

History and Continued Implications of Brown v. Board

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### Abstract

Social justice relates to equal sharing or distribution of opportunities in a community, which in turn leads to equity and parity in wealth and privilege. Higher education is the connection between the citizenry and the kind of professional or vocational opportunities that can ensure the equal sharing of opportunities (Sumida & Abeita, 2018). This paper will explore the seminal legal case *Brown v. Board of Education of Topeka*, with a focus on its impact on higher education in America and its social justice implications over half a century after its holding was issued in 1954. Notably, the case did not per se address the issue of higher education, as it limited itself to segregation at the elementary education level. However, the case established “equal opportunity” as a symbolic victory in American progress. Through examining the history of the case, this paper will establish “equal opportunity” as a myth perpetuated to make the current marketization of higher education more palatable. It must be noted that a morally arbitrary market cannot create equity in any way, especially in education. Through symbolic victories such as *Brown v. Board of Education*, the American state can claim progress without addressing the gross inequalities created through unchecked market forces. *Brown v. Board of Education of Topeka* and its aftermath both shine a light on the historical lack of social justice in higher education and how a cycle of inequity simply cannot be reformed through legislation to reshape social structures.

## History and Continued Implications of Brown v. Board

### Historical Origins of the Law

The concept of all men being born equal was a supposed pillar of the birth of the United States, yet express opposition to that concept is the basis of the case law enshrined in *Brown v. Board of Education of Topeka*. Racism and racial discrimination were an integral part of independent America, with the nation continuing the practice of slavery and the slave trade for almost a century after independence (Deibel, 2016). Slavery only ended after a devastating war that created a divide that still exists today. The compromises made to unite the nation after the Civil War inform the historical origins of various case laws that provide the foundation for the concept of “equal opportunity.” During the era following the Civil War, the Supreme Court and State legislatures created laws, rules, and regulations designed to erode social justice in the community generally, including in the education sector (Deibel, 2016; Brown & Brown, 2017).

These landmark decisions included *Plessy v. Ferguson* in 1896 that provided for the “separate but equal” doctrine upon which school segregation would be built. A unique example relating to higher education is the case *Berea College v. Kentucky* in 1908, where the Supreme Court upheld a state law that expressly prohibited private colleges from admitting both Black and White students (*Berea College v. Kentucky*, 1908). *Berea College v. Kentucky* suggested that segregation in elementary education was a pretext for preventing parity in higher education. Elementary schools provided a soft underbelly where racial discrimination could be applied to limit if not curtail the chances of Black students of eventually attaining higher education. Segregation at the elementary level adversely affected Black students psychologically and academically, which limited their chances of enrolling or excelling in higher education (Brown & Brown, 2017).

Finally, the historical origins of *Brown v. Board of Education of Topeka* are closely intertwined with politics. As discussed in the section above, politics and the need to placate the South after the Civil War led to the state laws and judicial precedent that legalized school segregation (*Brown v. Board of Education*, 1954). By the 1950s, international politics took precedent over local politics, paving way for *Brown v. Board of Education of Topeka*. During the Second World War and the subsequent Cold War, the United States presented itself as a global champion of social justice, freedom, and equality (Romanelli & Tomio, 2017). However, this message contrasted sharply with news about racial discrimination and injustice in America. The nation could not argue that the atrocities occurring against minorities were anything other than intentional, considering that the federal laws enshrined in Supreme Court judicial precedent supported de facto racial discrimination.

### **Legal Review**

From a judicial perspective, *Brown v. Board of Education of Topeka* was less about creating new laws than it was about undoing bad laws. The case was about the Supreme Court backtracking from its early holdings that had cemented school segregation in America (*Brown v. Board of Education*, 1954). Equality as a legal issue was already settled by the Equal Protection Clause of the 14<sup>th</sup> Amendment of the US Constitution as ratified in 1868 (Voros, 2017). Using its constitutional interpretation powers, the Supreme Court undid the Equal Protection Clause through holdings in cases such as *Plessy v. Ferguson* in 1896, which expanded the Equal Protection Clause to mean separate facilities but of equal quality. Similarly, *Cumming v. Richmond County Board of Education* in 1899 sanctioned state education laws that expressly contradicted the Equal Protection Clause by providing for school segregation (*Cumming v. Richmond County Board of Education*, 1899). Finally, and perhaps most blatantly, there was

*Berea College v. Kentucky* in 1908 that supported a law that made Black and White students studying together illegal (*Berea College v. Kentucky*, 1908). Therefore, *Brown v. Board of Education of Topeka* was not a result of impeccable legal arguments of judicial courage but rather the correction of a reprehensible set of judicial errors.

### **Current Research: Impact of *Brown v. Board of Education of Topeka* on Higher Education**

#### **Trickle-Up Integration**

Research shows that the elementary education level integration created by the Brown case led to a trickle-up effect, resulting in more Black students attending predominantly White institutions (PWIs). According to Strayhorn and Johnson (2014), in the early 1950s, almost all Black students attended historically Black colleges and universities (HBCUs). By 1960, only 70% of Black students attended HBCUs, which reflects the impact of the Brown case. By the turn of the 21st century, the number of Black students in HBCUs had been reduced by a further 20%.

Similarly, according to Stallion (2013), the Brown Cases, more so Brown II of 1955, had an impact beyond elementary education, as it affected the enrollment of Black students in PWIs. The 1955 extension of *Brown v. Board of Education of Topeka* provided that all schools should take measures to implement desegregation. According to Stallion (2013), some institutions sought to move the Supreme Court to clarify that universities and colleges were not included in the desegregation ruling of Brown II. However, the Supreme Court declined to take the case, a decision that extended the desegregation impact of Brown II to PWIs.

Subsequently, White colleges and universities commenced admitting Black students. Indeed, some PWIs began applying affirmative action to increase the rate of enrollment of Black

students. Brown II thus contributed to the increased number of Black students who enrolled in and graduated from PWIs (López & Burciaga, 2014). Often, the institution of higher learning that a student attends has an impact on the quality and number of job opportunities available to them. Unlike one's elementary or high school education, a degree is intertwined with the institution that issued it. Limiting Black students to degrees only from HBCUs limited their chances in the professional arena (López & Burciaga, 2014).

However, according to Anderson (2018), the letter and wording of *Brown v. Board of Education of Topeka* had an unintended negative impact on Black higher education, and by extension, aided in eroding social justice. As Anderson (2018) argues and Hockett (2017) concurs, in the Brown Case, the Supreme Court ruled against school segregation but did not expressly attack the philosophy behind school segregation. School segregation was built upon an idea that Blacks were intellectually inferior to Whites. Part of the arguments made in the case, including scientific evidence based on doll experiments by Kenneth B. Clark and Mamie K. Clark, explicitly put forth the notion that Black education was inferior to White education. In the aftermath of the ruling, the general notion that Black education was inferior led to a substantive decline in perception about Black education (Hockett, 2017). By the 1950s, that perceived inferior status of Black higher education (i.e., systems such as HBCUs) had been growing in America (Lee, 2017). This notion affected the reputation of HBCUs and of Black educators. Further, Southern states continued legally supporting discriminatory practices such as firing Black educators and school administrators (Lee, 2017). Since higher education is intertwined with the institution that a student attended, the notion of HBCUs being inferior affected school enrollment and reputation to the detriment of students in these institutions. Having a degree from

an HBCU institution limited the chances of a graduate competing effectively in the job market, which further eroded any notion of social justice.

### **Pertinent Case Law**

Whereas *Brown v. Board of Education of Topeka* may not be remarkable in terms of the legal arguments involved, it does stand out as a pacesetter for case law and the creation of legal precedent. As the court with the highest jurisdiction in America, the Supreme Court is not per se bound by the rules of Stare Decisis (Segall, 2018). Under Stare Decisis, the decision of a court is bound by the decision made in the past, based on the same facts and laws. In the Brown case, there was a settled judicial precedent that providing the same quality of education in colored schools met the requirements of the Equal Protection Clause of the 14<sup>th</sup> Amendment. The US District Court for the District of Kansas had relied on this position, as settled in *Plessy v. Ferguson*, to rule against the Browns leading to the Supreme Court hearing (*Brown v. Board of Education*, 1954). If the Supreme Court had followed pertinent case law, it would also have found in favor of the school district. However, to its credit, the court elected to change the pertinent case law, instead of adhering to it, hence setting new case law on the issue.

### **Discussion: Application of the Law and Its Impact on Higher Education**

The case *Brown v. Board of Education of Topeka* expressly addressed elementary education only but canvassed all education, including higher education. Successfully completing elementary education is primary to the eventual enrollment and completion of higher education. Further, the completion of higher education is vital to attaining social justice, as it provides a fair chance of sharing in available economic opportunities (Sumida & Abeita, 2018). For a start, the Brown case enabled more Black students to get an elementary education by making traditionally

White schools available to them. With more Black students attending elementary schools, there was a likelihood of more Black students proceeding to high school and later to colleges and universities (Deibel, 2016). In turn, graduating from an institution of higher learning increased Black people's chances of participating in the job market and thus can alleviate generational poverty.

However, this argument falls apart in the face of the day-to-day injustices that persisted despite integrating schools. To truly achieve the “equal opportunity” promised by US legislation, it is required that every individual also has equal footing. Equity in education means students can attend the same classes, but disrupting persistent racial injustice requires more than the legislation presented in *Brown v. Board* and related cases.

Brown’s case was also applied in opening places for Black students in traditionally White higher education institutions, including colleges and universities (Deibel, 2016). Some states such as Kentucky had express laws that prohibited the enrollment of Black and White students in the same institutions. The Kentucky law also provided that if an institution elected to have a campus for Black students, it should be at least 25 miles from the White students’ campus (*Berea College v. Kentucky*, 1908). Several other states had laws, rules, and regulations that sought to prevent Black students from accessing higher education or studying alongside their White counterparts. Brown’s case not only outlawed such laws, rules, and regulations, but also allowed willing states to commence affirmative action to increase the enrollment of Black students in traditionally White schools.

Notably, the application of the decision in *Brown v. Board of Education of Topeka* faced hostile opposition, more so in the Southern states. The Supreme Court was compelled to hear two more Brown Cases, commonly referred to as Brown II and Brown III, to facilitate the

implementation of desegregation (López & Burciaga, 2014). Similarly, the federal government was often required to use physical force to ensure desegregation in institutions that presented physical resistance. For example, a decade after the Supreme Court ruling, Alabama Governor George Wallace physically blocked two Black students to keep them from enrolling at the University of Alabama (Lee, 2017). Wallace's actions reflect the grotesque means White supremacists attempted to use to block the application of desegregation. Another extreme example was in Prince Edward County, Virginia, which elected to close all its public schools instead of desegregating them (Scales, 2017). To some extent, these blocking measures succeeded in slowing down and, in some places, reversing the implementation but not in curtailing it (Fiel & Zhang, 2019).

### **Implications for Practice**

The Equal Protection Clause of the 14<sup>th</sup> Amendment of the US Constitution is one of the most important pieces of legislation in US history due to its regular application in administrative and constitutional litigation. The clause suggests that all people should be treated equally in the eyes of the law despite demographic or cultural differences (Hockett, 2017). While such a law is fundamental to social justice and egalitarianism, it is not sufficient on its own. Due to political interests and machinations, the US Supreme Court eroded the Equal Protection Clause and created room for institutionalized racism and racial discrimination (Deibel, 2016). By subjecting higher education to the market at large, the US state has ensured that racial disparity continues to exist. A global rise in new-right and neo-liberal agendas have resulted in a push to remove the burden of education from the state by subjecting it to the public market (Lynch, 2006). Lynch (2006) goes on to note that, “ In year 2000 UNESCO estimated that education was a \$2 trillion global ‘industry’” (p. 6). This means that market forces dictate who can pursue education by way

of limiting factors such as cost and admissions standards, among others. So while “equal opportunity” exists in the precedent of case law, it has yet to truly manifest by way of promoting equity and social justice.

The primary implication of *Brown v. Board of Education of Topeka* was to restore the sanctity of the Equal Protection Clause by reversing all precedent that had eroded the protections established by the said clause. While the case had a monumental impact on education generally, including higher education, arguably its largest impact went beyond education to affect all constitutional law-related litigation (Deibel, 2016). Due to Brown’s case, all Americans can claim the rights and privileges enshrined in the US Constitution and its amendments.

### **Conclusion**

In an ideal society, the case *Brown v. Board of Education of Topeka* would never have been necessary. Similarly, the Equal Protection Clause of the 14<sup>th</sup> Amendment, which informed the Brown ruling, was equally unnecessary since America was built on the notion of absolute equality. Unfortunately, politics obscured constitutional law, leading to the continuation of slavery, the Civil War, and grotesque judicial precedents such as *Plessy v. Ferguson* and *Berea College v. Kentucky*. While legally, Brown’s case cleaned the slate and provided a sound judicial precedent for the Equal Protection Clause in education, it did not address what would come with further reform. Due to Brown’s decision, more Black people were able to participate in education. Yet there is still a large racial disparity today, which indicates that the ruling and its subsequent effects have done little to address the core causes of injustice in the US. The ruling of *Brown v. Board* must not be overlooked, but as a society, we must not rest on our laurels thinking progress has been completely realized.

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