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In the realm of Civil Rights, the Supreme Court has had an influence of different valences on U.S. political processes: social conditions such as discrimination, economic conditions such as education, and political conditions such as voting rights. Its decisions were not directly responsible for significant social reform or regression, however. *The Hollow Hope: Can Courts Bring About Social Change?* (1991) by Gerald Rosenberg and *One Person, No Vote: How Voter Suppression Is Destroying Our Democracy* (2018) by Carol Anderson best describe the sort of influence that the Supreme Court has exercised in the area of civil rights. On school segregation, Rosenberg illuminates the barriers that stood in between landmark Supreme Court decisions and associated change. On voting rights, Anderson shows how the Supreme Court upheld progressive stances at first, but its increasing laxity over time allowed for a regression in reform. The Supreme Court's influence can thus be described as indirect: it may be somewhat persuasive as its authoritative status gives legitimacy to certain ideas, but actual change can only manifest after other actors carry out the Court's decrees or take advantage of them.

Rosenberg argues that the Supreme Court's ability to produce change is inherently constrained by the limited nature of constitutional rights, the lack of judicial independence, and most notably, its inability to enforce policies. The Court lacks "the ability to develop appropriate policies and the power to implement them," so it requires "political elites" to support and carry out Court orders (p. 15). Since politicians are electorally accountable, it is in their interest to appease their supporters, but if their supporters' opinions do not align with the Court's, then the

Court-politician bridge is useless. Additionally, Courts need ample legal precedent for change (that is, case lineage that could support the expansion of an existing or a new right), support from the executive and legislative branches (which are subject to partisanship and ideologies), and citizen support or low levels of resistance (counter-movements). Rosenberg maintains that in order to produce significant social reform—that is, nationwide impact that affects historically marginalized groups—Courts must overcome all of these constraints, in addition to at least a few “dynamic conditions”: positive incentives to induce compliance, imposing costs to make it disadvantageous not to comply (both of which can include market-related arguments), or “providing leverage, or a shield, cover, or excuse, for persons crucial to implementation who are willing to act” (p. 35). Despite Rosenberg’s negative outlook on the effectiveness of the Supreme Court, his admission that change is possible if several constraints are overcome and conditions are met leave room for possibility. Rosenberg’s discussion of school desegregation Supreme Court cases, the Civil Rights Act of 1964, and their aftermath demonstrates how the Court has some influence, albeit indirect, on U.S. political processes.

In 1951, several African American families sued the Board of Education of Topeka, Kansas for denying admittance of their children to public schools. Segregating public schools on the basis of race was pursuant to state laws that either permitted or required it. The families argued that school segregation deprived black children of equal protection of the laws of the Fourteenth Amendment. They were denied relief in the lower courts based on the *Plessy v. Ferguson* (1896) case that introduced the “separate but equal” doctrine, which maintained that “equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate.” When the plaintiffs’ case reached the Supreme Court in

Brown v. Board of Education (1954), it was decided that “[s]eparate educational facilities are inherently unequal” and have no place in public education.

The *Brown* decision deemed segregation impermissible—in theory, signaling progress toward racial equality. In practice, however, little progress was made. In the 1955 reargument on the question of relief, the Court did not set out any plan for desegregating schools; it merely ordered states to “admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.” The Court refused to hear most later cases on the matter and insisted that lower courts simply follow *Brown*’s ruling that segregation violated the Constitution. Rosenberg claims that in the decade following *Brown*, “the Supreme Court contributed virtually *nothing* to ending segregation of the public schools in the Southern states” (p. 52). He reports that bordering states and Washington D.C. saw increasing rates in desegregation following the Court decision, but many localities in the South ignored or actively opposed the Court’s decree. School districts found ways to circumvent the Court decision. For example, Arkansas’s state constitution was amended to oppose desegregation and a law was passed to relieve children from mandatory attendance at integrated schools. Rosenberg comments: “Despite the unanimity and forcefulness of the *Brown* opinion, the Supreme Court’s reiteration of its position and its steadfast refusal to yield, its decree was flagrantly disobeyed” (p. 52). Although the Court sought to be an agent of change, enforcement was virtually absent; there was little force behind its words.

It was not until the Congressional and Executive branches finally took action by passing the 1964 Civil Rights Act, with Title VI “[giving] the federal government the power to cut off federal funds to school districts that discriminated on the basis of race” (p. 47)—an example of Rosenberg’s “negative incentive” dynamic condition—that desegregation in the South gained

momentum. Rosenberg points out that because it was “[o]nly when Congress and the executive branch acted *in tandem with* [emphasis added] the courts did change occur in these fields” (p. 71), it can be reasonably concluded that courts do not have a direct effect on preventing discrimination. While nothing changed in the first decade after *Brown* alone, the other branches’ actions produced significant changes, demonstrating the unlikelihood that the Court played much of a role. Rosenberg attributes the Court’s inability to do so to a “lack of political and cultural support for civil rights, the courts’ qualified independence, and the judiciary’s lack of implementation tools” (p. 106). *Brown*’s influence was indirect and limited, but it was positively impactful nonetheless.

The Court’s indirect influence on political processes can also be seen in the realm of voting rights. Whereas the progression of cases leading to *Brown* demonstrates the Court’s ability to encourage states to support civil rights over time, Anderson (2018) shows how the Court can also lose momentum in its (positive) influence. Although black men gained the right to vote in 1870 (Fifteenth Amendment), their ability to vote was severely limited. Racial and partisan gerrymandering, suppression and violence by paramilitary organizations diluted the voting power of people of color by dissuading or preventing them from voting at the polls. Laws passed during the Jim Crow Era (1877-1964) effectively eliminated black men’s right to vote, as many were unable to pay poll taxes, pass literacy tests, or meet restrictive residency requirements due to intergenerational disadvantages in wealth, education, and property. The passage of the 1965 Voting Rights Act (VRA) removed these strictures and placed barriers to write potentially discriminatory laws by providing direct federal action enabling black people to vote. Section 5, the preclearance requirement, required states to obtain federal permission before enacting any laws changing voting procedures. Section 4(b), the coverage formula, identified particular

jurisdictions that had restrictive prerequisites and low voter registration or turnout at the time to be covered by Section 5. The positive impact of the VRA was demonstrated by the dramatic increase in the number of black people who were registered to vote by 1970 (Rosenberg 1991:60-61).

The Voting Rights Act was met with a lot of backlash, bringing many cases to the Supreme Court. In *South Carolina v. Katzenbach* (1966), South Carolina argued that the VRA infringed on states' rights. The Court reaffirmed the constitutionality of and need for the VRA, noting that the state had voting registration levels below 50% and a history of discrimination that justified its coverage. This case, however, did not stop states from attempting to undermine the VRA. When states were unable to successfully use the constitutionality argument, they looked for loopholes that would allow them to subtly discriminate by pushing the boundaries of the Fifteenth Amendment. States could justify their voting restrictions under the pretense that they "merely sought to make minor changes to aid the efficiency of elections" (Anderson 2018:23). For example, poll workers could help illiterate people vote prior to the passage of the VRA, but after the VRA, Virginia instituted the requirement that candidates not named in the ballots be handwritten by voters or otherwise discarded and uncouned. On its face, this requirement was not necessarily discriminatory, but in effect, people's voting rights were abridged. Anderson comments that "this latest iteration was as 'race-neutral' as the literacy test" (p. 24). Since Virginia lawmakers were reluctant to desegregate after *Brown*, they shut down school districts and refused to fund or provide educational opportunities for black students, rendering many illiterate. Coupled with the aforementioned voting requirement, this reduced the number of black people who could vote. The Court's declarations may have been somewhat influential, but they could do little to ensure that people were able to actually exercise their civil rights.

States eventually found arguments that maintained validity in the Court, eliminating yet another line of defense. *Crawford v. Marion County* (2008) held that a 2005 Indiana law requiring voters to present a government-issued photo ID at polls was relevant to its legitimate interest in “protecting the integrity and reliability of the electoral process” via fixing antiquated and inefficient election procedures and preventing voter fraud. The Court did not find that the inconveniences of acquiring a valid ID qualified as a “substantial burden on most voters’ right to vote.” What the Court failed to take into account, however, were the disproportionate burdens posed by these voting restrictions on people of color and poor people. Anderson asserts that these “factors of assumed criminality, presumed respectability, and common sense reasonableness provided ample cover for state after state after state to systematically target and disenfranchise millions of American citizens” (p. 66). *Crawford* did not directly impact voting rights, but its holding gave states the go-ahead to institute strict voting laws that, for all intents and purposes, needlessly curbed voting ability.

In 2013, there was finally enough legal justification to eliminate the last line of defense: the Voting Rights Act. In *Shelby County v. Holder* (2013), Justice Roberts claimed that “[t]he Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem” and that “exceptional conditions can justify legislative measures not otherwise appropriate.” This choice of words—“exceptional conditions” and “not otherwise appropriate”—effectively set the precedent for the VRA’s eventual downfall. The Supreme Court struck down Section 4(b) as unconstitutional because the “the conditions that originally justified [the coverage formula] no longer characterize voting in the covered jurisdictions” since voter registration rights in covered jurisdictions were roughly equal. Justice Roberts wrote that “[o]ur country has changed, and while any racial discrimination in voting is too much, Congress must

ensure that the legislation it passes to remedy that problem speaks to *current conditions* [emphasis added].”

Although the decision in *Shelby* did not place any additional restrictions on voting, it indirectly caused many people to lose their ability to vote, or at least made it more difficult. Section 5 allowed jurisdictions to obtain preclearance “only by proving that the change [in voting procedures] had neither ‘the purpose [nor] the effect of denying or abridging the right to vote on account of race or color.’” Because the Court struck down this measure, there was no authority to prevent the passage of discriminatory laws. In her dissent in *Shelby*, Justice Ginsburg asserted that although times have changed, preclearance was indeed effective at stopping discriminatory changes and gutting it would just bring back the problems it was preventing. Sweren-Becker (2021) writes that lawmakers took advantage of the gap in voting rights protections left after *Shelby*. She asserts that “we are seeing the most aggressive voter suppression effort since Jim Crow” as “17 states have enacted 28 laws that restrict voting access” since the gutting of preclearance, which “could have stopped many of these policies in their tracks.”

Once again, the Court failed to take context into account. It turned a blind eye and opened up a pathway for states to institute laws that had a disparate impact on people of color under the guise of legitimate interests, namely preventing voter fraud. After *Shelby*, many states required people to present a government-issued photo ID to vote, but several types of ID were excluded. For example, despite being government-issued, public housing ID was unacceptable in Alabama, but it was often the only form of ID owned by people of color. Texas passed a law that only accepted gun licenses or driver’s licenses—IDs that white people were more likely to carry since “nearly one-third of the state’s counties, including some of those that are heavily minority, do not have DMVs” (Anderson 2018:69). Because not everyone has the means or need to acquire

acceptable IDs, citizens either “ha[d] to run an obstacle course to acquire the appropriate identification to vote” (p. 67) or not vote at all. Laws such as these strategically disenfranchised people of color, which was demonstrated by the wide turnout gap between white people and people of color in voter ID states versus non-voter ID states (p. 70). The *Shelby* Supreme Court decision did not change anything by itself. It simply allowed jurisdictions to take advantage of the opportunity that was essentially being granted to them by reducing voting law regulations and consequences.

The Supreme Court’s influence is mostly symbolic. Its decisions indirectly shape U.S. political processes by stating what is and is not permissible, but the impacts of these declarations are only tangible when other actors enforce them. Rosenberg (1991) sees the Court as having inherent constraints, namely its lack of implementation power that make it difficult to produce change. Although *Brown v. Board of Education* (1954) declared that schools must desegregate, the Court could not enforce this decree. Without any consequences, many schools ignored or opposed the decision. Only when the Civil Rights Act of 1964 created consequences for segregating did schools obey the decree. In this way, Rosenberg shows how the Court’s influence is indirect as it required support from other actors for any actual change to occur. Anderson (2018) shows how the Courts’ lack of action was also a form of indirect influence. Although the Fifteenth Amendment forbade states to stop black men from voting outright, it said nothing of making voting more difficult for them. The Voting Rights Act of 1965 was effective at hindering states from passing discriminatory voting laws and the Court doubled down on it in *South Carolina v. Katzenbach* (1966), but states found ways to discriminate anyway. They even managed to make disenfranchisement permissible by framing it in legitimate terms in *Crawford v. Marion County* (2008) and *Shelby v. Holder* (2013). Jurisdictions took advantage of the

Court's increased laxity on voting rights and used the opportunity to pass subtly discriminatory laws. Rosenberg and Anderson thus show that Supreme Court decisions function mostly symbolically, as they do little to ensure that people are able to exercise the rights that they advocate.

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