Constitutional Crisis: II

By ANTHONY LEWIS

Twenty years ago in Washington, D.C., Negroes could not sit down with white people at a drugstore lunch counter. In seventeen states and the District of Columbia black children were legally barred from going to the same public schools as white children. In a third of the country blacks had to ride in the back of streetcars and could not go into a good hotel or restaurant.

In just two decades that pattern of segregated life has been broken in law and in fact. It has been one of the great social and moral achievements in America's history, perhaps the greatest. And it has been made possible by two principal factors: the place of law in the American ideal and Presidential leadership.

The South met court orders with evasion and delay and violence; but the courts stood firm, and in time they awoke this country's faith in law. The crucial political act was President Eisenhower's intervention against the mob in Little Rock. After that every Southern politician knew in his heart that neither the legal nor the political system could be moved from the course of desegregation.

It is that history, that achievement of the last twenty years, that President Nixon's program against school busing now threatens. Of course the President has not said that he wants to return to a segregated society. But there are reasons, both practical and psychological, for believing that his program may stop the momentum of desegregation and even reverse it.

Mr. Nixon proposes a moratorium of up to fifteen months on all "new busing orders by the Federal courts." In a still-segregated Southern district where half the children now go to school by bus—a common situation—it may be quite impossible to devise any desegregation plan that does not involve substantial busing. In those cases the Nixon plan would effectively put a moratorium on the Constitution.

The permanent legislation he suggests would outlaw busing for desegregation purposes altogether in the first six grades of school, whatever the geographic situation and whatever the history of racial barriers in an area. And school officials already under court orders would be entitled to have them "reopened and modified"—an open invitation to reverse the movement of the last twenty years.

Psychologically, the effect could be even greater. The impression Mr. Nixon sought to create in his television speech was that he could stop the courts and the Constitution—that he would stand in the school bus door, so to speak. Those who want a segregated America are not going to miss the message that at last they have a President who will bargain.

It is not surprising that George Wallace and the militant black separatists are both on Richard Nixon's side on the busing issue. They want an America of two nations.

ABROAD AT HOME

White liberals will be hypocritical if they pretend that busing can solve the really difficult problem of education and race in America: the problem of the inner city. In Chicago and Washington and New York there are simply going to be schools that are largely black; the answer to bad education there is not busing but a willingness on the part of the white middle class to spend real money and effort on those schools even though their own children are not involved.

But recognition of that hard reality does not mean capitulation to the symbolism of segregation. Studies show that Americans, even as they fear busing of their children to distant schools, accept the idea of a racially integrated society more than they ever have. They do not want to go back to the two nations.

The moratorium is the particularly disastrous symbol. The President might easily have suggested a pause in lower-court orders to let the Supreme Court consider the busing question. Conservative voices have urged that course; indeed a Nixon supporter, Senator Brock of Tennessee, assumed in a television appearance the morning after the President's speech that he was just allowing the Supreme Court time to act. But the moratorium would prevent decisions by the Supreme Court as by other judges.

For Congress to restrict the jurisdiction of the Federal courts in order to prevent a particular result obviously raises questions broader than schools or race. The leading precedent is a particularly unhappy one: action by the Radical Republicans after the Civil War to prevent the Supreme Court from deciding the constitutionality of military trials in the occupied South.

Whether it would be constitutional for Congress to impose a busing moratorium on the courts would depend on the facts of a particular case. But the Nixon proposal raises a profound question for our society, whether it is technically allowable or not: do we want to twist the legal process for short-run political ends?

That is the question that the lawyers of the United States especially should consider. The bar is often attacked as selfish, insufficiently public-minded. Now is the chance for it to show character—to lead the fight against hasty political intervention in the deliberate process of law and the courts.

It should be a fight that can be won. Other Presidents and other Congresses have attacked the Supreme Court; but the Court, even when its decisions have been most unpopular, has usually prevailed. The public has somehow understood that in our turbulent country it is wiser to trust our ultimate liberties to those judges, however wrong they may be in this case or that, than to politicians.