

Essays

Brown v. Board of Education.
Lessons for the Twenty-First Century
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Good Morning. Tomorrow, the first day in May, will be Law Day, a day on which lawyers, policymakers and civic organizations, among others, all around the nation will focus on law development, maintenance and enforcement and ways in which our system of law-making and application can be enhanced. A few days later, on May 17, 2004, it will be the 50-year anniversary of the United States Supreme Court's decision in Brown v. Board of Education, a case that breathed fresh life into the document that comprises the highest law of the land, the United States Constitution. So this is a special and appropriate time for us to pause and think together about the work that we do as lawyers and citizens, our values, the challenges that lie ahead, and our duties and responsibilities in relation to all of the foregoing.

I am especially glad to be able to be here with members of the Bar who day in and out help our nation's military honor the rule of law and ensure the fair application of law to everyone. There is no area of American life where adherence to fundamental principles of equity and fairness, evenhandedness and due process is more important than in the military. Our nation's military must be comprised of women and men who are united, not divided. And there is no more insidious means by which to drive a wedge between persons who must trust and rely upon each other than the reality or perception of unequal and unfair treatment of some and privileged and special treatment of others. Although I am not in the military, I salute you for the critically important role that you play day in and out.

I have titled these remarks, ***Brown v. Board of Education: Lessons for the Twenty-First Century***, and in our brief time together will mine aspects of the contemporary relevance of this landmark decision.

Most of you are too young to remember first-hand the context within which the Brown case arose. One of the challenges that each generation faces is to help succeeding generations understand how current problems are more often than not rooted in the past. Put another way, the tree with all of its branches is above ground, but its root system below was years in the making and still contributes to the life of the tree, even though unseen. For those of you who may not have been alive during the days of Jim Crow segregation, let us briefly walk down memory lane.

Our nation has a blemish on its history called "slavery," the peculiar institution that allowed some people to brutalize, abuse and deny the humanity of others in order to benefit from their free labor and exclusion

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from the societal mainstream. A war, the Civil War, was fought over the institution of slavery. In subsequent years, an Emancipation Proclamation notwithstanding, *de jure* and *de facto* practices and policies maintained and reinforced the divide between Black and White and powerful and vulnerable. The same processes that impoverished African Americans—segregation, lack of education, denial of the right to vote, unequal access to governmental benefits and services, exclusion from equal employment opportunity—advantaged Whites who had all of these rights. Official and unofficial violence was, especially in our region, the underpinning of the enforced racial separation and segregation that concentrated poverty and disadvantages among Black people. This pattern of Black isolation and disadvantage continues, despite important progress, to this day.

In 1948, as the world was engulfed in World War II, President Harry S. Truman ordered the desegregation of the military. It may be difficult to imagine a time when color was the dominant means by which to assess talent and fitness for opportunity, given the composition of the present-day military, but it was only 52 years ago that that was so. The desegregation of the military was a milestone in the struggle by Blacks for equality. President Truman was not motivated solely by a sense of fairness when he issued the Executive Order to desegregate the military. He was motivated as well by the fact that the United States was under a global spotlight as never before and could not claim to be the land of a half free people and ensure international leadership and legitimacy. He was responding to growing pressure mounted by Blacks to make real the promise of democracy for all people. He was moved by a need to unite and strengthen the military itself.

The desegregation of the military created and raised aspirations by families of soldiers and veterans and other members of the African American population for better and fairer treatment in all aspects of life. It inspired Black people and their allies across the nation to believe that change was possible, if only they were willing to struggle for it. It demonstrated that law can both oppress and liberate. It also inspired a certain young lawyer named Thurgood Marshall and his colleagues, Charles Hamilton Houston, Jack Greenberg, Robert Carter and others at the NAACP Legal Defense and Educational Fund, Inc. to continue the work in which they were already involved to find ways to use law as a force for good and equality. If the military was desegregated and Blacks were to be afforded fair treatment, how could *Plessy v. Ferguson* that declared Blacks to have no rights that Whites were bound to respect still stand?

Who was Thurgood Marshall, the lead lawyer in the lead case, *Brown V. Board of Education*? Thurgood Marshall was a Black man who was born in 1908, just 47 years after the Civil War's end and one year before of the founding of the National Association for the Advancement of Colored People. He lived in Baltimore, Maryland, attended racially segregated elementary and secondary schools and Lincoln University and Howard University Law School, both historically Black institutions of higher learning. While at Howard, he was exposed by his colleague and mentor, Charles Hamilton Houston, to the work of the fledgling NAACP to use law to challenge racial discrimination in all walks of life. This was the area Thurgood Marshall determined to make his life's work. Indeed, before he became the United States Solicitor General and a Justice of the Supreme Court of the United States, he worked on cases involving the

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desegregation of the military, in addition to anti-lynching, fair housing, equal employment and education cases.

By the late 1940s and early 1950s, Thurgood Marshall and his colleagues had been successful in securing some decisions by the High Court requiring the desegregation of publicly supported institutions of higher education by exposing the fact that the separate facilities provided to Blacks were not equal, the myth of “separate but equal” notwithstanding. Mr. Marshall and his colleagues then decided to mount a series of test cases arguing that separate facilities were inherently unequal and to make these arguments in the context of elementary and secondary education.

Who was Linda Brown? Linda Brown was in 1950, a seven year old girl entering third grade in Topeka, Kansas. Her father, a minister and veteran, worked in a welder’s shop. Each day, Linda had to leave home at 7:40 a.m. to walk to the place where she would catch a school bus to take her to a segregated school distant from her home. Each day she walked past a white school near her home. She spent almost three hours every day simply to get to and from school. Her father, protective of his tired child and desirous of ensuring that she would have a better education than that he had received, agreed to have his daughter named plaintiff in the Brown case. All of the plaintiffs in the four companion cases announced under the lead of *Brown*, were not dissimilar from the Oliver Brown and his daughter, Linda. They were decent, hard-working folk, struggling to make ends meet, who hoped that their nation would live up to the lofty promise of equal justice before the law embedded in the Fourteenth Amendment to the United States Constitution.

The rest, as they say, is history. On May 17, 1954, the United States Supreme Court handed down its decision in *Brown v. Board of Education* and companion cases, declaring that separate education facilities were inherently unequal. Reading the decision, Justice Earl Warren said:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

One year later, the High Court held that all public schools must be desegregated with “all deliberate speed”. The process of desegregation was fought violently by many Whites, who, when they could not prevail through bogus “freedom of choice” remedies, or mob action, withdrew their children from the public schools and placed them in all White “segregation academies.” Many White children remain in such schools today. The withdrawal of Whites from the schools, coupled with later decisions of the courts that barred

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inter-district remedies or declared previously separate schools systems unitary, and segregated housing patterns have largely frustrated achievement of the full promise of *Brown*. Today, as recent studies confirm, despite a measure of school integration in the South, racially identifiable schools remain the order of the day. It is a measure of the resistance to *Brown*, rather than frailty of the decision itself, that these problems persist.

So what is *Brown's* enduring legacy? What can we learn from this decision? A lot.

First, the persistence of problems notwithstanding, *Brown* reminds us that progress in addressing complex social problems is possible. Old structures, antiquated ideas can give way. As a result of the determination of a small group of people, today the United States has a far better educational system than it had in 1954. Many millions of African Americans and Whites have attended integrated schools and gained a better appreciation of the nation's fabric of diversity. With the scrutiny of the judicial spotlight, the quality of education in many schools where Blacks are concentrated has improved. Rates of Black high school graduation and college attendance, though still lagging behind those of Whites, have increased dramatically. A Black middle class of scale has emerged due to the better educational opportunity for which *Brown* paved the way. Today, all Americans are more open and free than ever before.

Second, *Brown* reminds us of the role and power of law in a democratic society. Without a good legal system and people with big brains and fair hearts involved in law development and enforcement, the nation is the loser. Today, our nation prides itself on the fact that racism and discrimination are no longer legal, although different folks disagree about how far we have actually come, the role of government in ensuring equality of opportunity and what indeed is equal opportunity. But the fact is that law reform has helped to change attitudes, mores and practices and allowed the nation to remain a beacon of hope and fairness for the rest of the world.

Our role as lawyers is not just to enforce the laws that others make or construe but to help educate and inform law development and implementation processes, using our own experience and democratic values. Creativity in use of facts to illuminate areas in need of improvement in the administration of justice, creativity in fashioning rules and policies and practices that have equity as their core is the highest use of our talents as members of the Bar. The example of the lawyers in *Brown* stands as a challenge to each of us to take seriously our obligation to love justice and to serve it, no matter how unpopular the cause.

Brown helped to spark the civil rights movement that, in turn, helped to secure a body of anti-discrimination law and policy that serves and protects us all. It helped inspire efforts by women, Latinos, low income Whites, the disabled, Asians and others to press and advocate for fairer opportunity structures. It brought about increased national awareness of the ugliness of spirit that racism fosters and the suffering and waste of capacity that it creates. It helped talented individuals from the Black community to emerge as leaders and contributors to the commonweal. It spawned the creation of a public interest law movement. Through the better education of Blacks, *Brown* helped the nation expand its tax and consumer base.

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The third thing that we can learn from *Brown* relates to the need to be attentive to investing in the education of all of the nation's children, not just a slice, but all. The world's economy has changed a lot since 1954. Today, more than ever, due to the revolution in technology, "skills" are the key to livable wages, and as educated workforce is the key to national competitiveness and prosperity in the global marketplace. *Brown* reminds us that investment in the education of all children, especially the throngs of poor children of color who are ill-served by the current education status quo is an urgent challenge that we must face. No one can seriously believe that the nation will remain at the top of the global economic order as more and more of our people fall deeper and deeper into poverty, unemployment, crime, dependency and life at the economic margins due to lack of education.

Today, in the American South, close to half of our public schools students in elementary and secondary school come from poor families. They lag behind more affluent counterparts in most academic subjects because more often than not they are denied an equal opportunity to learn. What do I mean? Low income students have less money spent on their education largely through reliance on property taxes. They attend the least well maintained schools with the greatest number of out-of-field or inexperienced or substitute teachers. They come to school unable to speak standard English well. They have the fewest computers, support services or other opportunities for educational enrichment. So these children, who are malnourished, transient, and frequently without familial or community involvement, the children who need help the most, receive the least. And if you live in a low income state, compared to states with high per capita incomes, the aggregate amount available to spend on students in your state will be less than that available for expenditure on students living in high income states. So our national education system is a patchwork of inequality still, due to race, class, national origin and geography. The High Court in *Brown* set us on the right path and raised our consciousness, but the business of *Brown* is still unfinished.

Finally, *Brown* reminds us that education is not just about academic achievement. It has far broader purposes and serves far broader aims in a democracy. Today, our nation is in the midst of a population sea change due to immigration and differential birthrates among diverse groups. Most demographers believe that by 2020, the nation will be a majority minority country, a collage of diverse groups—Whites, Blacks, Asians, Latinos, Native Peoples and others drawn from all over the world. Today, New York City has a population the majority of whom are foreign born. In many schools in Georgia, 10 or more language minority groups are found among students in a single public school.

Some folk don't like to talk about race, racism, the nation's past, what led up to *Brown*, or its aftermath. But I think that we must remember the past in order not to repeat its failings. Our purpose in commemorating *Brown* is not to apportion blame or fault for what happened in the past. Let's have a "no fault" conversation about needs to be done now and in the future. That doesn't mean ignoring the past with all of its ugliness or unfairness. It means looking the past squarely in the eye and resolving to help the nation move to a different place and space where we can all learn, to work and live together as brothers and sisters. As we move into the future, a world full of diversity awaits us.

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The nation's system of public schools is the primary meeting venue in which a diverse array of students, families and communities can be brought together to defuse the fear of difference that divides, promote better intergroup relations and understanding, forge a shared sense of national identity and purpose, enlarge and enrich the culture of the nation, and create hope and a sense of place and belonging. At a time when the nation is beset with terrorism and anger by marginalized people outside of our borders, we must attend to ensuring shared purpose within our borders. By barring racial segregation and exclusivity in public educational access, the *Brown* plaintiffs and lawyers and judges have given us a cherished gift—the gift of having the real chance to make “one out of many.” If we do not succeed through public education in forging one out of many, we may live to rue the truth in Abraham Lincoln's adage, “divided we fall.”

Thus, in a real sense, colleagues, *Brown* helped our nation “secure the common defense, provide for the general welfare and promote the blessings of liberty to ourselves and our posterity.” By helping us to move down the path toward substantive democracy at home and an embrace of our national diversity, it also helped us mirror international human rights, values and standards that promote global peace and cooperation. The United States would have no credibility in the global village of which our nation is now a part if it were still segregated like South Africa, if Americans of color were excluded from the opportunity mainstream, if we did not work to honor the affirmation of the Declaration of Independence that all of us really are created equal. Think about what a pariah the United States would be internationally had the plaintiffs, lawyers and judges in *Brown* not had the prescience and bold vision to strike down segregation and separation and affirm the value of diversity in education.

The next time you hear some talk about a *Brown* or school desegregation, please remember that this great landmark is a cornerstone of the national security, freedom and prosperity that we all now enjoy. The lessons of *Brown* are also our best hope for good lives tomorrow.

Thank you very much.