***Brown v. Board of Education***

**Background**

On May 17, 1954, U.S. Supreme Court Justice Earl Warren delivered the unanimous ruling in the landmark civil rights case *Brown* v. *Board of Education of Topeka, Kansas*. State-sanctioned segregation of public schools was a violation of the 14th Amendment and was therefore unconstitutional. This historic decision marked the end of the "separate but equal" precedent set by the Supreme Court nearly 60 years earlier and served as a catalyst for the expanding civil rights movement during the decade of the 1950s.

While the 13th Amendment to the United States Constitution outlawed slavery, it wasn't until three years later, in 1868, that the 14th Amendment guaranteed the rights of citizenship to all persons born or naturalized in the United States, including due process and equal protection of the laws. These two amendments, as well as the 15th Amendment protecting voting rights, were intended to eliminate the last remnants of slavery and to protect the citizenship of black Americans. In 1875, Congress also passed the first Civil Rights Act, which held the "equality of all men before the law" and called for fines and penalties for anyone found denying patronage of public places, such as theaters and inns, on the basis of race. However, a reactionary Supreme Court reasoned that this act was beyond the scope of the 13th and 14th Amendments, as these amendments only concerned the actions of the government, not those of private citizens. With this ruling, the Supreme Court narrowed the field of legislation that could be supported by the Constitution and at the same time turned the tide against the civil rights movement.

By the late 1800s, segregation laws became almost universal in the South where previous legislation and amendments were, for all practical purposes, ignored. The races were separated in schools, in restaurants, in restrooms, on public transportation, and even in voting and holding office. In 1896 the Supreme Court upheld the lower courts' decision in the case of *Plessy* v. *Ferguson*. Homer Plessy, a black man from Louisiana, challenged the constitutionality of segregated railroad coaches, first in the state courts and then in the U. S. Supreme Court. The high court upheld the lower courts noting that since the separate cars provided equal services, the equal protection clause of the 14th Amendment was not violated. Thus, the "separate but equal" doctrine became the constitutional basis for segregation. One dissenter on the Court, Justice John Marshall Harlan, declared the Constitution "color blind" and accurately predicted that this decision would become as baneful as the infamous Dred Scott decision of 1857.

In 1909 the National Association for the Advancement of Colored People (NAACP) was officially formed to champion the modern black civil rights movement. In its early years its primary goals were to eliminate lynching and to obtain fair trials for blacks. By the 1930s, however, the activities of the NAACP began focusing on the complete integration of American society. One of their strategies was to force admission of blacks into universities at the graduate level where establishing separate but equal facilities would be difficult and expensive for the states. At the forefront of this movement was Thurgood Marshall, a young black lawyer who, in 1938, became general counsel for the NAACP's Legal Defense and Education Fund. Their significant victories at this level included *Gaines* v. *University of Missouri* in 1938, *Sipuel* v. *Board of Regents of University of Oklahoma* in 1948, and *Sweatt* v. *Painter* in 1950. In each of these cases, the goal of the NAACP defense team was to attack the "equal" standard so that the "separate" standard would in turn become susceptible.

By the 1950s, the NAACP was beginning to support challenges to segregation at the elementary school level. Five separate cases were filed in Kansas, South Carolina, Virginia, the District of Columbia, and Delaware: *Oliver Brown et al.* v. *Board of Education of Topeka, Shawnee County, Kansas, et al.*; *Harry Briggs, Jr., et al.* v. *R.W. Elliott, et al.*; *Dorothy E. Davis et al.* v. *County School Board of Prince Edward County, Virginia, et al.*; *Spottswood Thomas Bolling et al.* v. *C. Melvin Sharpe et al.*; *Francis B. Gebhart et al.* v. *Ethel Louise Belton et al*. While each case had its unique elements, all were brought on the behalf of elementary school children, and all involved black schools that were inferior to white schools. Most important, rather than just challenging the inferiority of the separate schools, each case claimed that the "separate but equal" ruling violated the equal protection clause of the 14th Amendment. The lower courts ruled against the plaintiffs in each case, noting the *Plessy* v. *Ferguson* ruling of the United States Supreme Court as precedent. In the case of *Brown* v. *Board of Education*, the federal district court even cited the injurious effects of segregation on black children, but held that "separate but equal" was still not a violation of the Constitution. It was clear to those involved that the only effective route to terminating segregation in public schools was going to be through the United States Supreme Court.

In 1952 the Supreme Court agreed to hear all five cases collectively. This grouping was significant because it represented school segregation as a national issue, not just a southern one. Thurgood Marshall, one of the lead attorneys for the plaintiffs (he argued the Briggs case), and his fellow lawyers provided testimony from more than 30 social scientists affirming the deleterious effects of segregation on blacks and whites. These arguments were similar to those alluded to on pages 18 and 19 in the first featured document, the Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al.* v. *R. W. Elliott, Chairman, et al*. The lawyers for the school boards based their defense primarily on precedent, such as the *Plessy* v. *Ferguson* ruling, as well as on the importance of states' rights in matters relating to education. Realizing the significance of their decision and being divided among themselves, the Supreme Court took until June 1953 to decide they would rehear arguments for all five cases. The arguments were scheduled for the following term, at which time the Court wanted to hear both sides' opinions of what Congress had in mind regarding school segregation when the 14th Amendment was originally passed.

In September 1953, President Eisenhower appointed Earl Warren, governor of California, the new Supreme Court chief justice. Eisenhower believed Warren would follow a moderate course of action toward desegregation; his feelings regarding the appointment are detailed in the closing paragraphs of the second featured document, Letter from President Eisenhower to E. E. "Swede" Hazlett. In his brief to the Warren Court that December, Thurgood Marshall described the separate but equal ruling as erroneous and called for an immediate reversal under the 14th Amendment. He argued that it allowed the government to prohibit any state action based on race, including segregation in public schools. The defense countered this interpretation pointing to several states that were practicing segregation at the time they ratified the 14th Amendment. Surely they would not have done so if they had believed the 14th Amendment applied to segregation laws. The U.S. Department of Justice also filed a brief; it was in favor of desegregation but asked for a gradual changeover.

Over the next few months, the new chief justice worked to bring the splintered Court together. He knew that clear guidelines and gradual implementation were going to be important considerations, as the largest concern remaining among the justices was the racial unrest that would doubtless follow their ruling. Finally, on May 17, 1954, Chief Justice Earl Warren read the unanimous opinion; school segregation by law was unconstitutional. Arguments were to be heard during the next term to determine just how the ruling would be imposed. Just over one year later, on May 31, 1955, Warren read the Court's unanimous decision, now referred to as *Brown II*, instructing the states to begin desegregation plans "with all deliberate speed." The third featured document, Judgment, *Brown* v. *Board of Education*, shows the careful wording Warren employed in order to ensure backing of the full Court.

Despite two unanimous decisions and careful, if not vague, wording, there was considerable resistance to the Supreme Court's ruling in *Brown* v. *Board of Education*. In addition to the obvious disapproving segregationists were some constitutional scholars who felt that the decision went against legal tradition by relying heavily on data supplied by social scientists rather than precedent or established law. Supporters of judicial restraint believed the Court had overstepped its constitutional powers by essentially writing new law.

However, minority groups and members of the civil rights movement were buoyed by the *Brown* decision even without specific directions for implementation. Proponents of judicial activism believed the Supreme Court had appropriately used its position to adapt the basis of the Constitution to address new problems in new times. The Warren Court stayed this course for the next 15 years, deciding cases that significantly affected not only race relations, but also the administration of criminal justice, the operation of the political process, and the separation of church and state.

**Other Resources**

Dudley, M. E. *Brown* v. *Board of Education (1954)*. New York: Twenty-First Century Books, 1994.

Forman, J. A. *Law and Disorder*. New York: Thomas Nelson, Inc., 1972.

Goode, S. *The Controversial Court, Supreme Court Influences on American Life*. New York: Julian Messner, 1982.

Koch, Kenneth. *Wishes, Lies, and Dreams: Teaching Children to Write Poetry*. New York: Vintage, 1970.

Lawson, D. *The Changing Face of the Constitution*. New York: Franklin Watts, 1979.

