The Sitdowns

Many a Virginian must have felt a pang of wry regret at the state of things as they are in reading of Saturday's "sitdowns" by Negro students in Richmond stores. Here were the colored students, in coats, white shirts, ties, and one of them was reading Goethe and one was taking notes from a biology text. And here, on the sidewalk outside, was a gang of white boys come to heckle; a ragtag rabble, shack-jawed, black-jacketed, grinning fit to kill, and some of them, God save the mark, were waving the proud and honored flag of the Southern States in the last war fought by gentlemen.

``Eh!'' It gives one pause.

A spokesman for the students said they had come to demand their constitutional rights, and it is to this point alone that we would venture a few comments today. Whatever grievances they may have on the grounds of custom, the students are assuming a constitutional position which cannot possibly be defended. They are mistaken in believing they have some "constitutional" right to be served at Woolworth's or Murphy's or Grant's or the Soup Bar; they have no such right at all.

The constitutional rights in this matter belong entirely to the restaurateur, the innkeeper, the store owner, and violent invasion of those rights cannot be countenanced without jeopardy to personal freedoms as precious to Negroes as they are dear to whites.

The restaurant owner who serves the public does not become, as the term is used in law, a "public servant," nor is his restaurant a "public institution." The Fourteenth Amendment says that no State shall deny any citizen equal protection of the laws, but the five-and-dime stores are by no stretch of the imagination agencies of the State. In deciding to serve white patrons only, or Negro patrons only, or whites at one counter and Negroes at another, the innkeeper acts upon his own responsibility in the management of his own private property. This is his right. It must be respected.

Twice within the past seven months, high-ranking courts have said as much. On July 16, 1959, the United States Court of Appeals for the Fourth Circuit, as friendly a forum as a colored plaintiff could ask, dismissed a suit brought by Negro attorney Charles E. Williams against the Howard Johnson's restaurant in Alexandria. He had been denied service. His suit offered three contentions.

Williams argued, first, that the old Civil Rights Act of 1875 prohibited any interference with the right to do business by denying his facilities to any customer by reason of race. To this, the Fourth Circuit Court replied briefly that the Act of 1875 had been declared unconstitutional long ago. In the Civil Rights Cases of 1883, the Supreme Court of the United States had ruled that the Fourteenth Amendment was "prohibitory upon the States only," and "did not invest Congress with power to legislate upon the actions of individuals." It was obvious, said the Court, that Williams' suit could not be sustained on this argument.

His second contention was that the State of Virginia licenses restaurants to serve the public, and thereby is barred by a positive duty to prohibit unjust discrimination in the use and enjoyment of the facilities. Speaking for a unanimous court, Circuit Judge Soper said this:

This argument fails to observe the important distinction between activities that are required by the State and those which are carried out by voluntary choice and without compulsion by the people of the State in accordance with their own desires and social practices. Unless these activities are performed in obedience to some positive provision of State law, they do not furnish a basis for the pending complaint.

The license laws of Virginia do not fill the void. Section 35-26 of the Code of Virginia, 1950, makes it unlawful for any person to operate a restaurant in the State without an approved permit. That person is the chief executive officer of the State Board of Health. The statute is obviously designed to protect the health of the community, but it does not authorize State officials to control the management of the business or to dictate what persons shall be served. The customs of the people of the State do not constitute State action within the prohibition of the Fourteenth Amendment.

Williams' final contention was that the Howard Johnson's restaurant, located on a main interstate highway and serving a large volume of tourist traffic, was engaged in interstate commerce and thus was subject to many court decisions prohibiting racial discrimination in this field. But such decisions, said the court, have involved organizations directly engaged in interstate commerce. These cases were not applicable here. A restaurant is an instrument of local commerce, and as such, it is at liberty "to deal with such persons as it may select."

These views were echoed on January 11 by the Supreme Court of Delaware, in a suit brought by Negroes demanding access to restaurant facilities in a building owned by the Wilmington Parking Authority. Despite the public ownership, the court ruled that the restaurant, privately leased, and equipped at private expense, was wholly unrelated to the public purpose to be subserved by the Parking Authority. The suit was dismissed.

The Negro students engaged in these spreading "sitdowns" assuredly have rights of free speech; they can con plain to their hearts content. They have constitutional rights of petition also; they can seek, by political means, to obtain State and local laws to suit their ends. But willful invasion of private property violates the plain constitutional rights of others; and in the end, this deliberate abuse of the rights of others is bound to lessen respect for the rights they seek themselves.