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# BRITAIN, BLACKS, AND BUSING

*Derrick Bell\**

DOING GOOD BY DOING LITTLE: RACE AND SCHOOLING IN BRITAIN. By *David L. Kirp*. Berkeley: University of California Press. 1979. Pp. xi, 164. \$11.95.

“Do *something* even if it’s wrong,” is a nonsensical, usually counterproductive, but nevertheless frequently followed admonition that accurately describes this country’s current school desegregation policy. Here we are twenty-seven years after the Supreme Court first acknowledged what blacks had always known: that coerced school segregation is a constitutional wrong and an educational evil.<sup>1</sup> And yet today, proponents and opponents of racial balance and busing remedies still defend or attack these techniques with a frenzy far out of proportion to their importance in obtaining the equal educational opportunity promised in *Brown*.

And as the battle over busing rages, it is quite clear that its outcome will not alter the demographic facts which render the busing debate so irrelevant to so many minority children. More than half of the nation’s minority children attend schools in urban districts which are approximately 60% nonwhite and therefore beyond the possibility of integrating on the racial balance model. The average minority population in the nation’s ten largest districts was 68.2% five years ago and is likely higher today.<sup>2</sup>

Nor has the resistance to school desegregation lessened. Anti-busing riders and other legislative schemes designed to discourage school desegregation policies remain popular in the Congress.<sup>3</sup> States have enacted laws and even amended their constitutions in efforts to ban or substantially limit busing for school desegregation.<sup>4</sup>

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1. *Brown v. Board of Education*, 347 U.S. 483 (1954).

2. Ravitch, *The “White Flight” Controversy*, 51 PUB. INTEREST 135, 146-47 (1978). The nonwhite population of Britain, about 3% of the total population, is far smaller than that of America, in which 15% of the population are minorities (p. 117).

3. Efforts to attach anti-busing riders to appropriations bills delayed the adjournment of the lame-duck session of the 96th Congress. *See, e.g., Senate Drops Curb on U.S. Busing Suits from Financing Bill*, N.Y. Times, Dec. 11, 1980, at 1, col. 1.

4. *See, e.g., North Carolina State Bd. of Educ. v. Swann*, 402 U.S. 43 (1971), affirming a lower court order striking down a statute that prohibited assignment or involuntary busing of

Although the courts, including the Supreme Court, have not abandoned the *Brown* mandate in the face of widespread opposition, the days when the Supreme Court spoke with one voice in resolving school desegregation issues are long passed.<sup>5</sup> Slim majorities are found to affirm most school desegregation orders, but only on the basis that the facts of those cases reach restrictive standards of liability that cannot be satisfied in those districts where metropolitan remedies hold the only hope for classical desegregation through racial balance techniques.<sup>6</sup> There is even less chance that further relief can be obtained in systems where once desegregated schools not uncommonly become resegregated through white flight and changes in neighborhood and racial patterns.<sup>7</sup>

Black parents have become disenchanted with the slow progress of school desegregation. They recognize, often to a greater extent than civil rights lawyers, the small gains in academic achievement that come from the large sacrifice involved in sending black children across town to mainly white schools.<sup>8</sup> While the Supreme Court has not found it necessary to hear any of the cases raising the issue, it is quite possible that within the next year or so, it will be faced with the paradox of black parents who have gone to court in order to prevent school boards from assigning black children to mainly white schools.

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students to create a racial balance. California, by a November 1971 referendum, amended its constitution to prohibit its state courts from ordering racial balance and busing remedies unless federal courts in similar circumstances would be authorized under the federal Constitution to order such remedies. CAL. CONST. art. 1, § 7 (West 1980).

5. See generally, Hutchinson, *Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958*, 68 GEO. L.J. 1 (1979).

Actually, the effort to issue unanimous decisions lasted only a decade after *Brown*. Justices Clark and Harlan added a one-sentence dissent in *Griffin v. County School Bd.*, 377 U.S. 218 (1964). The Court spoke unanimously in both *Greene v. County School Bd.*, 391 U.S. 430 (1968), and in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971). Beginning with *Milliken v. Bradley*, 418 U.S. 717 (1974), the close 5-4 decision reversing a metropolitan-wide desegregation plan, divided decisions became expected rather than exceptional. Indeed, in an earlier case with metropolitan-type relief in issue, an equally divided Court affirmed the lower court's refusal of relief in *Bradley v. School Bd.*, 382 U.S. 103 (1965). See also *Dayton Board of Educ. v. Brinkman*, 443 U.S. 526 (1979) (5-4 decision); *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979) (7-2 decision). And in its most recent effort, the Court could not finally agree that it wanted to decide the appeal of Dallas, Texas, school case, in litigation stretching back to 1953. *Tasby v. Estes*, 572 F.2d 1010 (5th Cir. 1978), cert. granted sub nom. *Estes v. Metropolitan Branches of the Dallas NAACP*, 440 U.S. 906 (1979), cert. dismissed as improvidently granted, 444 U.S. 437 (1980).

6. Compare *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979) with *Milliken v. Bradley*, 418 U.S. 717 (1974).

7. See *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976).

8. Reasons why plaintiffs' lawyers in school cases may continue seeking racial balance remedies in opposition to black parents' preferences are discussed in Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976). The uncertain effects of school desegregation are reviewed in N. ST. JOHN, *SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN* (1975).

These parents will not be urging a reversal of *Brown*, but they will be insisting on a reading of *Brown* that emphasizes equal educational opportunity directly rather than the traditional call for racial balance with educational opportunity serving as an assumed by-product.<sup>9</sup>

Through it all, civil rights agencies committed to bringing about an integrated society through the mechanism of school desegregation remain steadfast. They are deterred neither by political opposition, judicial weariness on the issues, nor critics within the civil rights ranks.<sup>10</sup> But the situation grows worse. Even in most desegregated settings, racial understanding has not improved. Indeed, quite the opposite result has too often been the case.

Given the current confusion, it is not unreasonable to try to determine whether other countries have faced similar racial problems in their public schools, and resolved them with greater efficiency and sensitivity than has been the case here. Professor David L. Kirp, a long-time observer of the desegregation scene in this country, has led the search for other answers with an interesting review of the British experience.<sup>11</sup>

*Doing Good By Doing Little* is the result of Kirp's investigation. He brings a cold and sometimes disconcerting objectivity to his findings, but in the end, his approach perhaps makes a greater impact because the reader is led to reach conclusions that are not only obvious, but also discouraging. For it is apparent that in both Britain and the United States, school policies are influenced by priorities that favor white over nonwhite interests whenever a choice between the two must be made. This is not to minimize the substantially different dimensions of the race problem in British schools. But there are parallels that recall and sometimes reflect the American experience. Not the least of these similarities is the obstacles faced by both countries in reconciling racial equality rhetoric with the political

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9. The Supreme Court has agreed to review a case brought by black parents in Chicago who were barred from enrolling their children in the high schools near their residences by the working of the Board's voluntary desegregation plan that set a ceiling on the number of blacks permitted to attend the two high schools in order to forestall white flight. The Board modified the plan to provide free bus transportation to other integrated high schools for black children excluded from the schools where the racial quota was in effect. The court of appeals affirmed the district court's approval of this plan. *Johnson v. Board of Educ.*, 604 F.2d 504 (7th Cir. 1979), cert. granted, 100 S. Ct. 3055 (1980), vacated, 101 S. Ct. 339 (Oct. 20, 1980).

10. Serious questions regarding the continued viability of racial balance remedies and educationally oriented alternatives are discussed in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* (D. BELL ed. 1980).

11. See, e.g., Kirp, Fine & Angelides, *Desegregation, Politics, and the Courts: Race and Schooling Policy in Richmond, California*, 88 AM. J. EDUC. 32 (1979); Kirp, *Race, Politics, and the Courts: School Desegregation in San Francisco*, 46 HARV. EDUC. REV. 572 (1976).

pressures that impede direct responses to the educational needs of minority children.

In the United States, the ringing promise of equal educational opportunity for black children through integration with whites has not been implemented because of white opposition, much of it motivated by the fear that integrated schools would narrow the educational opportunities of white children.

In England, the numbers of nonwhite children were, until relatively recently, so small that policymakers concluded that their schooling could be accomplished through racially nonspecific processes. Kirp reports it was not until about 1960 that Great Britain began to experience a significant immigration of nonwhite peoples from the "new Commonwealth" countries of India, Pakistan, Bangladesh and the West Indies. As the percentage of nonwhite residents increased, Britain appeared to recognize its new multicultural and multiracial character, but felt that the responsibilities that accompanied such diversity could be carried out under the general policies under which the self-styled "Welfare State" had assumed to insure the collective well-being of all its inhabitants.

Britain, Kirp tells us, felt a sense of obligation to these less well educated, working-class immigrants, but it also felt it important not to single out one group for special treatment to avoid charges of favoritism. "Moreover, Britons did not regard this group as having a particular claim on the public fisc. The dilemmas of social class were familiar; the unique dilemmas of race were not generally acknowledged" (p. 23).

To be successful, the official policy on race also had to be responsive to the tensions between the actual and the preferred self images of the English people. From all indications, the British still harbor a paranoid resentment at the loss of their imperial grandeur. On the one hand, they regard themselves as a superior people. This is evidenced by their paternalistic rule in the past and, as will be shown here, their high-handed approach to race relations in the present. But the British also perceive themselves as a very tolerant, liberal people. They are quick to distinguish their treatment of nonwhites from that of the United States by noting the lack of an official discriminatory policy based on race. It is true, there is no official Jim Crow policy in modern England. However, tolerance to the British means encouraging complete cultural assimilation of nonwhites, not an acceptance of distinctive identities. The latter, Kirp points out, would require the hosts themselves to change. The British policy of

racial inexplicitness represents a compromise among all these concerns.

Racial inexplicitness is a deliberate policy to "diminish the significance of race, to act insofar as was possible without explicit attention to race by noting the shared and nonracial vulnerabilities of needy people" (p. 24). It is an official recognition of the existence of nonwhites and their special needs without a commitment to work with or for minorities, as minorities. In fact, the policy is so "neutral" as to race that its nonwhite beneficiaries were not consulted during the determination of this governmental response to their needs. Kirp attributes this lack of input to the politically disorganized and culturally dissimilar nonwhite community. Perhaps. But the lack of consultation also reflects a continuation of the paternalistic attitudes of the British toward their colored citizens.

Professor Kirp's attraction to racially inexplicit school policies is not lessened by the presumptions that accompany their imposition on nonwhite people. Patronizing means are evidently justified to reach educationally impressive ends. And public education in Britain has come a long way in a few generations.

Professor Kirp reports that the roots of British race and schooling policy lie in the transition from an elitist to an egalitarian philosophy of education. Until the post-World War II era, the elitist philosophy dominated. Education was provided strictly along class lines. While a grade school education was available to most children, albeit for a fee, few lower or middle class children continued their education beyond age fourteen. The philosophy of education for the lower classes, which was to teach them to discharge the duties assigned them, reflected this elitism. The 1944 Education Act marked the transition to a more egalitarian approach to public education. The Act provided for a universal education to age sixteen, abolished fees in state-maintained schools, and ended the distinction between elementary and secondary schools. This more egalitarian attitude enabled more careful consideration of educational needs of poorer, nonwhite children than would have been possible in the pre-Education Act era.

The policy of racial inexplicitness has been carried out within the context of egalitarian reform of public education. "The aim of British policy has been, on the one hand, to stress the infinitely diverse needs of individual students, and, on the other, to imbed race in some broader policy context, such as educational disadvantage" (p. 40). For example, educational services destined almost exclusively

for nonwhite children, such as intensive instruction in the English language, were described as programs for "special needs" children.

The original rationale for special attention was to promote assimilation, to "render the newcomers at ease with their surroundings by making them over into Britons" (p. 45). But, by the mid-1960s, "[t]he rhetoric of assimilation was ultimately too inconsistent with presumed British tolerance of diversity, and too unpalatable to nonwhites, to endure — at least as official policy" (p. 46). A new policy called for equal opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance.

In reality, Kirp concedes, there has been minimal tolerance and recognition of cultural differences. School officials resisted suggestions that native languages be taught in the schools. Black studies proposals received a similarly cool reception. Such ventures were seen as inconsistent with the concern for integration, and in no way helpful in achieving the education goal. "Multiculturalism was apparently to be confined to the symbolic gesture . . . . To do otherwise," Kirp was told, "risked catering to intellectual weakness, as well as promoting social divisiveness" (p. 48). Educational improvement and becoming familiar with British ways were seen as synonymous.

By the late 1960s, as a result of the increasingly restrictive (and racist) British immigration laws, there were far fewer "newcomers." However, minorities continued to perform more poorly in school than their white counterparts. The discouraging achievement scores did not shake school officials' commitment to racially inexplicit solutions for the problems of minority children, who were first designated "urban deprived children," and later "educationally disadvantaged children" (p. 49).

Kirp reports that factors of belief and bureaucracy undergird racially inexplicit school policies. First, there is a deep-seated ideological commitment to universalism in social services. The British feel that there is a social stigma placed on having to declare oneself needy as a prerequisite to receiving schooling or medical care. They feel that such selectivity equates need with fault and stigmatizes the recipient. In a universalist view, an "individual's entitlement to social service has no relationship to social status . . ." (p. 58). When faced with limited resources, which by necessity requires some "positive discrimination," the allocation of such scarce resources is done by choosing some needy area rather than needy individuals.

Second, there is a pronounced political and bureaucratic preference for consensual and incremental decision making. Consultation

is a way of life in Britain and change occurs through nuances rather than through bold initiatives. There is a partnership between the Department of Education and Science (DES) and local school authorities which illustrates the preference for consensual decision making. Kirp notes that such an approach to decision making effectively limits race specific policy initiatives because officials would regard them as too dramatic.

DES has continued to pursue a policy of inexplicitness with respect to race and schooling, and has consistently defined educational problems posed by the nonwhite presence in nonracial terms: as reflecting language difficulties or a lack of cultural familiarity, or as an indistinguishable aspect of the dilemmas associated with educational disadvantage generally. This approach has been presumed "likely to achieve more for racial minorities in the long run, and with rather less social pain, than the alternative of a more overtly racial focus" (p. 54). Adhering to this rubric, DES has been unwilling even to maintain a count of nonwhites in British schools.

Kirp does not find that the British policy of "doing good by stealth" (p. 65) has served to provide nonwhites with tangible benefits in school funding. Nevertheless, he questions whether Britain's racial minorities would have been better served by a British equivalent of the more specific American programs like Title I of the 1965 Elementary and Secondary Education Act, in which bookkeeping concerns as to whether eligible children were benefiting have often taken precedence over educational concerns. He thinks racial inexplicitness can best be appreciated as "one plausible approach to a set of immensely troubling issues" (p. 66).

The British commitment to racially inexplicit school policies was likely strengthened by their unhappy experiments with busing. Actually, a prerequisite for racially neutral policies is a relatively small percentage of minorities, and nonwhites constitute only about 4% of the primary and secondary British population (p. 1). In addition, inexplicit policies are a comfortable means of proceeding with an unorganized minority community. Yet by the 1960s, substantial numbers of nonwhites had settled, in particular London suburbs, threatening these foundations of racially neutral policies. When the Beaconsfield Road School became 60% nonwhite, white parents organized to protest the "racial invasion," and "hostilities between whites and Indians flared" (p. 74). Perhaps in part to insure the continuance of the small percentage, unorganized minority community model, the dispersal via busing of 3,000 nonwhite children was begun.

The British government turned to busing as a means to prevent schools from becoming "irretrievably immigrant" schools (p. 74). There were no claims that busing would improve the educational opportunities or achievements of nonwhite students, and white students were never considered for busing. The sole purpose was to "render newcomers relatively invisible and hence unthreatening to whites" (p. 75). DES saw dispersal as "enabling nonwhites to 'fit in with reasonable ease,'" indicating that "[r]acial invisibility . . . was good for nonwhites as well as whites" (p. 76).

In the London borough of Ealing, the busing experiment was taken very seriously. A substantial amount of effort and expense was invested in the program. Nonwhite children underwent elaborate testing to assess their knowledge of English before they were transferred to white schools. Specially trained teachers were hired to teach English to those children experiencing problems with it. Nonwhite students were admitted to grammar schools on the basis of their intellectual promise despite grades which would not ordinarily have entitled them to admission, a fact Kirp suggests indicates a willingness to undertake extraordinary measures on behalf of nonwhites. In 1975 a DES official praised the program highly, both for the quality of education received by the nonwhite students and for the experiment in race relations (p. 89). The success of the busing project in Ealing became a source of pride for local school officials. They came to see dispersal as done for the benefit of immigrant children rather than for the original purpose of allaying the "immigrant takeover" fears of whites.

In the United States, busing is urged by civil rights lawyers as the best means to insure equal educational opportunity for black children. But in practice, so many concessions must be made to meet the fears and concerns of whites in the integrated school that few integrated schools can boast of real academic improvement for its black students. In the meantime, white resistance to the busing program continues.

In Britain, too, there was discontent almost immediately. Some local school officials were upset because the DES initiative seemed to ignore, or even to usurp, their role in the traditional governance partnership. There were also the usual administrative difficulties associated with large-scale busing. And even nonwhite parents, who initially had accepted the policy, began to complain that busing was discriminatory and insulting. They claimed that busing denied them, as nonwhite parents, the choices of schools available to white parents. Political considerations also forced a reconsideration of the

program. Nonwhites in these areas represented 30% of the population (up from 10%). DES officials found there were too few white children in the area to maintain the designated proportion of whites, and they deemed busing white children to be politically unfeasible.

By the late 1970s, DES had abandoned its dispersal program, leaving the policy choice of whether to continue busing in local hands. In Southall, the local authorities decided to build new schools which would primarily serve nonwhite children; construction was now a "politically easier course of action than trying somehow to press on with busing" (p. 92). Ealing authorities had decided to follow suit when they were sued by the government's Select Committee on Race Relations and Immigration. The Committee charged that busing and the whole dispersal policy was discriminatory because it was based on race rather than educational need. In 1978 the parties settled, with Ealing agreeing to disperse "only on grounds of demonstrated educational need, not race" (p. 99). Kirp suggests that busing was a deviation from the traditional British policy of inexplicitness, and was ultimately abandoned because of "an ideologically and politically rooted reluctance to single out nonwhites for any purpose, whether allegedly benevolent or malign" (p. 71).

In summary, Kirp states that in the fifteen years since racial inexplicitness has been the predominant social policy as regards race, nonwhites have made considerable progress. "The race relations climate is more hopeful and there is less overt discrimination" (p. 114). He dismisses the minimal gains of minorities in economic and social mobility after a decade of this policy, stating that the goal of an educational policy of inexplicitness is to educate, not to remake the social order.

Kirp does acknowledge that "there remain substantial gaps between the groups. Some of these gaps are attributable to disadvantage associated with race" (p. 114). However, he says that it is difficult to determine whether a more vigorous and directed public policy would have caused an even greater amelioration of racial inequalities.

Kirp ends his discussion with a comparison of the British and the American approaches to race. After detailing the historical and demographic differences between the two, Kirp describes the differences between decision making processes. The United States adheres to a legalist approach. The judiciary and administrative agencies act as problem solvers and as the primary enforcers of the law. In England, Parliament controls the decision making process. Administrative agencies such as DES use informal inquiry and ad

hoc agreements to determine policy rather than making court-like statements of right.

Despite these differences, Kirp seems to think that the United States may be leaning toward a policy of racial inexplicitness. There is a current trend toward less emphasis on race and more on economic discrimination. Racial explicitness, at least with respect to hiring and university admissions, provokes hostility, and Kirp interprets Justice Powell's opinion in the Supreme Court's *Bakke* decision<sup>12</sup> as enunciating a "constitutional value in not being too race-specific" (p. 128). In other words, there is an "insist[ence] upon inexplicitness as the constitutionally mandated policy choice" (p. 128).

As for Britain, Kirp perceives there a combining of "the considerable virtues of inexplicitness with both a greater willingness to incorporate nonwhite groups into the relevant decision making and consultative apparatuses, and a recognition that discrimination . . . deserves more serious public policy attention than it has thus far received (p. 129). He recognizes that effective civil rights policies require that "attention be paid to practices which, while not overtly racial, nonetheless operate to disadvantage racial minorities without adequate justification" (pp. 129-30). But he holds to the view that racial inexplicitness need not necessarily imply inattentiveness.

This point of view, Kirp acknowledges, places old civil rights warriors in this country on their guard. They remember all too well the "benign neglect" admonition of Daniel Moynihan during the early 1970s. Kirp suggests that Moynihan may simply have been urging that more civil rights progress could be made if less public attention were focused on the issue. Nevertheless, civil rights liberals viewed Moynihan's suggestion as a morally bankrupt response to America's history of discrimination.

Civil rights leaders are not likely to be more sanguine about the "benign neglect" approach today, even if it is clothed in more neutral "racial inexplicitness" language. In too many areas during the past decade, they have experienced a loss of recently won rights as a result of the adoption of policies facially neutral as to race, but which in operation have the effect of disadvantaging blacks. In a series of cases, the Supreme Court has held that such policies do not violate constitutional rights unless blacks can prove that they were intentionally adopted to discriminate on the basis of race.<sup>13</sup> In many instances, this burden of proof is extremely difficult to meet because

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12. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

13. *See, e.g., Washington v. Davis*, 426 U.S. 229 (1976).

the policies arguably further some legitimate, nonracial goal.<sup>14</sup> For these reasons, black leaders would oppose any effort to adopt in this country the racially inexplicit approach Kirp finds that Britain has used as vigorously as they condemned the Moynihan proposal, which they viewed as a "calculated, aggressive and systematic effort . . . to wipe out all the civil rights gains made in the 1950s and 1960s" (p. 109).

And yet there is a problem. Many thoughtful blacks have wondered in recent years whether the direct approach in the civil rights field has lost its effectiveness. Professor William J. Wilson argues that poverty, and not racial discrimination, is now the chief obstacle to black progress.<sup>15</sup> He acknowledges that past discrimination has consigned a disproportionate number of blacks to permanent poverty status, but he argues that more civil rights laws are not going to improve their condition. He warns moreover that a deepening economic schism seems to be developing in the black community, with the black poor falling further and further behind middle- and upper-income blacks.<sup>16</sup> It is clear that blacks with skills and education have been able to take best advantage of the new opportunities created by civil rights laws and affirmative action policies. Indeed, Wilson suggests that the very presence of these civil rights measures tends to harden public resistance to the broader-scale measures needed to alleviate the plight of the black poor.

Wilson views the large, black underclass as "one of the legacies of the racial oppression in previous years." For its remediation, he calls for public policy programs that attack inequality on a broad class front and "go beyond the limits of ethnic and racial discrimination by directly confronting the pervasive and destructive features of class subordination."<sup>17</sup> In effect, Wilson is urging that racially inexplicit policies be adopted. Applying this standard to current school desegregation problems in this country, he would likely approve policies that give less emphasis to racial balance and busing, and greater emphasis to educational programs intended to upgrade the quality of schooling for blacks wherever they attend school. To the extent that black children remain in identifiably black institutions, educational improvement, rather than racial-balance remedies, would likely win

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14. *See, e.g.*, *City of Mobile v. Bolden*, 446 U.S. 55 (1980), finding an at-large electoral system not in violation of black rights even though it serves to dilute the voting strength of blacks, because there was no proof that the system was intended to violate the voting rights of blacks.

15. *See* W. WILSON, *THE DECLINING SIGNIFICANCE OF RACE* 151-52 (1978).

16. *See id.* at 151-54.

17. *See id.* at 154.

his vote. The Supreme Court seems to have tried to encourage school desegregation policymaking along this route.<sup>18</sup> But most civil rights leaders are understandably wary that such policies would portend a return to the separate but equal policies condemned in *Brown*, and they are unalterably opposed to any retreat from the right to maximum feasible school desegregation recognized by the Court.<sup>19</sup>

Interestingly enough, it is likely that both civil rights adherents who favor racial balance policies and those who would prefer educational improvement would be deeply suspicious of the racially inexplicit approach presented in *Doing Good By Doing Little*. Racism is too ingrained in American society to be eradicated by indirection. "Doing good by stealth" seems, at least in the American context, a contradiction in terms. A more serious problem is whether, regardless of the policy adopted, racial subordination which has served so many white interests so well can ever be eliminated. Public policy expert Tilden W. LeMelle doubts "whether a society such as the United States is really capable of legislating and enforcing effective public policy to combat racial discrimination" in the political process and elsewhere.<sup>20</sup> And, as he suggests, history indicates that the United States has acted effectively against racially discriminatory policies only when those policies were perceived as posing a serious threat to the country rather than serving as useful regulators of the status quo.<sup>21</sup>

In concluding *Doing Good By Doing Little*, David Kirp calls for public policy in the racial realm "that neither becomes officious intermeddling nor degenerates into mere neglect, with the result that race eventually ceases to be a policy problem" (p. 133). As to the likelihood of such policies being adopted in either nation, Kirp says "it is far too soon even to hazard predictions" (p. 133). Kirp may be right, but there is not unlimited time in which to decide whether a sensible as well as moral approach to race relations can be effected. "The fire next time" will not always be a future event.

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18. *Milliken v. Bradley*, 433 U.S. 267 (1977).

19. See, e.g., Taylor, *Columbus and Dayton: A Renewed Commitment to Equality*, 3 LEGAL ANALYSIS: TRENDS IN SCHOOL DESEGREGATION LAW (Natl. Project and Task Force on Desegregation Strategies, Oct. 1979).

20. LeMelle, *Foreword to R. Burkey, RACIAL DISCRIMINATION AND PUBLIC POLICY IN THE UNITED STATES* x (1971).

21. D. BELL, *RACE, RACISM AND AMERICAN LAW*, § 1.12 (2d ed. 1980).