

Brown v. Board of Education: "The Case of the Century"



HISTORICAL BACKGROUND

May 17, 2004 marks the 50th anniversary of the five cases collectively known as *Brown v. Board of Education of Topeka*. In this 1954 landmark decision, the United States Supreme Court declared racial segregation of public schools to be unlawful under the Constitution of the United States. An explanation of the historical background aids understanding of the importance of this decision and the reasons behind it.

Slaves were first brought to the colonies that would become the United States not long after permanent settlements were established in the early 1600s. The slave trade continued to flourish for almost 200 years. By the time of the American Revolution, slavery was deeply ingrained in the economic structure of the country, especially in the Southern colonies, which relied on slave labor.

Slavery was an explosive and divisive issue that made the founding of this country more difficult. The states often clashed over whether slavery should be permitted in the new territories that were not yet states. Kansas Territory became a fierce battleground between pro- and anti-slavery forces in the 1850s, resulting in its nickname of "Bleeding Kansas."

In 1857, the United States Supreme Court delivered what many consider to be its worst decision. In *Dred Scott v. Sandford*, the court declared that the U.S. Constitution protected the institution of slavery and that Congress had no authority to prohibit slavery in the new territories. Chief Justice Taney declared that blacks "had no rights which the white man was bound to respect." The *Dred Scott* decision infuriated anti-slavery forces and brought the reputation and standing of the Supreme Court to its lowest level in our history.

In 1860, Abraham Lincoln won the presidency of the United States. His Republican party had campaigned on a platform of keeping slavery out of the territories. President Lincoln tried to assure the Southern states that he would not interfere with slavery where it already existed. But the Southern states were alarmed fearing that the admission of additional free states eventually would give anti-slavery forces enough votes in Congress to outlaw slavery throughout the nation.



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The State of Kansas was born out of the struggle between the North and the South over slavery prior to the Civil War. Our State was populated by people who migrated here from the North and the South. Significant numbers of people who were pro-slavery settled in Leavenworth, Atchison, and Lecompton. Significant numbers of people who were "free soil" or anti-slavery, settled in Topeka, Lawrence, and Wyandotte.

The South's attempt to secede from the Union led to the Civil War, four years of struggle that was the most cataclysmic event in American history. After the Civil War, the 13th, 14th, and 15th Amendments of the U.S. Constitution were passed, along with various civil rights acts--all to abolish slavery and protect the rights of newly freed blacks. Just what these Amendments and laws meant, especially the 14th Amendment, would become very important issues.

After federal troops were withdrawn from the former Confederate states in 1876, white leaders of those states, many of whom had fought for the Confederacy in the war, quickly reestablished white-controlled governments that deprived blacks of many rights. At this time, public education was not well established or widely available, especially in the South, so the education of black children was not as great a concern as the denial of other fundamental rights, such as the right to vote and the right to equal protection under law.

While many Americans had opposed slavery, they were not necessarily willing to grant full and equal rights to blacks. Most Americans were more interested in conquering the western frontier and building the nation's industrial, transportation, financial, and agricultural resources. So-called "Black Codes," which had been enacted throughout the Southern states, were designed to maintain blacks' inferior position in society. Among other provisions, these codes included laws compelling blacks to work for limited pay, restricting their mobility, prohibiting their court testimony against white persons, and providing for segregation in public transportation and in public places.

Kansas had contributed more troops to the Union armies in proportion to its population than any other state. Most members of the Kansas legislature in 1867 were Union Army veterans. The Kansas legislature quickly ratified the Fourteenth Amendment that year. During the same session, however, the Kansas legislature enacted a statute providing for separate education for white and black children in some cities.

In the years after the Civil War, a number of freed slaves, who we call the Exodusters, migrated to Kansas and settled in several communities. In some



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places, whites resisted living and sharing facilities with blacks. Other communities were more accepting of their new neighbors. The legislature determined that it was best to enact a law that gave community members a voice in the issue of segregation or integration of schools. This led to laws which allowed a certain amount of racial segregation in the schools.

In 1897, the U.S. Supreme Court damaged the ideal of equal rights in America in *Plessy v. Ferguson*. The State of Louisiana, like many other states, had passed segregation laws. Homer Plessy, a black, violated Louisiana's law by insisting on sitting in a "whites only" railroad passenger car instead of the car designated for blacks. Mr. Plessy's lawyers argued that the segregation law violated the 14th Amendment, in particular that part of the amendment that says a state could not deny equal protection under the law to any person.

The Supreme Court ruled that the Louisiana law did not deny equal protection because it provided "separate but equal" facilities for the races. In this decision, the Supreme Court seemingly put its seal of approval on all types of state laws that segregated public facilities, including schools. The theory of the *Plessy* decision and the "separate but equal" doctrine was that segregation caused no harm as long as the two groups were treated equally.

Plessy also contained one of the most amazing statements ever to appear in a U.S. Supreme Court opinion. To paraphrase, the Court stated that if Plessy thought segregated facilities stamped the black race with a badge of inferiority, it was only because Plessy chose to interpret it that way!

Justice John Marshall Harlan wrote a dissenting opinion, saying the majority decision would allow states to enact legislation effectively imposing legal inferiority on blacks. Justice Harlan believed our nation should be colorblind. Yet, just two years later, even Justice Harlan wrote a decision that appeared to support segregated public schools.

By the beginning of the 20th century, things were changing. Black America, even with meager economic and political resources, continued to produce inspiring leaders, and black Americans followed them to greater freedom. Leaders such as Booker T. Washington and W.E.B. DuBois spoke strongly about the unfair treatment of black Americans and convincingly argued that all America was injured by it. America was denying itself the full development and contribution of its black citizens. While a majority of Americans were not stirred to action, there were many who were becoming increasingly concerned.



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In 1910, the National Association for the Advancement of Colored People was formed to fight three forms of racial oppression: (1) disenfranchisement or denial of blacks' right to vote in some places; (2) limitation of education; and (3) denial of civil liberties, the most shocking example of which was lynching.

Events in the world were also catalysts for changes in attitudes. With our entry into World War I, the nation was forced to enlist the skills of many whites and blacks in the armed forces. Some of the industrial jobs white soldiers left behind were made available to black workers for the first time. Many black Americans left the poverty and scarce educational and economic opportunities of the South, migrating to the better jobs and schools of the North.

These new educational and economic opportunities produced growing numbers of educated and accomplished black Americans, who in turn became leaders with prophetic and persuasive arguments against the continuing injustices black Americans suffered. Black Americans' willingness and ability to fight injustice grew as well.

Meanwhile, change was also occurring slowly in the judicial branch of the national government. While the executive and legislative branches remained adverse to reform, the U.S. Supreme Court appeared to hint that the courts would recognize the application of U.S. Constitutional guarantees to all Americans. Civil rights advocates--led by superb black lawyers such as Charles Hamilton Houston, William Hastie, and James Madison Nabrit, Jr.--determined that the most promising battleground was the courts. They decided to attack the system of segregation where it was the most vulnerable: its legal basis.

In the legislative and executive branches of government, representatives stood for election. Racist demagogues, or those who feared opposing them, might be able to win public office by appealing to the lowest common denominator of their voting constituency. Or they might simply ignore the problem to avoid angering or alienating voters. The courts, in contrast, were designed to be at least somewhat insulated from political pressures, enabling us to settle disputes and decide issues even when the process would be uncomfortable or confrontational. A vote of the people would not be required.

Under the leadership of Mr. Houston, the Howard University Law School in Washington, D.C., began turning out talented black lawyers who could fight the battle in the courts. Civil rights advocates determined that segregation of the public schools was the biggest problem and the most likely target for reform. In 1931, a young lawyer named Nathan Margold produced a report for the NAACP



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that analyzed the Supreme Court's recent decisions. Margold predicted that, although the Supreme Court would likely continue its *support* of segregated schools, the court did not appear to be comfortable with *requiring* segregated public schools. There was room to maneuver.

The cadre of civil rights lawyers adopted a strategy of using the language from *Plessy* to demand that if schools were to remain separate, they must be truly equal. As a practical matter, especially in the South, separate black schools were almost always seriously inferior to white schools in terms of facilities, curriculum, and funding. Forcing truly equal schools might well bring heavy economic pressure to integrate.

However, it soon became apparent that it would take a very long time and a great deal of money to force each state to integrate its schools. The NAACP had little money, especially during the Depression. Given its limited resources, the NAACP selected those cases it believed had the best chance of success.

Lead by Mr. Houston, and learning from some early losses, the civil rights lawyers fought on. Slowly the tide began to turn. Part of the reason was the new young lawyer who began his long and storied career with the NAACP soon after his graduation from Howard Law School in 1933: Thurgood Marshall. Mr. Marshall was one of those American miracles -- exactly the right person, in the right place, at the right time. Trained by Mr. Houston, he knew fighting racial injustice was his life's work. That work would eventually take him to a seat on the U.S. Supreme Court.

Beginning in 1935, Mr. Houston and Mr. Marshall tried a series of cases concerning segregation in public universities. They took on the case of Donald Murray, a black man who wanted to attend law school at the University of Maryland. They were successful at the trial level, and, when the state appealed they also were successful before the Maryland Court of Appeals. Murray was admitted to the law school. The state responded to the lawsuit by appropriating more money for black education in an effort to relieve pressure for further integration.

Meanwhile, Mr. Houston took the case of Lloyd Gaines, who wanted to go to law school at the University of Missouri. The state gave Gains two options. He could go to another state's law school, and the state would pay the difference in his tuition rate; or the state would establish a law curriculum just for him at Lincoln University, the black university where Gains had received his bachelor's degree. Gaines lost at the trial level, but, after 2 ½ years, the U.S. Supreme Court decided



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in his favor. In a 6-to-2 decision, Chief Justice Hughes declared that Missouri's practice of providing a school for whites to receive legal education without a like place for blacks was unlawful. Gaines was admitted to the law school.

Cases challenging other racial injustices were also making their way through the courts. Cases were filed to challenge segregated political primaries and unequal pay for white and black teachers. Mr. Marshall took the case of Melvin O. Alston, a black teacher at a black high school in Virginia. White high school teachers were paid one-third more than black high school teachers. Although they lost at trial. Mr. Marshall and Mr. Alston were successful on appeal to the Fourth Circuit Court of Appeals.

These victories encourage Mr. Marshall and other civil rights lawyers. The Administration of President Franklin D. Roosevelt also encouraged them, appearing to agree with the need for reform. President Roosevelt appointed Supreme Court justices who were in favor of civil rights reform, replacing justices who had often been opposed.

World War II also brought changes. Again, economic opportunities for blacks improved, as large numbers of black Americans were employed in the armed forces or in jobs formerly closed to them. Yet discrimination was still common.

The NAACP and civil rights lawyers continued to use *Plessy* to demand equal facilities if not integrated ones. They took the cases of students who wanted to go to law school at the Universities of Texas and Oklahoma. Texas attempted to placate a black man, Marion Sweatt, with a one-student law school in makeshift facilities. Oklahoma forced George McLaurin to sit outside law school classrooms and listen to lectures from a distance. Perhaps realizing how ridiculous its actions were, the University of Oklahoma eventually allowed Mr. McLaurin to sit inside the classroom, but his seat was surrounded by a railing marked: "Reserved for colored."

The U.S. Supreme Court decided the *Sweatt* and *McLaurin* cases on the same day in 1950, declaring the Texas and Oklahoma practices unconstitutional because the education offered to black students was obviously inferior to that offered to whites. The Court said that a valuable part of education was normal interaction among the students, something the black students were denied. Still, the Supreme Court did not strike down the basic "separate by equal" holding of *Plessy*. It clung to the theory, despite undeniable evidence that separate facilities were virtually never equal.



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Brown v. Board of Education of Topeka, as it was finally decided, consolidated five cases from different areas of the United States. In addition to the Kansas case, there was *Briggs v. Elliott* from South Carolina; *Davis v. County School Board of Prince Edward County, Virginia*; *Bolling v. Sharpe* from the District of Columbia; and *Gebhart v. Belton* from Delaware. At the time of the *Brown* oral argument, seventeen states in the union provided for separate schools for white and black children. Four others permitted school boards to segregate. Those four were Wyoming, Kansas, New Mexico, and Arizona.

In all five cases consolidated in *Brown*, the NAACP lawyers and their associated local counsel presented evidence at trial about the damage caused students by segregation. They also presented legal arguments about why the courts should take action in spite of the *Plessy* case. They did these things to set up an eventual appeal to the U. S. Supreme Court, hoping it would overrule *Plessy* and end segregation.

The *Brown* case was the first case to be argued to the court. Robert Carter, representing the Brown family and the other plaintiffs, began his argument on December 9, 1952. The State of Kansas was represented by 36-year-old Assistant Attorney General Paul Wilson. By the fall of 1952, the School Board of Topeka had been transformed by elections to a group whose majority did not want segregation and did not want to defend it. Kansas Attorney General Harold Fatzer, who would later become chief justice of the Kansas Supreme Court, was not enthusiastic about the State's side of the case. However, he could not concede that Kansas' law was unconstitutional. The Supreme Court essentially ordered the attorney general's office to file a brief and present oral arguments. Mr. Wilson, who would later become a much beloved law professor at the University of Kansas, wrote extensively about his experience in *Brown*. He had a feeling that he would lose the case because, as he said later, "history and social conscience had simply overtaken the law."

Following the 1952 oral argument, the Supreme Court justices remained deeply divided over the question of whether to uphold racial segregation in education. At the conclusion of the Court's session, the justices delayed their decision by asking the parties to present additional arguments. Five questions were issued to the parties, focusing on the original understanding of the Fourteenth Amendment and on judicial power to abolish segregation even if such abolition had not been contemplated by the writers of the Amendment and those who ratified it. The Court scheduled reargument on October 12, 1953. But those plans changed on September 9, 1953, when Chief Justice Fred Vinson died of a heart attack at the age of 63.



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Less than one month after Chief Justice Vinson's death, Earl Warren took the oath of office to become the new Chief Justice of the United States. New arguments in *Brown* were rescheduled to begin on December 7, 1953.

During those arguments, the parties focused on whether, at the time the Fourteenth Amendment was ratified, Congress and others understood the Amendment would outlaw segregation in public schools. The parties also addressed whether future members of Congresses or the court had the power to interpret the Amendment to abolish segregation, if there was no such understanding at the time the Amendment was adopted.

The Supreme Court ruled unanimously that segregated public education violated the Fourteenth Amendment, a conclusion that rested not necessarily on the understanding or conditions existing when the Fourteenth Amendment was adopted, but on the later full development of public education and its current status in American life throughout the nation.

Because its decision applied to all public schools in a variety of local conditions, the Supreme Court was concerned about how to design a remedy. It directed the parties to submit additional briefs and return for another argument in 1955, this time concerning the relief that should be ordered. The Supreme Court ultimately ruled that school boards must make a "prompt and reasonable start toward full compliance" and that the courts would monitor school boards to make sure they were putting compliance plans in place and following them.

In 1999, the U.S. District Court finally closed the *Brown* case in Topeka, after monitoring compliance for 40 years. Today some U.S. school districts are still under monitoring and supervision of federal courts.

The *Brown* decision altered the daily lives of black and white Americans. It laid a foundation of equal rights and opportunities for all. It demonstrated that educational opportunity and achievement are core values and recognized that education can be a great equalizer among people of different races, classes, and backgrounds. It shines as a beacon to all Americans and to the rest of the world, demonstrating that the ideals in the Declaration of Independence and the tenets of the United States Constitution will be universally applied to all citizens.

