



Hannah Arendt's Reflections on Little Rock, 1957-59: Echoing Academic Critiques of Brown, and (Somewhat Unwillingly) Legitimizing Segregationist Claims for State Sovereignty

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**HANNAH ARENDT'S *REFLECTIONS ON LITTLE ROCK, 1957-59*:
ECHOING ACADEMIC CRITIQUES OF *BROWN*, AND (SOMEWHAT UNWILLINGLY)
LEGITIMIZING SEGREGATIONIST CLAIMS FOR STATE SOVEREIGNTY**

MARIBEL MOREY¹

In its 1954 *Brown v. Board of Education*² opinion, the United States Supreme Court held that segregated public schools violated the Fourteenth Amendment of the federal constitution. That same year, segregated school districts in the South asked themselves how they could satisfy minimum compliance with the Court's decision. In 1955, when the Court returned with *Brown II*,³ explaining that to satisfy the constitution, school boards needed to integrate their schools "with all deliberate speed,"⁴ the litigated debates among the schools boards and the National Association for the Advancement of Colored People [NAACP] shifted to one of defining "with all deliberate speed." In the months preceding September 1957, when the federal courts ordered Little Rock, Arkansas's Central High School to integrate, the debate in the community turned to one of "preserving the peace": Segregationist groups, among them the Mother's League and the Citizens' Council, suggested that because school integration would instigate violence inside and outside the schools, the only way to prevent violence in Little Rock was to prevent the integration of its schools. This view won the support of Arkansas' Governor Orval Faubus, who called out troops to prevent black students from entering Little Rock's Central High School on the first day of school in September 1957. The Governor could have prevented violence and preserved the peace by protecting the black students, and by doing so, enforcing the federal court order to integrate Central High School. Instead, he chose to prevent violence by

¹ PhD candidate, History Department, Princeton University (first draft, January 2007; updated draft, April 2007), presented at the Hannah Arendt & Little Rock symposium, Princeton University, April 27th, 2007.

² *Brown v. Board of Education*, 347 U.S. 483 (1954) [hereinafter *Brown I*].

³ *Brown v. Board of Education*, 349 U.S. 294 (1955) [hereinafter *Brown II*].

⁴ *Id.*

preventing integration. By doing so, he necessarily defied a federal court order. At this point, the federal government became implicated in the Little Rock debate, and in late September, the federal government moved into Little Rock to defend the supremacy of its own laws and court decisions.

Against this backdrop, Hannah Arendt wrote her *Reflections on Little Rock* in the fall of 1957. Inspired by a photograph of one of the young black female students surrounded by a screaming mob of segregationists, Arendt criticizes the Supreme Court's decision in *Brown* and the federal government's use of troops to enforce the integration of Central High in Little Rock. Wondering how a photograph of a victimized black student would lead Arendt to side with segregationists' claims in favor of states' rights, I have compared Arendt's discussion of Little Rock with the debates between and among legal scholars and political actors of the late 1950s. Like other political and legal scholars of the late 1950s in the United States, Arendt feared that *Brown* threatened the structure of the Republic. Arendt writes in her *Reflections on Little Rock*, that neither the federal nor state government should interfere with an individual's right to free association in the social realm. With this neutral principle in mind, she "dips into" the political debate of the time between the federal government and state-level political leaders— between federal supremacy and state sovereignty—and sides with those parents who were protecting their rights to free association by fighting against federal intrusion in Little Rock. Arendt seeks to explain how, by yielding to segregationist parents' rights to free association, the structure of the Republic can be preserved, and how the violent episode exposed in the picture could have been avoided.

Before exploring in detail Arendt's *Reflections* on the Little Rock school crisis, I will offer an overview of the legal and political events that scholars agree played a significant role in leading up to the crisis in the fall of 1957.

1. FROM *PLESSY* TO THE LITTLE ROCK SCHOOL CRISIS

In its 1896 ruling in *Plessy v. Ferguson*,⁵ the Supreme Court held that segregated transportation on the basis of race was constitutional, so long as each race was afforded "separate but equal" treatment.⁶ In 1954, the Supreme Court explained that "in the field of

⁵ 163 U.S. 537 (1896).

⁶ *Id.*

public education, the doctrine of ‘separate but equal’ has no place,”⁷ clarifying that segregated education does not afford black and white students equal treatment. The Court reasoned in *Brown v. Board of Education* that such unequal treatment is a violation of the federal constitution.

In the concluding remarks of *Brown I*, the Court restored the case to the docket for further arguments on methods for desegregating schools in states “requiring or permitting segregation in public education.”⁸ For the next year, the Court heard arguments from school boards and administrators on the implementation of its desegregation plan. The State of Arkansas, like other southern states, permitted segregation in public education and was thus implicated in the *Brown I* ruling: Ten days after the Supreme Court decided *Brown* in 1954, the Little Rock School Board of Arkansas announced a plan for desegregating the schools, to be carried out in three phases.⁹ “Little Rock’s elected superintendent of schools, Virgil Blossom, attached his name to the plan to desegregate the Little Rock schools voluntarily and gradually.”¹⁰ Blossom proposed desegregating the high schools first, but stated that such desegregation would begin three years from then, in 1957.¹¹ This plan was known as the Blossom Plan.

Orval Faubus, later becoming infamous for his role in school desegregation, was elected Governor of Arkansas the same year of the *Brown I* ruling and of the Blossom Plan. Faubus assumed office as Governor of Arkansas January of 1955: “Following the precedent of his mentor Sid McMath, under whom Faubus served as administrative assistant and then as state highway director, Faubus appointed black men to state boards and commissions; Faubus appointed more black officials than any previous governor.”¹² Scholars concur that in January 1955 there was little reason to suspect Faubus would become the ardent segregationist he later became in 1957, when he called out the national guard to defy federal

⁷ *Brown I*, *supra* note 2, at 495.

⁸ *Id.*

⁹ *Id.* at 49.

¹⁰ DAVID L. CHAPPELL, *INSIDE AGITATORS: WHITE SOUTHERNERS IN THE CIVIL RIGHTS MOVEMENT* 98 (1994).

¹¹ *Id.*

¹² *Id.* at 97.

court orders to integrate Little Rock's Central High School, and later in 1958 when he closed all high schools in Little Rock in lieu of following the Supreme Court's orders to keep the schools integrated.

Three months after Faubus took office as Governor, the Supreme Court published its *Brown II* opinion on May 31, 1955. After spending a year hearing arguments from school boards and authorities across the South, the Court acknowledged the difficulties local school authorities faced in desegregating the schools. The *Brown II* Court delegated to the District Courts the task of policing school boards' compliance with the Court's holding in *Brown I*, and ambiguously defined a school board's compliance as the desegregation of its schools "with all deliberate speed."

Upon the Supreme Court's announcement of *Brown II* in 1955, Little Rock's elected superintendent of schools, Virgil Blossom, modified his original school desegregation proposals:

Brown II proved an important turning point for school desegregation in Arkansas. Whites such as Blossom who advocated a policy of minimum compliance saw the court implementation order as a mandate for further measures to limit the impact of *Brown*. In turn, this paved the way for the beginning of a movement toward outright defiance of the law and total opposition to school desegregation.¹³

Blossom who advocated a policy of minimum compliance saw the court implementation order as a mandate for further measures to limit the impact of *Brown*. The new Blossom Plan allowed whites to opt out of attending the predominately black high school, Horace Mann High, but did not allow blacks to attend the predominately white high school, Central High.¹⁴

Reacting to the school board's new desegregation plan, the Arkansas State Conference of the NAACP filed suit in federal court in the spring of 1956. The NAACP sued on behalf of thirty-three black parents who sought the immediate desegregation of all schools in Little Rock.¹⁵ The federal court decided in favor of the school board, reasoning that the board "had acted in good faith in scheduling its integration plan to start the following year, in

¹³ John A. Kirk, *Massive Resistance and Minimum Compliance: The Origins of the 1957 Little Rock School Crisis and the Failure of School Desegregation in the South*, in *MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION* 76, 81 (2005).

¹⁴ *Id.* at 82.

¹⁵ *Id.*

September, 1957.”¹⁶ The NAACP appealed the decision to the Eighth Circuit: the Circuit Court upheld the federal court’s ruling in favor of the school board, but is also “ruled that the district federal court retain jurisdiction of the case for the purpose of entering such further orders as might be necessary.”¹⁷ The Little Rock school board was able to postpone integration until September 1957, but now, it was under federal court orders to do so.

In the spring of 1956, when Blossom modified his school integration plan and the NAACP reacted with a lawsuit, it became clear that school desegregation in Little Rock was becoming a politically divisive issue. By the new year, segregationist organizations were being formed and becoming vocal in the community, and by the later half of 1957, “the issue of school desegregation swiftly reached its denouement at Little Rock.”¹⁸

2. SEGREGATIONISTS IN LITTLE ROCK

In the spring of 1957, just months before the desegregation of Little Rock public schools was scheduled to take place, the Arkansas legislature introduced four pro-segregationist bills with the support of Governor Faubus: Daisy Bates, president of the Arkansas State Conference of NAACP branches, said that it was then when she realized that Faubus “was yielding to the pressure of the segregationists.”¹⁹

As the beginning of the 1957-58 school year approached, two segregationist organizations tried their last attempts to stall integration. Little Rock mothers who opposed the desegregation of the Little Rock schools formed the Mother’s League of Central High, “claim[ing] to be a ‘group of Christian mothers opposed to violence.’”²⁰ On August 27, 1957, this group filed suit, requesting temporary injunction against school integration in Little Rock, arguing that the pro-segregation laws passed by the legislature conflicted with federal

¹⁶ Bates, *supra* note ____, at 35.

¹⁷ *Id.*

¹⁸ JOHN A. KIRK, *REDEFINING THE COLOR LINE: BLACK ACTIVISM IN LITTLE ROCK, ARKANSAS, 1940-1970* 106 (2002).

¹⁹ Bates, *supra* note ____, at 53.

²⁰ Karen S. Anderson, *Massive Resistance, Violence, and Southern Social Relations: The Little Rock, Arkansas, School Integration Crisis, 1954-1960*, in *MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION* 203, 204 (2005).

laws. The Mothers' League argued that if the school board continued on with its desegregation plans under such uncertainty of the law, "civil commotion" would ensue.²¹ The local court granted the injunction, and the next day, on August 28, 1957, the NAACP went before a federal judge with a petition. The federal judge overruled the injunction, "ordering the school board to proceed with immediate integration."²² That same month, another segregationist group, the Capital Citizens' Council of Little Rock filed several lawsuits petitioning the state to uphold its segregationist statutes. While the Mothers' League sought to protect its children, the Citizens' council sought to defend a Southern way of life. Both groups "claimed the mantel of 'respectable resistance' by posing as exponents of non-violent opposition to a coercive federal government."²³ They ultimately failed to convince the courts; however, both groups remained influential segregationist forces in the Little Rock community for the next two years. By the end of the summer of 1957, the Citizens' Council and the Mothers' League greatly contributed to creating an aura of fear and intimidation of violence in Little Rock.

On September 2, 1957, the night before the first day of school at Central High, Governor Faubus said that he, too, feared violence at the school. He announced that he would call out the Arkansas National Guardsmen for the beginning of school the next day.²⁴ "Faubus' alleged reason for calling out the troops was that he had received information that caravans of automobiles filled with white supremacists were heading toward Little Rock from all over the state. He therefore declared Central High School off limits to [Blacks]."²⁵ Faubus warned that "blood would run in the streets of Little Rock" if black students attempted to attend Central High the next day.²⁶ Like the Mothers' League and the Citizens' Council, Faubus did not claim to be defying federal authority in the name of segregation; instead, he said he sought to preserve the peace and to avoid violence.²⁷ The federal court

²¹ Kirk, *supra* note ____, at 113.

²² Bates, *supra* note ____, at 57.

²³ Anderson, *supra* note 20, at 204.

²⁴ Chappell, *supra* note 10, at 106.

²⁵ Bates, *supra* note ____, at 61.

²⁶ *Id.*

²⁷ Chappell, *supra* note 11, at 104.

stated that it was “accepting the Governor’s statement at face value—that his purpose in calling out the Guard was to protect ‘life and property’ against possible mob violence.”²⁸ Not until September 20, 1957 did a federal judge grant an injunction barring the Governor’s use of the troops to defy the integration of Central High.²⁹ Admitting his defeat on television, Faubus asked the black students to “refrain from exercising their rights under the court order by staying away from Central High until such a time as school integration could be accomplished without violence.”³⁰

Daisy Bates explains that on September 22, 1957, a day when citizens of Little Rock saw the uprising of passionate racial hatred unprecedented since the Reconstruction era, the Mothers’ League called for an all-out demonstration outside Central High the next morning.³¹ With insufficient local police power to protect the black students at Central High, the black students were removed from the school.³² The next morning, September 23, the local police escorted the students to class, and by midafternoon, President Eisenhower had federalized the Arkansas National Guard units.³³ According to Bates, “[s]ome of the citizens watching the arrival of the troops cried with relief. Others cursed the Federal Government for ‘invading our city.’” Daisy Bates “got the impression that the ‘Solid South’ was no longer solid.”³⁴ The South was split between those who found relief in the federal government’s presence in Little Rock, and those who did not.

For the next couple of months, as the federalized troops upheld federal law by enforcing the safe integration of black students in Central High, the Mothers’ League and the Capital Citizens’ Council, among other groups of segregationists in Little Rock, contributed in escalating the level of fear and intimidation in the city and in the school. It is against this backdrop in the fall of 1957 that Hannah Arendt wrote her *Reflections on Little Rock*.

²⁸ Bates, *supra* note ____, 63.

²⁹ *Id.* at 83.

³⁰ *Id.* at 84.

³¹ Bates, *supra* note ____, at 86.

³² *Id.* at 92.

³³ *Id.* at 99-100.

³⁴ *Id.* at 100-01.

3. HANNAH ARENDT WRITES *REFLECTIONS ON LITTLE ROCK*

In the fall of 1957, after seeing a photograph of one of the young black female students surrounded by a screaming mob of segregationists in front of Central High School, Hannah Arendt wrote her *Reflections on Little Rock*. In this piece, she criticizes both the federal judiciary's reasoning in *Brown*, and the federal executive's use of federal troops to enforce the *Brown* decision in Little Rock. How do we understand Arendt's critique of *Brown* and of the federal government's use of troops in Little Rock? Hannah Arendt agrees with parts of the Supreme Court's decisions and disagrees with others. I have tried to organize her thoughts in a way that a legal audience can easily understand, and in a way that a non-legal audience can get to understand the Supreme Court's legal reasoning, by comparing it directly with Hannah Arendt's criticisms.

The plaintiffs in *Brown I* were individual minors seeking aid from the courts in obtaining admission to the public schools of their community in a nonsegregated basis. The defendants were the states of Kansas, South Carolina, Virginia, and Delaware (Kansas statute permitting segregation; provisions in the South Carolina, Virginia and Delaware state constitutions and statutory codes requiring race-based segregation in public schools). In each instance, the minors had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. The Supreme Court explained that “[t]here is little in the history of the Fourteenth Amendment relating to its intended effect on public education.” After considering social science evidence showing that black children were harmed by segregated education, the Court held that “in the field of public education the *Plessy* doctrine of ‘separate but equal’ has no place,” explaining that “separate educational facilities are inherently unequal.”

In *Reflections on Little Rock*, Hannah Arendt writes that the Supreme Court has legitimate role in overruling state constitutions or statutory codes that requiring race-based segregation in public schools; She disagrees that the Court should overrule state statutes merely permitting segregation. “The crucial point to remember is that it is not the social custom of segregation that is unconstitutional, but its legal enforcement. . . Segregation is discrimination enforced by law, and desegregation can do no more than abolish the laws enforcing discrimination” (236-37). Taking Arendt's reasoning seriously in *Reflections on*

Little Rock, the South Carolina, Virginia and Delaware state constitutions and statutory codes requiring race-based segregation in public schools are unconstitutional: “The state has an unchallengeable right to prescribe minimum requirements for future citizenship and beyond that to further and support the teaching of subjects and professions which are felt to be desirable and necessary to the nation as a whole. All this involves, however, only the content of the child’s education, not the context of association and social life which invariably develops out of his attendance at school” (242).

Because the South Carolina, Virginia, and Delaware state constitutions and statutory codes requiring race-based segregation in public schools limit parents’ rights to free association, these states’ laws are unconstitutional. Arendt does not specify which constitutional amendment is violated—perhaps the substantive due process clause of the Fourteenth Amendment? She does mention “jobs” in her analysis, comparing a person’s freedom to choose a job to a person’s freedom to choose where her child attends school—She might be making comparisons with *Lochner*. Like the *Lochner* court which emphasized an individual’s freedom to contract, perhaps Hannah Arendt suggests the *Brown* court should overrule the South Carolina, Virginia, and Delaware statutes by emphasizing liberty of association. Perhaps Arendt means “illegitimate” when she writes “unconstitutional,” without connecting her sense of constitutionality with any specific amendment or clause of the United States Constitution.

But what about the Kansas statute permitting segregation? The *Brown* court not only deligitimized state enforced segregation, but also segregation growing out of free association. Arendt examines the issue of education in light of the “three realms of human life—the political, the social, and the private. Children are first of all part of the family and home, and this means that they are, or should be, brought up in that atmosphere of idiosyncratic exclusiveness which alone makes a home a home, strong and secure enough to shield its young against the demands of the social and the responsibilities of the political realm. The rights of parents to bring up their children as they see fit is a right of privacy, belonging to home and family... To force parents to send their children to an integrated school against their will means to deprive them of rights which clearly belong to them in all free societies—the private right over their children and the social right to free association” (241-42). According to Arendt, a statute allowing parents the right to associate freely in the social and private realms—the realms where children’s education and children existed-- is “constitutional”, or “correct” or “legitimate.”

In her analysis, Arendt supports the overruling of state legislation requiring segregation, but the *Brown I* Court went far beyond Arendt's expectations: The Court deemed all state legislations requiring or permitting segregation to be unconstitutional, and later explicated the terms for integration. In *Brown II*, the Court ordered the District Courts to enter orders that "are necessary and proper to admit public schools on a racially nondiscriminatory basis with all deliberate speed." Hannah Arendt, writes "that enforced integration is no better than enforced segregation."

Arendt's discussion and support of states' rights was timely in the fall of 1957, as segregationists transitioned from arguing "preservation of the peace," to emphasizing the state's right to segregate their schools. In essence, Arendt's reflections on state sovereignty lent support to segregationist arguments from the fall of 1957.³⁵

Arendt had plans of publishing this article with *Commentary* in the fall of 1957, but she withdrew her piece from publication in a letter dated November 23, 1957. Explaining her withdrawal, Arendt writes that it was partly due to "the controversial nature of [her] reflections which, obviously, were at variance with [*Commentary's*] stand on matters of discrimination and segregation."³⁶ She later published the article—unchanged—in the winter 1959 volume of *Dissent*, where two academics, David Spitz and Melvin Tumin, responded to her piece. However, before discussing their reactions, it is important to note how the Little Rock school crisis developed in the time period between the writing and the publication of *Reflections*.

4. LITTLE ROCK BETWEEN THE WRITING AND THE PUBLICATION OF ARENDT'S REFLECTIONS: NOVEMBER 1957—JANUARY 1959

During the 1957-58 academic year at Central High, the federal government continued to emphasize the supremacy of its laws over the community's violence defiance. Starting in September 1957, racial tension intensified in the school and among the community. In the school, black students faced torments from white students: "The African American students

³⁵ "As the school board member Wayne Upton put it, Faubus was 'hellbent on letting the whole wide world know that he was in charge of this state and the federal government just wasn't going to interfere with him and with his operation of the state of Arkansas.'" Karen S. Anderson, *supra* note 20, at 213-14.

³⁶ *Id.* at 45.

at Central High...faced daily intimidation and harassment.³⁷ In the community, “[a]nyone actively promoting integration of schools was subject to a torrent of physical violence, public insults, and economic pressure from local white segregationists.”³⁸ All these forms of harassment and intimidation largely remained unpunished in Little Rock,³⁹ and although some white people in the community sought to speak out against the segregationists, they were clearly outnumbered by those who remained silent, or who actually supported the segregationists.⁴⁰

Segregationists in Little Rock continued fighting their cause in court. At the end of the school year, the Little Rock school board petitioned the federal district court to delay integration of Central High. The school board explained that integration had caused increased violence in Little Rock, and that the community could use a cooling-off period. The school board “asked that the Negro pupils currently enrolled be removed and that integration be postponed until the January mid-term of 1961.”⁴¹ On June 1958, the school board’s request to delay integration was granted by the federal court. The NAACP appealed and by August 18th, the delay was overruled. In its written opinion, the Eight Circuit did not underscore the federal protection of civil rights, but rather, the supremacy of the federal government:

We say that the time has not yet come in the United States when an order of a Federal Court must be whittled away, watered down, or shamefully withdrawn in the face of violent and unlawful acts of individual citizens in opposition thereto.”⁴²

The segregationists appealed this decision to the Supreme Court, who, on September 11, 1958, held that, no matter how violent the opposition, integration at Central High must continue. That same day, Governor Faubus “signed the ‘package of segregation bills passed at the Extraordinary Legislative Session and ordered Little Rock’s three white and one Negro

³⁷ Karen Anderson, *The Little Rock School Desegregation Crisis: Moderation and Social Conflict*, 70 JOURNAL OF SOUTHERN HISTORY 3 603, 627 (2004); Kirk, *Redefining the Color Line*, 123.

³⁸ Kirk, *supra* note 18, at 123.

³⁹ Anderson, *supra* note 37, at 627.

⁴⁰ Kirk, *supra* note 18, at 129-30.

⁴¹ Bates, *supra* note ____, at 151.

⁴² Kirk, *supra* note 18, at 132; Bates, *supra* note ____, at 152.

high school closed.”⁴³ For the following academic year, from September 1958 to August 1959, all public schools in Little Rock were closed.

In September, as he promised a seamless transition from public to private education, Faubus enjoyed support from Little Rock voters to close down the public schools. However, “the white private school quickly proved unsatisfactory, especially after a federal court blocked its use of public money and public school buildings.”⁴⁴ By December 1958,

There was a rising awareness of the overall effect school closings were having on the community. Teachers unoccupied in empty classrooms were leaving the public school system in droves, the education of all the city’s students was being disrupted, and of more pressing concern to the businessmen, the city’s economy was suffering. According to a report by Gary Fullerton in the *Nashville Tennessean*, not one new industry had chosen to locate in Little Rock since the events of September 1957.⁴⁵

Little Rock became divided between those segregationists who continued to support Faubus’ decision to close schools, and those Little Rock residents who saw little reason in fighting federal sovereignty if it meant sacrificing the education of their children and the economic wellbeing of Little Rock. It is under this political climate, in January 1959, that Hannah Arendt published her *Reflections on Little Rock* and that David Spitz and Melvin Tumin responded.

5. HANNAH ARENDT PUBLISHES *REFLECTIONS ON LITTLE ROCK*, AND CRITICS REACT

In the fall of 1958, when Little Rock schools closed, Arendt realized that the issue of school integration in Little Rock was as critical as ever. That fall, she had published an article entitled “Crisis in Education” in the *Partisan Review*, arguing that individuals in modern societies—even though tempted otherwise—must divorce the realm of children’s education from the realm of public, political life (512). That same year, in 1958, she published *The Human Condition* (1958), where she further articulates her ideas of the private, social and public realms. In the winter 1959 edition of *Dissent*, Arendt explained that recent

⁴³ Bates, *supra* note ____, 155.

⁴⁴ Michael J. Klarman, *Why Massive Resistance?*, in MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION 21, 31 (2005).

⁴⁵ Kirk, *supra* note 18, at 135.

developments in Little Rock convinced her to publish the piece, and she “agreed to let *Dissent* publish her *Reflections* as they were written” in the fall of 1957.

While it is important to contextualize *Reflections* within Arendt’s own body of work on education, and on the private, public and private realms in the late 1950s, it is also important to note that Arendt was not alone in her critique of *Brown*: During this time period, from 1957 to 1959, other academics, including legal scholars at Harvard Law School, would be questioning the legitimacy of the Court’s decision in *Brown (I and II)*. As Morton Horwitz mentions in *The Transformation of American Law*, “The single dominant theme in post-war American academic legal thought is the effort to find a ‘morality of process’ independent of results....*Brown v. Board of Education* produced a sharply critical reaction among elite legal thinkers, for it challenged at the deepest levels their efforts to re-establish a neutral, value-free system of constitutional doctrine.”

According to Horwitz, two of the most prominent critics of the *Brown* decision were Judge Learned Hand and Columbia Law Professor Herbert Wechsler, who delivered consecutive Holmes Lectures at Harvard Law School in 1958 and 1959. Each of these lectures was widely discussed in legal circles, and indeed, they expressed a number of the themes prominent in post-war American legal thought (258): Learned Hand critiqued the Court’s role in reviewing legislation, and Herbert Wechsler questioned if there was a basis in neutral principles for barring segregation. While Hand critiqued the practice of judicial review, Wechsler questioned whether the Court could (or should) decide between one parent’s right of association over another parent’s right of association.

As for Arendt, she questioned the *Brown* Court’s intervention in a parent’s right of free association, and in the federal government’s role in Little Rock. Like Hand and Wechsler, Arendt was defending a neutral, value-free system of constitutional doctrine, independent of any “intended moral ends.” In the introduction to *Reflections*, Arendt writes that: “Since what I wrote may shock good people and be misused by bad ones, I should like to make it clear that as a Jew I take my sympathy for the cause of the Negroes as for all oppressed or under-privileged for granted and should appreciate it if the reader did likewise.” Arendt sought to distinguish her theoretical analysis from the politically sensitive conclusions she reached.

The publication of Arendt’s piece in *Dissent* was accompanied by two rebuttals: *Politics and the Realms of Being* and *Pie in the Sky*, written by David Spitz and Melvin Tumin respectively. While Spitz analyzed Arendt’s political theories, specifically focusing on

her demarcation of education in the private realm, and her characterization of federalism and states' rights, Tumin sought to crystallize the conclusions Arendt must reach from her critical stance on the federal government's role in Little Rock.

Spitz begins his piece by dismissing Arendt's two main points: Her critique of *Brown*—that the education of children belongs in the private realm—and her criticism of federal troops' usurpation of states' rights. First focusing on Arendt's treatment of education as a private, and not a social, matter, Spitz writes:

Surely Miss Arendt cannot deny that education is the most social, as it is the most socializing, of human activities. And if she admits that the community has a legitimate stake in the intellectual development of its citizens, on what ground can she maintain that the give-and-take among students, the exchange of ideas and attitudes and interests that is central to such associations, is not relevant to this concern?⁴⁶

Spitz rebuts Arendt by arguing that the education of children is not solely a private issue, but also a social concern. He goes on to say that even if Arendt considered the education of children to be a privacy interest, these rights and interests exist only because they were created by the democratic society. Because the democratic society created these rights, it can also limit or take away them away.⁴⁷

Second, Spitz focuses on Arendt's discussion of federalism and states' rights: "[H]er argument might, perhaps, have some relevance if she could show that our federal system rests on a fairly clear-cut division between two sets of geographical interests—one embedded in the national community and its government, the other represented by the constituent state or states and their respective communities."⁴⁸ Spitz underscores the fact that quiet moderates and integrationists, including the NAACP and the black students at Central High, exist in the same "South" Arendt characterizes as heralding segregation and states' rights. He explains that the issue is "one between national majority and national minority, and between local majority and local minority... For the national majority to coerce the national minority is to prevent a local majority from coercing a local minority."⁴⁹ Recognizing the value of the Supreme Court's supreme interpretation of the Constitution, and of the democratic principle

⁴⁶ *Id.*

⁴⁷ David Spitz, *Politics and the Realms of Being*, 6 *DISSENT* 1 56, 58 (1959).

⁴⁸ *Id.* at 59.

⁴⁹ *Id.*

of equality, Spitz concludes that the national majority and the local minority are right in advocating the South's compliance with *Brown*.

Lastly, Spitz goes on to reframe the issue of school integration in Little Rock as one about competing equality and liberty interests. The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."⁵⁰ Because public schools are one form of public facilities that must abide by the provisions of the Fourteenth Amendment, public schools must be neutral as to their treatment of black and white students. As far as liberty, Spitz explains that liberty "is a complex and ever-changing system of liberties and restrains, in which law by restraining some men who would restrain others, guarantees to those others the enjoyment of certain prized freedoms."⁵¹ He articulates how a parent's right to segregate his child's school along racial lines necessarily limits another parent's right to integrate his child's school. The issue becomes deciding which parent's right is constitutionally protected, and which is constitutionally prohibited. Because public schools are part of the state, the parent seeking to segregate his child's school along racial lines is constitutionally prohibited from doing so. As Spitz argues, the latter parent, the national majority and the local minority, are "clearly in the right."⁵²

The second rebuttal published in the winter 1959 volume is entitled *Pie in the Sky*, written by Melvin Tumin. After reading Arendt's piece, Tumin asks: "Just what, after all, does Miss A. mean to tell us?"⁵³ Tumin argues that Arendt's critique of *Brown* and her criticism of the federal government's use of troops to enforce *Brown* leads to only one possible solution: He writes that if "equality produces these disastrous events, then there is nothing to be done but to call an immediate halt to desegregation of any type, restore law and order, and denounce as enemies both of the Negro, and of the country as a whole, all those misguided persons who persist in bringing a crisis upon us by their advocacy of equality."⁵⁴ Tumin concludes that Arendt, in essence, implies that the federal government's efforts to integrate public schools was not wise: "After all those hurricane warnings, all those ominous

⁵⁰ *Id.*

⁵¹ *Id.* at 62.

⁵² *Id.* at 59.

⁵³ Melvin Tumin, *Pie in the Sky*..., 6 DISSENT 1 65, 66 (1959).

⁵⁴ *Id.*

massings of portentous black clouds, out comes this tremulous and timorous pipsqueak of a conclusion.”⁵⁵

While Spitz analyzed Arendt’s political theories, specifically focusing on her demarcation of education in the private realm, and her characterization of federalism and states’ rights, Tumin sought to crystallize the conclusions Arendt must reach from her critical stance on the federal government’s role in Little Rock. In the following edition of *Dissent*, spring 1959, Arendt had an opportunity to respond to these two critics. In the meantime, between the winter and spring of 1959, the terms of the Little Rock debate on federal supremacy and state sovereignty were changing as the state’s sovereign right to defy the federal government was being challenged locally by those advocating the economic well-being of Little Rock.

6. JANUARY 1959- SEPTEMBER 1959

In the winter of 1959, when Arendt published *Reflections* and her critics responded, business leaders were gaining headway against the segregationist control of Little Rock: three segregationists and three business leaders won seats to the Little Rock school board. On January 14, 1959, in his inaugural speech, the president of the Little Rock Chamber of Commerce shared his reservations with the segregationist campaigns that led to the closing of schools in Little Rock. He told the audience that “no matter what our personal feelings might be,” the “time has come for us to evaluate...the cost of the lack of public education.”⁵⁶ While the business community increasingly felt self-assured in publicly criticizing segregationists’ closing of schools, the segregationists gained strength as well: At the 1959 Arkansas General Assembly, Faubus helped pass thirty-two prosegregation laws.⁵⁷

The business leaders and the segregationists finally came tête-à-tête at a school board meeting on May 5, 1959, when segregationists sought to remove from the board anyone unsympathetic with their cause to keep the schools closed. On May 8th, a group of business

⁵⁵ *Id.*

⁵⁶ Kirk, *supra* note ____, at 135.

⁵⁷ *Id.*

leaders formed a new organization, Stop This Outrageous Purge (STOP).⁵⁸ On May 15th, segregationists joined forces against the school board's business leaders and formed a Committee to Retain Our Segregated Schools (CROSS).⁵⁹ When the school board held an election on May 25th, the business leaders won by a slight margin, "with all the business representatives reinstated and all the segregationist candidates dismissed from the school board."⁶⁰

That spring of 1959, as business leaders took control of the Little Rock school board, Arendt had an opportunity in *Dissent* to respond to her two critics. In her introductory paragraph, she mentions Spitz and Tumin, and then dismisses them. Arendt reiterates her critique of *Brown* and her support for state sovereignty, but emphasizes the limited role that the *Brown* decisions or the federal executive branch would play in Little Rock: "[t]he series of events in the South that followed the Supreme Court ruling, after which this administration committed itself to fight its battle for civil rights on the grounds of education and public schools, impresses one with a sense of futility and needless embitterment as though all parties concerned knew very well that nothing was being achieved under the pretext that something was being done."⁶¹

On June 18, 1959, the segregationist laws Faubus had passed to close the public schools were declared unconstitutional.⁶² After a year under the control of segregationists, the Little Rock community was retaken by the white business community, and the policy of minimum compliance was resumed.⁶³ Little Rock's Central High reopened on August 12th 1959 as a minimally integrated school: "Only four black students attended formerly segregated schools, with two assigned to Central High and two assigned to Hall High."⁶⁴

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 136.

⁶¹ *Dissent*, spring 1959, 246.

⁶² Bates, *supra* note ____, at 161; Kirk, *supra* note ____, at 136.

⁶³ Anderson, *supra* note 37, at 635; Kirk, *supra* note 13, at 93.

⁶⁴ Kirk, *supra* note ____, at 93.

CONCLUSION:

In this paper, I have argued that Arendt's criticism of the Supreme Court's 1954 and 1955 *Brown* decisions resonated with legal academics' discussions of *Brown* in 1958 and 1959 when she published *Reflections*. Hannah Arendt, like other legal scholars of the late 1950s, thought that the *Brown* decision threatened the structure of the Republic. She was critical of the federal government's limitation of individuals' rights to free association in the social realm: As such, in the Little Rock debate, she sided with those fighting against federally-enforced school integration and advocating state sovereignty. Her support of state sovereignty tapped into the public debate on federalism of the time.

Arendt's critics asked her to look at the ends realized through her analysis; she asked readers to overlook (or at least not judge her for) the ends she reached. As a scholar, was she so preoccupied with the preservation of the Republic, with the structure of the polity, that the "moral" outcomes of her political theories seemed less critical? It is clear that Arendt expected the Supreme Court to follow a certain theoretical framework in its legal reasoning—specifically, her framework of the private, public and social realms, and her sense of a balanced Republic protected by states' rights: But once the Court broke from her framework in *Brown I* and *II*, she expected the government to achieve something in the battle for civil rights. As she retreated from the Little Rock debates in the spring of 1959, she expressed her sense of futility and needless embitterment in realizing that the federal government had not done much at all "under the pretext that something was being done."⁶⁵

⁶⁵ Arendt, *Dissent*, spring 1959.