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BROWN v. BOARD OF EDUCATION 347 U.S. 483 (1954) 349 U.S. 294 (1955)

In the dual perspectives of politics and constitutional development, *Brown v. Board of Education* was the Supreme Court's most important decision of the twentieth century. In four cases consolidated for decision, the Court held that racial SEGREGATION of public school children, commanded or authorized by state law, violated the FOUR-TEENTH AMENDMENT'S guarantee of the EQUAL PROTECTION OF THE LAWS. A companion decision, BOLLING V. SHARPE (1954), held that school segregation in the DISTRICT OF COLUMBIA violated the Fifth Amendment's guarantee of DUE PROCESS OF LAW.

Brown illustrates how pivotal historical events, viewed in retrospect, can take on the look of inevitability. To the actors involved, however, the decision was anything but a foregone conclusion. The principal judicial precedent, after all, was PLESSY V. FERGUSON (1896), which had upheld the racial segregation of railroad passengers, partly on the basis of an earlier Massachusetts decision upholding school segregation. More recent Supreme Court decisions had invalidated various forms of segregation in higher education without deciding whether *Plessy* should be overruled. Just a few months before the first *Brown* decision, Robert Leflar and Wylie Davis outlined eleven different courses open to the Supreme Court in the cases before it.

The four cases we now call *Brown* were the culmination of a twenty-year litigation strategy of the NAACP, aimed at the ultimate invalidation of segregation in education. (See SEPARATE BUT EQUAL DOCTRINE.) Part of that strategy had already succeeded; the Supreme Court had ordered the admission of black applicants to state university law schools, and had invalidated a state university's segregation of a black graduate student. The opinions in those cases had emphasized intangible elements of educational quality, particularly the opportunity to associate with persons of other races. (See SWEATT V. PAINTER.) The doctrinal ground was thus prepared for the Court to strike down the segregation of elementary and secondary schools—if the Court was ready to occupy that ground.

The Justices were sensitive to the political repercussions their decision might have. The cases were argued in December 1952, and in the ordinary course would have been decided by the close of the Court's term in the following June or July. Instead of deciding, however, the Court set the five cases for reargument in the following term and proposed a series of questions to be argued, centering on the history of the adoption of the Fourteenth Amendment and on potential remedies

if the Court Page 254 | Top of Article should rule against segregation. The available evidence suggests that the Court was divided on the principal issue in the cases—the constitutionality of separate but equal public schools—and that Justice FELIX FRANKFURTER played a critical role in persuading his brethren to put the case over so that the incoming administration of President DWIGHT D. EISENHOWER might present its views as AMICUS CURIAE. It is clear that the discussion at the Court's CONFERENCE on the cases had dealt not only with the merits of the black children's claims but also with the possible reaction of the white South to a decision overturning school segregation. Proposing questions for the reargument, Justice Frankfurter touched on the same concern in a memorandum to his colleagues: "… for me the ultimate crucial factor in the problem presented by these cases is psychological—the adjustment of men's minds and actions to the unfamiliar and the unpleasant."

When Justice Frankfurter wrote of "the adjustment of men's minds," he had whites in mind. For blacks, Jim Crow was an unpleasant reality that was all too familiar. It is not surprising that the Justices centered their political concerns on the white South; lynchings of blacks would have been a vivid memory for any Justice who had come to maturity before 1930. In any event the Court handled the *Brown* cases from beginning to end with an eye on potential disorder and violence among southern whites.

Chief Justice FRED M. VINSON, who had written the opinions invalidating segregation in higher education, appeared to some of his brethren to oppose extending the reasoning of those opinions to segregation in the public schools. Late in the summer of 1953, five weeks before the scheduled reargument of *Brown*, Vinson died suddenly from a heart attack. With *Brown* in mind, Justice Frankfurter said, in a private remark that has since become glaringly public, "This is the first indication I have ever had that there is a God."

Vinson's replacement was the governor of California, EARL WARREN. At the *Brown* reargument, which was put off until December, he did not say much. In conference, however, Warren made clear his view that the separate but equal doctrine must be abandoned and the cases decided in favor of the black children's equal protection claim. At the same time, he though the Court should avoid "precipitous action that would inflame more than necessary." The conference disclosed an apparent majority for the Chief Justice's position, but in a case of such political magnitude, a unanimous decision was devoutly to be wished. The vote was thus postponed, while the Chief Justice and Justice Frankfurter sought for ways to unite the Court. Near-unanimity seems to have been achieved by agreement on a gradual enforcement of the Court's decision. A vote of 8–1 emerged late in the winter, with Justice ROBERT H. JACKSON preparing to file a separate concurrence. When Jackson suffered a heart attack, the likelihood of his pursuing an independent doctrinal course diminished. The Chief Justice circulated a draft opinion in early May, and at last Justice STANLEY F. REED was persuaded of the importance of avoiding division in the Court. On May 17, 1954, the Court announced its decision. Justice Jackson joined his brethren at the bench, to symbolize the Court's unanimity.

The opinion of the Court, by Chief Justice Warren, was calculatedly limited in scope, unilluminating as to doctrinal implications, and bland in tone. The South was not lectured, and no broad pronouncements were made concerning the fate of Jim Crow. *Plessy* was not even over-ruled—not then. Instead, the opinion highlighted two points of distinction: the change in the

status of black persons in the years since *Plessy*, and the present-day importance of public education for the individual and for American society. Borrowing from the opinion of the lower court in the Kansas case (*Brown* itself), the Chief Justice concluded that school segregation produced feelings of inferiority in black children, and thus interfered with their motivation to learn; as in the graduate education cases, such intangibles were critical in evaluating the equality of the educational opportunity offered to blacks. In *Plessy*, the Court had brushed aside the argument that segregation stamped blacks with a mark of inferiority; the *Brown* opinion, on the contrary, stated that modern psychological knowledge verified the argument, and in a supporting footnote cited a number of social science authorities. (See LEGISLATIVE FACTS.) Segregated education was inherently unequal; the separate but equal doctrine thus had no place in education.

In the ordinary equal protection case, a finding of state-imposed inequality is only part of the inquiry; the Court goes on to examine into justifications offered by the state for treating people unequally. In these cases the southern states had argued that segregation promoted the quality of education, the health of pupils, and the tranquillity of schools. The *Brown* opinion omitted entirely any reference to these asserted justifications. By looking only to the question of inequality, the Court followed the pattern set in earlier cases applying the separate but equal doctrine. However, in its opinion in the companion case from the District of Columbia, the Court added this remark: "Segregation in public education is not reasonably related to any proper governmental objective.…" With those conclusory words, the Court announced that further inquiry into justifications for school segregation was foreclosed.

The *Brown* opinion thus presented a near-minimum political target, one that could have been reduced only by the elimination of its social science citations. Everyone understood the importance of educational opportunity. Nothing was intimated about segregation in PUBLIC ACCOMMODATIONS Page 255 | Top of Article or state courthouses, hospitals, or prisons. Most important of all, the Court issued no orders to the defendant school boards, but set the cases for yet another argument at the next term on questions of remedy: should segregation be ended at once, or gradually? Should the Supreme Court itself frame the decrees, or leave that task to the lower courts or a SPECIAL MASTER ?

A full year passed before the Court issued its remedial opinion. *Brown II,* as that opinion is sometimes called, not only declined to order an immediate end to segregation but also failed to set deadlines. Instead, the Court told the lower courts to require the school boards to "make a prompt and reasonable start" towart "compliance at the earliest practicable date," taking into account such factors as buildings, transportation systems, personnel, and redrawing of attendance district lines. The lower courts should issue decrees to the end of admitting the plaintiff children to the schools "on a racially nondiscriminatory basis with ALL DELIBERATE SPEED. …"

This language looked like—and was—a political compromise; something of the sort had been contemplated from the beginning by Chief Justice Warren. Despite the Court's statement that constitutional principles could not yield to disagreement, the white South was told, in effect, that it might go on denying blacks their constitutional rights for an indefinite time, while it got used to the idea of stopping. Unquestionably, whatever the Court determined in 1954 or 1955, it would take time to build the sense of interracial community in the South and elsewhere. But in *Brown II* the Court sacrificed an important part of its one legitimate claim to political and moral

authority: the defense of principle. A southern intransigent might say: after all, if *Brown* really did stand for a national principle, surely the principle would not be parceled out for separate negotiation in thousands of school districts over an indefinite time. The chief responses of the white South to the Court's gradualism were defiance and evasion. (See DESEGREGATION.) In 1956 a "Southern Manifesto," signed by nineteen Senators and 82 members of the House of Representatives, denounced *Brown* as resting on "personal political and social ideas" rather than the Constitution. One Mississippi senator, seeking to capitalize on the country's recent anticommunist fervor, called racial integration "a radical, pro-Communist political movement." President Eisenhower gave the decision no political support, promising only to carry out the law of the land.

Criticism of another sort came from Herbert Wechsler, a Columbia law professor with impressive credentials as a CIVIL RIGHTS advocate. Wechsler argued that the Supreme Court had not offered a principled explanation of the *Brown* decision—had not supported its repeated assertion that segregation harmed black school children. Charles L. Black, Jr., a Texan and a Yale professor who had worked on the NAACP briefs in *Brown,* replied that all Southerners knew that Jim Crow was designed to maintain white supremacy. School segregation, as part of that system, must fall before a constitutional principle forbidding states deliberately to disadvantage a racial group. This defense of the *Brown* decision is irrefutable. But the *Brown* opinion had not tied school segregation to the system of Jim Crow, because Chief Justice Warren's strategy had been to avoid sweeping pronouncements in the interest of obtaining a unanimous Court and minimizing southern defiance and violence.

Within a few years, however, in a series of PER CURIAM orders consisting only of citations to *Brown,* the Court had invalidated state-supported segregation in all its forms. In one case *Plessy* was implicitly overruled. Jim Crow was thus buried without ceremony. Yet the intensity of the southern resistance to *Brown* shows that no one had been deceived into thinking that the decision was limited to education. Not only did the occasion deserve a clear statement of the unconstitutionality of the system of racial segregation; political practicalities also called for such a statement. The Supreme Court's ability to command respect for its decisions depends on its candid enunciation of the principles underlying those decisions.

Both *Brown* opinions, then, were evasions. Even so, *Brown* was a great decision, a personal triumph for a great Chief Justice. For if *Brown* was a culmination, it was also a beginning. The decision was the catalyst for a political movement that permanently altered race relations in America. (See SIT-IN; CIVIL RIGHTS ACT OF 1964; VOTING RIGHTS ACT OF 1965.) The success of the civil rights movement encouraged challenges to other systems of domination and dependency: systems affecting women, ALIENS, illegitimate children, the handicapped, homosexuals. Claims to racial equality forced a reexamination of a wide range of institutional arrangements throughout American society. In constitutionaldoctrinal terms, *Brown* was the critical event in the modern development of the equal protection clause as an effective guarantee of equal CITIZENSHIP, a development that led in turn to the rebirth of SUBSTANTIVE DUE PROCESS as a guarantee of fundamental personal liberties. After *Brown,* the federal judiciary saw itself in a new light, and all Americans could see themselves as members of a national community.

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Bibliography

BELL, DERRICK 1980 *Brown v. Board of Education* and the Interest-Convergence Dilemma. *Harvard Law Review* 93: 518–533.

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BLACK, CHARLES L., JR. 1960 The Lawfulness of the Segregation Decisions. *Yale Law Journal* 69:421–430.

KLUGER, RICHARD 1975 *Simple Justice.* New York: Knopf.

LEFLAR, ROBERT A. and DAVIS, WYLIE H. 1954 Segregation in the Public Schools—1953. *Harvard Law Review* 67:377–435.

WECHSLER, HERBERT 1959 Toward Neutral Principles of Constitutional Law. *Harvard Law Review* 73:1–35.

WILKINSON, J. HARVIE, III 1979 *From Brown to Bakke.* New York: Oxford University Press.

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