

# The Troubled Legacy of *Brown v. Board*

James T. Patterson

**B***rown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*<sup>1</sup> is an attempt to look back at the *Brown* case of 1954 and, as the subtitle indicates, decide whether it can rightly be regarded as a civil rights milestone or whether, to some considerable degree, we should be concerned with its troubled or perhaps troubling legacy.

When the unanimous decision was announced on May 17, 1954 by the Warren Court, it generated a good deal of excitement. The *Amsterdam News* of Harlem said that this was the greatest victory for the Negro people since the Emancipation Proclamation. Thurgood Marshall, the chief lawyer litigating the five cases that actually made up *Brown*, said during a long night of celebration, “I was so happy, I was numb.” A little bit later he predicted that all of the schools in the south and everywhere else would be desegregated by January 1, 1963, the hundredth anniversary of the Emancipation Proclamation. Ralph Ellison wrote in a letter to a friend, “What a wonderful world of possibilities are unfolded for the children.”<sup>2</sup>

It was my assumption when I undertook this book that *Brown* was a pivotal moment in American history, and that Ellison’s comment was prophetic. The further I got into the research, however, the more I began to have doubts about its long-term legacy. Did the decision in fact come even close to accomplishing the wonderful things that Ellison and the *Amsterdam News* and Thurgood Marshall and various others thought it was going to do in 1954?

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**James T. Patterson** is Ford Foundation Professor of History, Brown University; and author, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford University Press, 2001); *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (University of Kentucky, 1967); *Mr. Republican: A Biography of Robert A. Taft* (Houghton Mifflin, 1972); *The Welfare State in America, 1930-1980* (British Association for American Studies, 1981); *Dread Disease: Cancer and Modern American Culture* (Harvard University Press, 1987); *Grand Expectations: The United States, 1945-1974* (Oxford University Press, 1996; recipient, Bancroft Prize in History); *America in the Twentieth Century* (Harcourt Brace, 4th rev. ed., 1999); and *America’s Struggle Against Poverty in the Twentieth Century* (Harvard University Press, 2000). He is also a recipient of fellowships from the Guggenheim Foundation, National Endowment for the Humanities, and Woodrow Wilson International Center for Scholars.

I will focus on just two of the many legacies of the case. One is its impact on the civil rights movement; the second, its impact on school integration or desegregation and the quality of education.

Chronology once seemed to make the impact of the decision on the civil rights movement obvious. A year and a half after *Brown* was handed down in May 1954, the historic Montgomery school bus boycott took place, and Martin Luther King, Jr. emerged as a major civil rights leader. Those events were followed by the Little Rock case of 1957, when Governor Orville Faubus attempted to prevent desegregation of Central High School. Little Rock became another milestone. It led the Supreme Court to slap Faubus down, and it led President Dwight Eisenhower, in spite of his distaste for the decision, to send in troops to enforce what amounted to no more than token desegregation – but even that token desegregation probably would not have taken place had it not been for *Brown*. The Freedom Rides of 1961 were scheduled to arrive in New Orleans on May 17, 1961, the seventh anniversary of *Brown*. The timing was one of many testaments to the symbolic value of the decision. The Freedom Riders did not reach New Orleans on time, however, because of all the violence they encountered en route.

William Chafe was one of the first historians to look carefully at the civil rights movement in *Civilities in Civil Rights*, a study of Greensboro, North Carolina.<sup>3</sup> The city's school board, which met on May 18, 1954, the day after *Brown* was handed down, agreed unanimously to carry out the decision. There were great expectations in Greensboro, as in other places, that integration would take place. Very shortly thereafter, however, the Greensboro Board reneged, and as Chafe points out, Greensboro was in fact the last major city in North Carolina to desegregate its schools.

Three of the four black students who started the historic sit-ins at the Woolworth's store in Greensboro, on February 1, 1960, grew up in Greensboro. Despite the hopes of 1954, their education had taken place in segregated schools. It is Chafe's view that their anger, and that of many other black students who participated in what became this famous wave of sit-ins, stemmed from the rebuffs that the South gave to school desegregation between 1954 and 1960.

So there seems to be a clear chain of causation leading from *Brown* to the sit-ins, the Freedom Rides, major demonstrations, and then to the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

But the more I looked into this history, the more uncertain I became. As Gerald Rosenberg's *The Hollow Hope* indicates, it is not so clear that the *Brown* case had a major effect upon the escalation of the civil rights

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movement in the late 1950s or the 1960s.<sup>4</sup> Rosenberg and others point out that the attention given to civil rights in the late 1950s by the press or, for that matter, the American Bar Association, which was full of criticism of the decision, was really rather modest. Indeed, the press of those days was not particularly focused on judicial events: Anthony Lewis did not become the first Supreme Court correspondent for the *New York Times* until the mid 1950s. Overall, the white population didn't give much heed to civil rights. One of the best known of the substantial number of books about the civil rights decades is by historian Harvard Sitkoff.<sup>5</sup> It covers 1954 to 1992 and it, like similar books, suggests that there was a straight line of causation from *Brown* on. But an examination of major outlets in the late fifties, such as the *New York Times* or major magazines or others indexed in the *Guide to Periodic Literature*, reveals that little attention was paid either to the case or to civil rights.

Another indication of attitudes in the late 1950s: in 1958 the Gallup Poll asked Americans to list their ten most admired Americans. One of the ten was Orville Faubus. Presumably most of the people who said they admired him were from the South, but the poll nonetheless provides some sense of the racial climate of the United States in the late 1950s.

Rosenberg and others have pointed out that one would have expected the number of civil rights demonstrations in the United States to have increased after *Brown v. Board*, particularly when the South thumbed its nose at the decision as it did in the late fifties. In fact, there were fewer civil rights demonstrations in most of the late 1950s than there had been in 1943 or in 1946, 1947, and 1948, when there was a fair amount of demonstrating led particularly by returning black war veterans who had fought a war to save democracy but came back to a Jim Crow South. There was no steady escalation of demonstrations during the first five or six years after the decision.

One is also struck by the limited impact of the decision on national politics. In 1956 Autherine Lucy, a black woman, attempted to go to the University of Alabama. She was hounded out of town and was never able to enroll. This led reporters covering the 1956 presidential campaign to ask both Adlai Stevenson and Dwight Eisenhower whether they would ever send in troops or in other important ways enforce *Brown v. Board*. Both candidates said they could never imagine any circumstances under which that would happen. Eisenhower of course had to eat his words, however reluctantly, in 1957. But he made it clear at the time that he was doing so not because he had any sympathy with *Brown*, which he never endorsed, but because he felt it his duty as commander-in-chief to preserve order in Arkansas.

Similarly, civil rights did not emerge as a key issue in the 1960 presidential campaign between John F. Kennedy and Richard M. Nixon. True, toward the end of the campaign, the Kennedys helped Martin Luther King get out of jail, and the black vote may well have had an important effect in swinging that extraordinarily close election to Kennedy. But civil rights were nonetheless a peripheral issue. Kennedy's inaugural address, the famous "Ask not what your country can do for you" speech, contained almost no mention of domestic concerns. He, like Nixon, was deeply wrapped up in Cold War issues.

*Brown II*, the second *Brown v. Board of Education* decision handed down in May 1955, contained the famous statement that the desegregation process was to be carried out with "all deliberate speed." What exactly did that mean? No one seemed to know. Thurgood Marshall said later that he finally figured out what it meant, and he spelled it out: S-L-O-W. And slow it was. The Supreme Court's decision was ignored or deliberately violated in all of the southern states. Ten years after *Brown*, in 1964, only an estimated 1.2% of black children in the eleven states of the old Confederacy attended public schools with white children.

It is the force of that kind of resistance over ten years that Gerald Rosenberg makes so much of in *The Hollow Hope*. Michael Klarman, another leading revisionist, made many of the same points in a very important article in the 1994 *Journal of American History*, in essence agreeing that the Supreme Court made its decision, little happened, and therefore courts are often limited agents of social change.<sup>6</sup> Rosenberg looks at the areas of desegregation, women's rights, and abortion rights, and shows how little the Court actually accomplished. If the Court hadn't involved itself, Rosenberg adds, protest might have emerged more quickly as militant demonstrations, which in fact brought forth concrete gains.

Revisionists also argue that things might have worked out differently if the Court had stayed away from the issue of schools in its emphasis on racial justice. Had it turned instead to other issues such as public accommodations, the ending of discrimination in employment, voting rights, or transportation, they say, perhaps things would have been different because these are less sensitive areas. The South might gradually have accommodated itself to change without resorting to the massive resistance of the 1950s. Therefore, revisionists contend, it was perhaps counterproductive to go the education route.

I don't have a lot of faith in these arguments, which are sometimes summarized as the "backlash thesis." It seems to me that while the foes of integration in public accommodations, changes in employment and other such

things were perhaps less excited than were the opponents of school desegregation in the 1960s, there was nonetheless a lot of white anger and some violence. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 brought dramatic changes in our race relations laws. Along with the Social Security Act, those laws were the most important pieces of American legislation of the last 150 years. Absent the civil rights movement and all the turmoil of the early 1960s, they might not have passed. I don't believe, in short, that *Brown* made things worse.

I would also point out that the case did have some impact. We tend to forget that in 1954 segregation was mandated not only in eleven southern states but in six others, and was optional in four more. It also existed in the District of Columbia. So there were twenty-one states where segregation was either mandated or possible, Kansas among them. Richard Kluger reports in his magisterial book, *Simple Justice*,<sup>7</sup> that there were 11,500,000 white and black children, 40% of all American school children, affected by segregation policies in the southern and border states in 1954. We tend to forget that *Brown* changed this relatively quickly in most of the border states.

Other historians have suggested that *Brown* encouraged some northern states to enact laws against racial discrimination in employment and in public accommodations, and that it also had a liberalizing effect on some labor unions.<sup>8</sup> In other words, the Supreme Court's statement encouraged acceleration of a process already under way.

The Court also quietly handed down a number of *per curiam* decisions in the late 1950s that showed that the Court considered *Brown* applicable to areas other than education.<sup>9</sup> By 1960 it was clear that the *Brown* doctrine would apply to buses, municipal golf courses, beaches, and public parks as well as schools; that segregation in these places was equally unconstitutional.

As Douglas Reed has pointed out, the *Brown* decision was also relied upon later by states in their efforts to bring about greater equalization of resources and quality of education in the schools.<sup>10</sup> *Brown's* arguments and language have been used and continue to be used by a number of state courts.

Finally, there is the symbolic value of *Brown*. The Freedom Riders of 1961 certainly were inspired by the decision. On May 17, 1957, Martin Luther King staged a prayer pilgrimage in Washington, D.C. The point here is that the Court had spoken. This had an effect – hard to pin down and quantify, but there nonetheless.

My friend John Dittmer has written a wonderful prize-winning book on Mississippi called *Local People*.<sup>11</sup> He argues in it that even in Mississippi in 1954 and 1955, a lot of black people were extraordinarily heartened by *Brown* and expected their children to go to desegregated schools in the

near future. Of course, as Dittmer notes, they were cruelly rebuffed by both the “all deliberate speed” compromise of *Brown II* and by the refusal of the Eisenhower administration and other political leaders to stand behind *Brown* and make it clear that resistance would not be tolerated.

In short, there was a symbolic role here, even though it is hard to prove. The decision was indeed in the minds of many of the protestors in the early 1960s, even if their articulated goals were the ending of racial discrimination in public accommodations, employment, and voting rather than desegregation of schools.

But ceding all of this, I continue to wonder how pivotal *Brown* was. I close my book with a quotation from Jack Greenberg, who was Marshall’s right-hand man in many of these cases and who later succeeded him as head of the NAACP Legal Defense and Education Fund. In 1994 Greenberg wrote, “Altogether, school desegregation has been a story of conspicuous achievement flawed by marked failures, the causes of which lie beyond the capacity of lawyers to correct. Lawyers can do right, they can do good, but they have their limits. The rest of the job is up to society.”<sup>12</sup>

My second question is about *Brown*’s impact on the pace of desegregation and the quality of schools. The decision finally was enforced in the South in the 1970s, and it is estimated that by 1980, 38% of African-American children around the nation attended schools that were 50% or more white in student population. It had been only 22% in 1968; the change by 1980 obviously resulted from the belated desegregation of the southern schools after 1969.

This was a considerable change. People who went to Jim Crow schools and who have done well in life criticize me for not giving these schools sufficient credit but, as Kluger’s book details, those schools were very inadequately supported by public authorities. Washington, D.C. was one of the segregated areas at issue in the cases combined in *Brown*.<sup>13</sup> The total equipment in the science laboratory in the black Washington, D.C. junior high school involved in the case was a goldfish bowl with one goldfish, and a Bunsen burner. Of course there were some good black schools and any number of dedicated black teachers, administrators, coaches and so on. But I think we should get away from the notion that most of these were places in which a lot of learning could occur.

Another thing I should point out is that the amount of money the U.S. has spent on public education since 1970 in real dollars per student has been astronomically higher. Whether more money means better education is of course a big issue, but the best statistics suggest that the increase in per stu-

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dent public school spending between 1970 and the year 2000 in real dollars has been around 60%.

There are doubts, however, about the virtues of desegregation. W. E. B. Du Bois was a founding member of the NAACP and a lifetime supporter of integration. By the 1930s, he had become somewhat disillusioned about the value in all cases of integrated schools, and in 1935 he wrote, “A separate Negro school, where children are treated like human beings, trained by teachers of their own race, who know what it means to be black...is infinitely better than making our boys and girls doormats to be spit and trampled upon and lied to by ignorant social climbers, whose sole claim to superiority is ability to kick ‘niggers’ when they are down.”<sup>14</sup> Du Bois was not opposing desegregation or integration but suggesting that under some circumstances, there was a lot to be said for sending black kids to good *black* schools – providing, of course, that it was done voluntarily, rather than mandated by the state.

Du Bois was not the only person to have doubts. Clarence Thomas, in the important 1995 Kansas City case of *Missouri v. Jenkins*, took direct aim at the psychological argument developed by Kenneth and Mamie Clark that was enshrined in the famous footnote 11 of *Brown*.<sup>15</sup> The Clarks argued that black children sent to all-black segregated schools suffered psychological damage that interfered with their ability to learn. Thomas could not have been more contemptuous of what he saw as the argument that black students going to black schools were psychologically worse off than they would be if they sat next to a white kid in school. Thomas wrote, “the theory that black students suffer an unspecified psychological harm from segregation that retards their mental and educational development...not only relies upon questionable social science rather than constitutional principle, but it also rests on an assumption of black inferiority.”<sup>16</sup> Thomas’ view is not the same as that of Du Bois, but it raises the same question: under some circumstances, what’s wrong with a good black school?

Linda Brown Thompson, the Brown of *Brown v. Board*, said on the fortieth anniversary of the case in 1994, “Sometimes I wonder if we really did the children and the nation a favor by taking this case to the Supreme Court. I know it was the right thing for my father and mother to do then but after nearly forty years we find the Court’s ruling unfulfilled.”<sup>17</sup> She went on to suggest that it probably couldn’t or wouldn’t be, given the nature of American society.

Elizabeth Eckford was one of the nine black children who got caught up in the Little Rock controversy in 1957. Eckford said in 1997, forty years after Little Rock, “There was a time when I thought integration was

one of the most desired things...I appreciate blackness more than I did then.”<sup>18</sup> And there are other examples of disenchantment with *Brown*. Jack Balkin recently edited a collection of essays by law professors entitled *What Brown v. Board Should Have Said*.<sup>19</sup> Derrick Bell, a leading black law professor, said in it that had he been on the Supreme Court in 1954, he would have voted against *Brown v. Board*. He would have insisted instead that the Court require segregating states to make “separate but equal” really equal – maintain the “separate but equal” doctrine of *Plessy v. Ferguson* but insist that the facilities be equal. People like Bell wonder if there is really much reason to think that sending blacks into a white school and sitting them down next to whites is going to make them better people, going to make them more or less tolerant, going to change the whites very much or going to improve the education of either race.

Many of these commentators point to realities such as the black/white “test score gap,” segregated tracking within schools that are supposedly integrated, and resegregation of schools. Numbers tell the story. As I mentioned earlier, in 1980, 38% of black public school children were in schools which were 50% or more non-black. By 1996 this number had dropped to 32%. In 1996, the percentage of black kids in schools that are 90% or more black – which really means they’re black schools – was 35%, up from 33% in 1980. What’s happening is a process of creeping resegregation. We see this in housing as well, in the development of black suburbs. Residential movement throughout American history has been and continues to be very different for blacks than it has been for white immigrants.

There is near-total segregation in cities like Detroit and Chicago. It is not legally mandated, to be sure, but the result of demographic movements. Per capita spending on schools varies enormously and because of the Supreme Court’s *Rodriguez* decision of 1973, there is no real way for the federal government to force equal resources in schools.<sup>20</sup> The differences within states are quite large.

Race relations in this country have come a long way since 1954. The alteration in race relations between 1900 and the 1960s was so glacial as to be scarcely perceptible, but the enormous changes that occurred in the 1960s have persisted despite various conservative efforts since then. Most of these gains, as in voting, for example, have lasted. Public opinion polls report that the vast majority of Americans believe in integrated education and wish there were more of it.

I consider the idea of separate but equal schools pernicious. Sending black kids and white kids to school together does not necessarily make black kids into better students, but it certainly is an opportunity they



ought to have if they want it. It can open up all kinds of doors and opportunities and networking that they are unlikely to get if they are stuck in a poorly funded or even a well funded all-black school.

But having said that, I remain ambivalent about the role of *Brown*. Were Ralph Ellison alive today, he surely would have to wonder whether his prediction that *Brown v. Board of Education* opened up a wonderful world of possibilities for the children has proven correct.

## NOTES

1. James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford University Press, 2001).
2. Quoted in Patterson, *Brown v. Board of Education*, pp. xiii-xiv.
3. William H. Chafe, *Civilities in Civil Rights: Greensboro, North Carolina, and the Black Struggle for Freedom* (Oxford University Press, 1980).
4. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press, 1991).
5. Harvard Sitkoff, *The Struggle for Black Equality, 1954-1992* (Hill and Wang, 1993).
6. Michael Klarman, "How Brown Changed Race Relations: The Backlash Thesis," 81 *Journal of American History* 81-118 (June 1994).
7. Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (Knopf, 1975).
8. See V. P. Franklin and Bettye Collier-Thomas, *My Soul Is a Witness* (Henry Holt, 2000).
9. *Per curiam* decisions are short, unsigned decisions which frequently cite earlier decisions rather than spelling out the justices' reasoning.
10. Douglas S. Reed, *On Equal Terms: The Constitutional Politics of Educational Opportunity* (Princeton University Press, 2001).
11. John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (University of Illinois Press, 1994).
12. Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (Basic Books, 1994), p. 401.
13. *Bolling v. Sharpe*, 347 U.S. 497 (1954).
14. W. E. B. Du Bois, "Does the Negro Need Separate Schools?," 4 *Journal of Negro Education* 328-335 (July 1935).
15. In the *Brown* decision, Chief Justice Earl Warren quoted the United States District Court for the District of Kansas, which had written, "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. 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." *Brown v. Board of Education*, 98 F.Supp. 797, at 880-881. Warren continued,

“Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. n11 Any language in *Plessy v. Ferguson* contrary to this finding is rejected.” Footnote 11 cited the work of a number of social scientists: “K. B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Midcentury White House Conference on Children and Youth, 1950) ; Witmer and Kotinsky, *Personality in the Making* (1952), c. VI; Deutscher and Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 *J. Psychol.* 259 (1948); Chein, *What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?*, 3 *Int. J. Opinion and Attitude Res.* 229 (1949); Brameld, *Educational Costs*, in *Discrimination and National Welfare* (MacIver, ed., 1949), 44-48; Frazier, *The Negro in the United States* (1949), 674-681. And see generally Myrdal, *An American Dilemma*.” *Brown v. Board of Education*, 347 U.S. 483 (1954), at 494-495. During the litigation, Kenneth Clark testified about the Clarks’ findings that black school children in segregated schools, asked to choose between white and black dolls, liked the white dolls better and chose them rather than the black dolls.

16. *Missouri v. Jenkins*, 515 U.S. 1139 (1995), at 97 (Thomas, J., concurring).

17. Quoted in Patterson, *Brown v. Board*, p. 207.

18. Quoted in Patterson, *Brown v. Board*, p. 208.

19. Jack M. Balkin, ed., *What Brown v. Board of Education Should Have Said: The Nation’s Top Legal Experts Rewrite America’s Landmark Civil Rights Decision* (New York University Press, 2001).

20. *San Antonio v. Rodriguez*, 411 U.S. 1 (1973), holding that there is no constitutional right to an education.

The legacy of Brown in terms of the school system itself has been debated and Patterson tries to approach this debate with an honest and fair evaluation of its enduring victory. He follows Brown and the court system throughout the decades to see how this 1954 ruling has left a lasting imprint on the court. James T. Patterson's *Brown v. Board of Education* is an exceedingly well researched historical work on the pivotal cases faced on all judicial levels in the 1950s, 60s, 70s and 80s regarding segregation in our nation's schools. Professor Patterson masterfully writes on not just the legal implications of the landmark decision(s) in Brown but also in regard to their social impact. *County Board of Education (1899)*, for instance, the Court refused to issue an injunction preventing a school board from spending tax money on a white high school when the same school board voted to close down a black high school for financial reasons. Moreover, in *Gong Lum v. Rice (1927)*, the Court upheld a school's decision to bar a person of Chinese descent from a "white" school. *The Road to Brown*. (Note: Some of the case information is from Patterson, James T. *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*. Oxford University Press; New York, 2001) When the cases came before the Supreme Court in 1952, the Court consolidated all five cases under the name of *Brown v. Board of Education*. Marshall personally argued the case before the Court.