***Brown v. Board I & II***

*Brown v. Board of Education I*

Plaintiffs allege that racial segregation in primary and secondary public education deprives them of equal protection of the laws guaranteed under the 14th Amendment.

* “The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws.”

Case was denied under the “separate but equal” doctrine announced in *Plessy v. Ferguson*, under which says that equal treatment is met when equal facilities are provided to both races, even though they may be separate.

CENTRAL QUESTION

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities?

The court considered all relevant evidence that originalists would use to construct the 14th Amendment’s original meaning on this question

* It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive.

Original intent and public understanding is indiscernible as to how the Amendment in question would handle the question at hand.

* “The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.”

Can’t knock these decisions for not recognizing the history of permissible segregation at the time of their passing, as the state of public education was nowhere near that of 1950. The massive changes in this regard mean we can’t fairly or accurately extrapolate how segregation would apply to publicly funded primary and secondary schools.

* “An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold… As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.”

Evidence that schools in question were approaching equality with respect to “tangible” factors, but other non-tangible impacts must also bear weight – for if it can be proven that such effects exist, then the schools are truly equal.

* Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

Opinion does NOT say the Court shouldn’t use history to guide its construction of the 14th Amendment in this case, only that we must give heavy consideration to the current role of public education (given that it was sorely lacking in 1879) when deciding how to apply its original meaning.

* “In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.”

CURRENT STATE OF PUBLIC EDUCATION:

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 a 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 an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Despite overturning the “separate but equal” doctrine, the ruling in *Brown v. Board of Education* is remarkably inline with more recent relevant precedent.

* “In Sweatt v. Painter, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on ‘those qualities which are incapable of objective measurement but which make for greatness in a law school.’”
* “In McLaurin v. Oklahoma State Regents, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ‘ . . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.’”

Preventing these intangible harms to students’ educational experience is doubly important for primary and secondary education due to the young age of pupils in their care.

* “Such considerations apply with added force to children in grade and high schools. To separate them 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”
* Quote from a Kansas quote that nevertheless ruled against Negro plaintiffs: “Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.”

Decision in *Plessy v. Ferguson* relied on the proposition that mere separation of races wasn’t harmful in and of itself. In the face of clear and strong evidence to the contrary, the Court must overrule the “separate but equal” doctrine.

* “Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.”
* “We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.”

This inherent inequality violates the 14th Amendment by depriving black students of the equal protection of the laws.

*Brown v, Board of Education II*

PURPOSE:

“All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.”

Court respects the traditional role of local authorities in providing public education for its residents and governing relevant policies:

* “Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems.”

Knowing that some groups may act in bad faith, the Court assigns the job of overseeing integration and judging legitimacy of these efforts to the most proximal judicial authorities. Again, this is the most proper delegation:

* Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.

Invokes the Judicial Branch’s equity power to justify this principle.

* “These cases call for the exercise of these traditional attributes of equity power.”
* “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority” Article III Sec. II, Clause I

In these cases, the lower courts should be guided by the following principles:

* Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.
* Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date.

Laundry list of relevant considerations for lower courts:

* To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.