



Constitutional Rights Foundation Chicago

After Brown: The First 50 Years

A Module for U.S. History
Classrooms

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After *Brown*: The First 50 Years

Overview

In 1947, in Clarendon County, South Carolina, a small group of African American parents sued their local (white) school board alleging a violation of their rights under the Equal Protection Clause of the Fourteenth Amendment. They wanted one bus to take their children to the “colored” school, just as the school board provided some 30 buses to white children traveling to their schools. Their efforts culminated on May 17, 1954, in one of the most awaited, significant, and controversial Supreme Court decisions in American history: *Brown v. Board of Education of Topeka, Kansas*.

Brown was a pivotal event in the history of civil rights in America and of the United States in the 20th Century. It overturned a system of legal subordination of an entire class of people simply because of their race. The effort of making an America with liberty and justice for all is not, however, complete.

This module looks at what has happened in schools in the first 50 years after *Brown* and what equal protection means in a society where “separate but equal is inherently unequal.” This module looks briefly at how the law changed and what happened when those changes were challenged. It also presents some of the major interpretations of what *Brown* has come to mean in the United States today.

Objectives

- < Present a history of the implementation of *Brown v. Board of Education* in American public schools
- < Provide some of the major interpretations of what *Brown* has come to mean in the United States today
- < Offer opportunities for students to explore the meaning of “equal protection of the laws” for themselves

Materials

A: Reading: After *Brown*: The First Fifty Years

B: Activity: Applying *Brown: Parents v. School District* [A Hypothetical Case]

C: Activity: What Does *Brown v. Board of Education* Mean to Me?

After *Brown*: The First 50 Years: Selected Print and On-line Resources

A: After *Brown*: The First Fifty Years

Brown I to *Brown II*

The response to the *Brown* decision in 1954 was immediate, and white newspaper editorials across the South reflected the range of emotions. The *Atlanta Constitution* correctly noted that “the court decision does not mean that Negro and white children will go to school together this fall.... Not until next autumn will it even begin to hear arguments from the attorneys general of the 17 states involved on how to implement the ruling.” The *Cavalier Daily* (University of Virginia) wrote that “we feel that the people of the South are justified in their bitterness concerning this decision. To many people this decision is contrary to a way of life and violates the way in which they have thought since 1619.” The *Daily News* (Jackson, Mississippi) was more blunt: “Human blood may stain Southern soil in many places because of this decision but the dark red stains of that blood will be on the marble steps of the United States Supreme Court building” (landmarkcases.org, 2000).

In truth, the Supreme Court had not desegregated any school in *Brown*. Rather, it had requested arguments about how to implement desegregation. A year later, in May 1955, they announced their remedy: instead of calling for immediate desegregation of all schools, the Court called for the admission to public schools “on a racially nondiscriminatory basis with all deliberate speed.” As federal judge and former NAACP lawyer Robert L. Carter notes, this was the first time the Court “ever deferred immediate vindication of a successful litigant’s entitlement to a constitutional right” (“The Long Road to Equality,” *The Nation*, May 3, 2004). This delay would be the first of many in the effort to eliminate segregation in public schools.

“Equal Protection of the Laws” after *Brown*

Ever since the Fourteenth Amendment was ratified, there has been a tension in the courts regarding how the Equal Protection Clause should be interpreted. This tension affects how the U.S. Supreme Court interprets questions of discrimination in school and other public settings.

According to Ohio State University law professor Ruth Colker, there are two broad and slightly different principles in anti-discrimination law:

- § In Anti-classification theory, the Constitution means what it says – “no person shall be denied the equal protection of the laws” and applies to all persons, and everyone should be treated the same.”
- § Anti-subordination theory, by contrast, looks at historical origins of the Reconstruction Amendments, particularly slavery. “Here the law is remedial in order to counter a history of subordination directed against a particular class of persons, and the law should be interpreted to remedy that subordination.” University of Chicago law professor Jill Hasday describes it this way: “The real harm that the law is designed to remedy is that caused by the legalized history of subordination. The law was part of the process of discrimination, so it must also be part of the solution” (*Odyssey*, WBEZ-FM, May 25, 2004).

These two theories sometimes are in conflict and sometimes not. Legal scholars have interpreted *Brown* as an anti-classification case, an anti-subordination case, or both. For Colker, *Brown* is “a classic anti-classification decision—separate is never equal.” By contrast, Hasday sees *Brown* as “much more of a mixed opinion. Here the Court clearly pre-supposes [assumes] a harm to African Americans due to segregation and in no wise [way] can imagine white children ever bringing such a claim” (*Odyssey*, *supra*). Stanford law professor Kathleen Sullivan suggests two additional interpretations of the *Brown* opinion itself that

have been adopted by the Court: "that racial classifications are invalid when they psychologically stigmatize minorities; and that racial integration is a useful and desirable social outcome" (Sullivan, "What Happened to 'Brown'?" *New York Review of Books*, September 23, 2004). Each of these different understandings of *Brown* has found expression in the effort to desegregate public education.

Applying *Brown* in K-12 Public Schools

The primary response to *Brown* among Southern White leadership was non-compliance. Not only state governments, but even judges on the federal courts sought to frustrate the decision:

[W]hen the Clarendon County case returned to South Carolina, [U.S.] Circuit Judge John Parker shrewdly... said, "a state may not deny to any person on account of race the right to attend any school that it maintains." However, so long as schools are "open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools." Pursuant to *Brown*, Parker explained, the Constitution "does not require integration. It merely forbids discrimination" and "forbids the use of governmental power to enforce segregation." (David J. Garrow, "Why Brown Still Matters," *The Nation*, May 3, 2004).

Moreover, Congress and the President—not the Supreme Court—had to take the political steps to make *Brown* a reality. Yet in 1956, the so-called "Southern Manifesto" was signed by 19 Senators and 81 Representatives from 11 states in the old Confederacy:

We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power.... It is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding.... We decry the Supreme Court's encroachments on rights reserved to the States and to the people.... We commend the motives of those States which have declared the intention to resist forced integration by any lawful means.... We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation" (102 Cong. Rec. 4515-16 (1956), <http://www.cviog.uga.edu/Projects/gainfo/manifesto.htm>).

With significant opposition in Congress and no explicit endorsement of *Brown* by President Eisenhower, "the South interpreted 'all deliberate speed' to mean 'any conceivable delay'" (Richard Kluger, *Simple Justice*, 1975), and the effort to integrate the nation's schools moved very little in the first years after *Brown*. By 1960, only 1 percent of Black students were in majority White schools in the South, and only 2.3% were a decade after the decision (Gary Orfield and Chungmei Lee, "Brown At 50: King's Dream or Plessy's Nightmare?" The Civil Rights Project, Harvard University, 2004). Southern white retaliation against black teachers, either for urging school integration, supporting the emerging civil rights movement, or both, was also severe: over 30,000 were fired in the decade after *Brown*. Not until Congress passed the Civil Rights Act of 1964, which tied federal school funding to desegregation, did integration begin to significantly increase across the country, reaching a highpoint in 1988.

The Supreme Court continued to rule on public school desegregation cases, but its decisions followed different understandings of *Brown*. On the one hand, the Court struck down many of the Jim Crow barriers in the South and the de facto segregation policies throughout the nation. In *Green v. County School Board of New Kent County* (1968) the Court held that segregated "dual" school systems had to be dismantled "root and branch" and that

desegregation had to be achieved in all educational activities, including faculty, facilities, staff, sports and other extracurricular activities, and transportation resources. In *Swann v. Charlotte-Mecklenberg Board of Education* (1971) the Court ruled that “racially neutral” student assignment plans that were based on where people lived and resulted in segregated schools were unconstitutional. While not saying that a specific racial balance had to be achieved, the Court nevertheless held that desegregation had to be achieved in each of a district’s schools to the greatest extent possible, and it approved busing as a way to meet that end. Despite often fierce local opposition in many cities, busing plans were adopted and used across the country.

In *Keyes v. School District No. 1, Denver, Colorado* (1973), the Court extended *Brown* to cases of *de facto* segregation on the North and West. A school district without an explicit segregation policy could still be found responsible for a deliberate plan of segregating specific schools, and once such a policy had been proved, the burden was on the district to show that their actions were not motivated by a desire to segregate. (*Keyes* also recognized that Hispanic students could experience segregation and suffer the same educational inequities as Black students.)

Nevertheless, the Court still continued to respect traditional local control over education, with important results for school desegregation. In *San Antonio Independent School District v. Rodriguez* (1973), the Court held that since education was not a “fundamental right or liberty,” the issue of equalizing education funding was held to be an issue for the states and not the federal Constitution. As a result, the effort to provide equal funding for schools now had to be pursued using state constitutions and in state courts. In *Milliken v. Bradley* (1974), the Court held that federal courts could not order busing across jurisdictional lines—between a city and its suburbs or between neighboring school districts—without specifically showing that “racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation.” This decision effectively ended the possibility of court-ordered integration of mostly nonwhite urban areas with mostly white suburbs.

Brown Today

What did *Brown* achieve and what does it mean in 2004? Looked at one way, the successes are very great. Three of the four school districts in the *Brown* decision (the exception is Clarendon County, South Carolina) “show considerable long-term success in realizing desegregated education” (Orfield and Lee, *supra*). Many more African Americans, Latinos, and other nonwhite students are enrolled in American colleges and universities. Yet there is still an uncertain feeling about how far America has come. Linda Brown, who visited Topeka, Kansas on Brown’s 40th anniversary in 1994, told a reporter,

“Sometimes I wonder if we really did the children and the nation a favor by taking this case to the Supreme Court.... I knew it was the right thing for my father and other to do then. But after nearly 40 years, we find the court’s ruling remains unfulfilled” (Jeremy Irons, *Jim Crow’s Children: The Broken Promise of the Brown Decision*, 2002).

In 2004, some people see *Brown* as a great achievement of American democracy and a critical moment in the Civil Rights Movement in the effort to make America a more fair and equal society. Other people, looking at continuing disparities in school funding, facilities, and opportunity, are frustrated with the lack of progress since *Brown*. Still other people wonder whether *Brown* really changed much in public education. The way people understand *Brown* leads to important differences in how they seek to apply its lessons to today’s challenges.

B: Applying *Brown: Parents v. School District* [A Hypothetical Case]

Educators around the country have recognized the special needs of certain inner-city African-American and Latino male students and of certain female students of all races. Growing up in severely distressed economic environments marked by gangs and drugs, and often the product of fatherless households, boys in these circumstances often fall well below their educational potential and the average progress for their grade. Faced with the intense sexual pressures of a co-educational environment and the documented learning challenges in mathematics and the sciences, certain girls are at risk of early pregnancy and falling well below their educational and workforce potential.

To address these problems, one city has established special academies offering enriched education programs for these boys and girls. These public schools feature low enrollment, high teacher-student ratios, and courses designed to improve learning skills. They have special programs and coaches to promote self-esteem and discipline, and they feature well-equipped labs, libraries, and computer centers. Each of these special academies also has a policy limiting admission: the boys' schools deny admission to girls, with only African Americans admitted to an all-black academy and only Latinos admitted to an all-Latino academy; the girls' schools exclude any boys from attending.

In general, the academies are better equipped and better funded than regular schools in the city. Several parents file suit in Federal Court, claiming that the academies are much better than the regular public schools and that their admission policies violate the U.S Supreme Court ruling in *Brown v. Board of Education*. The School District claims that the academies have a real chance to improve the education of the targeted students and help solve community problems. They argue that since the academies were not set up to discriminate, they do not violate the *Brown* ruling.

Instructions

You will take part in deciding the case of *Parents v. School District*. Working in groups, you will be assigned the role of a Supreme Court Justice, an attorney representing the Parents, or an attorney representing the School District. You will be arguing the question of whether this policy violates the Equal Protection Clause as understood in the case of *Brown v. Board of Education of Topeka*.

You will prepare your case with the other persons assigned to your role: Attorneys for Parents together, Attorneys for the School District together, and Justices together.

When your teacher gives the signal, everyone will break into a three-person group or triad—one Supreme Court Justice, one Attorney for the Parents, and one Attorney for the School District. Your teacher will be in charge of keeping time.

Moot Court Instructions

Parents Attorney Instructions	Supreme Court Justice Instructions	School District Attorney Instructions
It is your job to represent the Parents by developing and making arguments that the School District's regulations violated the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution and are different from those in the <i>Brown</i> case.	It is your job to review the case of <i>Brown v. Board of Education</i> and the facts of the case in <i>Parents v. School District</i> . Prepare for hearing the case by trying to think about arguments both sides might raise.	It is your job to represent the School District by developing and making arguments that the regulations are permitted under the Equal Protection clause of the Fourteenth Amendment of the Constitution and by the Court decision in the <i>Brown</i> case.
You will have no more than three minutes to present your case. The Justice may interrupt you to ask one question during that time.	When hearing the case, each attorney has no more than three minutes to give its arguments. The Parents side goes first. You may ask one question to each side during this time.	You will have no more than three minutes to present your case. The Justice may interrupt you to ask one question during that time.
	When both sides have finished, you will have three minutes to decide the case and give the reasons for your decision. Stand up in place after you have given your decision.	

Group Questions for Thinking About Arguments:

1. How are the facts of *Brown* different from the facts in *Parents v. School District*?
2. What are some benefits to society or to education if the decision for the academies are upheld?
3. What harm to society or education might result if the decision for the academies is upheld?

Adapted from: *Foundations of Freedom*, Teacher's Guide, © Constitutional Rights Foundation 1991.

C: What Does *Brown v. Board of Education* Mean to Me?

Fifty years later, the meaning of the *Brown* decisions remains controversial. What happened as a result of *Brown*? What significance, if any, does it have in the 21st Century? What is *Brown's* legacy and meaning for today?

Below are five statements about the meaning of *Brown*. These statements, while distinct, are not mutually exclusive.

Choose one statement with which you agree. Using this curriculum and other resources, develop the evidence which you believe supports this statement.

Then prepare an essay [500 words maximum] or a poster explaining the meaning of *Brown* as you understand it. Share your poster or essay with two classmates who chose different statements. What did you learn about the meaning of *Brown* from their presentations? Which statements, if any, would you not be able to support?

- (1) *Brown* has been celebrated because it deserves to be. Put another way, the Court did the right thing, at the right time, and for the right reasons.

- (2) *Brown* is significant not so much for what changes it caused at the time but for how it has become a symbol for other rights movements. It set the stage for such developments as the civil rights movement, Martin Luther King, Jr., the women's movement, and the liberation efforts of Latinos, Asians, the elderly, and gays.

- (3) If the goal of *Brown* was to create equal educational opportunities for students of color through desegregation, then even a cursory analysis of education in the United States provides evidence that the goal remains unmet.

- (4) *Brown* was well-intentioned but a mistake. Civil rights advocates had hoped that *Brown* would spark progress toward racial equality, yet 50 years later race-based unequal educational opportunities and outcomes persist. Instead of desegregating schools, for example, perhaps equalizing resources going into segregated schools would have better served the educational needs of African American and other underserved students.

- (5) *Brown* didn't change much of anything at all. Courts in general, and the Supreme Court of the United States in particular, are less powerful than people think. *Brown* failed to cause significant change because there was too little political pressure to enforce the decision and considerable pressure to resist it.

* Adapted from: Diana E. Hess, "Deconstructing the *Brown* Myth," *Rethinking Schools*, Volume 18, No. 3 -Spring 2004.

After *Brown*: The First 50 Years: Selected Print and On-line Resources

Web Sites

Landmark Cases – *Brown v. Board of Education*

<http://www.landmarkcases.org/brown/home.html>

Constitutional Rights Foundation – *Brown v. Board of Education*: 50th Anniversary

http://www.crf-usa.org/brown50th/brown_v_board.htm

American Bar Association – 2004 Law Day lessons celebrating the 50th anniversary of *Brown*

<http://www.abanet.org/publiced/lawday/schools/lessons/>

Illinois Humanities Council – *Brown v. Board* 50 Years Later: Conversations on Integration, Race, and the Courts

<http://www.bvb50.org/>

National Archives and Records Administration – Timeline of Events Leading to the *Brown v. Board of Education* Decision, 1954

http://www.archives.gov/digital_classroom/lessons/brown_v_board_documents/timeline.html

National Museum of American History: Separate Is Not Equal, *Brown v. Board of Education*

<http://www.americanhistory.si.edu/brown/>

University of Michigan Library's *Brown v. Board of Education* Digital Archive

<http://www.lib.umich.edu/exhibits/brownarchive/index.html>

Brown v. Board of Education National Historic Site

<http://www.nps.gov/brvb/>

Decisions Of The Supreme Court Of The United States

Brown v. Board of Education, 347 U.S. 483 (1954) [Brown I]

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=483>

Bolling v. Sharpe, 347 U.S. 497 (1954)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=497>

Brown v. Board of Education, 349 U.S. 294 (1955) [Brown II]

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=349&invol=294>

Bibliography

Blaustein, Albert P. and Clarence Clyde Ferguson, Jr. *Desegregation and the Law: The Meaning and Effect of the School Segregation Cases* (Revised Ed.). 1962: Vintage Books, New York.

Hess, Diana E. "Deconstructing the *Brown* Myth," *Rethinking Schools*, Volume 18, No. 3 - Spring 2004

http://www.rethinkingschools.org/archive/18_03/deco183.shtml

Irons, Peter. *Jim Crow's Children: The Broken Promise of the *Brown* Decision*. 2004: Penguin USA.

Kluger, Richard. *Simple Justice: The History of *Brown v. Board of Education* and Black America's Struggle for Equality*. 1976: Alfred A. Knopf, New York.

Lofgren, Charles A. *The Plessy Case: A Legal-Historical Interpretation*. 1987: Oxford University Press, New York.

Orfield, Gary and Chungmei Lee. "*Brown* At 50: King's Dream or *Plessy*'s Nightmare?" January 2004, The Civil Rights Project, Harvard University.

<http://www.civilrightsproject.harvard.edu/research/reseg04/resegregation04.php>

Tushnet, Mark V. *Brown v. Board of Education*. 1995.

Woodward, C. Vann. *The Strange Career of Jim Crow* (2nd Ed.). 1966: Oxford University Press, New York.