

2009

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Recommended Citation

G. R. Cooper, & James Prescott, *What Did Brown Do for You? Brown v. Board Fifty Years Later*, 14 Pub. Interest L. Rptr. 231 (2009).
Available at: <http://lawcommons.luc.edu/pilr/vol14/iss3/4>

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WHAT DID *BROWN* DO FOR YOU? *BROWN V. BOARD* FIFTY YEARS LATER

by DR. G. ROBB COOPER AND JAMES PRESCOTT

Brown v. Board of Education is one of the few cases that most Americans recognize. The United States Supreme Court's decision in *Brown*, rejecting *Plessy's* "separate but equal standard," led to the Civil Rights Movement of the 1960s and the push to desegregate a variety of institutions, including schools.¹ However, since that landmark decision, *Brown's* practical impact has been ambiguous at best. Although *Brown* was successful in achieving general, racial desegregation and led to the end of Jim Crow laws, the Supreme Court also sought to ensure equality in opportunity beyond fiscal and staffing considerations. Thus, the achievement gap between whites and minorities remains. In mitigating the achievement gap, *Brown* has not done enough.

This article seeks to define what *Brown* has done and then what *Brown* has failed to do. First, it considers what the courts set out to achieve through its *Brown* decisions. Next, it considers whether the current state of education conforms to those goals by considering recent empirical studies measuring academic achievement for minorities and whites. It concludes that while *Brown* has done much and public education has come a long way, in order to further minimize the difference in achievement between races, the federal government should focus on legislative rather than litigious means. With an increased focus on prenatal and early childhood care and education, as well as parental training, the true purpose of *Brown* may be fully realized.

BROWN AND ITS PROGENY

The standard extended by the *Brown* Court was surprisingly narrow in scope. Chief Justice Warren believed that educational segregation deprived minorities of intangible benefits, such as an ability to study and engage in discussion with students of other racial backgrounds.² “To separate [students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”³ As segregation was inequitable due to its denial of such benefits, “separate but equal” was found to be a violation of the Fourteenth Amendment.⁴

While *Brown I* addressed what standard should be applied, *Brown II* concentrated on how to apply it. The Warren court hesitated to provide any concrete procedures as to how desegregation should be pursued, as it believed it would be better addressed by local courts.⁵ The Court did provide a course of action as to how the local courts should apply these guidelines. While permitted to consider practical issues such as the physical condition of the schools and the school transportation system, lower courts were compelled to apply equitable principles in desegregating with all deliberate speed.⁶ What this meant was that the school districts could consider personal preferences, but only to the extent that they would not infringe upon the public’s goal of desegregation or the expedited achievement of that purpose.

The effect of these decisions did lead to some desegregation, but the standard set by these cases was relatively ineffective and could be met by merely claiming an “open enrollment” policy, which gave students the choice to go to

whatever school they chose. This type of de facto segregation is what the Court addressed in 1968 with *Green v. County School Board of New Kent County*.⁷ In that case, the school district offered the students the option to transfer to a different school as a means of satisfying their desegregation duty.⁸ While reasonable in theory, the result was minimal desegregation as no Caucasian students transferred to the “black school,” while few African American students transferred to the “white school.”⁹

The Court, in *Green*, mandated that school districts had an affirmative duty to desegregate.¹⁰ A plan must not merely address the issue of desegregation but effectively resolve it.¹¹ The Court recognized that there was no universal “cure” for segregation, and that for each district a plan would need to be customized.¹² While the school districts would be free to assess all practical circumstances, as permitted in *Brown II*, the school district had to demonstrably act in good faith and the plan had to have a significant chance to achieve desegregation at the earliest practicable date.¹³ The plan need not be the “best” plan; it need only fit those parameters as defined above.¹⁴ This idea of measuring desegregation not by policy neutrality but real world effectiveness of the plan was later upheld in *Brown III*.¹⁵

Desegregation standards seemed clear to school districts until 2007 when the Supreme Court decided *Parents Involved in Community Schools v. Seattle*, in which the Court seemingly stood *Brown* on its head.¹⁶ In this case, the school districts involved bussed students from one school to another to ensure racial neutrality within the schools, seemingly as the earlier *Brown* cases had demanded that they do.¹⁷ However, the Supreme Court, under Chief Justice Roberts, found that such activities were not constitutional in the given case.¹⁸ Essentially, the Court found that the federal government’s interest was not in racial equality within its schools by itself, but for something much broader. The *Parents Involved* decision discusses diversity of a broader scale taking into consideration many different factors, of which ethnicity is but one part.¹⁹

The *Parents Involved* decision further stated that a strict adherence to racial composition would ensure that race would always be a factor in American life.²⁰ That strict adherence runs counter to the goal of the original *Brown* decision.²¹ Rather the purpose was to ensure a broad array of viewpoints and perspectives leading to a more enriched educational experience for all students, regardless of classification.²² Racial balance by percentages by itself was not a sufficient government goal to justify the policy.²³

The progeny of *Brown*, including *Parents Involved*, signifies a dedication by the Court to not merely eliminate social racial barriers, but an intention to improve students' performance across the board. In a practical sense, this has not been the case as the empirical real world evidence shows; there has been no such marked improvement in student performance.

BROWN IN THE REAL WORLD

By some metrics, academic performances among minority groups and African Americans in particular have improved dramatically. Significantly more African Americans have high school educations now, in comparison with 1957, from 18.4 percent to 79.2 percent, and African Americans with a college degree have also increased sizably, from 2.9 percent to 17.2 percent.²⁴ In comparison, 88.7 percent of Caucasians have high school degrees now in comparison to 43.2 percent in 1957, and 29.4 percent have college degrees as opposed to 8 percent in 1957.²⁵ Dropout rates for African Americans have been cut in half since 1974, and college entrance rates have grown from 45.8 percent to 66.7 percent.²⁶ While disparities in degrees obtained between African Americans and Caucasians still exist, the gap continues to steadily narrow.

However, quality of education is not measured in completion alone, but also in skills obtained. In these metrics, there is a more exacerbated difference between minorities and Caucasians. African Americans and Latinos continually score significantly lower on tests than their Caucasian counterparts. The average African American or Hispanic elementary, middle, or high school student achieves scores comparable to a Caucasian student ranked in the lowest quartile.²⁷ While these gaps in achievement began to narrow in the 1970s and 1980s, this process stalled in the 1980s.²⁸

These disparities are brought into sharper context when considered in light of each individual's performance. According to the 2000 National Assessment of Educational Progress reading assessment, 40 percent of Caucasian fourth graders scored at or above proficient, compared to only 12 percent of African American students, 16 percent of Hispanic students, and 17 percent of Native American students.²⁹ In math, 35 percent of white fourth graders scored at or above proficient, while just 5 percent of African Americans, 10 percent of Hispanics, and 14 percent of Native Americans scored as high.³⁰ If the tests had been applied based on aggregated student scores, nearly 40 percent of all stu-

dents would fail, but the failure rate for minority students could be as high as 80 percent.³¹

The education achievement difference persists into later education. In 2005 in math tests given to high school seniors, on a scale of 300, the average Caucasian score was 157, compared to 127 for African Americans and 133 for Latinos.³² In reading tests, on a scale of 500, Caucasian students scored 293 on average, while African Americans averaged 267 and Latinos averaged 272.³³

Although there have been some marked improvement in some metrics, American schools have yet to live up to the promise of *Brown* as there is significant racial disparity in academic performance. Thus the critical question becomes; what causes such a gap?

One explanation for the performance gap is that schools are not desegregating to the degree *Brown* envisioned. This is not a failure of *Brown*, but rather a reality of suburbanization and natural progression. *Brown* only mandated that school districts be desegregated, not states or other government entities.³⁴ Since 1954, there has been more “white flight” to the suburbs, with Caucasian students moving out of urban school districts.³⁵ School districts are “desegregated,” but only to the degree permissible by the concentration of minorities within an area. As a result, the average Caucasian student attends school with 81.2 percent Caucasian students and 18.8 percent minority.³⁶

Other suggested reasons for the performance gap relate to insufficient desegregation, as primarily Caucasian suburban school districts have greater access to funding due to higher property taxes. Specifically, many contend that minority students are put at a disadvantage due to lower teacher to student ratios or decrepit school facilities, due to insufficient operating budgets.

Most people in the United States believe that lower teacher to student ratios would improve the quality of education.³⁷ However, a 2002 study found that lower teacher student ratios did not lead to higher SAT and ACT scores.³⁸ Indeed, when student to teacher ratios were under thirteen, the study suggested that students did worse on these exams.³⁹ Studies in England and the United States have also demonstrated a lack of correlation to class size and student performance.⁴⁰ On the other hand, there have also been studies that have shown some positive effect of small class size on class performance.⁴¹ So while any definitive statement on the effectiveness of smaller class size is un-

warranted at this time, the United States Department of Education continues to support smaller class sizes as a remedy to flagging test scores.

Moreover, in a recent study, too little financial support was identified as the biggest problem facing our schools.⁴² Again, the public's perception may not align with fact. Since 1970, the average amount spent per student has more than doubled, even after inflation has been taken into account.⁴³ Assuming that popular perception is correct that more money per student equates to higher academic performance, aggregate scores over that time should have increased. However, over that period aggregate scores in reading have remained consistent while math increased a mere six percent.⁴⁴ This is too much investment for negligible gain.

The judicial enforcement of equal opportunity can only be so effective; *Brown* has done all it can. If the United States is committed to improving their schools and minimizing the achievement gap, it must refocus on funneling its limited resources into programs that will provide the most benefit for all, which can only be achieved through legislation.

BROWN AS IT SHOULD BE

Given the achievement gaps and the additional strain placed on the government's funding abilities, it is vital that the government direct funding to areas where it would do the most good. While the achievement gap is serious, some of it should be naturally mitigated by future generations becoming more educated. To further minimize the difference in achievement between races, the federal government should focus on additional funding for widespread pre-school education, prenatal care and parental training advocating high parental involvement.

Some of the gaps in racial achievement should naturally decrease assuming a comparable increase in educational completion. Evidence demonstrates that the higher level of education the parents have completed, the higher the scores their children will obtain eventually.⁴⁵ As more minority students complete their education, the higher their children's scores will be. As the degree gap continues to narrow between Caucasians and minorities, so will the achievement gap.

Studies show that the benefits of preschool investment exist beyond academic achievement. Students who participate in preschool activities do more than achieve higher test scores later in life, but also obtain a host of other benefits.⁴⁶ Students are less likely to repeat a grade or need special education, and are more likely to attend college.⁴⁷ Moreover, students are less likely to participate in criminal activity, be unemployed and will generally have higher incomes than their peers.⁴⁸ They are also less likely to smoke, rely on public assistance or become teenage parents.⁴⁹ The total net impact of these benefits is a \$2 to \$4 return in investment on every government dollar spent on these programs.⁵⁰

In terms of how successful these programs are in generating cognitive improvement, the results are mixed. Generally, most studies support that early education does provide tangible benefits for educational achievement. However, some studies are mixed and suggest that preschool can have a positive effect but only when continued with high quality education. Finally, Steven Levitt, of *Freakonomics* fame, suggested that any and all benefits that appear to derive from preschool could be attributed to other factors.⁵¹

The federal government is currently conducting an ongoing study regarding its Head Start program, which provides pre-school aged children of lower-income families with both educational and health services, while encouraging parental involvement.⁵² The earliest portion of its study has shown that in general these services result in some benefit to the children in cognitive and social development.⁵³ The study is ongoing and will track these students through their educational progression.⁵⁴

Another, proactive means of minimizing the achievement gap is through increased funding for prenatal care. African American parents are more than twice as likely to forego prenatal care as their Caucasian counterparts.⁵⁵ This type of care provides doctors with a vital opportunity to instruct expecting parents in nutrition and child care, and helps ensure the development of the child.⁵⁶ Without prenatal care, children are three times more likely to be born underweight and are five times more likely to die.⁵⁷ While there is some question as to whether increased prenatal care is the sole cause for these trends, as those mothers who do not receive such treatment are generally prone to more socioeconomic risks such as poverty and younger age, it generally agreed that prenatal care can mitigate the above concerns.⁵⁸

Empirical studies have shown that lower birth weight does lead to some cognitive and social deficiencies. Children who have a lower birth weight are less likely to graduate from high school and go to college.⁵⁹ These children tend to perform worse in school and have lower I.Q.s, with an increased incidence of neurosensory impairments.⁶⁰ These problems tend to manifest by age eight and persist throughout the child's life.⁶¹ In addition to cognitive disadvantages, studies have shown the children born under weight were found to be less active, vocal, responsive and cooperative.⁶² These children also tend to have an abbreviated attention span and are less happy.⁶³

Investment in prenatal care is vital in providing a solid baseline with which to begin child educational achievement. While prenatal care will not improve child performance, it would tend to insulate them from lower birth weights which act as a barrier.

One of the biggest influences on childhood development is parental involvement. Multiple studies have established that parental involvement in the form of interest in the child, particularly parent-child discussions can have a significant positive effect on a child's behavior and achievement, in spite of other socioeconomic factors.⁶⁴

While it may seem that this parental involvement is relatively straight forward and does not require much training, optimal participation as defined by these studies requires more nuanced approaches and often runs against common sense. For example, studies have shown that an organized, structured home life can often stymie academic achievement.⁶⁵ Thus, parental participation should be curtailed as the child enters adolescence. In their exuberance to "push" their child to higher achievement, a diligent parent could actually limit their student's achievement.⁶⁶ As such, parental training is vital to help shape the parental involvement in ways that make the interactions as healthy and supportive as possible.⁶⁷

CONCLUSION

Brown was a momentous decision in our country's history, but its promise is not one that can be fulfilled by legal standards alone. While public education has come a long way in bridging the racial education gap in some areas, it still has a long way to go. While well-intentioned individuals have proposed in-

creasing staffing and funding in key areas to mitigate these problems, these plans may not be entirely effective. To a degree, some of the disparity in educational achievement will decrease as more minority individuals complete their education and have children. However, more funds should be focused on prenatal and early childhood care and education, as well as parental training. By focusing more on these areas and acting appropriately, the achievement gap can be greatly mitigated and the true purpose of *Brown* may be finally realized.

NOTES

- 1 *Brown v. Board of Education of Topeka et al.*, 347 U.S. 483, 495 (1954).
- 2 *Id.* at 494.
- 3 *Id.*
- 4 *Id.* at 495.
- 5 *Brown v. Board of Education of Topeka et al.*, 349 U.S. 294, 299 (1955).
- 6 *Id.* at 300-01.
- 7 *Green v. County School Board of New Kent County et al.*, 391 U.S. 430 (1968).
- 8 *Id.* at 434.
- 9 *Id.* at 441-42.
- 10 *Id.*
- 11 *Id.*
- 12 *Id.* at 439-40.
- 13 *Id.* at 440-41.
- 14 *Id.*
- 15 *Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas*, 892 F.2d 851 (1989).
- 16 *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (U.S. 2007).
- 17 *Id.* at 2746.
- 18 *Id.* at 2767.
- 19 *Id.*
- 20 *Id.* at 2758.
- 21 *Id.* at 2767-68.
- 22 *Id.*
- 23 *Id.*
- 24 *Social/Economic Indicators: Comparing Brown Era Racial Disparities to Today*, Kirwan Institute for the Study of Race & Ethnicity, OHIO STATE UNIVERSITY, 3, Apr. 2004.
- 25 *Id.*
- 26 *Id.*
- 27 *Closing the Achievement Gap: The Impact of Standards-Based Education Reform on Student Performance*, U.S. Commission on Civil Rights, OFFICE OF THE GENERAL COUNSEL, 9, July 2, 2004, <http://www.law.umaryland.edu/marshall/usccr/documents/closingachiegap.pdf> (last visited Apr.15, 2009), citing Robert Rothman, *Closing the Achievement Gap: How Schools Are Making It Happen*, JOURNAL OF THE ANNENBERG CHALLENGE, vol. 5, no. 2, Winter 2001/02, available at http://www.annenbergchallenge.org/pubs/cj/gap_cj.htm.
- 28 *Id.*

29 *Closing the Achievement Gap*, *supra* note 27 at 10-11, citing *Reaching Out: Raising African American Achievement*, U.S. DEPARTMENT OF EDUCATION, http://www.ed.gov/nclb/accountability/achieve/achievement_aa.html (last visited Apr. 15, 2009); *Reaching Out: Raising Hispanic Achievement*, U.S. DEPARTMENT OF EDUCATION, http://www.ed.gov/nclb/accountability/achieve/achievement_hisp.html (last visited Apr. 15, 2009); citing *Raising American Indian Achievement*, U.S. DEPARTMENT OF EDUCATION, http://www.ed.gov/nclb/accountability/achieve/achievement_native.html (last visited Apr. 15, 2009).

30 *Id.*

31 *Closing the Achievement Gap*, *supra* note 27 at 11.

32 *National Center for Education Statistics*, U.S. DEPARTMENT OF EDUCATION, INSTITUTE OF EDUCATION SCIENCES, <http://nces.ed.gov/nationsreportcard/nde/criteria.asp>, (select grade 12 and subject math-new frame work; select national jurisdiction; select race/ethnicity major reporting group; select year 2005) (last visited Apr. 15, 2009).

33 *Id.* (select grade 12 and subject reading; select national jurisdiction; select race/ethnicity major reporting group; select year 2005).

34 *Brown*, *supra* note 1 at 495.

35 Kim M. Lloyd et al, *Trends in Educational Achievement of Minority Students since Brown v. Board of Education*, PRINCETON UNIVERSITY, 5, June 22, 2001, available at http://www.texas10.princeton.edu/reports/misc/trends_in_ed.pdf.

36 *Id.* at 15, tble 11.

37 Ninety-five percent of Americans polled believe that smaller class sizes would be extremely or somewhat effective in attracting and retaining “quality” teachers; See Lowell C. Rose and Alec M. Gallup, *The 39th Annual Phi Delta Kappa/Gallup Poll of the Public’s Attitudes Toward the Public Schools*, PHI DELTA KAPPA 33, 43, tbl 40, Sept. 2007, available at http://www.pdkmembers.org/members_online/publications/e-GALLUP/kpoll_pdfs/pdkpoll39_2007.pdf.

38 William L. Bainbridge, *SchoolMatch Analyzes High School Pupil/Teacher Ratios: Little Relationship Between High school Pupil/Teacher Ratios and Pupil Performance on Scholarship Examinations*, USA TODAY, Dec. 21, 2002, available at <http://schoolmatch.com/articles/hiclasssize.cfm>.

39 *Id.*

40 *Small class pupils ‘do no better,’* BBC NEWS, Jan. 5, 2005, available at <http://news.bbc.co.uk/1/hi/education/4146977.stm>; *Reducing Class Size, What Do We Know?*, U.S. DEPARTMENT OF EDUCATION, March 1999, http://www.ed.gov/pubs/ReducingClass/Class_size.html (last visited Apr. 15, 2009).

41 *Id.*

42 Lack of funding was consistently found the biggest problem facing American schools in Gallup Polls taken in 2004-2007, with approximately 20% of Americans finding it to be the biggest problem every year. Other factors included Lack of Discipline, Overcrowded Schools, Fighting, Lack of Quality teachers, Concern about Standards, and drug use by the student body; See Lowell C. Rose and Alec M. Gallup, *supra* note 37 at 44, tbl. 43.

43 Dan Lips et al, *Does Spending More on Education Improve Academic Achievement*, THE HERITAGE FOUNDATION, Sept. 8, 2008, available at http://www.heritage.org/research/Education/bg2179.cfm#_ftn1.

44 *Id.*

45 *National Center for Education Statistics*, *supra* note 32, (select grade 8 and subject math; select national jurisdiction; select parent’s major reporting group); (select grade 8 and subject reading; select national jurisdiction; select parent’s major reporting group).

46 *The Economic Promise of Investing in High-Quality Preschool*, COMMITTEE FOR ECONOMIC DEVELOPMENT, 2006, <http://www.aap.org/advocacy/putchildrenfirst/background/summary-prek-econpromise.pdf> (last visited Apr. 15, 2009)

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 Steven D. Levitt and Stephen J. Dubner, *Freakonomics*, 167-76, (Harper Collins 2005).

52 42 U.S.C. § 9831.

53 Westat et al, *Head Start Impact Study: First Year Findings*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Office of Planning, Research and Evaluation Administration for Children and Families, June 2005, http://www.acf.hhs.gov/programs/opre/hs/impact_study/reports/first_yr_execsum/first_yr_execsum.pdf (last visited Apr. 15, 2009).

54 *Id.*

55 *Late or No Prenatal Care*, CHILD TRENDS DATA BANK, tbl 1, <http://www.childtrendsdata.bank.org/indicators/25PrenatalCare.cfm> (last visited Apr. 15, 2009).

56 *Id.*

57 *Id.*

58 *Id.*

59 See generally Maureen Hack, M.B. et al, *Outcomes in Young Adulthood for Very-Low-Birth-Weight infants*, NEW ENGLAND JOURNAL OF MEDICINE, January 17, 2002, available at <http://content.nejm.org/cgi/content/abstract/346/3/149>.

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61 Marcus Richards, *Birth Weight and Cognitive Function in the British 1946 Birth Cohort: Longitudinal Population Based Study*, MRC National Survey of Health and Development, UNIVERSITY COLLEGE LONDON, January 27, 2001, available at <http://www.bmj.com/cgi/content/full/322/7280/199>.

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64 Charles Desforges and Alberto Abouchaar, *The Impact of Parental Involvement, Parental Support, and Family Education on Pupil Achievements and Adjustment: A Literature Review*, UNITED KINGDOM DEPARTMENT FOR CHILDREN SCHOOLS AND FAMILIES, Research Report No. 433, 23-29, <http://www.dcsf.gov.uk/research/data/uploadfiles/RR433.pdf> (last visited Apr. 15, 2009).

65 *Id.* at 25-26.

66 *Id.*

67 *Id.*