# Introduction—The *Brown* Decision at Age 50: Limitations and Emanations

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The two best-known Supreme Court decisions of the twentieth century differ in many ways but especially in the controversies they bequeathed to the twenty-first. Handed down the day former President Lyndon Johnson died, and bitterly contested ever since, *Roe v. Wade* (1973) has transformed national politics, especially in the realm of judicial appointments.

But while many yearn passionately for a world without *Roe,* few would admit to similar feelings about *Brown v. Board of Education of Topeka, Kansas* (1954). Indeed, the decision "has become a beloved legal and political icon," (Balkin 2001, 3) lauded even by critics of race-based affirmative action.[1] And yet this broad-based respect is leavened with bitterness, for mention of *Brown* today regularly evokes a sense of derailed policy and frustrated opportunity. The subtitles of recent books point to the decision's "quiet reversal" (Orfield et al. 1996), its "broken promise" (Irons 2002), and its "troubled legacy" (Patterson 2001). One contributor to this symposium reiterates here his well-known critique of *Brown* as a vastly overrated civil rights victory (Rosenberg 1991). Both *Roe* and *Brown* were trailblazing civil rights decisions that prompted significant backlash. But the societal expectations concentrated on *Brown* were naturally much greater, and resistance to its implementation even more pervasively traumatic. To a degree that few would have predicted a half century ago, courts, communities, and civil rights advocates have all largely accommodated to racially segregated schooling, though K-12 education today stands far more politicized, federalized, and scrutinized than it was then.

The fiftieth anniversary of the initial *Brown* decision—which preceded by one year a companion remedial opinion bearing the famously ill-fated call for school desegregation "with all deliberate speed," the so-called *Brown II*—invites reflection on what the *Brown* breakthrough meant, and what it might have meant. The five articles in this symposium address a few of the decision's countless "limitations and emanations."

While Gerald Rosenberg argues that the decision's consequences have been misperceived, Neal Devins challenges conventional wisdom regarding its origins. Indeed, Devins pairs *Brown* with the Rehnquist Court's *United States v. Lopez* (1995) to emphasize the primacy of broad social and political forces, above crafty and determined litigation, as a principal driver of those opinions and of judicial behavior more generally. Paul Sracic considers a "lost legacy" of *Brown,* its assessment of the civic importance of education, a loss stemming importantly from the political predisposition of Justice Lewis F. Powell. Marion Orr and Hanes Walton direct attention to the often painful human consequences of the southern political establishment's fierce rebuff of *Brown*. Through them we hear what it was like, as two Georgia cities moved at last to comply with the Court's directive, to live day-by-day as an opening wedge for school desegregation. Jennifer Hochschild explores the failure of political science to grapple convincingly with three issues stemming directly from *Brown* and its aftermath: the alleged failure of desegregation; the gap between elite ideology and constituent preference on *both* sides of the school voucher issue; and the apparent willingness of policymakers across the country to subject both themselves and a well organized interest (i.e., teachers) to the accountability of standards and testing.

These articles only begin to suggest the richness of *Brown* as a focus (or, at least, as a timely excuse) for political analysis. This symposium reaches readers of *PS* as many similar endeavors are under way. One hopes it will help energize public debate, scholarly inquiry, and classroom teaching, especially for those who still know little about, or have not thought much about, what may be the most iconic judicial decision since *Marbury v. Madison* (1803).



https://doi.org/10.1017/S1049096504004081 Published online by Cambridge University Press

## Note

1. For example, Stephan and Abigail Thernstrom (1997, 97–101) see *Brown* as "a true watershed moment. It began a process of irrevocable change in the South . . . *Brown* remains the most important Supreme Court decision in [the twentieth] century." As Jack M. Balkin (2002, 10) notes: "[Affirmative action opponents believe that such] programs violate the spirit of *Brown* because they bestow benefits through classifying individuals according to their race."

## References


Balkin, Jack M. 2001. "*Brown* as Icon." In *What* Brown v. Board of Education *Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision,* ed. Jack M. Balkin. New York: New York University Press.

Irons, Peter. 2002. *Jim Crow's Children: The Broken Promise of the Brown Decision*. New York: Viking.

Orfield, Gary, Susan E. Eaton, and the Harvard Project on School Desegregation. 1996. *Dismantling Desegregation: The Quiet Reversal of* Brown v. Board of Education. New York: The New Press.

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

Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.

Thernstrom, Stephan, and Abigail Thernstrom. 1997. *American in Black and White: One Nation, Indivisible.* New York: Simon and Schuster.


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***Neil Devins*** *is Goodrich Professor of Law and professor of government, College of William and Mary. Thanks to Chris Foreman for asking me to participate in this symposium and to Stacy Haney for exceptional research assistance. Portions of this essay are drawn from "Congress as Culprit: How Lawmakers Spurred on the Rehnquist Court's Federalism Revolution,"* Duke Law Journal *51: 435 (2001) and "The Judicial Role in Equality Decisionmaking," Neal Devins and Davison M. Douglas, eds.,* Redefining Equality *(1998: 218).*

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https://doi.org/10.1017/S1049096504004081 Published online by Cambridge University Press