AFTER TWENTY YEARS

BROWN: 'THE NOBLEST DECISION'

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Twenty years ago this 17th of May the Supreme Court delivered what history may well record as the noblest and most influential judicial decision of the century. In *Brown* v. *Board of Education* the Court rejected the false doctrine of "separate but equal" and held the segregated school in violation of the equal protection clause of the Constitution.

With this action Earl Warren qualified as a jurist. He had come to the Court with a record as a hard-handed prosecutor and a remarkably popular governor, but the considerations that led to his appointment had been clearly political. For the decision in *Brown* he had achieved unanimity, no mean feat. With hindsight, we also can see that this decision forecast the style of the Warren Court—a departure from the excessive judicial restraint that had been the pattern and a willingness to deal boldly with the most troublesome problems, as had John Marshall in his time.

Before 1954 some progress had been made in breaking down racial discrimination. In 1947 Branch Rickey and Jackie Robinson opened up major league baseball. In 1948 the Supreme Court turned thumbs down on the restrictive covenants, long used to keep minorities out of white neighborhoods. In the early 1950s the Court held against the exclusion of Negroes from state-supported law schools. In the Korean War, on the purely practical ground that it was more efficient, the Army abandoned its practice of segregated fighting units.

Dealing with an abuse of long standing that was causing great social unrest, *Brown* revitalized the Fourteenth Amendment and returned it to its original function as protector of the civil rights of an endangered minority. The decision articulated the fundamental principle that inspired Martin Luther King and which he supported with the tactic of nonviolence. It sparked the Negro revolution and led directly to the first civil rights legislation in almost a hundred years. It enlisted the powerful support of President Johnson. On the crucial issue of equal opportunity, *Brown* brought the application of the Constitution into harmony with American ideals. Thereby it changed the image of the nation both at home and abroad.

Because it rested on a cluster of cases that protected segregated schooling, the key ruling in *Brown* held circumspectly to that point—"separate *educational* facilities (emphasis added) are inherently unequal." But the finding that segregation violated the equal protection clause spread almost across the board, in what amounted to a "Browning" of America.

Brown drove Jim Crow from the drinking fountain, the waiting room, the lunch counter, the rest room, the elevator, the bus, the motel, the voting booth, the employment office, the salesroom, the public playground and the graveyard. That is not to say that racism has been extirpated. But all underpinning of governmental support has been withdrawn from almost every category of segregation or discrimination by race.

I vividly remember when and how I heard about Pearl Harbor, the assassination of President Kennedy, the atomic bombing of Hiroshima and, on the joyful side, Lindbergh's landing at Paris and the Armistice in 1918. But where was I on May 17, 1954? And what was my reaction? To my chagrin as a civil libertarian and an integrationist, for the life of me I cannot remember.

That spring, twenty years ago, my thoughts were trained on Washington all right, but not on the Supreme Court. At that moment the Oppenheimer trial was approaching climax. Eisenhower had "put a wall" between the maker of the A-bombs and the nation's atomic secrets. Oppenheimer insisted on a hearing; the charges and his response had been published. Now behind closed doors the Atomic Energy Commission sat in judgment. Decision would be handed down on May 27, and I remember it vividly.

Meanwhile, in the Senate Caucus Room under the glare of television, the epic Army-McCarthy hearings were in full blast. Pushed into a corner by McCarthy's charges against generals and the Secretary of the Army, the administration was fighting back. In the bizarre hearings before his own committee McCarthy won some damaging admissions. Counsel Joseph Welch was scoring points, but as of May 17 the outcome of the brawl was far from decided.

Alongside the ominous fugue on Oppenheimer and the blaring Army-McCarthy fanfare, the Supreme Court pronouncement was a bit of sedate chamber music. It was not even addressed to the civil liberties issue that appeared most in danger. The thrust of McCarthyism was that, in order to protect national security from the Communist threat, it was necessary to ride roughshod over the constitutional protection of individuals. Guilt by accusation or guilt by association would suffice. The constitutional casualty would be the Fifth Amendment. I, for example, composed an elegy on The Decline and Fall of the Fifth Amendment.

In the witch hunt then current I was not exactly a witch, but I had been fired as one. That disaster was only temporary: I was back on the job but engrossed in another round of litigation seeking to "be made whole" or, less personally, to re-establish tenure in my university. I find no evidence that I made any immediate comment on *Brown*. Did anyone else?

Mystified as well as chagrined, I have consulted the files of *Open Forum*, the monthly publication of the ACLU of Southern California, and *Frontier*, then the foremost journal of opinion in the West. In February,

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Open Forum had run a story on the cluster of school cases under review by the Supreme Court and in its July number there was a one-sentence oblique reference to the decision. In *Frontier* two letters to the editor told about school integration efforts in Arizona. That was all.

On May 24, *The New Republic* opened with one enthusiastic column of print on the decision. A week later it carried a feature by Harold C. Fleming, who had been sounding out opinion in the South. His title was optimistic, "The South Will Go Along," and so was his conclusion, "We may witness something extraordinary in the way of human growth."

In *The Nation* on May 29, Carey McWilliams had 2 pages on "The Climax of an Era." He reported "national approval as nearly unanimous as any such verdict is ever likely to have," and he hailed it as "a fine antidote for the blight of McCarthyism." In support of this story, which reviewed *Plessy*, as well as the background of the immediate case, McWilliams had solicited comment from an NAACP attorney and from three Southern journalists. Harry Ashmore's remark was typical: "All told the South's reaction . . . has been calm." And with this coverage, *The New Republic* and *The Nation* were content for the rest of the year. But for its reporting, the liberal press is not to be condemned. Having spoken, the Supreme Court fell silent for a year and then regrettably added the phrase, "with all deliberate speed." Little that was noteworthy occurred until 1956 or 1957.

Along the northern edge of the South certain districts began to comply with the ruling. The South proper settled into angry resistance and after ten years the number of black pupils in schools with even one white pupil had dropped from 1 per cent down to absolute zero. The rest of the country was critical of the mob violence in this resistance but otherwise apathetic.

Somewhat later the Deep South came to accept school integration as the law of the land. It allowed implementation to proceed. By last report, some 44.4 per cent of black pupils in those states were in schools that were not just token integrated but where there was a majority of white pupils. That is far better than the report card for the North and West. Today, the prime concentrations of black children assigned to segregated schools are to be found in Northern and Western cities. It is, furthermore, in these communities and on the school issue that the one great exception to the "Browning" of America is to be found. Here the order of the Supreme Court is evaded and resisted, usually under such slogans as local control or opposition to bussing, but with the anomaly that the one governmental body in town that still imposes and enforces segregation is the school system. □

Oslin, Cleveland Plain Dealer

"Guess What? I Learned What De Jure *and* De Facto *Mean."*

Portugal: A Country for Historians

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Lisbon

From fifteen years of exile, I arrived in Lisbon two days after the military proclamation. I fell at first into a state of psychological and emotional confusion, my first impression being one of anticlimax because Lisbon looked singularly quiet after London. To add to the confusion I, who had been a writer and journalist in exile, was now myself escorted by journalists who wanted to report about my return home. Things had certainly changed, but I had found a better home.

Once recovered from the first shocks of arrival, I discovered that events had moved so fast in the previous days that suddenly there were no experts in Portuguese politics—we had all become historians. Portugal is living through a period which will force political writers and sociologists to learn new lessons.

In its chronology, the development of the new military regime is quite easily explained. Toward mid-1973 there was a clash of interests between career officers and reserve officers, arising from the widening of the permanent cadres and structure in the armed forces. The issues, revolving around differences of pay, promotion and status between

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