THE LEGACY OF *BROWN V. BOARD OF EDUCATION*

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Brown v. Board of Education is rightly revered as a legal landmark, but it is also misguidedly labeled as the end of segregation. Brown was an important first step, but the struggle for legal justice is far from over.

Today's American legal culture hails the 1954 Supreme Court ruling in *Brown v. Board of Education* as a landmark victory for the cause of racial equality. According to dominant civil rights discourse, *Brown* almost single-handedly changed the normative American vision of race relations by defining and supporting the possible cause of racial equality[1]. This image is based upon misconceptions of the ruling's origins and its legacy. The common perception is that *Brown* was intended to help subjugated blacks and that segregation is an injustice of the past. In fact, *Brown* was a Cold War tactic meant to improve America's international reputation. Segregation only vanished in popular consciousness; it is as prevalent in 2005 as it was in 1954. Because of this inaccurate understanding of *Brown,* it remains "a magnificent mirage, the legal equivalent of that city on a hill to which we all aspire without any serious thought that it will ever be attained[2]."

An examination of the history of segregation sheds light on how naive it is to praise a single Supreme Court decision as defeating the entire institution. Slavery was the first, albeit more repressive and violent, form of segregation. In this light, segregation is older than the United States itself. When the thirteenth amendment finally abolished slavery, federal troops safeguarded the black population's newfound suffrage, citizenship, and due process rights. However, when troops left as part of the Compromise of 1877, they gave the Southern elite "meaningful if unspoken assurances that the federal government would not protect black civil rights[3]." One of the first consequences of the Compromise

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was the establishment of Jim Crow legislation. Southern elites pressured legislatures to legally mandate segregation to dismantle the populist movement, a multi-racial working-class coalition because its communist ideals threatened the aristocracy's dominance[4]. The southern ruling elite capitalized on existing ideas of black inferiority that originated in the slavery era to divide the workers and thereby weaken resistance to their economic dominance and exploitation. The consequence of Jim Crow legislation was to shatter multi-racial alliances and to pit blacks workers against whites workers in the struggle for economic survival. Blacks refused to strike for better working conditions and raises for fear of losing what scarce employment they had. Their poverty also made them eager to serve as scabs, strikebreakers who often work for less than the contested salary of the usual workers, which both undermined resistance of white workers and increased the animosity between the two groups. Modern segregation emerged as an ingenious "divide and conquer" strategy of the ruling class. Therefore, to contend that the Supreme Court's disapproval of this system in *Brown v. Board of Education* (1954) could erase almost 100 years of history rooted in the interests of America's most powerful is naïve. Furthermore, such a belief is also problematic in that it neglects to credit the myriad of lawyers, lobbyists and activists who contributed to the dismantling of segregation both before and after *Brown*.

The first major legal challenge to this system came in *Plessy v. Ferguson* 1896, though Homer Plessy's challenge was fruitless. The Court ruled that segregated facilities did not violate the constitution so long as they were equal in nature. They also concluded that "the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority[5]" was the fault of the perceiver (i.e. black people), and not the responsibility of the federal government. Moreover, the ruling's equality "requirement" was severely undermined both by the Court's refusal to create an oversight mechanism to ensure that the separate facilities were equal. Indeed, Justice Brown's pronouncement that "if one race be inferior to the other socially, the Constitution of the United

States cannot put them upon the same plane[6]" ensured that such a mechanism would never be created in the future. Thus, the Court simultaneously declared that the races were equal in that they deserved equal facilities, yet admitted that it was powerless to enforce its decree. In saying that it could not make the races socially equal, the Court essentially told the white Southern aristocracy that they would not interfere on behalf of disenfranchised blacks in the south. The Court appeased the angered black population with a hollow declaration that they deserved equal public facilities, and simultaneously placated the Southern elite by leaving segregation intact by refusing to directly intervene with the status quo.

The horrifying state of Black public facilities in the *Plessy* aftermath allowed led to the legal challenge posed by *Brown v. Board of Education*. Aside from its social ramifications, *Brown* is a landmark as one of the first cases in which the Court relied on social science research to come to its conclusion. Kenneth and Mamie Clark's *Skin Color as a Factor in Racial Identification of Negro Preschool Children,* commonly referred to as The Doll Study, is the most famous example. In this study many black children when asked to choose the "better" doll between a white and a black one chose white dolls as being "better". The Clarks argued this self-loathing was a manifestation of the psychological harm imposed by segregation[7]. The Warren Court seemed to have accepted this logic, declaring that:

> To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone[8].

In accordance with its new decision, the Court overturned the *Plessy* precedent and ordered the presentation of further oral arguments for the enforcement of its new decree.

Brown represented a dramatic break from Supreme Court precedent in which the Court actually sided with black

interests and rights. However, many scholars, both recently and in the *Brown* era, are justifiably hesitant to adopt this perception. As evidenced by years of slavery and oppression, the plight of the black people has rarely, if ever, been the government's primary concern. Derrick Bell argues that rather than being a pure act of altruism toward the black community motivated by a profound sense of justice, the *Brown* decision was a reaction to the Cold War efforts abroad and the Red Scare at home. For example, the State department filed a brief urging the Court to invalidate segregation because it would benefit the nation's foreign policy[9]. At the time, both the Soviet Union and the United States were actively courting the newly independent nations to convert to their political systems. Because most of these formally colonized peoples were not white, most were disinclined to ally themselves with the United States, a government that endorsed segregation and discrimination and often refused to prosecute indiscriminate mob violence against minorities. Segregation and racism at home was a profound weakness in the ideological war against communism abroad. *Brown's* main objective was to rectify this weakness in foreign relations. In retrospect, *Brown* was only a symbolic victory for the petitioners. Even at the time of the decision, W.E.B. DuBois observed that "no such decision would have been possible without the world pressure of communism" which made it "simply impossible for the United States to continue to lead a 'Free World' with race segregation kept legal over a third of its territory[10]." Ironically, the same threat that produced the Red Scare, which often manifested in ruthless attacks on black labor unions, compelled the United States government to move toward espousing racial equality in the *Brown* decision. It is more likely that the *Brown* decision was meant to thwart a communist critique of the American system than it was to ameliorate the plight of Black America.

Although the Warren Court opinion centered on the psychological impacts of segregation and appealed to American ideals of justice, an analysis of the segregation cases following *Brown* fits the theory that foreign policy was *Brown's*

origin more so than the popular understanding of the decision as a lofty declaration of equality based on ideals of American justice. The first legal blow to *Brown* came one year later in *Brown v. Board of Education* (1955), commonly referred to as *Brown II,* which was intended to resolve the issue of the enforcement of *Brown I.* Unfortunately, the Court declined to state with any conviction how their landmark opinion in *Brown I* was to be enforced. Instead, it gave the ambiguous decree that the lower courts should move their districts into compliance with the *Brown* "with all deliberate speed[11]."

The "all deliberate speed" clause undermined the *Brown* decision because the ambiguity of the phrase allowed blatant stalling on the part of resisters to remain in compliance. Aside from placating white resistance, the Supreme Court did a disservice to the lower federal courts. First, "The only instruction the Court gave to the lower courts was to 'require that defendants make a prompt and reasonable start toward full compliance with *Brown*[12]." *Brown I* was a largely philosophical opinion denouncing segregation and *Brown II* did nothing to clarify its mandate. Consequently, federal court judges had no way to know what racial balance was required in schools to qualify them as desegregated, how desegregation should be accomplished, or how quickly and enthusiastically it should be done. In this respect, *Brown* created the chaos and social upheaval associated with desegregation without actually enforcing the mandate.

Miller vehemently opposed *Brown II* because it "left federal judges far too exposed[13]." Because neither *Brown I* nor *Brown II* gave any specific desegregation guidelines, any judge who ruled against segregationists could not claim to be following federal authority. Unable to claim he was simply doing his job, any federal judge who demanded significant progress toward integration became an instant target for the violent terror imposed by anti-integration whites. Although lifetime appointments insulated federal judges from political repercussions in connection with enforcing *Brown's* controversial ruling, they were still subject to intimidation and threats to the safety of themselves and their families.

The threat of violence served to keep judges from ordering desegregation, and thus anti-*Brown* federal judges went virtually unopposed in the judicial system, allowing pro-segregationists to determine the practical definition of "all deliberate speed." Considering that the same Court which ruled in *Brown* would virtually disable its impact just one year later by passing the burden of social change off to lower court judges without any means to protect them, it is probable that the decision was intentionally symbolic, and that actual enforcement was never a priority.

Despite these problems, the integrationists did gain significant legal victories for the enforcement of *Brown* in *Cooper v. Aaron* (1958), *Goss v. Board of Education* (1963), *Griffin v. Prince Edward County School board* (1964) and *Green v. County School Board of New Kent County* (1968). The most significant of these cases was *Cooper v. Aaron,* which "rejected the Little Rock School Board's reasons for delaying desegregation and stated that 'law and order are not here to be preserved by depriving the Negro children of their constitutional rights'[14]." This decision was better supported by its following rulings than was *Brown.* The Court upheld the *Cooper* precedent in *Goss, Griffin,* and *Green* and finally legitimately fought to enforce its desegregation decree. However, these efforts made little progress toward the integration ideal because they left "the more subtle forms of resistance, such as white flight, [and] denial of funding for equalization" virtually unaddressed[15].

As the Courts began to earnestly enforce integration, Bell claims that white parents began sending their children to all-white private schools or moving into mainly white school districts for fear of exposing them to black children[16]. However, Bell makes a crucial error in simplifying this phenomenon of White Flight by explaining it only in terms of racism. Thomas Peddigrew argues that although the phenomenon did exist, its effect was largely irrelevant. In Fact, many cities were relatively unaffected by the White Flight, which was a mere quickening of an inevitable demographic shift toward the suburbs. Furthermore, the presence or absence

of desegregation was largely irrelevant to the magnitude of suburbanization; it was housing discrimination, not fear of integration that rendered suburbanization a largely white phenomenon[17].

However, given the hostile and turbulent political climate regarding integration, the explanation that the White Flight was purely coincidental is unlikely. Powell offers a more convincing explanation of the White Flight as a reaction to the quality of schools in the post-integration area and that white and black parents alike who could afford it opted for private schools over newly segregated public ones[18]. In this view, the Courts are more to blame for the White Flight than white resistance. Because *Brown* did nothing to address the unequal funding and quality between traditionally white and traditionally black schools, it is no surprise that many parents sent their children to private schools instead of newly integrated traditionally black ones. Few parents would choose to sacrifice their child's education to further the cause of racial equality. In other words, it is an ineffective and short-sighted judiciary, not racist parents that is to blame for "White Flight."

In order to counteract the effects of White Flight, and the segregated urban housing created during the *Plessy* era, many school boards instituted busing policies to integrate their schools. At first, the Court supported busing plans. In *Swann v. Charlotte-Mecklenburg Board of Education,* 1971 The Court approved the use of busing to remedy de jure segregation. The busing solution was vehemently opposed by segregationist critics, among them President Nixon, who courted the white vote by attacking busing policies, proclaiming that integration had gone "too far too fast" and pledging to work to reverse pro-integration Court rulings[19]. Tragically, a full fifteen years after the *Brown* decision, its minimal progress remained objectionable in mainstream American politics.

However, the busing solution was also disliked by integrationists, who criticized the method "for encouraging white families to flee to the suburbs to avoid its reach, resulting in urban schools that are even more racially isolated than

before busing[20]." This criticism proved prophetic. In *Miliken v. Bradley* 1974, the Court struck down a busing plan for desegregation due to a lack of evidence that districts outside Detroit contributed to the desegregation. Rich white families, in effect, could buy noncompliance with the law, a result that had huge negative consequences both in the pursuit of true integration, and for the legitimacy of the rule of law in general.

In addition to the White Flight, *Brown* advocates also faced considerable opposition from the States and from the federal government. Although President Eisenhower did support the authority of the Court, he claimed that integration should develop gradually and naturally not because of a judicial mandate[21]. This position served to encourage resistance by the southern states. In response to the *Brown* decision, ninety percent of Southern congressmen signed the 'Southern Manifesto'[22]. This document attacked the *Brown* decision as "a clear abuse of judicial power" and vowed that all of its signatories would "use all lawful means to bring about a reversal of [*Brown*]… and to prevent the use of force in its implementation[23]." Accordingly, several states used legislation as a tool to defy *Brown II*, regardless of federal injunction.

> Even though many of their laws defying segregation would eventually be struck down, each law meant 'another round of motions, briefs, hearings, ruling and appeals.' This in turn meant further delay of desegregation. As one segregationist stated, 'as long as we can legislate, we can segregate'[24].

Just as individual racists bought noncompliance with *Brown* by moving out of busing's reach, states achieved noncompliance by passing more unconstitutional segregation laws than the NAACP, and other civil rights organizations had the time and resources to contest. Because the executive branch refused to actively support the *Brown* ruling, emphasizing instead gradual integration, these rebel states largely succeeded. "By

1964, only one-fiftieth of all southern black children attended integrated schools" and "in the North, many school districts refused to publish racial data that could be used to measure segregation[25]."

The bleak picture of integration continues to this day. Black and latino children in urban areas still attend schools with inferior facilities and instruction whereas eighty percent of white children attend superior schools with a largely white population[26]. Furthermore, even "integrated" schools are segregated by tracking programs under which "white students are admitted to accelerated schools and programs, and black children are relegated to inferior ones[27]." This inequality of lower education has led to continued but lawful segregation in higher education. An applicant's scores on standardized tests such as the SAT, GRE, and LSAT are a huge factor in university and graduate and professional school admissions, even though "studies show that such tests are notoriously poor predictors of performance either in school or after, but they measure quite accurately the incomes of the applicant's parents[28]." Additionally, universities also rely on Advanced Placement test scores when making admissions decisions. However, because of their need for college-level texts, Advanced Placement courses are more expensive for schools to offer. Thus, many poorer schools simply cannot afford to give their students the opportunity to follow an Advanced Placement curriculum, which places them significantly behind their middle class competitors for university admissions is several ways.

In competing for admission, the absence of these challenging courses on their transcripts makes them appear less qualified than richer students who have taken a myriad of AP courses. If students from poorer schools are admitted to a major university, the absence of AP courses leaves them less prepared for the rigor of university coursework than the majority of incoming first year students who have taken at least one AP course. This is just one example of how the disadvantages of an inferior secondary school education endure far beyond high school graduation. In addition, the

absence of AP courses can make college more expensive for the students with the least ability to pay for it. Many middle and upper class students pass enough AP exams to enter the University with sophomore standing, and thus have the opportunity to graduate in three years, saving them a year in educational expenses that often amounts to over twenty thousand dollars. Poor students, who are in greatest need of such an opportunity, have a low probability of getting a degree a year early, because they did not have the opportunity to fulfill general education requirements in high school through AP tests. Because minority populations remain largely impoverished and their children attend largely inferior schools, minority undergraduates often enter the university with an economic and educational disadvantage which is tantamount to institutional discrimination[29]. Sadly, the inequality is unlikely to disappear because most American's will defend the disparity between races as the result of "meritocracy"; they are unaware, or choose to ignore the relationship between race and access to adequate preparation for university admission and success.

In light of these large failures of *Brown*, many modern scholars have come to question whether segregation was the correct remedy for educational inequality. Sabrina Zirkel reports that "several reviews of literature suggest that school desegregation does, in fact, lead to better educational outcomes for African American students[30]." Similarly, Bell contends that "many researchers have found that… black children attending desegregated schools perform better on standardized achievement and IQ tests, and are more likely to complete high school and to enroll in and graduate from college than black students in single race schools[31]." However, socioeconomic status is a compounding variable in these studies, as multiracial schools tend to be wealthier than predominantly minority schools[32].

This evidence demonstrates that the problem is not racial homogeneity, but inequality of funding between black and white schools. Unfortunately, American jurisprudence has been unwilling to make this connection. Accordingly, Bell

laments that "zealous faith in integration blinded us to the actual goal of equalizing educational opportunities for black children, and led us to pursue integration without regard to, and often despite its ultimate impact on the well-being of students[33]." In fact, one major effect of the *Brown* decision was to create a new obstacle in fighting discrimination, for once blacks had achieved legal equality in law, they lost their ability to complain about inequality in practice. In light of their newfound "equality" the unequal status of blacks was no longer a result of an oppressive and discriminatory social order, but due to a lack of character and perseverance of black people[34]. It is conceivable that the psychological harm done to children struggling to meet these expectations engendered by integration would be just as harmful, if not more so, than the harm that the Clark and the Court found in segregation. Although the *Brown* was a legal landmark in the history of civil rights, and "while the *Brown* lawyers were right to celebrate this remarkable achievement, the evil that *Brown* sought to eliminate segregation is still with us, and the good that is sought to put in its place integration continues to elude us[35]." However, in spite of its many documented failures, *Brown* "provided us with a rationale for and a first step toward racial justice in education[36]."

As soon as America ceases to naively hail *Brown* as the righteous solution to educational inequality and begins to view *Brown* as the first step on a long and arduous road, *Brown* can leave a powerful legacy of racial reform. Until that day, *Brown* will remain the tragic symbol of what Langston Hughes eloquently refers to as "a dream deferred".

Endnotes

[1]Bell, Derrick, Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform. (New York: Oxford University Press, 2004), 136.
[2]Bell, 4.
[3]Bell, 11.
[4]Bell, 12.
[5]*Plessy v. Ferguson, 1896*

[6] Ibid
[7]Clark, Kenneth B., and Clark, Mamie K., "Skin Color as a Factor in Racial Identification of Negro Preschool Children," The Journal of Social Psychology, S.P.S.S.I. Bulletin ,11, 1940, 159-169.
[8]*Brown v. Board of Education, 1954*.
[9]Bell, 71.
[10]Bell, 63.
[11]*Brown v. Board of Education, 1955.*
[12]Bell, 19.
[13]Ogletree, Charles J,. All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education. (New York: W.W. Norton & Co., 2004) , 127.
[14]Ogletree, 12.
[15]Ogletree, 17.
[16]Bell, 7.
[17]Peddigrew, Thomas F. (2004). Justice Deferred: A Half Century After Brown v. Board of Education. *American Psychologist* 99, 521-529.
[18]Bell, 109.
[19]Ogletree, 132.
[20]Bell, 110.
[21]Ogletree, 126.
[22]Ogletree, 132.
[23]The Southern Manifesto (1956). 102 Cong. Rec. 4515-16.
[24]Ogletree, 128,131.
[25]Ogletree, 128.
[26]Ogletree, 126.
[27]Bell, 112
[28]Bell, 110.
[29]Ogletree, 261.
[30]Zirkel, Sabrina and Cantor, Nancy. "50 Years After Brown v. Board of Education: The Promise and Challenge of Multicultural Education." Journal of Social Issues (60) 2004, 1-15.
[31]Bell, 127.
[32]Zirkel, 15
[33]Bell, 113.
[34]Bell, 7.
[35]Bell, 114.
[36]Zirkel, 15.

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