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## Brown's Legacy at Fifty

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*BROWN'S LEGACY AT FIFTY: BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY.* By James T. Patterson. Oxford, England, Oxford University Press, 2001. 320 pp.

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*Brown v. Board of Education*<sup>1</sup> may be the most critical opinion that the United States Supreme Court has ever issued. A half century ago, Thurgood Marshall and his colleagues convinced the justices to overturn the six-decade-old precedent in *Plessy v. Ferguson*, which had upheld the constitutionality of separate but equal facilities.<sup>2</sup> Newly appointed Chief Justice Earl Warren concomitantly persuaded all the Court's members to join the May 1954 *Brown* decision that invalidated separate but equal public education.<sup>3</sup> This case and the 1955 opinion in *Brown II*, which required that public schools desegregate with "all deliberate speed,"<sup>4</sup> have remained significant and controversial since their issuance.

As we mark the fiftieth anniversary of *Brown*, the decision's scrutiny will only intensify. An early account, which promises to be one of the finest, is *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy (Troubled Legacy)*.<sup>5</sup> That volume is the first installment in the new series, which is titled *Pivotal*

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\* Williams Professor, University of Richmond School of Law. I wish to thank Peggy Sanner for valuable suggestions, Pam Smith for processing this piece, and Russell Williams for generous, continuing support. Errors that remain are mine.

1. 347 U.S. 483 (1954).

2. See 163 U.S. 537, 548, 552 (1896).

3. See 347 U.S. at 495.

4. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955) (*Brown II*).

5. JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* (2001).

*Moments in American History*, published by Oxford University Press. The book's author, James T. Patterson, the Ford Foundation Professor of History at Brown University, earned the Bancroft Prize in History for his prior monograph, *Grand Expectations: The United States 1945-1974*.<sup>6</sup>

These ideas make salient Professor Patterson's publication of *Troubled Legacy* and mean his valuable contribution to illuminating this crucial Court determination warrants analysis. My review undertakes that effort. I first descriptively assess the volume, finding that it elucidates appreciation of *Brown's* import and the legacy which the opinion has left. The review then evaluates the book's many virtues. I conclude with recommendations for the future.

## I. DESCRIPTIVE ANALYSIS

Professor Patterson initially considers race and public schools during the time before the Court resolved *Brown*.<sup>7</sup> The writer asserts that three major forces changed United States race relations during the 1940s and 1950s: greater military participation by African-Americans; white liberals' increasingly vocal opposition to racial discrimination; and the endeavors of Thurgood Marshall and others who vindicated civil rights through litigation. The author focuses on the evolution of the NAACP legal strategy from challenging *Plessy's* equality prong to attacking its perpetuation of segregation, while he traces the lower federal court suits that culminated in the Court's *Brown* decision.

The writer then turns to an examination of the ruling.<sup>8</sup> Professor Patterson shows that the justices were divided and concerned that the Court might appear to be activist, especially because it was initiating social change which the other federal branches eschewed. He demonstrates how Chief Justice Warren labored to craft an opinion that was short, unemotional, nonconfrontational, and unanimous.

Professor Patterson then canvasses the situation immediately after the Court decided *Brown*.<sup>9</sup> The author employs opposition to desegregation in southern Delaware as a paradigm for indicating how ardent segregationists could negate *Brown*. Professor Patterson explores the difficulties of implementation and enforcement posed by

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6. JAMES T. PATTERSON, *GRAND EXPECTATIONS: THE UNITED STATES, 1945-1974* (1996).

7. PATTERSON, *supra* note 5, at 3.

8. PATTERSON, *supra* note 6, at 46-69.

9. *See id.* at 70-85.

*Brown II*, whose advocates contended that desegregation must be gradual and that the opinion should reaffirm *Brown*.

The writer next analyzes resistance to *Brown* in the South over the latter half of the 1950s and emphasizes how numerous whites believed public school desegregation would jeopardize the traditional southern way of life.<sup>10</sup> Opponents relied on several tactics to thwart desegregation. First, whites made African-Americans bring complex, expensive litigation while attempting to intimidate those who served as plaintiffs and to harass the NAACP that pursued the cases. Second, whites organized local groups, such as the Citizens Councils, and used economic coercion against African-Americans who sought to desegregate schools or to vote. Third, they adopted the "Southern Manifesto," which opposed *Brown* for infringing upon "states' rights" and which moderate white politicians did not challenge, and these phenomena eventually fostered direct political action by the civil rights movement. Moreover, whites amended state constitutions and passed legislation to evade compliance with *Brown* through devices, such as pupil placement statutes, that frustrated desegregation efforts. Professor Patterson assesses the complex questions of whether *Brown* and the gradualism which "all deliberate speed" reflected were efficacious or provoked a backlash that ended slow change in race relations that had already begun. He concedes those queries may not have answers, by tracing the events that unfolded: *Brown* prompted massive resistance which led in part to the civil rights movement and the 1964 and 1965 Civil Rights Acts; however, the litigation alone did not effect broad change in American society.

Professor Patterson shows how all three federal government branches were attempting to increase desegregation and racial balance by the mid-1960s.<sup>11</sup> Congress enacted pathbreaking civil rights legislation. The Department of Health, Education and Welfare correspondingly mandated that southern school districts desegregate and threatened to withhold federal funds. The Court rejected Virginia's pupil placement law and imposed an affirmative duty on the commonwealth to achieve a unitary school system, thus requiring that the state eliminate discrimination, root and branch.

In the 1970s, the Court decided cases that reinforced *Brown*, and southern public schools desegregated to a greater extent than their northern and western counterparts. Nonetheless, Professor Patterson

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10. See *id.* at 86-117.

11. See *id.* at 118-46.

intimates that results were checkered during the early 1970s.<sup>12</sup> For example, de jure segregation ended, but whether actual integration or true racial equality prevailed was unclear. These phenomena support the author's conclusion that much remained to be accomplished twenty years after *Brown*.

The writer ascertains that numerous stalemates and much retrenchment characterized developments from the mid-1970s until the mid-1980s.<sup>13</sup> For instance, Presidents Gerald Ford, Jimmy Carter, and Ronald Reagan opposed national government leadership on public secondary education. The Court decided *San Antonio Independent School District v. Rodriguez*,<sup>14</sup> which rejected an equal protection argument for better school funding in economically-deprived locales; *Milliken v. Bradley*,<sup>15</sup> the first decision that retreated from *Brown*; and *Regents of the University of California v. Bakke*,<sup>16</sup> the splintered opinion which Patterson contends reflected profound societal division over affirmative action. Segregation in large metropolitan areas concomitantly resisted treatment, while structural change might have been more productive than busing. Whether desegregated schools fostered interracial understanding was also not certain. Professor Patterson remarks, however, that increasing percentages of African-Americans graduated from high school and college, and those students who attended integrated secondary schools earned better test scores.

The author next scrutinizes the idea of resegregation and determines that some African-Americans expressed concerns about progress in race relations and desegregation's benefits.<sup>17</sup> He asserts that four Court decisions between 1990 and 1995 eroded integration, promoted white flight and even approved resegregation. Thus, at the time of Thurgood Marshall's death in 1993, African-Americans realized greater legal, than social or financial, equality, and the lofty expectations raised by *Brown* had proved difficult to attain.

Professor Patterson concludes with legacies and lessons.<sup>18</sup> He first recounts anecdotal illustrations of successes and disappointments, namely attempts at integration in Little Rock, New Orleans, and Topeka. The writer then laments the failure to desegregate schools and neighborhoods, arguing the two are inextricably linked; finds the

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12. *See id.* at 147-69.

13. *See id.* at 170-90.

14. 411 U.S. 1 (1973).

15. 418 U.S. 717 (1974).

16. 438 U.S. 265 (1978) (plurality opinion).

17. *See* PATTERSON, *supra* note 5, at 191-205.

18. *See id.* at 206-23.

“luminous star of racial mixing dimmed” by judicial opinions; and claims the promotion and maintenance of stable, desegregated communities is essential, particularly to narrowing the standardized-test-score gap between whites and African-Americans. Finally, Professor Patterson ponders *Brown*'s impact; he observes that school desegregation achieved conspicuous progress even as it sustained marked failures, the causes of which society, not lawyers, must remedy.

## II. CONTRIBUTIONS

Professor Patterson substantially enhances comprehension of *Brown* and what has transpired over the five decades since the United States Supreme Court issued its landmark ruling. One great virtue of *Troubled Legacy* is Professor Patterson's ability to proffer so thorough a rendition in such a brief compass. The author has successfully gathered, reviewed and synthesized an enormous quantity of applicable information while distilling its essence.

A second important contribution is Professor Patterson's meticulous examination of relevant developments that occurred after the mid-1970s. *Troubled Legacy* updates, and brings forward to the present, concepts that Richard Kluger documented in *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*.<sup>19</sup> That volume is widely regarded as *Brown*'s definitive treatment. However, Kluger essentially concluded in 1975 his assessment of the pathbreaking opinion and the events which followed its disposition. Thus, Professor Patterson advances the inquiry by tracing over the subsequent quarter century pertinent phenomena, such as how the Burger and Rehnquist Courts addressed desegregation, the complications white flight posed, and the interrelated conundrum of resegregation.

Other salutary dimensions of *Troubled Legacy* include its neutral and balanced character. The writer appears to hold few preconceptions about the complex, subtle issues that he analyzes. Professor Patterson also formulates many controversial questions about *Brown* and the decision's implementation, which he attempts to resolve by furnishing ideas that comprise a broad range of perspectives. One trenchant example is whether identically funded schools for African-Americans would have provided better education than racially integrated facilities.

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19. See RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1976).

Professor Patterson lauds the traditions developed by historically African-American schools, when separate, even as he remarks that African-American students' test scores improved with desegregation. Additional illustrations include his evaluation of white racism across the North as well as the South and why public school desegregation has not always been a resounding success.

### III. SUGGESTIONS FOR THE FUTURE

Despite Professor Patterson's valuable insights, I can offer several recommendations. Numerous propositions that he includes deserve elaboration. The author raises a plethora of cogent questions. However, he accords some minimal treatment and leaves others unanswered while positing rather few constructive solutions. For example, Professor Patterson's assessment of the limitations inherent in legal change, formal equality, and social progress attributable to *Brown* might benefit from amplification. He could have detailed how meaningful reform would have required that whites yield actual economic, political, or social power, and this was change which a number resisted, as manifested in public school desegregation fights. Professor Patterson's analysis of the lessons to be derived from federal and state interaction would similarly profit from elaboration. For instance, understanding how federalism affected national policy on public secondary education would clarify modern disputes, such as controversies that implicate vouchers and resegregation ascribed to housing patterns. This appreciation would also enable policymakers and citizens to ascertain whether current federal education policy is optimal.

These ideas do not undermine Professor Patterson's significant contributions. However, the writer might have articulated some concepts expressly or in greater detail, tendered additional lessons, and prescribed more suggestions. His views on why developments unfolded as they did and how to improve the present circumstances would be helpful, especially for advocates of social change. Those notions have peculiar force today when divisiveness suffuses contemporary politics while apparently insoluble, race-related concerns, such as the persistence of discrimination and poverty, defy felicitous remediation. In fairness, these are certain of the most pressing difficulties which modern society confronts, and few observers have devised efficacious approaches since *Brown's* issuance.

## IV. CONCLUSION

*Troubled Legacy* is among the first, and may rank with the best, commemorations of *Brown* on its fiftieth anniversary. Professor Patterson affords a thorough, concise, balanced and perceptive account of this critical opinion and its implementation over the ensuing half century. The greatest challenge for the United States as it celebrates *Brown* is how to realize the decision's substantial promise five decades later.