Measuring the Impact of Brown v. Board

Douglas S. Reed

The key question here is, did *Brown* do anything? Did it really matter? If we answer yes, then the question is, what good did *Brown* do?

James Patterson's wonderful book neither glosses over the good things *Brown* did nor denies the inadequacies of the people and the institutions who sought, designed, and implemented it. I would like to expand on some of the themes that emerge from his retelling and that merit discussion beyond the framework and chronology of *Brown* and its progeny. The first distinction worth making is the difference between racial oppression and racial conflict, because what *Brown* did needs to be situated in that context. Second, there is the subject of rights consciousness: questions about whether one pursues one's rights within legal institutions or outside legal institutions, and what it means to have a right and fight for a right in courtrooms or in the street. Finally, I will look at notions of racial neutrality. This raises the issue of a color-blind Constitution and the problem of metrics; that is, how do we measure social outcomes and the impact of politics on different groups?

First, racial oppression and racial conflict. Professor Patterson's book goes back and forth on the subject of whether the pursuit of integrated schools was the right way to pursue racial progress for African Americans in the mid twentieth century. This is the "on the one hand and on the other hand" school of historical research. On the one hand, some argue that educational quality in and of itself is sufficient. Schools for African

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American children should be improved; we should focus on good schools regardless of whether they are integrated. Others, however, argue that racial integration is necessary for the achievement of full and equal citizenship for African Americans.

The irony is that both are right. The problem is that they're talking about two different things, but *Brown* embodied both.

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The first approach focuses on the individual dimensions of public education: what a child needs to learn in order to thrive within society. The second focuses on the social or collective dimension of public education. The problem for Thurgood Marshall and the NAACP was that public schools are the vehicle for achieving both of these things, and segregated education was cruelly efficient at generating harms both to individuals and at the collective level. For individuals, segregated education in grossly inferior one-room tar paper shack schools all but eliminated opportunities for personal advancement and damaged some people permanently.

Segregated education, not segregated movie houses or drinking fountains, was the foundation of Jim Crow. Segregated education was the line of demarcation between oppressor and oppressed; it policed the boundary of the racial hierarchy. Which side of that line you stood on determined where you could go in the world. Even if you were fortunate enough to be educated in one of the few excellent segregated schools, you faced severely limited horizons. The classic example is W.E.B. Du Bois. The first black American to get a Ph.D. from Harvard, he could not find an academic appointment at a white institution in the United States. That was the point at which the confinement of the horizon was most cruel.

Brown therefore had its most transformative power in the collective dimension, in its impact on racial oppression, and not necessarily on racial conflict. Along with the kind of direct action and protest led by Martin Luther King and others, *Brown* eventually destroyed the capacity of white supremacists to maintain powerful lines of social demarcation between whites and blacks. The physical enforcement of *Brown* by soldiers with guns brought down a legalized system of racial hierarchy. It eliminated segregation, and Jim Crow, as an ideal. Polls in the 1950s reported a high percentage of people who said that white kids and black kids should not go to school together. By the 1970s, only about four to six percent of the American population said schools should be segregated by law, and those folks were viewed as almost a lunatic fringe.[1] Segregated education was no longer a viable ideal. *Brown* did that.

What *Brown* didn't do was create a better educational system that conferred individual advantages on all school children. Integration in and of

itself does not necessarily produce a better learning environment. Studies show that under particular circumstances, integration can create better learning opportunities, but test scores show that integration alone will not do the trick. That of course does not mean that integration should not be undertaken; instead, it means that the conditions under which integration produces social conflict have to be minimized through strong executive leadership – that of the president, governors, mayors. Leadership was the key to the different experiences of Buffalo and Boston, which went through an integration struggle at the same time but had vastly different results in terms of how kids were able to learn.[2]

So we must view *Brown* with an awareness of the difference between racial oppression and racial conflict. *Brown* profoundly challenged and changed the ability of white supremacists to engage in racial oppression. It was too much to expect that Thurgood Marshall and the NAACP and the Supreme Court and the "fifty-eight lonely men" at the federal district court level could also provide us with an educational system resulting in high test scores for all school children.[3] It is simply not the same kind of task.

The second thing I want to address is the notion of rights consciousness and a liberal commitment to an ideology of law. Nothing in Thurgood Marshall's speeches or in the accounts of him in James Patterson's book or elsewhere suggests that he was a naive man. He seemed to have a firm understanding of power: who had it, who wielded it, and who was vulnerable to it. Yet, ironically, much of his work in the NAACP was premised on the remarkable proposition that an unfair and distorted legal system that denied basic civil rights and liberties to African Americans could be used to gain advantage for those who had no political power. It is an insane idea on its face. Why try to achieve your objectives through a system that is so stacked against you? Why should a legal system that formally relegates African Americans to second or even third class status find within itself the resources to obliterate those legal distinctions? How can a legal system that is the foundation of these distinctions be the means by which to eliminate them? And all that Thurgood Marshall had for encouragement was the Fourteenth Amendment to the Constitution.

The Fourteenth Amendment says in part, "No state shall…deny to any person within its jurisdiction the equal protection of the laws." That was in some respects a hollow promise, particularly to the roughly 3,000 people who were lynched and tortured without any protection of law between the 1880s and the 1930s. "Separate but equal" was a kind of wallpaper that rationalized the hollow promise for jurists, but the promise simply didn't exist as a lived reality. And yet time and time again,

Marshall returned to the notion that the Constitution was more than a parchment protection. His was a visceral response. He seemed utterly convinced that the Constitution actually meant what it said, even if that flew in the face of the experience of millions of black southerners. It was a powerful constitutional faith.

The faith existed even after *Brown II* which, if he thought about it, was a bit of a setback for Thurgood Marshall. Professor Patterson's book quotes him: "'The more I think about it, I think it's a damned good decision!' The South, he added, has 'got to yield to the Constitution. And yield means yield! Yield means give up!'"[4] He was committed to the idea that the law means something durable and robust, even if nobody else is listening.

One of the tragedies of this story and of *Brown* is the loss of that idea. Linda Brown's comment that perhaps *Brown* should not have been brought may indicate the loss of constitutional faith. Faith in the impartiality of law, and especially the impartially of the Supreme Court, may have been damaged further by the election of 2000.

It is the notion of the impartiality of law that brings me to my final point, about the question of standards or metrics or norms, and how one evaluates what is racially neutral. Pamela Grundy's wonderful book, *Learning to Win: Sports, Education, and Social Change in Twentieth Century North Carolina*,[5] details the experiences of athletic teams in twentieth century North Carolina. One chapter contrasts the relatively successful desegregation of athletic teams in that state, within a fairly short period, with the jarring and complicated problem of desegregating cheerleading squads. It may seem like an insignificant problem but it is not, because if schools are going to be integrated, extracurricular activities must be integrated, whether they are sports or cheerleading or something else.

The relative success in integrating athletic squads, and this goes back to Roger Wilkins' point, was due to the fact that there was a clear metric of performance. Can you hit a jump shot? Are you the best shooter? Are you the best hitter? Are you the fastest? If you can do it, you're on the team.

But cheerleading raises all kinds of very subjective and thorny questions. How do you select a cheerleading squad? Do you do it on the basis of popularity? Do you do it according to some standard of beauty? Do you do it according to dancing ability? Who judges the moves, and by what criteria? All of this is bound up in very complex cultural contests over beauty, appropriate behavior, sexual mores, social popularity. A point guard or running back has it much easier, in that sense, than an aspirant for the cheerleading squad.

Many of the continuing conflicts of the post-*Brown* era arise because in a larger analytical sense, we are faced with the equivalent of integrating cheerleading squads. The standard by which we should judge integration is unclear, and this is particularly true about measures of opportunities for social and educational advancement. What are the appropriate criteria for people who are admitted to higher education or graduate education? Is getting into law school like being the fastest running back, or is getting into law school like being evaluated as an applicant for the cheerleading squad? If it is like trying to get on an athletic team, then the metric is clear: it is test scores and grades. But if it is more like choosing cheerleaders, then candidates for law school and graduate school have to be assessed according to a very different set of skills.

Brown doesn't provide us with easy answers. In a sense, it's good to have these problems; certainly, it is better to have the problem of how to measure the success of *Brown* than to be back in the era of segregation. What we have to remember is that the expectation that *Brown* would eliminate racial conflict was hopelessly naive. *Brown* generates racial conflict because it needs to, because we've progressed, and in some ways that is a very hopeful thing.

NOTES

1. Christine H. Rossell, "The Convergence of Black and White Attitudes on School Desegregation Issues," in Neal Devins and Davison M. Douglas, eds., *Redefining Equality* (Oxford University Press, 1998), p. 123.

2. See, generally, Steven J. L. Taylor, *Desegregation in Boston and Buffalo* (SUNY Press, 1998).

3. The phrase is from Jack Peltason, *Fifty-Eight Lonely Men* (Harcourt, Brace, 1967).

4. James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford University Press, 2001), p. 85.

5. Pamela Grundy, *Learning to Win: Sports, Education, and Social Change in Twentieth-Century North Carolina* (University of North Carolina Press, 2001).