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ABSTRACT

Views concerning the influence of the 1954 Supreme Court decision in "Brown versus the Board of Education" which ended school segregation are discussed. Historian Raymond Wolters believes that while segregation was wrong and the Supreme Court's unanimous decision reversing the "separate but equal" interpretation was right, the Court erred in calling for more state action to correct state error. For example, the Supreme Court in "Green versus New Kent County" (1968) required statistical evidence of integration. Because urban whites found this social engineering and judicial reconstruction distasteful and retreated to suburbs and private schools, public education and blacks suffered. According to Wolters, reform belongs to elected representatives, not to unelected judges. On the positive side, however, the Brown decision did force the South to desegregate and gave impetus to the far-reaching civil rights movement. However, since about 1974, during which time economic retrenchment and conservative renewal have prevailed, these positive elements have lost support. Today, 30 years after Brown, we see federal disinvestment in public schooling, retreat from equality, and return to pre-Brown "separate but equal" programs and facilities. (RM)

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School Desegregation Since Brown (1954): 30-Year Perspective*

By Franklin Parker

"Terrible. A disaster!" is how a Northern city white friend described school desegregation 30 years after Brown.

"We are well rid of it [segregation], wrote James Kilpatrick conservative Southern writer and one-time segregationist.[1] "An oppressed people gained but...jurisprudence lost," he believes. Supreme Court justices saw segregation as immoral and decided it was unconstitutional. Later misguided decisions, Kilpatrick holds, led the Court to amend rather than interpret the Constitution. Such decisions and federally imposed school redistricting and busing drove whites into suburbs and caused far worse urban resegregation. The 14th Amendment and Constitutional intent were thrown into the trash heap. "For this arrogant usurpation of power they cannot be forgiven," he writes, citing as evidence a major study by historian Raymond Wolters, The Burden of Brown.[2]

Before examining Wolters' critical findings, one can note positive statements made about Brown 30 years later.

"The chain of events triggered by Brown changed the daily operation of the nation's schools," wrote one reporter.[3] It "gave impetus to the most far-reaching civil rights movement in the United States since...Reconstruction."[4]

"Brown...stands as a national confession of error," editorialized the New York Times.[5] "It propelled the modern civil

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rights movement....It reaffirmed the American spirit of equality and rekindled hope of peaceful transformation. It is a living monument, a cause for celebration."[6]

"The Supreme Court in Brown established a legal precedent that led to the end of state-sponsored racial apartheid," wrote a University of Oregon Law School Dean.[7] "Encouraged by the court's stirring words, blacks threw off the stifling veil of racial humiliation and began a national freedom self-help effort that continues to the present time."[8]

Historian Raymond Wolters' The Burden of Brown[9] asserts that the Court's unanimous decision reversing the "separate but equal" Plessy v. Ferguson (1896) interpretation was right. It was also right to declare state-imposed racially segregated schools unconstitutional. Where the Court erred was in calling for more than state action to correct state error, in repeating scholars' opinion that blacks in segregated schools suffered damage in inferiority feelings and in lower educational attainment. Some critics think that repeating emotional language went beyond the Court's role in interpreting the Constitution. Example:

> Separate educational facilities are inherently unequal and generate a feeling of inferiority as to the [blacks'] status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[10]

Wolters infers that unjudicial language encouraged further constitutional abuse. Brown 1 (1954) called desegregation unconstitutional. Brown 2 (1955) called for desegregation with 'all deliberate speed but listed no deadlines. Public consensus led

Congress to enact the 1964 Civil Rights Act, Section 407 of which authorized the U.S. attorney general to initiate school desegregation action.

Many school boards' "freedom of choice" desegregation plans relied on local persuasion, which often translated into holding the status quo Some time after the freedom of choice plan in New Kent County, VA, 85% of blacks remained in all-black schools. In oral argument, Chief Justice Warren asked the school board lawyer, "Isn't the new result of freedom of choice that while they took down the fence, they put bocby traps in place of it?"[11] Thurgood Marshall, a President Johnson Court appointee, asked, "Assuming a Negro parent wants to send his child to the...previously white school and his employer said, 'I suggest you do not do it," would that be freedom of choice?"[12]

The Court in Green v. New Kent County (1968) voided freedom of choice, called it a continuation of segregation, and required statistical evidence of integration. After Green federal judges set quantitative desegregation standards school boards had to meet.[13]

To states' righters and strict Constitution constructionists, the Court's shift from desegregation to federal enforcement amended, not interpreted, the Constitution. In Brown (1954) the Court held that the Constitution is color blind; in Green (1968), that the Constitution is color conscious. "After Green, desegregation no longer meant assignment without regard to race; it meant assignment according to race to produce greater racial mixing."[14] Wolters continues: "Sensing the possibility of achieving social balance by judicial decree, liberals endorsed the concept of government

by an unelected judicial elite...."[15] Urban whites found this social engineering and judicial reconstruction distasteful. They retreated to suburbs and private schools. They joined the conservative coalition which has since curbed court-ordered busing and redistricting. Wolters believes public education suffered from liberal court orders, from progressive educators linked to federal programs, and from irresponsible urban rioters.

Segregation was wrong in mid-20th century America, Wolters says, but the Constitution suffered when judges presumed to make social policy. Reform belongs to elected representatives, not to unelected judges.

To balance Wolters' negative view, Harvard Education Law Professor Rosemary C. Salomone[16] points to Brown's wider influence. Southern opposition did turn to compliance. President Lyndon Johnson and Congress did translate Brown into a national agenda. Witness Title VI of the 1964 Civil Rights Act, which prohibited discrimination in federally funded programs. Note Title I of the 1965 Elementary and Secondary Education Act's (ESEA) unprecede d aid to remedial programs for the disadvantaged. Brown helped universalize and also particularize equality. Witness PL 94-142 for the handicapped. Note Title IX of the 1972 Education Amendments Act for women.

These benefits, Salomone notes, lost support in the conservative aftermath of the 1974 OPEC oil crisis, gas lines, awareness of limited resources, stagflation, and the economic threat from Japan's cars and Korea's steel. Equality became suspect. It was expensive and trod on majority toes. Proof lay in the North's massive resistance to mandatory busing.

California's Proposition 13 heralded a taxpayer rebellion. Education of the handicapped was seen as diverting scarce local and state funds. Bilingual education retreated under hard-hat emphasis on "speaking American." Withholding federal school funds for civil rights noncompliance made federal assistance "coercion" to many Americans.

Economic retrenchment and conservative renewal helped President Reagan pursue limited government, less federal spending, and return to state-initiated programs. Since then, critics charge, we have had block grants, civil rights deregulation, a halt to Court-ordered busing, and pressures for tuition tax relief and school prayer. Thirty years after Brown saw federal disinvestment in public schooling, retreat from equality, and return to pre-Brown "separate but equal" programs and facilities.

Advocates of A Nation at Risk and other 1983 critical school reports link decades of civil rights changes with the decline of educational excellence. They doubt that we can be equal and excellent, too.

Some see a backlash against educational excellence by those who must implement it. Concerns are how to get the needed large funds, how to achieve high standards for all, what to do with those who fail, how to raise teacher quality, and how to maintain public pressure for better schools. That pressure is already dissipating, writes New York Times writer Fred M. Hechinger.[17] As a major 1984 campaign issue, education took a back seat to deficits, star wars, and personalities.

Brown's influence now seems to some less than its 1954 promise. But federal programs did work, were beneficial, as the facts show but the public does not perceive. ESEA Title I remedial programs did raise reading and math achievement scores. ESEA Title VII's bilingual programs did reduce Hispanic dropout rates. Title IX of the 1972 Education Amendments Act did increase women's participation in school athletics. Project Headstart and Follow Through succeeded.

We may still be too close to judge the Brown revolution. Longer perspective will confirm that Gunnar Myrdal[18] correctly noted the contradiction between justice for all and mistreatment of blacks, that the NAACP rightly pursued school desegregation cases to the highest court in the land,[19] that Howard Law School Dean Charles Hamilton Houston taught winning legal strategies to Thurgood Marshall and other black lawyers,[20] that Earl Warren nobly led a brave Court to knock down school segregation's walls. Brown remains a landmark against centuries of injustice.

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