

UCLA
National Black Law Journal

Title

Charles Hamilton Houston

Permalink

<https://escholarship.org/uc/item/776794vd>

Journal

National Black Law Journal, 3(2)

Author

McNell, Genna Rae

Publication Date

1973

Copyright Information

Copyright 1973 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

CHARLES HAMILTON HOUSTON

By GENNA RAE MCNEIL*

CHARLES HAMILTON HOUSTON, the descendant of a line of free Blacks and slaves, was born September 3, 1895, in Washington, D.C., where he lived and worked until his death at the age of fifty-four in April, 1950. His parents were William LePre Houston, a lawyer, and Mary Ethel Hamilton Houston, a former teacher and hairdresser. To the extent that it was within their power, these two working parents provided a privileged environment for their very capable only child. Houston attended "M" Street High School (subsequently renamed for the Black poet, Paul Laurence Dunbar), the college preparatory school for Blacks in Washington, D.C., and the surrounding area. At the age of nineteen, he graduated Magna Cum Laude with an honors degree in English and Phi Beta Kappa from Amherst College. The next two years he taught English at Howard University's Commercial College. At the age of twenty-one Charles Houston entered the first Black officers' training camp, Fort Des Moines, where he earned his commission as a First Lieutenant in the Infantry. The Army's unfair assignment of a number of Black infantry officers and disparaging reports regarding the ability of Blacks to train in the Special Services, however, offended and provoked Houston so much that he relinquished his rank and retrained to become a field artillery officer in the American Expeditionary Forces. As a Second Lieutenant overseas, he encountered virulent racism practiced by Red Cross workers, white enlisted men and his fellow white officers. Because of his race and color, he suffered arbitrary insults, indignities

and exposure to mortal danger.

Injustice at home and abroad prompted a decision to join his father in the practice of law. In the summer of 1919 following his discharge from the Army, racial violence erupted in Washington, D.C., and a score of other localities. Blacks were murdered and victimized. In the autumn following that "Red Summer," Charles Houston entered Harvard Law School. He distinguished himself at Harvard, being the first Black to serve on the Harvard Law Review, earning his LL.B. ('22) with an honors average and receiving the Langdell Scholarship for further studies. Houston earned all "A"s in his fourth year of law studies during which time he was instructed by such men as Roscoe Pound and Felix Frankfurter.¹ In 1923 he obtained his Doctorate in Juridical Science and was awarded the prestigious Sheldon Traveling Fellowship which allowed him to study civil law at the University of Madrid and sit as an observer in the courts of Spain, Italy, Greece, Tunisia and Algeria.

After Houston returned from southern Europe and northern Africa and joined the District of Columbia bar, his father proudly renamed the office, "Houston & Houston".

*B.A. Kalamazoo College; M. A. University of Chicago; Candidate for PhD History, University of Chicago. Ms. McNeil's dissertation topic is: "Charles Hamilton Houston (1895-1950) and the Struggle for Civil Rights." She is a former instructor of Afro-American History at Roosevelt University, and is newly appointed to the faculty of the History Department, University of North Carolina, Chapel Hill.

1. Letter from Walter White to Roger N. Baldwin, July 8, 1933, in 8 *American Fund for Public Service: Applications Favorably Acted Upon* 135, Frankfurter commented ten years later that Houston was one of the most "brilliant and able students at Harvard within his memory."

They went about the task of making a success of what they regarded as the first Black law firm in Washington, D.C. In addition to building a traditional private practice, the younger Houston began teaching at the Howard University School of Law. He was meticulous in the preparation of both cases and lectures, always putting forth his best effort for clients and students. By the end of 1924, Charles Houston's interest in the plight of Black people involved him in the pursuit of two full-time careers.

“. . . TO WAGE AN UNCOMPROMISING FIGHT . . .”

After three years as a practitioner and a professor, Charles Houston found he was still dissatisfied with the degree to which his work was contributing to the struggle for the improvement of the quality of Black life in the United States. With enthusiasm, he accepted for the Howard Law School the directorship of a survey on the status and activities of Black lawyers in the United States. In large measure, the dismal facts gleaned from this study coupled with a love for and sense of duty to his people led Charles Houston to accept the vice-deanship of Howard's Law School. In this capacity, despite criticism, he insisted on “unqualified excellence” from faculty and students and worked “with singleness of purpose [and] unremitting drive” for the conversion of the Howard Law School from an unaccredited evening school to a full-time, nationally known and respected school of law accredited by the American Bar Association and the Association of American Law Schools. Houston achieved in five years “a transformation which ordinarily requires a generation in the history of an educational institution.”²

The transformation of the institution went beyond the holding of day classes and full accreditation. It was Houston's view that Howard University's School of Law could justify its existence in a city with seven white law schools only if it performed a “distinct, necessary work for the social good.” The Howard Law School should provide a fertile “educational field for [not only] the working

out of special problems of [Black] lawyers,” but also for the researching of “legal aspects of [Black] economic, social and political life.” Moreover, it should produce “capable and socially alert [Black] lawyers to meet the group needs.”³ There was no doubt in Houston's mind that if Black lawyers were not trained to fight for Black people, resort to the courts for vindication of rights would prove to be more often than not an exercise in futility. “Experience has proved that the average white lawyer especially in the South cannot be relied upon to wage an uncompromising fight for equal rights for [Black people]. He has too many conflicting interests, and usually himself profits as an individual by that very exploitation of the [Black], which, as a lawyer, he would be called upon to attack and destroy.”⁴

Because of the improbability of white lawyers protecting Blacks with the same interest and vigor as they exhibit in the protection of white clients and an inadequate supply of Black lawyers for the Afro-American populace, Charles Houston considered it absolutely essential to offer Howard's law students a new interpretation of the meaning of the practice of law for a Black person in the United States. He insisted that this practice was more than skillful advocacy and negotiation in serving individual clients in matters pertaining to accident claims, wills and domestic relations. The law “offers an impelling challenge to leadership and service[;]” it offers the “privilege of piloting the race in its persistent march toward full citizenship . . .”⁵ Houston maintained that the political, social and economic condition of Black Americans necessitated a Black lawyer's preparation for both anticipation and guidance of the race's advancement. To students under his tutelage — Coyness L. Ennix, Oliver W. Hill, Edward P. Lovett, Thurgood E. Marshall, James G. Tyson, and others

2. W. Hastie, “Charles Hamilton Houston”, 8 *Negro History Bull.* 207 (1950).
3. C. Houston, “Personal Observations on the Summary of Studies in Legal Education As Applied to the Howard University School of Law” 1-2 (ms.) (1929).
4. C. Houston, “The Need for Negro Lawyers,” 4 *J. of Negro Education* 49 (1935).
5. C. Houston, “Law As A Career” 3 (ms.) (1932).

— Houston commended the undertaking of law as social engineering and further charged them to view the primary “social justification for the [Black] lawyer . . . in the United States . . . [as] the service he can render the race as an interpreter and proponent of its rights and aspirations.”⁶

Houston’s challenge did not go unheeded. By the mid-thirties Howard University Law students were beginning to move throughout the nation and to play active roles in the civil rights’ struggle. Moreover, friends and colleagues who shared his vision succeeded Houston as top administrators of the school. Men such as William Hastie, George Johnson and James Nabrit molded the Howard University School of Law into the center of legal thought and activity in work toward the elimination of legal obstacles to Black people’s freedom.

In 1935 Charles H. Houston left his position at Howard to enter the legal fray. He committed himself on a full-time basis to direct the struggle against racist oppression in its various manifestations, and against segregated, discriminatory and unequal education in particular. A grant from the American Fund for Public Service provided the National Association for the Advancement of Colored People (NAACP) with sufficient funds to hire a Special Counsel to conduct a legal campaign against discrimination. From 1935 to 1940 Charles Houston, as Special Counsel, established himself as the “architect and dominant force of the legal program of the NAACP.”⁷ The “spiritual father of the Legal Defense Fund,” Charles Houston devised the legal strategy, charted the course, began a program of political education for the masses, brought into the campaign the brightest and best young lawyers (among them Thurgood Marshall who subsequent to Houston’s resignation became the second NAACP Special Counsel), directed Black lawyers throughout the nation in the waging of their local campaigns, and provided the cohesive factor from 1935 until his death for a myriad of court battles designed to move Black people from racist oppression and suppression, from segregation and

inequality, to integration into the society, equal protection, equal access and equal opportunity.⁸

THE EDUCATIONAL CAMPAIGN: “LAW . . . WITHIN ITS LIMITATIONS”

To make a contented slave you must make a thoughtless one, . . . darken his moral and mental vision, and . . . annihilate his power of reason. He must be able to detect no inconsistencies in slavery . . . It must not depend upon mere force: the slave must know no higher law than his master’s will.

—Frederick Douglass (1881)

Using the above passage, Charles Houston introduced a descriptive essay and appeal for support of the NAACP’s program against discrimination in public education.⁹ For indeed it seemed to Houston that a new form of slavery still existed in the South and that a worse kind of oppression would await Blacks throughout the country if Black people did not ceaselessly protest discrimination and fight for “identical quality and quantity of educational opportunity [for] all citizens regardless of race, color or creed[.] . . . democracy and ignorance cannot endure side by side.”¹⁰ If ignorance prevails among the masses, among any race, Houston averred, they become “the tools of a small exploiting class.”¹¹

Houston felt that failure to eradicate inequality in the education of Black youth would condemn the race to an inferior position within American society. The white man claims Black American slowness, backwardness and lesser intelligence to justify “poorer teachers, wretched schools, shorter terms and an inferior type of education” for Blacks, Houston declared, but there is only one legitimate answer to the question of why

6. C. Houston, “The Need for Negro Lawyers,” 4 *J. of Negro Education* 49 (1935).

7. W. Hastie, *supra* note 2.

8. Address by J. Lindsay, Nat’l. Ass’n. for the Advancement of Colored People’s Legal Defense and Educational Fund, Nov. 18, 1971; Address by R. Wilkins, NAACP’s Forty-first Annual Conference, June 20, 1950.

9. [C. Houston], “A Program Against Discrimination in Public Education” 1 (ms.) n.d. [ca. 1935].

10. C. Houston, Memorandum “Re Projected Picture on Inequalities of Negro Education in South Carolina,” June 16, 1935.

11. “Segregated Educational System Hit . . .” (unidentified clipping), n.d. [ca. 1935].

such treatment.¹² He argued that:

... discrimination in education is symbolic of all the more drastic discriminations which [Blacks] suffer in American life. And these apparent senseless discriminations in education against [Blacks] have a very definite objective on the part of the ruling whites to curb the young [Blacks] and prepare them to accept an inferior position in American life without protest or struggle. In the United States the [Black person] is economically exploited, politically ignored and socially ostr[a]cized. His education reflects his condition; the discriminations practiced against him are no accident.¹³

What then would be the goal of the NAACP's campaign against unequal, discriminatory segregated public education? Houston's answer was unequivocal:

Absolute identity of educational opportunities as students, as teachers, as administrators. Equality of education is not enough. There can be no true equality under a segregated system. No segregation operates fairly on a minority group unless it is a d[ominant] minority ... The American [Black] is not a dominant minority; therefore he must fight for complete elimination of segregation as his ultimate goal.¹⁴

Having set this goal, the Special Counsel, understanding that the "[I]aw [is] ... one instrumentality ... effective ... always within its limitations," viewed his second task as devising "positionary tactics [—] ... the steps [one] takes to move from one position to another" — and formulating the rationale for such tactics.¹⁵ The difficulty of a legal campaign against discriminatory education was immediately apparent as Houston confronted this two-fold task. He proceeded to outline a plan of attack consistent with his knowledge of and familiarity with specific realities of American society. He called for a protracted legal struggle based upon the planned, deliberate prosecution of test cases to secure favorable legal precedents, and thereby lay a foundation for subsequent frontal attacks against racist discrimination and segregation per se. In conjunction with the program of litigation, he perceived as essential, constant efforts to keep the masses informed and involved in the struggle: arousing people,

strengthening the will of local communities to fight for their rights and providing local communities with model procedures for use in cases brought by them on their own initiative.

Houston was criticized during the 1930's and 1940's by some Black activists. Non-Communist activists considered Houston's indirectness and over-cautiousness in timing unwise. Communist Black activists found fault with what they considered Houston's excessive reliance on the courts and the law when these were products of the same government and socio-political-economic order which had as its policy the denial of rights to Blacks. Yet Houston's co-workers and test case litigants were cognizant of the fact that they would be extremely remiss to neglect summarily the means of appeals to the courts. Houston elected, however, to prosecute test cases both because he understood the necessity of using every means available, and because he was a skilled practitioner who in those years believed that "the written constitution and the inertia against constitutional amendment give the lawyer wide room for experimentation ... [and] enable [Black people] to force reforms where [they] could have no chance through politics."¹⁶ In spite of obstacles, Houston carried out a legal campaign for non-discriminatory education as part and parcel of the continuing struggle of Black Americans against racist oppression. He viewed the use of the law for social change as problematic, and he perceived the concept of Black Americans' use of the law as fraught with difficulties when used as an instrument for change in their behalf. Given a largely disenfranchised group, however, there was little or no chance for radical legislative change. Thus, his response was to formulate a strategy

12. *Id.*

13. Speech by C. Houston, National Bar Ass'n. Convention, "Proposed Legal Attacks on Educational Discrimination" Aug. 1, 1935 (uncorrected typescript summary of speech) p. 2.

14. *Id.*

15. [C. Houston], "Use of Law as an instrument available to a minority unable to adopt direct action to achieve its place in the community and nation" (typescript notes for lecture) Dec. 12, 1946, p. 6; Charles H. Houston, "Proposed Legal Attack on Educational Discrimination," Aug. 1, 1935, p. 3.

16. Letter from Charles H. Houston to Monroe Berger, Feb. 10, 1948.

which would take into account three pivotal problems.

First, Charles Houston recognized the judicial decision-making process in the United States to be essentially characterized by stare decisis, judicial self-restraint, and what Houston termed the law's evolutionary nature — *i.e.* (a) the law's prime function at any given historical moment to preserve the existing society, (b) the court's adherence to a step-by-step process in the performance of its duties, (c) the inherent limitation imposed by the requirement that legal consequences of actions be reasonably predictable, and (d) the fact that the system is not designed to directly challenge national conduct and dictate rapid and/or sweeping changes in the standard of national conduct. Secondly, experience demonstrated that several factors all too often combined to adversely affect Black people's — as an oppressed minority outside the mainstream and seeking change — use of the law. Specifically, the law is frequently in hostile and indifferent hands (*e.g.* judges, juries, commissioners, clerks); the law is so slow that frequently practical justice is thwarted and is so costly that it sometimes results in ruination. Finally, he realized that "the equal protection clause of the fourteenth amendment furnishes the key to future policies and practices which should govern the relationship of the federal government in all its branches . . . to [Black] separate schools."¹⁷ However in its dealings with Blacks, the American judicial system lacked a tradition of interpretation for equality. Historical facts and societal realities which, in addition to principles coming out of prior judicial decisions, influenced justices' decisions which lent little, if any, support to the reinterpretation of the place of Blacks within the existing order.

THE EDUCATIONAL CAMPAIGN: EQUAL PROTECTION OF THE LAW

HAVING DEVELOPED A LITIGATION program in the light of these understandings, from 1935-1954 the "real aim

. . . to abolish all segregated schools" was pursued through a line of cases carefully considered and deliberately prosecuted to establish specific legal/constitutional principles.¹⁸ Despite some adverse decisions in lower courts, Houston worked unceasingly, until his death in 1950, to guide, to advise and to inspire other lawyers. He refused to be "discouraged by temporary defeats." After all, he allowed, "[o]ur record in the United States has from the beginning been a record of doing the impossible."¹⁹

The charted course began on the state level with *University of Maryland v. Murray*,²⁰ and *Missouri ex rel Gaines v. Canada*²¹ which reached the Supreme Court. These cases were basic to the foundation of the Supreme Court's epochal school desegregation ruling in 1954. In these cases, the "NAACP lawyers, in order to get the campaign underway, accepted the doctrine that the State could segregate white and [Black] students provided equal accommodations were afforded both."²² Thus, tentatively accepting *Plessy v. Ferguson*²³ as a given, Charles Houston, Thurgood Marshall and William Gosnell, on behalf of Donald Gaines Murray, challenged the University of Maryland Law School's refusal to admit Murray. In 1936, the Maryland Court of Appeals affirmed the Baltimore Court's decision holding that this young man who on the basis of race was refused admission to the University of Maryland's Law School should be admitted to the one existing State Law School since compliance with the Constitution could not be deferred at the will of the State, and substantial equality of treatment had to be furnished. Although no appeal to a higher tribunal was made, Murray's attendance in the University's Law School without racial in-

17. C. Houston, "Future Policies and Practices Which Should Govern the Relationship of the Federal Government to Negro Schools" 1 (ms.) (1938).

18. [C. Houston], "Use of Law as an instrument available to a minority unable to adopt direct action to achieve its place in the community and nation" (typescript notes for lecture) Dec. 12, 1946, p. 3.

19. C. Houston, "The Highway," *Afro-American* 4 (Nat'l. Ed. 1947.)

20. 169 Md. 478 (1936).

21. 305 U.S. 337 (1938).

22. C. Houston, "The Highway," *Afro-American* 4 (Nat'l. Ed. 1947.)

23. 163 U.S. 537 (1896).

cident was a key social precedent in a later law school case, *Sweatt v. Painter*.²⁴

For additional monies toward the financing of test case litigants' studies and the NAACP educational program in general, Houston successfully appealed to Black fraternities and sororities in 1935 during his first year as Special Counsel. In an effort to draw more Blacks into the campaign, Houston toured the South filming inequalities, making speeches throughout the country, and writing articles to report and to explain the program.²⁵ In 1936, another test case was in the making concerning the admission of a Black student, Lloyd Gaines, to the University of Missouri Law School. After nearly three years, Charles Houston — assisted by Sidney Redmond, Henry Espy, Leon Ransom, Edward Lovett and Thurgood Marshall — argued the unconstitutionality of both out-of-state scholarships and exclusion of Gaines on the sole ground of his race from the tax-supported State University. Appealing to the Supreme Court of the United States, Houston extracted an opinion in affirmance of his basic contentions and reversing the judgment of the Supreme Court of Missouri. In December, 1938, the Court ruled that, " 'equal protection of the law is a pledge of the protection of equal laws.' . . . Manifestly the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction."²⁶ The Court further stated,

The question here is not of a duty of the State to supply legal training . . . but of its duty when it provides such training to furnish it to the residents of the State upon the basis of equality of right.

Here the petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State . . . afforded persons of the white race. . . .²⁷

The implications were enormous. Based on *Gaines*, any southern state could be attacked for failure to provide educational opportunities, particularly graduate and professional training, for all its citizens on a

basis of equality. The State could then be compelled to either establish equal opportunities or to admit Blacks to the school if such training was made available to individuals from other groups.

Between the *Gaines* decision and the failure of his health in the autumn of 1949, Houston litigated employment discrimination cases for Black railroad workers resulting by 1944 in landmark rulings in *Steele v. Louisville & Nashville Railroad Company*²⁸ and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*,²⁹ and housing discrimination cases resulting in 1948 with *Hurd v. Hodge*³⁰ in which the Supreme Court declared that racially restrictive covenants were unconstitutional.

Throughout this period he maintained an active interest in education cases. The NAACP's Legal Defense Fund, under the impetus of *Gaines* and with Houston's advice and counsel, carried to the courts the grievance of Ada Lois Sipuel, applicant for admission to the University of Oklahoma Law School. By 1948, a firmer foundation to overrule *Plessy* was laid when the Supreme Court handed down its opinion that not only must Oklahoma provide Ada Sipuel with a legal education but must also "provide it as soon as it does for applicants of any other group."³¹

After 1947, Charles Houston prepared cases arguing the unconstitutionality of the discriminatory dual school system in the District of Columbia. These were the precursors of *Bolling v. Sharpe*.³² He also participated with the NAACP in other higher education cases such as *McCready v. Byrd*,³³ *Sweatt v. Painter*,³⁴ and *McLaurin v. Oklahoma State Regents*.³⁵ Having coor-

24. 339 U.S. 629 (1950).

25. See XLII *Crisis*: 10, "Educational Inequalities Must Go!"; XLII, 12, "Cracking Closed University Doors"; XLIII, 2, "How to Fight For Better Schools" and XLIII, 3, "Don't Shout Too Soon."

26. 305 U.S. 337 (1938).

27. *Id.* at 349.

28. 323 U.S. 192 (1944).

29. 323 U.S. 210 (1944).

30. 334 U.S. 24 (1948).

31. 332 U.S. 631 (1948).

32. 347 U.S. 427 (1954).

33. 195 Md. 131 (1950).

34. 339 U.S. 629 (1950).

35. 339 U.S. 639 (1950).

minated programs and assisted with litigation for nearly fifteen years, an over-extended but confident Charles Houston, in August, 1949, wrote to assure Robert L. Carter, First Assistant Special Counsel: "These education cases are now tight sufficiently so that anyone familiar with the course of the decisions should be able to guide the cases through. You and Thurgood can proceed without any fear of crossing any plans I might have."³⁶

Charles Houston died as a result of a heart attack April 22, 1950. He was only 54 at the time of his death.

On June 5, 1950, two more U.S. Supreme Court victories were won in *Sweatt* and *McLaurin*. In the *Sweatt* appeal the Court held that the Constitutional requirement of equal protection, *qua* a personal and present right, could not be met in the "State Law School for Negroes" established by the University of Texas. Therefore, substantial equality could only be provided by *Sweatt's* admission to the University's Law School. Significant among the aspects considered in determining equality was the absence of white law students with whom *Sweatt* would eventually have to practice. Simultaneously the Court held in *McLaurin* that the State of Oklahoma could not provide "substantial equality" for a Black student who was admitted to the State University and at the same time segregate him from the majority of his fellow graduate students in the School of Education. These decisions logically anticipated *Brown v. Board of Education*³⁷ and its companion cases decided in 1954.

Addressing the Forty-first Annual Conference of the NAACP on June 20, 1950, Roy Wilkins remarked,

As these unanimous opinions were handed down, our minds went back over the years, touching upon the sacrifices, the courage, the skill, and the persistence of our people during the long battle.

We thought instantly of our beloved Charles H. Houston who missed by only a few weeks the announcement of the victories for which he almost literally gave his life.³⁸

Perhaps William Hastie best expressed the sentiments of the many lawyers who worked with Houston in the campaign: "He guided us

through the legal wilderness of second class citizenship. He was . . . the Moses of that journey."³⁹

*"WE CANNOT DEPEND UPON THE
LAW ALONE TO SOLVE OUR
PROBLEMS"*

THE FACT THAT Charles Houston carried out a legal program did not mean that he had dismissed as having no validity the criticism of his radical brothers, i.e. that the courts were but products of the existing oppressive system. It simply meant that he was willing to explore the limits of the law within the U.S. judicial system — according to his best understanding of it — as a weapon for his people against inequities, exploitation, oppression and as a means of putting on the official record the legitimate demands of Black Americans.

Charles Houston was convinced that the use of law as an instrument of change was necessary when a minority was "unable to adopt direct action to achieve its place in the community and nation" and when there was no other public forum where a Black man could compel a white man to listen.⁴⁰ Yet his development of and total involvement in the litigation program for non-discriminatory education led him to two significant conclusions on which he felt he had to act. First, "[A]ny attack on educational discrimination must align itself with attacks on other discriminations against . . . [Blacks] . . . We cannot separate the school fight from all the struggles to eradicate the other evils the [Black man] suffers."⁴¹ Black people must either wage an unceasing fight for physical security, full protection of the right to work and "some semblance of order and justice in the processes of the administration of the

36. Letter from Charles H. Houston to Robert L. Carter, August 27, 1949.

37. The consolidated school desegregation cases included: Delaware case, *Gebhart v. Belton*; Kansas case, *Brown v. The Board of Education*; South Carolina case, *Briggs v. Elliott*; Virginia case, *Davis v. County School Board*.

38. Address by R. Wilkins, NAACP's Forty-first Annual Conference, p. 11, June 20, 1950.

39. W. Hastie, *supra* note 2.

40. [C. Houston], *supra* note 15, at 51.

41. C. Houston, *supra* note 13, at 2 and 8.

government," or perish.⁴² Secondly, Houston concluded that, "We cannot depend upon the law to solve our problems."⁴³ In 1935, he addressed the National Bar Association in these words:

We must never forget that the public officers, elective or appointive, are servants of the class which places them in office and maintains them there. It is too much to expect the court to go against the established and crystallized social customs, when to do so would mean professional and political suicide. We have got to do our own fighting and more of it by extra legal means.⁴⁴

Following his return to private practice, and with these convictions, Charles Houston's service to his people was in over-lapping roles. Such service included his functioning as a general counsel representing two Black railroad workers' unions, an attorney for and Roosevelt appointee to the Fair Employment Practice Committee (FEPC), a columnist for the Baltimore *Afro-American*, a frequent spokesman for the rights of Black people before congressional committees, an instructor in civil rights at Howard's Law School, a private practitioner representing numerous clients in Washington, D.C. racial restrictive covenant cases, an advocate without compensation for the parents of children discriminated against in the Washington, D.C. Public School system (Consolidated Parent Group, Inc.), Vice-President of the American Council on Race Relations, a proponent of desegregation of the armed forces, and an untiring, outspoken critic of any administration lax in its support of freedom and equality for Black Americans.

Believing that his birth in America was one of the most compelling reasons for continual protest, Houston frequently used the press to voice unambiguous castigations. Upon resigning from the FEPC, he accused President Harry Truman of paying "lip service [to the endeavor of] eliminating discrimination in employment on account of race, creed, color or national origin . . . while doing nothing substantial to make the policy effective."⁴⁵ Houston did not hesitate in 1947 to declare that the national policy of the United States toward Black Americans was as much an in-

ternational issue worthy of the concern and consideration of the United Nations as the question of the denial of democratic rights in Franco's Spain. Writing in the *Afro-American*, Houston contended,

[T]he [Black] man is still on sufferance in the South. He is tolerated, not accepted; and when he makes a nuisance of himself he is promptly put in his place with or without the law . . . [Moreover] discriminations and denial of human and civil rights [have] reach[ed] a national level [and] where the national government cannot or will not afford protection and redress for local aggressions against [Black] people, the national policy of the United States itself becomes involved . . .⁴⁶

Despite U.S. paranoia about "Reds" in 1948, Houston restated and affirmed the position of Paul Robeson who was under attack for his testimony before the Senate Judiciary Committee in which he emphasized the lack of progress for Blacks in the United States as compared with the results of programs for equality in Russia. Houston, in part, wrote,

For [Blacks] there is no liberty in the United States . . . The United States should wake up and realize [B]lack men are not interested in fighting to fasten chains of segregation around their necks . . . [Blacks] have to fight bitterly for all those rights which white Americans take for granted . . . Segregation has to go the way chattel slavery went and go soon.⁴⁷

"TO HAVE IDEOLOGY . . ."

You have to establish the political aims and [.] based on your own condition [.] the ideological content of the fight. To have ideology doesn't necessarily mean that you have to define whether you are communist, socialist or something like this. To have ideology is to know what you want in your own condition.

—Amilcar Cabral (1972)⁴⁸

42. Address by Charles H. Houston, National Conference of the International Labor Defense (typescript) Jul. 8, 1939, p. 11.

43. C. Houston, *supra* note 13, at 8.

44. *Id.*

45. N. Y. Times, Dec. 4, 1945, "Assailing Truman, Negro Quits FEPC."

46. C. Houston, "The Highway," *Afro-American* 8 (Nat'l. Ed. 1947).

47. C. Houston, "Along The Highway," *Afro-American* 4 (Nat'l. Ed. 1948).

48. Africa Information Service, Ed., *Return To The Source: Selected Speeches of Amilcar Cabral* 88 (New York: Africa Information Service, 1973).

CHARLES HAMILTON HOUSTON's career of public service in general and service to his race in particular spanned only three decades. But they were decades in American history during which racism and fascist oppression still found expression in some of the highest offices of the land. They were, too, decades when it remained difficult, if not impossible, to militantly urge freedom, justice, dignity and equality for all men in America without becoming the target of a Congressional committee on un-American activities. They were, moreover, decades when labels all too often were put upon activists and used to impede the struggle for liberty. In this era Charles Houston refused to be a captive of labels or organizational lines. But "recogniz[ing] . . . the constructive potential of all of the forces he could see working against racism, segregation, discrimination," he moved with and defended those forces which to his mind were most effectively fighting for his people.⁴⁹ It was as his own man that he argued for the NAACP in the Supreme Court, defended the International Labor Defense's handling of the *Scottsboro* cases and criticized openly the indictment of Henry Winston, Benjamin Davis, Gus Hall and other Communists arrested after the Foley Square incident.

In Charles Hamilton Houston's life the struggle for liberty was preeminent. He viewed the oppressed condition of Black Americans, Native Americans, colonized Africans, and others, as intolerable, and the struggle as indivisible. He spent his life fighting for a change in the conditions and quality of life for oppressed Afro-Americans. Houston worked at numerous levels within the system. (As Roy Wilkins recalled, "Charlie was always . . . interested in getting America to treat his people right . . . for his people . . . and for America's sake."⁵⁰) Functioning in various roles within the system afforded him an opportunity to gain and benefit from an expansive view of the system at work. Yet, Harvard doctorate, Supreme Court victories and Presidential appointment notwithstanding, he perceived himself simply as "a technician probing . . . how far the ex-

isting system will permit the exercise of freedom before it clamps down."⁵¹

For Black people in America, Charles Hamilton Houston's legacy is more than the foundation he laid for the historic 1954 decisions declaring school segregation in the states and the District of Columbia unconstitutional. It is more than that cadre of Black lawyers trained or advised and inspired by him to continue the fight. It is, perhaps most importantly, the challenge he addressed to Black people based upon his years of struggle and understandings gleaned from those years,

So far as our struggle for civil rights is concerned, I am not worried . . . What I am concerned about is the fact that the Negro shall not be content simply demanding an equal share in the existing system. It seems to me that his fundamental responsibility and his historic challenge is to use his weight — since he has less to lose in the present system than anybody else or any other group — to make sure that the system which shall survive in the United States of America (I don't care what you call it) shall be a system which guarantees justice and freedom for everyone. The way I usually put it is, 'sure, we're being invited now to take a front seat, but there's no particular honor in being invited to take a front seat at one's own funeral . . . We are fighting a system, . . . we are trying to remove the lid off the oppressed people everywhere . . . So in this day, while there is still time, the primary task is to probe, to struggle and . . . teach the masses to think for themselves . . . know their place, recognize their power and . . . apply it intelligently.⁵²

49. Interview with the Honorable William H. Hastie, Philadelphia, Pennsylvania, Sept. 19, 1972.

50. Interview with Mr. Roy Wilkins, New York, New York, Dec. 6, 1972.

51. C. Houston, *Untitled Message [on Scottsboro and the continuing Struggle]* (tape recording), n.d. [ca. December, 1949].

52. *Id.*