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SURVEYING THE *GROUNDWORK*

Collins J. Seitz*

GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS. By *Genna Rae McNeil*. Philadelphia: University of Pennsylvania Press. 1983. Pp. xxv, 308. Cloth, \$21; paper, \$12.95.

For various reasons many true heroes attain recognition belatedly. The biography of Charles Hamilton Houston, whose life is so forcefully and succinctly captured by Dr. Genna Rae McNeil in *Groundwork*, reflects the accomplishments of a true hero who would not have recognized himself as such.

This book makes one think of the many other quiet heroes whose lives are obscured by time and circumstance:

Full many a gem of purest ray serene,
The dark unfathom'd caves of ocean bear:
Full many a flower is born to blush unseen,
And waste its sweetness on the desert air.¹

All who admire courage and tenacity against great odds owe a special debt of gratitude to Dr. McNeil for writing this book about a man who was an exemplar of both. Reading it is a command performance. It is no small task to bring to life the story of a person whose single-minded commitment to the struggle for civil rights allowed little time for extending his considerable talents to other facets of life. But this Dr. McNeil has done with a simple, direct style which does not preach, though preaching would be tempting, does not speculate at the expense of fact, and does not forget that its author is a biographer, not a publicist. I do not suggest, however, that the treatment is coldly objective. Such an approach to Charles Houston's life would be impossible except for one unmoved in the presence of great courage and the pursuit of justice for all.

The author has painstakingly uncovered the roots from whence sprang Charles Houston in 1895. They reveal that some of Charles Houston's Southern ancestors resolutely shook off the bondage of slavery by fleeing to a free state even before the Emancipation Proclama-

* Circuit Judge, United States Court of Appeals for the Third Circuit. The reviewer has had a limited judicial exposure to the general subject matter. See, e.g., *Belton v. Gebhart*, 32 Del. Ch. 343, 87 A.2d 862 (1952), *affid.*, 33 Del. Ch. 144, 91 A.2d 137 (Del. 1952), *affid. sub nom. Brown v. Board of Educ.*, 347 U.S. 483 (1954); *Parker v. University of Delaware*, 31 Del. Ch. 381, 75 A.2d 225 (1950). — Ed.

1. T. GRAY, *Elegy Written in a Country Churchyard*, in *THE COMPLETE POEMS OF THOMAS GRAY* 39 (H. Starr & J. Hendrickson eds. 1966).

tion. Their trials and tribulations reflected a strength of character and a thirst for freedom that were to become hallmarks of Charles Houston.

Charles Houston, an only child, came from a closely knit family. His father was a lawyer in Washington, D.C. Both his father and his mother were intensely supportive of their son. Their support influenced him in the pursuit of his higher education at Amherst College² and Harvard Law School. Thereafter, Charles studied abroad and came to the practice of law with his father in Washington, D.C., as a young lawyer with outstanding educational credentials.

Mere words cannot fully describe racial conditions in the United States in the early part of the twentieth century. Some of the indignities suffered by blacks are graphically captured in *Groundwork*, but the corrosive effect of pervasive segregation on black Americans really can only be known by those who dealt with it at every turn in their daily lives. Whites cannot appreciate the humiliations which were a black's constant companion.

At Amherst and later at Harvard, blacks were tolerated as long as they "stayed in their place." Even a well-educated professional such as Charles Houston, though he earned the admiration and support of distinguished American jurists such as Roscoe Pound and Felix Frankfurter,³ was affected by the isolation which was his lot. For example, after he became a distinguished appellate advocate, Houston argued many cases before the Supreme Court of the United States. Yet when he left the courtroom, he would be denied the simple right to sit down in a public restaurant to eat his lunch (p. 186).

A reading of *Groundwork* creates the definite impression that Houston did not burst forth from law school fanatically committed to the civil rights cause. He went to work in the practice of law with his father, who had a successful civil practice, and who was apparently not interested in civil rights causes. Thus, it is intensely interesting to read the author's account of Houston's slow but steady attraction away from the mundane practice of law to causes involving racial injustices. Clearly he could have been a very successful civil lawyer had he been able to make peace with himself over his status in a segregated society. As he came to witness the heartrending indignities to blacks that were largely ignored by other Americans, however, his moral outrage would not permit him to remain on the sidelines.

As one reads this well-researched biography, it is easy to imagine

2. Indeed, although William Houston's law practice was at times not very lucrative, the Houstons encouraged their son to forego a scholarship to the University of Pittsburgh in favor of applying to what they considered "a more prestigious institution." P. 30. Charles Houston was the only black student in Amherst's class of 1915. P. 31.

3. See pp. 63-64. Justice Douglas once recalled that Houston had a "mind that had as sharp a cutting edge as any I have known." W. DOUGLAS, *THE COURT YEARS, 1939-1975: THE AUTOBIOGRAPHY OF WILLIAM O. DOUGLAS* 185 (1980).

Houston's indignation at the treatment accorded blacks at every level of their own government. *Groundwork* records the dreary history of an American government that operated with selectivity and for the white majority. Where blacks were concerned, those manning our government openly ignored the great political and moral tenets on which our country was founded. Beginning with his experience as a black army officer during the first world war,⁴ Houston encountered a federal government that was not only indifferent, but actively opposed to equality for its black citizens. It was no wonder that Charles Houston struck out, not only for equal rights for all Americans, but particularly for a modicum of fairness for his fellow blacks. In this fight he understandably employed his intelligence and the consummate skills he possessed as a lawyer. The Southern courtrooms became the forum for his crusade against injustice to his race.

Charles Houston brought to those courtrooms the intellectual equipment and legal acumen that, combined with an inexhaustible work ethic, soon presented a serious challenge to the legal status quo in the South. His ever-increasing attacks on legal segregation, even when unsuccessful, laid the groundwork for later effective challenges to the "old ways." To him and his colleagues the progress must often have seemed like the erosion resulting from dripping water.

Slowly Charles Houston's reputation spread as he became involved in the famous *Scottsboro*⁵ case and other landmark cases. As Dr. McNeil demonstrates, Houston's attention was inexorably drawn from one injustice to another. He became a legal gadfly and his attacks on institutionalized unfairness to blacks was a constant reminder to a slowly awakening America that blacks, too, could be a part of the American dream.

Houston held a deep-seated belief that black lawyers were an essential instrument in the struggle for equality in America and that they must be as educationally equipped as their white counterparts if they were to carry the torch effectively. He began teaching at Howard University School of Law, where he soon gained a reputation with the students as a no-nonsense, demanding professor.⁶ He later became the

4. Having successfully implored the United States Army to create an officers' training camp for blacks, Charles and many other young black college graduates were sent to France, only to be presented with an order "relieving coloreds . . . from duty." P. 43. The order left the men with "nothing to do but eat and sleep," pp. 43-44, and face the virulent racism practiced by Red Cross workers, white enlisted men, and white fellow officers. P. 42.

5. See pp. 118-21; see also *Norris v. Alabama*, 294 U.S. 587 (1935); *Patterson v. Alabama*, 294 U.S. 600 (1935). In the *Scottsboro* incident, a group of young black teenagers were accused of raping two white girls on a train. The young men were convicted after a trial before an all-white jury.

6. "As a law professor he was called everything from 'insensitive' to 'a machine' because of his unyielding attachment to the goal of graduating *only* first-rate lawyers from Howard, no matter how many students began the three-year course of study." Pp. 216-17 (emphasis in original).

Vice Dean of the law school, and in that capacity he removed the cloud over Howard's accreditation status and left a legacy of talented lawyers who helped him carry forward the struggle for civil rights to the new heights which he envisioned. He believed that the graduates of the law school had a duty and a role in American society as "social engineers."⁷ He was a pioneer in the use of the legal process as a weapon for social change. His skilled students are too numerous to be identified but the names of Thurgood Marshall⁸ and Spottswood Robinson⁹ must be mentioned.

In 1935, Howard University granted Charles Houston a leave of absence to accept full time employment with the NAACP. This would presage a work schedule that defies description in its intensity. By this time he had established a reputation as a lawyer of great skill who was committed to minority causes. As a consequence, he was flooded with requests to represent innumerable groups and individuals who sought to obtain equal justice under a legal system that was un-receptive, to say the least.

It was during his five-year term as Special Counsel to the NAACP that a grand litigation strategy was developed, primarily at Houston's urging. The NAACP would move forward step by step to attack segregation in transportation, education and employment. In his way was a half-century of deeply imbedded legal doctrine institutionalizing segregation in the United States.¹⁰ Rather than confronting segregation "head on," he would "whittle away" at the rotten timbers barring the gates of freedom so that when the ultimate challenge came, the once solid bulwark of segregation would fall.

Houston's gradualistic approach was by no means universally accepted. It did, however, attract the support of many skilled black lawyers. These talented lawyers began a relentless legal battle to obtain transportation at public expense for black school children, to require the admission of blacks to graduate and professional schools of state universities, to equalize pay for black workers, and to eliminate en-

7. See pp. 216-18.

8. Formerly a Circuit Judge of the Second Circuit, a Solicitor General of the United States and now an Associate Justice of the United States Supreme Court. Justice Marshall's observation that "[w]e wouldn't have been any place if Charlie hadn't laid the groundwork for it," p. 3, seems to have inspired this book's title.

9. Now the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit. According to Dr. McNeil, Houston approached Robinson, then only recently graduated from law school, to assist him on the brief in a case in federal district court involving racially discriminatory restrictive covenants. See p. 177. Houston's involvement in this controversy culminated in his representation of the District of Columbia petitioners (with Robinson on the brief) in *Hurd v. Hodge*, 334 U.S. 24 (1948), the companion case to *Shelley v. Kraemer*, 334 U.S. 1 (1948).

10. See, e.g., *Corrigan v. Buckley*, 271 U.S. 323 (1926) (permitting racially restrictive covenants on land); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (holding that "separate but equal" segregation was constitutional for public transportation); *State v. Gibson*, 36 Ind. 389 (1871) (upholding law banning interracial marriage).

forcement of racially restrictive covenants on land.¹¹ Slowly, inch by grudging inch, and frequently subject to keen disappointments, the "step-by-step" plan moved forward. The bulk of the white majority, with the support of public authorities, fought the strategy every step of the way.

Houston preferred this course of action because he felt that by proceeding slowly the effect would not be too wrenching on the white majority. Houston also felt that the blacks themselves had to be "educated" to the need to support actively such attacks on segregation. He recognized how cowed many blacks had become because of long periods of racial separation and white retaliation against those who challenged the status quo.

His approach was based, in part, on his belief that white people could be brought to see that they could make common cause with blacks in critical areas of American life. To Houston, court victories were not the only goals of his litigation. He realized that ultimate equality would come only when the white majority itself realized the horrors of segregation.

Houston's plan to equalize teachers' salaries illustrates these principles well. He believed it necessary to sue both to increase the salary of black teachers and to reduce the salary of white teachers. He did not expect to win the latter suits, but to sensitize the white teachers to their unequal position (p. 137).

The wisdom of the Houston approach became more apparent as the manifest unfairness in the treatment of blacks was made clear to white America. Furthermore, with every court victory¹² it became somewhat easier for white Americans to accept the inevitable. Houston's approach also eased the way for the courts to remedy other injustices without undue public outcry. One can only speculate as to what the present status of blacks might be if Houston had not provided the groundwork for later victories in Congress and the courts.

With the growing number of cases attacking segregation on so many fronts, Houston had to enlist the help of more black lawyers, most of whom had already been exposed to his teaching or his legal work. In this way, many black lawyers came to be deeply involved in the attacks on segregation. Some of these lawyers are now noted names in American legal and, particularly, judicial history — Thurgood Marshall, William Hastie,¹³ Spottswood Robinson and

11. The pervasiveness of racially segregated property at this time was illustrated by the fact that a third of the United States Supreme Court recused itself in *Shelley v. Kraemer*, 334 U.S. 1 (1948), for having interests in property with racially restrictive covenants. P. 182.

12. See, e.g., *Shelley v. Kraemer*, 334 U.S. 1 (1948) (elimination of court enforcement of racially restrictive covenants); *Steele v. Louisville & N. R.R.*, 323 U.S. 192 (1944) (equal protection guaranteed through enforcement of labor laws); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (admission of blacks to state law schools).

13. The late William H. Hastie, like Houston, was a distinguished graduate of Amherst Col-

Robert Carter.¹⁴ They pursued the step-by-step strategy of Charles Houston. Such an approach was, to borrow a phrase, not for the short-winded, because most of the cases filed during this period were lost in the lower courts. But persist they did and, fortunately, their causes reached a receptive United States Supreme Court. With the Supreme Court victories, other courts got the message and so the trickle of successes by Charles Houston and his colleagues became a torrent.

Charles Houston did not limit himself to controversies in the United States. He showed the same concerns and was deeply involved in the struggle for human rights in Central and South America and Africa. When someone questioned his loyalty to the United States because of his "acceptance" of communist support, Houston indicated that he was in pursuit of justice and would not repudiate those who supported that goal (p. 203).

Charles Hamilton Houston died in 1950. He thus did not live to see one of the edifices that was the culmination of his groundwork — *Brown v. Board of Education*.¹⁵ His premature death was the result of his having made prolonged physical and emotional demands on himself that were beyond his physical ability to meet. When counselled to slow down, Houston must have answered in the words of the poet, "But I have promises to keep, and miles to go before I sleep."¹⁶

One can only speculate as to how Charles Houston would have reacted after the glow of *Brown v. Board of Education* subsided. Houston's whole emphasis was on striking down "laws" mandating segregation. But *Brown* spawned "white flight," and the whole emphasis shifted from desegregation to integration. In many ways the struggle became even more extreme because legal segregation became indefensible, while legally mandated integration touched white America even more intimately.

Public education, once again, became front page news. In seeking appropriate remedies in proper cases, the courts turned to a controversial remedy — busing. The jury is still out on the educational value of busing to the children — both black and white. But one thing is certain, conflicting parental emotions have generated extreme heat, particularly at the elementary school level. History teaches that there are no easy solutions to such problems. Given our Constitution and the diversity and concerns of our population, controversy is inevitable.

lege and Harvard Law School. He was the first black circuit judge and my predecessor as Chief Judge of the United States Court of Appeals for the Third Circuit.

14. Robert Carter is now District Judge of the United States District Court for the Southern District of New York.

15. 347 U.S. 483 (1954).

16. R. FROST, *Stopping by Woods on a Snowy Evening*, in *NEW HAMPSHIRE: A POEM WITH NOTES AND GRACE NOTES* 87 (1923).

Were there a fairly substantial consensus that busing and other remedies are beneficial to the children, I believe there would be more acceptance of that remedy among both blacks and whites. Unfortunately, I doubt that we will ever get a definitive benefit-detriment answer, and so one can only speculate whether, had he lived, Houston would have stayed with his step-by-step strategy.

Our Constitution reflects a magnificent legal and social experiment. By definition, then, we should not turn our back on social problems, but should confront them. If busing is viewed for what it is, an experiment, then we need not treat it as the immutable attempted solution to a problem as old as recorded history. Indeed, other solutions may be more desirable, and, if so, they may come from the courts or, preferably, from those who light candles rather than curse the darkness. Charles Houston, I suspect, would have been involved in either event, because he intuitively knew the line between expediency and prudence.

Houston's grand strategy produced a death blow to legal segregation in many areas and laid the groundwork for even greater victories after his death. That strategy is still very much with us. But, in the words of Dr. McNeil, Charles Houston's legacy was "that there should be no end to struggling, no immobilizing weariness until full human rights are won" (p. 224). A hero indeed.