

7-1-1979

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Recommended Citation

Days, Drew S. III (1979) "Brown Identified Ills of Segregation," *New Directions*: Vol. 6: Iss. 4, Article 4.
Available at: <https://dh.howard.edu/newdirections/vol6/iss4/4>

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Days: Brown Identified Ills of Segregation

Brown Identified Ills of Segregation

By Drew S. Days, III

10 **B**rown v. Board of Education went beyond mere legal analysis to lay bare for all America to see the "wrongness," baseness and cruelty of invidious discrimination against Black children. It identified and articulated important social values bound up in racial integration and equal educational opportunity. It was, at root, an object lesson in public morality.

Brown was primarily concerned with the question of whether Southern and border states could segregate by law in systems of public education. But Brown, in holding that state-imposed segregated systems of education were "inherently unequal" and violative of the 14th Amendment, said much more.

Three central points were made in Brown, which have served as the theoretical basis for education litigation since 1954, and which will continue to serve as guideposts for any education litigation in the future.

The first principle, already mentioned, is the most famous. The Supreme Court Justices said:

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

This inherent inequality existed because of intangible factors: Racial segregation of children by state law "generates a feeling (in Black children) of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

The second principle can also be communicated by quoting directly from Brown, which was quoting in turn from the decision of the trial court:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children..."

The quotation went on to reinforce an earlier statement by the Supreme Court that segregation by law has an even greater impact upon Black children since

it is interpreted as denoting their inferiority which affects their motivation to learn and retards educational and mental development.

This finding was based upon certain psychological and sociological studies and expert testimony introduced at trial. (Dr. Kenneth Clark is undoubtedly the most well-known and most frequently mentioned of those experts associated with this phase of Brown).

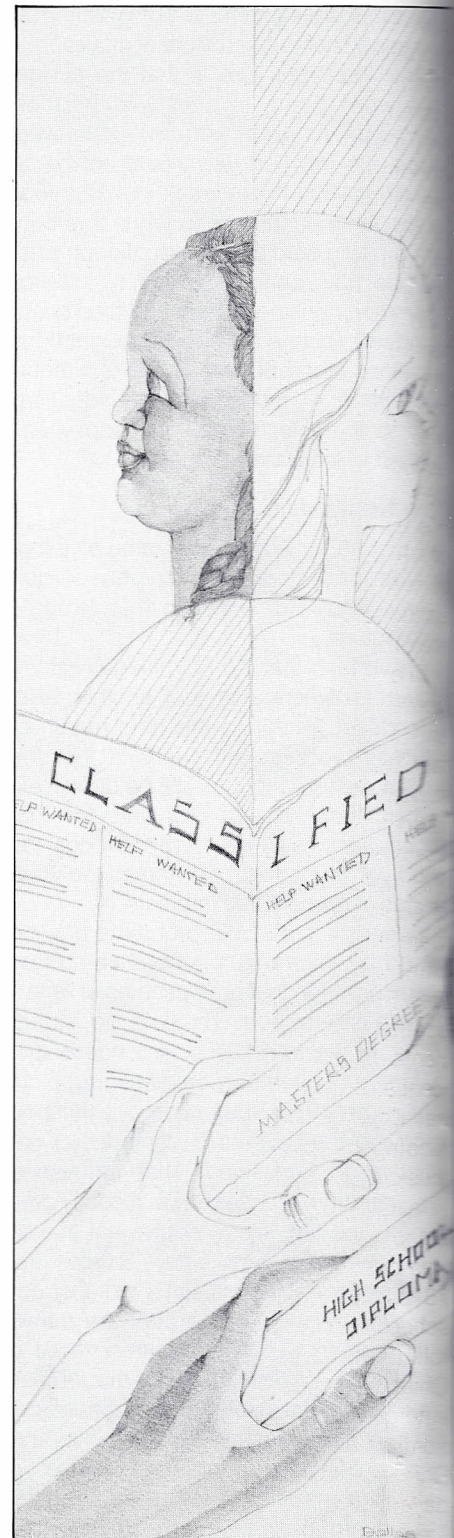
The third principle was articulated in the following language from Brown:

"Today, education is perhaps the most important function of state and local governments . . . in these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

Legal developments since 1954 have moved us farther and farther away from the moral lessons Brown taught. Instead, we have been told that segregation in public education does not produce cognizable harm in the absence of state action. We also have learned from the courts that education is not a fundamental right; hence, disparities among school districts within the same state in terms of per pupil expenditures do not bear a heavy burden of justification. To the extent that state action is found to have caused racial segregation in public schools, the courts have told us to prove that the school board was the agent of the state in this regard and that its acts were taken with an intent to discriminate.

Only where the effects of the discrimination can be presumed or proven to have system-wide consequences, do the courts say that the remedy can be system-wide. And remedies involving more than one district are permissible, under present judicial standards, only upon a showing that unconstitutional segregation within one had a "significant segregative effect" within another.

While these principles have not served to impede unduly meaningful desegregation in small cities and rural areas, the contrary is true with respect to large ur-



ban centers. *Brown* talked about racial isolation, the impact upon the "hearts and minds" of Black children from being subjected to "ghettoized" education and the way in which desegregation prepares our children to live in a pluralistic society. Yet we witness the ever-growing segregation of our schools—largely Black and other minorities in the cities, primarily white in the suburbs.

In 1977, the Chicago and Detroit systems had more than 75% minority enrollment; Philadelphia and New York were more than 65% minority; and Los Angeles was 63% minority. These five largest school systems in the nation contained 18% of all Black students and 22% of all Hispanic students in the United States. As of 1975, more than 55% of the nation's minority students were in central city schools, and these statistics have risen steadily since.

In addition to the increasing disparities between the racial composition of city and suburban schools, there is also the fact that *within* cities minority and non-minority students tend to be largely separated from each other in terms of school assignments.

Brown pointed out the fundamental role of education as a key to further advancement and opportunity. Yet we watch our cities going bankrupt, unable to provide their Black and Hispanic children with educational programs that non-minority students in the suburbs take for granted. Hence, Detroit first-graders had to go on half-day two years ago because of cuts in funding for the system. All varsity sports, music and art programs were eliminated.

In Cleveland, the schools almost ran out of funds before the academic year was over. As of the opening of the 1977-78 school year, Philadelphia cut 3,000 school system employees from the payroll. In the same year, schools in Toledo, Ohio, were closed for several weeks until emergency appropriations were obtained from the state legislature. And in 1976-77, Chicago closed all its public schools 16 days before the end of the term because it ran out of funds.

The courts provide a convenient scapegoat for those purporting to favor either more desegregation or less desegregation. We have experienced, for a number of years, a national ambivalence about desegregation. And we continue to wonder whether it is worth the cost and disruption. We have left the courts to function in this value vacuum as best they can. Chief Judge George Edwards of the United States Court of Appeals for the Sixth Circuit only a few years ago in a speech about school desegregation said:

"The most dangerous fact in America today is that concern about the problem of race in America is centered almost solely in the Judicial branch of the government. The Executive and Legislative branches are studiously looking the other way—and at times it would appear—any other way."

Courts, lawyers and the legal process do have important roles to play in any ultimate solution. But the courts cannot provide complete and permanent relief, i.e., desegregation in a viable educational environment, without vigorous support from other branches of the government.

As a society, we must be willing to affirm that desegregation in public education is good, a worthy aim, a national priority. We must admit that no action is truly neutral with respect to desegregation and that affirmative steps have to be taken to advance this interest. Otherwise, all the lawsuits in the world will not bring us closer to dealing with this lingering national disgrace. In his speech last year at Harvard University, Alexander Solzhenitsyn stated:

"A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses."

Let us hope that America will rededicate itself to realizing at last the "high levels of human possibilities" created by *Brown v. Board of Education*. □

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