Celebrating Brown

Geoffrey R. Stone

Spring 1984 marked the thirtieth anniversary of the decision of the United States Supreme Court in Brown v. Board of Education. It is difficult to conceive that only thirty years ago blatant, open, and legally enforced racism, with its degrading humiliations, was a fact of life in more than one-third of our nation.

In Brown, the Court overturned almost sixty years of precedent and held that state-mandated racial segregation violates the equal protection clause of the Fourteenth Amendment.

Because thirty years is by tradition a generation, now is an appropriate time to reflect on what was a dramatic turning point in American education and American society.

The roots of Brown run deep. They reach back to the first African brought to the new world in chains and to two hundred years of black slavery, to the Civil War and to emancipation, to Reconstruction and to Retreat.

The essential predicate of slavery in America was the assumption of white superiority and black subordination. The rule of the master encompassed the most intimate phases of the slave’s life and was absolute, personal, and arbitrary. The long experience of slavery left its mark on the posterity of both slave and master.

With emancipation, the status of the newly freed slaves in the post-Civil War South was not at once apparent. Gradually, however, the place of blacks evolved under the influence of economic and political conflicts among whites—conflicts that were resolved largely at the expense of blacks.

In the 1880s, for example, Southern conservatives, attempting to regain the leadership they had lost to a union of black and poor white populists and to divide poor whites from blacks, raised the specter of Negro Domination and the shibboleth of White Supremacy.

The conservatives launched an intensive propaganda campaign of negrophobia and race chauvinism. It was an era of violence, lynchings, and race riots. In this climate, segregation took hold as a fully developed apparatus of white supremacy.

By the late nineteenth and early twentieth centuries, Jim Crow was rampant. Up and down the byways and avenues of Southern life appeared the signs: “Whites Only” and “Colored.” A South Carolina law prohibited textile workers of different races from working together in the same room. A Louisiana law required separate entrances, exits, and ticket windows, at least twenty-five feet apart, at all circuses and tent shows. A Florida law required that textbooks used by black schoolchildren be kept separate from those used by white children, even while in storage.

Jim Crow extended to churches and schools; to housing and jobs; to eating, drinking, and virtually all forms of public transportation. It extended to sports, hospitals, orphanages, prisons, asylums, funeral homes, and even cemeteries. The law, in effect, created two worlds—one white, one black. And the wall of segregation was so formidable, so impenetrable, that the entire
weight of the American constitutional system had to be brought to bear to bring it down.

In its first encounter with the issue, however, the Supreme Court sustained the constitutionality of state-mandated segregation. In *Plessy v. Ferguson*, decided in 1896, the Court considered a Louisiana statute requiring railroad companies to provide separate but equal accommodations for “the white and colored races.”

Plessy, who was a “one-eighth African blood,” was prosecuted for attempting to sit in a “Whites Only” coach. Interestingly, but perhaps not surprisingly in light of the times, Plessy’s primary claim was not that the Louisiana law was unfair to blacks, but that he was in fact white, and that by mischaracterizing him as “colored” the state had deprived him of his constitutional right to the reputation and status “of belonging to the dominant race.”

Passing that issue, the Court embraced the prevailing moral and intellectual assumptions of the time and upheld the Louisiana statute as a “reasonable regulation.” The Court explained that in “the nature of things” the Fourteenth Amendment “could not have been intended” to enforce social equality or “a commingling of the two races.” The Court denied “that the enforced separation of the two races stamps the colored race with a badge of inferiority,” and maintained that if such stigma exists “it is not by

---

“It is fashionable these days to dismiss Brown as a failure. . . . I cannot agree.”

---

reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.”

In the years after *Plessy*, the Court consistently reaffirmed the constitutionality of state-mandated segregation. Beginning in the 1930s, however, the NAACP launched a carefully orchestrated and vigorous attack on separate but equal. This attack culminated in *Brown*—a direct frontal assault on racial segregation.

Not surprisingly, *Brown* was the center of intense and anxious public scrutiny. When the Court did not reach a decision in the spring of 1953, the case was scheduled for reargument the following fall. Although the Court did not decide the case in 1953, we now know where the Justices stood. At that time, a majority inclined to the view that state-mandated segregation in the public schools was not unconstitutional.

It is worthy of note, and of pride, that two members of the University of Chicago faculty, Robert Ming of the Law School and John Hope Franklin of the History Department, both black, actively assisted in the drafting of the critical NAACP briefs in that summer of 1953.

It is also noteworthy that in that same summer Chief Justice Vinson died and was replaced by Earl Warren. This turn of events led Justice Frankfurter, a staunch opponent of segregation, to declare: “This is the first indication I have ever had that there is a God.”

The following spring, the Court handed down its decision in *Brown*. Writing for a unanimous Court, Chief Justice Warren declared that “to separate [black children] from
The Court found unlikely way as race generates years the Warren concluded, “the doctrine of ‘separate but equal’ has no place.” Brown was only the beginning. In the years after the decision, the Court invalidated racial segregation in public parks, golf courses, airports, bus terminals, courtrooms, and other public facilities. The Court found unconstitutional discrimination in the listing of candidates for public office by race, in the custom of addressing black witnesses by their first names, and in laws making marriage and sexual relations between blacks and whites a crime. Brown buried Jim Crow.

It is fashionable these days to dismiss Brown as a failure. Blacks, it is said, remain economically, politically, and educationally disadvantaged. Brown, it is said, has changed little. I cannot agree. Brown was a triumph—a genuine cause for celebration.

Brown was a triumph for the Justices of the United States Supreme Court, whose vision and understanding enabled them fundamentally to recast our constitutional law. It was a triumph for the NAACP litigators, whose perseverance and ingenuity enabled them to reform our society while remaining true to our legal and constitutional order. It was a triumph for those Southern federal judges whose integrity and dedication enabled them to enforce the dictates of Brown in the face of ostracism, personal abuse, and even threats of violence. And it was a triumph for those black schoolchildren whose courage and simple dignity enabled them to walk each day into the vortex of often violent school desegregation to assert their constitutional right to “equal protection of the laws.”

Perhaps most of all, however, Brown was a triumph for our society. For although Brown did not end racism, it did put a stop to constitutionally sanctioned, government-sponsored racism.

Moreover, and perhaps equally important, Brown recast the style, the spirit, and the substance of race relations in America. It ignited the movement for civil rights. It opened the door to Little Rock and to Selma, to Dr. King and to Justice Marshall. It triggered a social and political revolution. Blacks are no longer supplicants, but full citizens, entitled to equal treatment as a matter of right. Brown marks a fundamental divide in American life. It is, indeed, a cause for celebration.

But it is not a panacea. The harsh reality is that we live in a society...
deeply scarred by racism. Despite *Brown*, blacks remain politically, economically, and especially educationally disadvantaged. The vast majority of black children still attend predominantly black schools. The color-blind society—the racially equal society—remains a distant dream. We live still with the legacy of slavery. There is much to be done.

There is another aspect of *Brown*, and it should not go unnoticed. At first glance, it might seem that the most astonishing feature of *Brown* was the Court’s acceptance in 1896 of segregation as “equal.” But in 1896 this seemed sensible. As the Court observed in *Plessy*, such segregation was, after all, “in the nature of things.”

What is astonishing about *Brown* was the Court’s willingness in 1954 to reconsider and to reject the received wisdom. As the division in the Court in the summer of 1953 suggests, *Brown* was not an easy case. *Plessy* did not seem as obviously wrong then as it does today. The Court, to reach the result it did, had to challenge the first principles of its predecessors and overturn almost sixty years of authority.

"*Brown* recast the style, the spirit, and the substance of race relations in America.”

A Court, to succeed, must constantly challenge “the nature of things.” A great University, like a successful Court, must dedicate itself to the rigorous, open-minded, unyielding search for truth. If you have learned anything here, you have learned to ask hard questions. It is not enough to examine the premises, beliefs, and assumptions of an earlier time and find them wanting. It is too easy to dismiss those who thought that the earth was flat, that its resources were boundless, or that separate could ever be equal.

You must remember that you, too, hold beliefs that your children or your children’s children will rightly regard as naive, foolish, or perhaps even obscene. You must be prepared to reform your world, just as the Justices in *Brown* were willing to reform theirs. You, too, must challenge “the nature of things.”

As you leave this University and make your way in the world, I wish you courage, integrity, and, perhaps above all, I wish you doubt. May you prosper.