meant forcing their children to attend schools with children from a neighborhood, a culture, and a class which were unlike, if not inferior to, their own. In contrast, the more privileged were asked only to provide their blessing to a progressive cause.

Graglia does not omit comment on the significance of the underlying economic elements that belie the assertion that busing is solely a racial matter. Yet he neglects to develop racism as a subheading among class differentiations in the United States. "Resistance to class integration cannot as easily as racism be dismissed as indefensible," states Graglia. Indeed, the generally accepted American ideal readily contains visions of economic and cultural superiority, while rejecting bigotry.

Busing is a vital, complex issue that deserves astute commentary such as that presented in *Disaster by Decree*. The value of the book, however, stems not so much from originality of analysis or uniqueness of perception concerning the post-*Brown* desegregation developments, as from the force and clarity of

Graglia's observations. The work is stimulating reading for persons not well-versed in the short, bitter history of integration, whose libertarian perceptions have become engulfed by personal bias against a judicial policy that would callously manipulate the lives of America's children. For all of us, it augurs the hope that a serious and meaningful reevaluation of busing policy by Congress and the Supreme Court will soon occur.

J.I.

THE TRANSFORMATION OF SOUTHERN POLITICS. By Jack Bass and Walter DeVries. New York: Basic Books. 1976. Pp. xi, 527. \$15.95.

The election of Governor Jimmy Carter as President has already provoked a flood of works that claim to unravel the intricacies of the contemporary Southern mind or to provide a comprehensive guide to the recent political and economic emergence of the region for the uninformed outsider. For the most part these books have failed to fulfill their ambitious claims. *The Transformation of Southern Politics*, however, is a scholarly and worthwhile exception. Completed prior to Governor Carter's nomination and based on both interviews with political figures and careful analyses of election and survey data, the work is a detailed examination of Southern political development in the modern era.

Authors Jack Bass, a journalist, and Walter DeVries, a professor at Duke University, adopt V.O. Key's *Southern Politics in State and Nation* as the starting point for their study. Writing in 1949, Key found a variety of forces dominant in the region: a one-party political structure, wholesale disenfranchisement and exclusion of blacks from the political process, and widespread malapportionment of state legislatures that concentrated power in the hands of rural conservatives. Bass and DeVries convincingly demonstrate that, by the mid 1970's, all have eroded, if not crumbled, dramatically changing the portrait of Southern politics that Key drew over a quarter of a century ago.

The emergence of the Republican Party and the consequent development of competitive two-party politics in the South is traced by Bass and DeVries to the Dixiecrat revolt in 1948, the first clear break in the Democratic "solid South." Republican strength grew throughout the 1950's and 1960's, demonstrated primarily in elections at the presidential level, where Republican nominees received a majority of the total vote cast in the South throughout the period. Growth at lower levels occurred more slowly and peaked in 1972, when Republicans held 31 percent of Southern seats in Congress and 17 percent of state legislative seats. The development of the Republican party is attributed by the authors, first, to demographic changes—the migration of business and professional families with established Republican allegiances into the region and the growth of a suburban middle class that, after reapportionment, attained greater representation in state legislatures and Congress. The authors also emphasize the deliberate effort by national Republican leaders to attract conversative Southerners, as embodied in the "Southern strategy" developed by Senator Goldwater and, later, by President Nixon.

The second major development noted by Bass and DeVries is the increased participation by Southern blacks in electoral politics. Since the passage of the Civil Rights Act of 1964 and, more particularly, the Voting Rights Act of

1965, black registration has nearly doubled and the number of elected black officials in the region has risen from 72 to 1652 in the decade from 1965 to 1975. An equally important change has occurred in white politicians. Faced with a growing black vote, traditionally conservative legislators and Congressmen have shown a willingness to consider progressive social programs. In addition, more moderate leaders who appeal to black voters and rely on their support have come to the forefront.

These major developments are considered in the context of a state-by-state analysis. Casting aside the simplistic vision of a monolithic South, the authors instead present each state as an independent political entity with distinctive characteristics. The degree to which a true two party, biracial political structure has developed, in fact, varies widely within the region from Alabama, where what the authors term the "Wallace freeze" has retarded changes, to South Carolina, where a rapid rise in black participation has created a new base for moderate Democrats even as a conservative Republican party has emerged since Senator Goldwater swept the state in 1964 and Senator Thurmond transferred allegiance to that party.

Despite the force of the major arguments advanced by the authors, it remains possible to draw different conclusions. The ease with which Senator Goldwater's vote in 1964 successively shifted to Wallace in 1968 and back to Nixon in 1972 suggests that Republican party allegiance may have been a less significant factor than a strongly ideological protest vote. How the authors would treat Governor Carter's sweep of the South in 1976, and whether his election demands a revision of their analysis, are further questions. Similarly, on the rise in elected black officials, it is essential to emphasize the limited nature of the changes that have occurred. As the authors note, as of 1975 blacks still comprise only 2 percent of all elected officials in the region. There also remains doubt whether the growth in black political power has, as yet, contributed to substantial changes in legislative policies. State Senator Julian Bond, in an interview excerpted in the book, strongly suggests that, while black politics has been successful at electing a core of blacks to public office, it has yet to develop a clear and unified political direction or voice.

A final weakness with *The Transformation of Southern Politics*, particularly from the standpoint of a reader interested in legal affairs, is the absence of any meaningful discussion of the role of the federal judiciary in shaping Southern politics. Although the authors do graciously acknowledge this omission, there is no question but that their work suffers for it. A conclusion implicit throughout the book, and a source of numerous passing references, is that the Supreme Court's reapportionment decisions in *Baker v. Carr*¹ and *Reynolds v. Sims*² fostered both the growth in the Republican party and the larger role played by black voters. For more substantial observations, however, the reader is left only with the comments of politicians interviewed by the authors. One of the interviewees, then Governor Carter, told Bass and DeVries: "Once we had to confront the fact that we were right or wrong in the eyes of God, we said we're wrong, and if we can find a way to make this change without losing face, we'll do it. And the Supreme Court and other court orders were the things that

1. 369 U.S. 186 (1962).

2. 377 U.S. 533 (1964).

permitted us to do it without losing face. And in many instances we did it with a great sense of relief." While these individual responses can be intriguing, they fall short of providing a complete analysis of the role of the courts.

Nonetheless, the inadequacies of *The Transformation of Southern Politics* are relatively minor when measured against its accomplishments, for Bass and DeVries have successfully created both a careful and a lively account of the dramatic changes that have taken place in Southern politics during the past thirty years.

D.S.R.