

Document 3.7.10

**Excerpts from the argument by Charles Sumner,
“Equality Before the Law: Unconstitutionality of Separate Colored
Schools in Massachusetts,” delivered to the
Supreme Judicial Court of Massachusetts in the case of
*Sarah C. Roberts v. The City of Boston, 1849***

Charles Sumner (1811-1874) was a lawyer from Boston and a United States Senator from 1851 until his death. Renowned as an active abolitionist, it is noteworthy that he also was very sensitive to racism. He is profiled in John F. Kennedy’s Profiles in Courage. In the Roberts case, Sumner worked with Robert Morris, a young black abolitionist and activist lawyer.

Obviously, men are not born to be equal in physical strength or in mental capacity, in beauty of form or health of body. Diversity or inequality in these respects is the law of creation. From this difference springs divine harmony. But this inequality is in no particular inconsistent with complete civil and political equality.

The equality declared by our fathers in 1776, and made the fundamental law of Massachusetts in 1780, was *Equality before the Law*. Its object was to efface all political or civil distinctions, and to abolish all institutions founded upon *birth*. “All men are *created* equal,” says the Declaration of Independence. “All men are *born* free and equal,” says the Massachusetts Bill of Rights. These are not vain words. Within the sphere of their influence, no person can be *created*, no person can be *born*, with civil or political privileges not enjoyed equally by all his fellow-citizens: nor can any institution be established recognizing distinctions of birth. Here is the Great Charter of every human being drawing vital breath upon this soil, what ever may be his condition, and whoever may be his parents. He may be poor, weak, humble, or black—he may be of Caucasian, Jewish, Indian, or Ethiopian race—he may be of French, German, English, or Irish extraction; but before the Constitution of Massachusetts all these distinctions disappear. He is not poor, weak, humble, or black; nor is he Caucasian, Jew, Indian, or Ethiopian—nor is he French, German, English, or Irish; he is a Man, the equal of all his fellow-men. . . .

In this rule—without the unfortunate exception—is part of the beauty so conspicuous in our Common Schools. It is the boast of England, that, through the multitude of schools, education in Boston is brought to every *white* man’s door. But it is not brought to every black man’s door. He is obliged to go for it, to travel for it, to walk for it—often a great distance. The facts in the present case are not so strong as those of other cases within my knowledge. But here the little child, only five years old, is compelled, if attending the nearest African School, to go a distance of two thousand one hundred feet from her home, while the nearest Primary School is only nine hundred feet, and, in doing this, she passes by no less than five different Primary Schools, forming part of our Common Schools, and open to white children, all of which are closed to her. Surely, this is not Equality before the Law. . . .

There is a respectable colored person, I am told, who became some time since a resident of East Boston, separated from the mainland by water. Of course there are Common Schools at East Boston, but none open to colored children. This parent was obliged to send his children, three in number, daily across the ferry to the distant African School. The tolls amounted to a sum which formed a severe tax upon a poor man, while the long way to travel was a daily tax upon the time and strength of his children. Every toll paid by this parent, as every step taken by the children, testifies to that inequality which I now arraign. . . .

The Committee of Boston, charged with the superintendence of the Public Schools, have no *power* under the Constitution and laws of Massachusetts, to make any discrimination on account of color or race, among children in the Public Schools.

It has been seen already that this power is inconsistent with the Declaration of Independence, with the Constitution and Laws of Massachusetts, and with adjudications of the Supreme Court. The stream cannot rise higher than the fountain-head; and if there be nothing in these elevated sources from which this power can spring, it must be considered nullity. . . .

A descendant of the African race may be Governor of the Commonwealth, and as such, with the advice and consent of the Council, may select the *Board of Education*. As Lieutenant Governor, he may be *ex officio* a member of the Board. He may be *Secretary* of the Board, with the duty imposed on him by law of seeing "that *all* children in this Commonwealth, who depend upon Common Schools for instruction, may have the best education which those schools can be made to impart." He may be a member of any School Committee, or teacher in any Common School of the State. As legal voter, he can vote in the selection of any School Committee.

Thus, in every department connected with our Common Schools, throughout the whole hierarchy of their government, from the very head of the system down to the humblest usher in the humblest Primary School, and to the humblest voter, there is no distinction of color known to the law. It is when we reach the last stage of all, the children themselves, that the beautiful character of the system is changed to the deformity of Caste, as, in the picture of the ancient poet, what above was a lovely woman terminated below in a vile, unsightly fish. And all this is done by the School Committee, with more than necromantic power, in the exercise of a mere discretion. . . .

But there cannot be one law for the country and another for Boston. It is true that Boston is not divided strictly into geographical districts. In this respect its position is anomalous. But if separate colored schools are illegal and impossible in the country, they must be illegal and impossible in Boston. It is absurd to suppose that this city, failing to establish School Districts, and treating all its territory as a single district, should be able to legalize a Caste school, which otherwise it could not do. Boston cannot do indirectly what other towns cannot do directly. This is the first answer to the allegation of equivalents. . . .

Still further, and this consideration cannot be neglected, the matters taught in the two schools may be precisely the same, but a school exclusively devoted to one class must differ essentially in spirit and character from that Common School known to the law, where all classes meet together in Equality. It is a mockery to call it an equivalent.

But there is yet another answer. Admitting that it is an equivalent, still the colored children cannot be compelled to take it. Their rights are found in Equality before the Law....

In determining that the School Committee have no *power* to make this discrimination we are strengthened by another consideration. If the power exists in the present case, it cannot be restricted to this. The Committee may distribute all the children into classes, according to mere discretion. They may establish a separate school for Irish or Germans, where each may nurse an exclusive nationality alien to our institutions. They may separate Catholics from Protestants, or, pursuing their discretion still further, may separate different sects of Protestants, and establish one school for Unitarians, another for Presbyterians, another for Baptists, and another for Methodists. They may establish a separate school for the rich, that the delicate taste of this favored class may not be offended by the humble garments of the poor. They may exclude the children of mechanics, and send them to separate schools. All this, and much more, can be done in the exercise of that high-handed power which makes a discrimination on account of race or color. The grand fabric of our Common Schools, the pride of Massachusetts—where, at the feet of the teacher, innocent childhood should come, unconscious of all distinctions of birth – where the Equality of the Constitution and of Christianity should be inculcated by constant precept and example—will be converted into a heathen system of proscription and Caste. . . .

But it is said that these separate schools are for the mutual benefit of children of both colors, and of the Public Schools. In similar spirit, slavery is sometimes said to be for the mutual benefit of master and slave, and of the country where it exists. In one case there is a mistake as great as in the other. This is clear. Nothing unjust, nothing ungenerous can be for the benefit of any person, or any thing. . . . The whites themselves are injured by the separation. Who can doubt this? With the law as their monitor, they are taught to regard a portion of the human family, children of God, created in his image, co-equals in his love, as a separate and degraded class—they are taught practically to deny that grand revelation of Christianity—the Brotherhood of Mankind. Their hearts, while yet tender with childhood, are necessarily hardened by this conduct, and their subsequent lives, perhaps, bear enduring testimony of this legalized uncharitableness. . . .

The whole system of Common schools suffers also....The law contemplates not only that all shall be taught, but that all shall be taught *all together*. They are not only to receive equal quantities of knowledge, but all are to receive it in the same way. All are to approach the same common fountain together; nor can there be any exclusive source for individual or class. The school is the little world where the child is trained for the larger world of life. It is the microcosm preparatory to the macrocosm, and therefore it must cherish and develop the virtues and the sympathies needed in the larger world. And

since, according to our institutions, all classes without distinction of color, meet in the performance of civil duties, so should they all, without distinction of color, meet in the school, beginning there those relations of Equality which the Constitution and Laws promise to all. . . .

You have already banished slavery from this Commonwealth. I call upon you now to obliterate the last of its footprints, and to banish the last of the hateful spirits in its train, that can be reached by this Court. The law interfering to prohibit marriages between blacks and whites, has been abolished by the Legislature. The railroads, which, imitating the Boston schools, placed colored people in a car by themselves, have been compelled, under the influence of an awakened public sentiment, to abandon this regulation, and to allow them to mingle with other travellers. . . . It is in the Caste schools of Boston that the prejudice of color has sought its final legal refuge. It is for you to drive it forth.

Source: "Argument of Charles Sumner, Esq. Against the Constitutionality of Separate Colored Schools, in the case of Sarah C. Roberts v. The City of Boston." Boston: B. F. Roberts, 1849.