

Lesson 9

Brown v. Board of Education (1954)

Overview

This lesson explores the landmark U.S. Supreme Court decision in *Brown v. Board of Education*, which led to the end of legal school segregation and other forms of legal segregation throughout the United States.

First, students read about and discuss the background on the case and the case itself. Then students examine a controversial 2007 U.S. Supreme Court decision in which both the opinion of the court and the dissent invoked the *Brown* decision. Students role play editorial writers and write editorials on the meaning of the *Brown* decision and on which side got the meaning of *Brown* correct in the 2007 decision.

Objectives

Students will be able to:

- Describe the Supreme Court’s opinion in *Plessy v. Ferguson* and explain its effect.
- Identify restrictive racial covenants, explain how the Supreme Court struck them down, and express a reasoned opinion on whether the court’s reasoning was correct.
- Explain the court’s ruling in *Brown* and in subsequent segregation cases.
- Express a reasoned opinion on the court’s ruling in *Brown II*.
- Write an editorial opinion on the meaning of *Brown* and on which side got the meaning correct in the 2007 case of *Parents Involved in Community Schools*.

Standards Addressed

National High School U.S. History Standard 29:

Understands the struggle for racial and gender equality and for the extension of civil liberties. (4) Understands significant influences on the civil rights movement (e.g., the social and constitutional issues involved in *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954) court cases . . .).

National High School Civics Standard 4: Understands the concept of a constitution, the various purposes that constitutions serve, and the conditions that contribute to the establishment and maintenance of constitutional government. (5) Understands how constitutions can be vehicles for change and for resolving social issues (e.g., use of the Fourteenth Amendment to the United States Constitution in the civil rights movement of the 1950s and 1960s . . .).

National High School Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. (4) Knows historical and contemporary illustrations of the idea of equal protection of the laws for all persons (e.g., the Fourteenth Amendment . . .).

National High School Civics Standard 25: Understands issues regarding personal, political, and economic rights. (1) Understands the importance to individuals and to society of . . . the right to . . . equal protection of the law.

California History-Social Science Content Standard 11.10: Students analyze the development of federal civil rights and voting rights. (2) Examine and analyze the key events, policies, and court cases in the evolution of civil rights, including . . . *Brown v. Board of Education*

California History-Social Science Content Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of . . . the due process and equal-protection-of-the-law clauses of the Fourteenth Amendment. (4) Explain the controversies that have resulted over changing interpretations of civil rights, including those in . . . *Brown v. Board of Education*

Preparation

Reading in the student text: “*Brown v. Board of Education* (1954),” pp. 43–46

Activity in the student text: “The Meaning of *Brown*,” p. 47

Vocabulary

Below are vocabulary words from this lesson. Their pronunciations and definitions can be found in the Glossary, which begins on page 91 of the student text.

chief justice	concurring opinion	equal protection	Jim Crow laws
lower court	lynching	oral argument	plurality opinion

Procedure

I. Focus Discussion

A. Hold a brief discussion reviewing what students know about the 14th Amendment, Jim Crow laws, and *Plessy v. Ferguson*. Ask students:

- What constitutional amendments were enacted right after the Civil War?

Three amendments:

13th Amendment abolished slavery and involuntary servitude.

14th Amendment granted citizenship to everyone born in the U.S. It also banned states from limiting citizens' rights, depriving anyone of due process of law, or denying any person equal protection of the laws.

15th Amendment prohibited states from denying citizens the right to vote because of race, color, or previous condition of servitude.

- What were Jim Crow laws?

Jim Crow laws required strict racial segregation. They spread throughout the South.

- How were Southern states able to enact them and keep them in place?

When Reconstruction ended in 1877 and federal troops pulled out of the South, local white control returned. Legislatures passed Jim Crow laws, and in 1896, the U.S. Supreme Court upheld these laws in *Plessy v. Ferguson*.

B. Tell students that it took a long time, but *Plessy* was finally overruled. Tell them they are going to see how this happened.

II. Reading and Discussion—*Brown v. Board of Education* (1954)

A. Ask students to read “*Brown v. Board of Education* (1954),” pages 43–46. Ask them to look for:

- The effect of the *Plessy* decision.
- Supreme Court decisions leading up to the *Brown* decision.
- The effects of the *Brown* decision.

B. When students finish reading, hold a discussion using the questions on page 46.

1. What was the Supreme Court's decision in *Plessy v. Ferguson*? What effect did this decision have?

The Supreme Court upheld Jim Crow laws as not violating the equal protection clause of the 14th Amendment. The court ruled that public facilities for blacks and whites could be “separate but equal.”

This decision justified legalized segregation, and Jim Crow laws spread throughout the South.

2. Why do you think NAACP attorneys chose graduate schools as their first line of attack on the doctrine of separate but equal?

NAACP attorneys believed that winning legal battles for integration at this level would be the easiest and would create the legal basis for a broader attack on racial segregation.

3. What were restrictive racial covenants? What argument did their defenders use to show that they did not violate the 14th Amendment? How did the Supreme Court rule on these covenants? Do you agree with the court's reasoning? Explain.

Restrictive racial covenants were agreements, often recorded in deeds, that an owner would not sell land to specified minorities.

The property owners in *Shelley v. Kraemer* argued that the 14th Amendment only protected against state action, and since these were private agreements, which restricted blacks from purchasing property, they did not involve the state, and therefore the 14th Amendment did not apply.

The Supreme Court held that although the agreements themselves did not involve state action, enforcement of the agreements did require state action and therefore violated the 14th Amendment.

As for whether students agree with the court's reasoning, accept reasoned responses.

4. What was the Supreme Court's decision in *Brown v. Board of Education*? How was this decision extended in later cases?

The Supreme Court held that segregation of children in public schools when authorized or required by state law violated the 14th Amendment of the Constitution because segregated educational facilities were inherently unequal.

The *Brown* decision was used as a precedent in later cases to strike down all forms of legal segregation (e.g., in buses, parks, and public golf courses, and laws banning interracial marriage).

5. Do you agree with the *Brown II* decision? Explain.

Brown II determined the speed of desegregation. The NAACP argued for immediate desegregation or a fixed timetable. The court, however, bowed to political realities, and issued an order favoring "all deliberate speed."

Accept reasoned responses on whether this was the proper decision.

III. Writing Activity—The Meaning of *Brown*

- A. Explain that the *Brown* decision was probably the most significant of the 20th century: It changed the makeup of American society. Tell students that in 2007, a deeply divided Supreme Court decided a school integration case. Both sides of the divided court cited *Brown* and said they were following the spirit of *Brown*.
- B. Review with students "Activity: The Meaning of *Brown*" on pages 47–48. Answer any questions students may have about the assignment. Give a deadline for the assignment.
- C. After students have turned in the assignment and you have graded and returned them, call on selected students to read their editorials.

Alternative Activity

Instead of having a writing assignment, divide the class into small groups and have them discuss the meaning of *Brown* and which side got the meaning correct in *Parents Involved in Community Schools*. Then hold a class discussion on the topic.

Brown v. Board of Education (1954)

The End of Legal Segregation



Three years after the *Brown* decision, members of the 101st Airborne Division escorted nine African-American students to Little Rock Central High School in Arkansas. The governor had previously sent the National Guard to prevent the students from entering.

Immediately following the Civil War, Reconstruction in the South offered African Americans new freedoms. The Civil War amendments ended slavery, granted them citizenship, promised equal treatment under the law, and guaranteed the right to vote. Blacks voted, won elected office, and served on juries. In 1877, however, federal troops withdrew from the South, returning it to local white rule.

Over the next 20 years, blacks lost almost all they had gained. Worse, denial of their rights and freedoms would be made legal by a series of racist statutes, the Jim Crow laws, mandating the separation of the races.

In 1890, the Louisiana General Assembly passed a law to prevent black and white people from riding together on railroads. *Plessy v. Ferguson*, a case challenging the law, reached the U.S. Supreme Court in 1896. Upholding the law, the court said that public facilities for blacks and whites could be “separate but equal.”

Soon Jim Crow laws ordered segregation throughout the South, touching every part of life. In South Carolina, black and white textile workers could not work in the same room or even enter through the same door. Mobile, Alabama, passed a Jim Crow curfew: Blacks could not leave their homes after 10 p.m.

Signs marked “Whites Only” or “Colored” hung over doors, ticket windows, and drinking fountains. Georgia had black and white parks. Oklahoma had black and white phone booths. Prisons, hospitals and orphanages were segregated as were schools and colleges.

The decision in *Plessy v. Ferguson* gave segregation a solid legal foundation. No major challenge was mounted against it for many years. The National Association for the Advancement of Colored People (NAACP), the leading civil rights organization, concentrated on other battles, such as campaigning against lynching and trying to ensure fair trials for criminal defendants.

In the 1930s, however, the NAACP began challenging legal segregation. Led initially by Charles Houston and later by Thurgood Marshall, NAACP attorneys started the legal battle by focusing on graduate and professional school education. They believed that winning legal battles for integration at this level would be easiest and would create the legal basis for a broader attack on racial segregation. The efforts of the NAACP represent one of the greatest legal strategies in American history. Many of these courageous lawyers risked their personal safety when they traveled through the South, often meeting hostility from police and other whites.

Graduate School Desegregation Cases

Their initial efforts brought significant legal success. Known generally as the “graduate school desegregation cases,” these early victories broke down the myth of “separate but equal” facilities for advanced black students. In 1936, a federal appeals court ordered the University of Maryland to admit to its law school a black student it had rejected due to his race. The state had no separate facility for blacks. Two years later, the U.S. Supreme Court ordered the University of Missouri Law School to admit a black student it had excluded. The state had no separate law school for blacks, but had offered to send the student to an out-of-state school for blacks. The

court ruled that this offer did not “remove the discrimination,” which violated the 14th Amendment.

The Second World War temporarily halted the graduate school cases. But following the war came its two most significant victories. The first involved a black law student, Herman Sweatt, who was denied admission to the University of Texas Law School because of his race. Responding to Sweatt’s lawsuit, the state of Texas built a separate law school in Austin for black students. It consisted of three small basement rooms in an office building not far from both the state capitol and the whites-only law school of the University of Texas.

After five years of litigation, Sweatt won his case. In 1950 in *Sweatt v. Painter*, the U.S. Supreme Court unanimously ordered his admission to the University of Texas. It rejected the state’s argument that the newly established law school for blacks was even remotely equal to the facilities for white law students.

In the second case, a federal court had ordered the University of Oklahoma to admit a black graduate student. The university had admitted the student, but roped him off from other students, reserving a special section for him in classes, at the library, and in the cafeteria. In 1950 in *McLaurin v. Oklahoma State Regents for Higher Education*, a unanimous Supreme Court ordered the school to end this segregation. The court stated that under the 14th Amendment, the student “must receive the same treatment . . . as students of other races.”

Other NAACP Victories

During the 1940s, NAACP lawyers had achieved other significant victories. In *Morgan v. Virginia*, the Supreme Court struck down segregation on interstate transportation because it impeded interstate commerce. In *Smith v. Allwright*, the court ruled that the Southern practice of holding whites-only primary elections violated the 15th Amendment.



Three leading civil rights attorneys posed for a photograph following the Supreme Court's decision in *Brown*. From left to right are George E.C. Hayes, Thurgood Marshall, and James Nabrit. In 1967, Marshall was appointed to the Supreme Court.

In 1948 in *Shelley v. Kraemer*, the court struck down racial restrictive covenants. Common in many parts of the country, these were agreements, often recorded in deeds, that an owner would not sell the land to specified minorities. In this case, despite a covenant against selling to blacks or Asians, the owner sold the property to a black couple. The other property owners sued in state court to prevent the sale. When the case reached the Supreme Court, NAACP attorneys argued that enforcing these covenants violated the 14th Amendment's guarantee of equal protection under the law. The property owners argued that the 14th Amendment only protected against state action and since these private agreements did not involve the state, the 14th Amendment did not apply. The Supreme Court agreed that the agreements by themselves did not involve state action. But the unanimous court pointed out that enforcing them required state action and thus violated the 14th Amendment.

The *Brown* Decision

By the 1950s, the rigid legal doctrine supporting segregation had finally been weakened. Thurgood Marshall was preparing for the final legal assault on school segregation, but he faced major opposition even from many committed to full racial equality. They thought that the time was not ripe for such drastic social and legal change. They feared that the Supreme

Court would reject a case seeking total racial integration throughout American public education. Such a defeat, they argued, would result in further frustration and continued racial inequality and lack of opportunity.

Determined to succeed, Marshall pushed ahead. The Supreme Court agreed to hear cases that presented the same issue: Was it legal to mandate separation of the races in public schools?

Two of the cases came from South Carolina and Virginia. Parents had sued to get their children into white schools. In both cases, federal courts had upheld segregation. In a similar case, Delaware's Supreme Court had ordered a district to admit black students to white schools until adequate classrooms could be provided for blacks. The final case was from Topeka, Kansas. The Topeka schools for blacks and whites were equally good, but Oliver Brown wanted his 8-year-old daughter, Linda, to attend a school close to home. State law prevented the white school from accepting Linda because she was black, and the appeals court upheld the law. All the cases had been appealed to the Supreme Court. The court agreed to consider the four cases together.

NAACP lawyers worked furiously to present the best possible case. In 1952, Marshall presented the legal argument to the court. In chambers, the justices were divided. Several justices were concerned about the probable reaction of violence and civil disorder among white Southerners if the court ruled school segregation unconstitutional. Chief Justice Fred Vinson, who had written earlier opinions striking down segregation in universities, appeared reluctant to extend those opinions to the public schools.

Vinson died in the summer of 1953 before a final decision in the case. President Dwight Eisenhower appointed Earl Warren as his replacement. Warren resigned as governor of California to take the position of chief justice.

The court heard a second round of oral arguments on the case. Chief Justice Warren was determined to overturn the "separate but equal" doctrine and equally determined to orchestrate a

unanimous decision in a case of such political magnitude. With the assistance of Justice Felix Frankfurter, the new chief justice used his considerable political skills to accomplish this goal.

On May 17, 1954, the Supreme Court announced its dramatic unanimous decision in the landmark case of *Brown v. Board of Education*. Segregation of children in America's public schools, when authorized or required by state law, violated the U.S. Constitution, specifically the 14th Amendment's guarantee of equal protection of the law. Chief Justice Warren's opinion relied on scientific evidence in concluding that segregated schools promoted feelings of inferiority in black children. Because this reduced their motivation to learn, Warren and his fellow justices determined that segregated educational facilities were inherently unequal.

Aftermath

The *Brown* decision was one of the most important in the 20th century. More than any other case, it expanded the legal rights of African Americans. For the first time, many blacks saw that American justice system might actually help them achieve full justice and equality. Robert Williams, a Marine Corps veteran and a civil rights leader, spoke for many:

On this momentous night of May 17, 1954, I felt that at last the government was willing to assert itself on behalf of first-class citizenship, even for Negroes. I experienced a sense of loyalty that I had never felt before.

For all its historic and constitutional significance in declaring equal educational opportunity, the *Brown* decision was deliberately limited in language and scope. Warren had done this to assure a unanimous decision. The Supreme Court issued no orders to the defendant school boards on when they should end their segregated practices.

The following year, the court decided what is known as *Brown II* on how the *Brown* decision should be implemented. The NAACP argued that schools should be desegregated immediately or on a fixed schedule. The school districts argued

that this could not be done and would result in chaos. The Supreme Court in another unanimous decision written by Chief Justice Warren required school boards to "make a prompt and reasonable start" toward compliance. It directed the lower courts to issue orders to schools to admit black children "with all deliberate speed." Such language reflected a concern for the political realities of the time.

Following the Supreme Court's *Brown* decisions, the court continued to strike down legal segregation throughout the 1950s and 1960s. In a series of short opinions, the court outlawed segregation in buses, parks, public golf courses, and other places. In each case, the court cited the *Brown* opinion. In 1967 in *Loving v. Virginia*, the court ruled that states could no longer outlaw people of different races from marrying each other. In that ruling, Chief Justice Warren noted that the Virginia statute, which the court declared invalid, did nothing more than endorse the doctrine of white supremacy. By the end of the 1960s, the court had ended all aspects of legal segregation.

For Discussion

1. What was the Supreme Court's decision in *Plessy v. Ferguson*? What effect did this decision have?
2. Why do you think NAACP attorneys chose graduate schools as their first line of attack on the doctrine of separate but equal?
3. What were restrictive racial covenants? What argument did their defenders use to show that they did not violate the 14th Amendment? How did the Supreme Court rule on these covenants? Do you agree with the court's reasoning? Explain.
4. What was the Supreme Court's decision in *Brown v. Board of Education*? How was this decision extended in later cases?
5. Do you agree with the *Brown II* decision? Explain.

ACTIVITY

The Meaning of *Brown*

In 2007, the U.S. Supreme Court decided an important school integration case, *Parents Involved in Community Schools v. Seattle School District*. The case consolidated cases from two public school districts—Seattle, Washington, and Louisville, Kentucky. Some parents in both districts objected that their children were assigned to schools based on race.

The school integration plans in the two districts differed. In the Seattle district, high school students could enroll in any of the district’s 10 high schools. But when a school was oversubscribed, students were selected based on race to make sure that the school was integrated. The Louisville district plan was based on 25-year-old court-mandated order to desegregate its once legally segregated schools. In 2000, the court lifted the order, but the district decided to keep part of the court’s plan to place to prevent the schools from segregating again. The plan requires all non-magnet elementary schools to have a black enrollment of no less than 15 percent and no more than 50 percent.

The U.S. Supreme Court in a 5–4 decision held both plans unconstitutional. The opinion of the court held that public schools could not use race as a basis for assigning students to schools. (The decision was a plurality opinion. Justice Kennedy agreed that the two programs were unconstitutional, but disagreed that race could never be used under any circumstances.)

In this major case, all the written opinions cited the *Brown* decision and claimed to be following *Brown*. (Below are excerpts from the opinion of the court, a concurring opinion, and two dissents.)

Heralded as a great decision, *Brown v. Board of Education* is one of the most important decisions in the history of the Supreme Court. Yet its meaning seems controversial.

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Imagine that you are an editorial writer for a major newspaper. You are to write an editorial on the meaning of the *Brown* decision and on which side got the meaning of *Brown* correct in the 2007 decision of *Parents Involved in Community Schools v. Seattle School District*. Support your editorial opinion with material from the article, the 14th Amendment, and the excerpts from the opinions in *Parents Involved in Community Schools v. Seattle School District*.

Chief Justice Roberts (opinion of the court):

What do the racial classifications do in these cases, if not determine admission to a public school on a racial basis? Before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin. The school districts in these cases have not carried the heavy burden of demonstrating that we should allow this once again—even for very different reasons. For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past segregation, such as [Louisville], the way “to achieve a system of determining admission to the public schools on a nonracial basis,” [the quote is from *Brown II*] is to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.

Justice Thomas (concurring with the opinion of the court):

What was wrong in 1954 cannot be right today. Whatever else the Court’s rejection of the segregationists’ arguments in *Brown* might have established, it certainly made clear that state and local governments cannot take from the Constitution a right to make decisions on the basis of race None of the considerations trumpeted by the dissent is relevant to the constitutionality of the school boards’ race-based plans because no contextual detail . . . can “provide refuge from the principle that under our Constitution, the government may not make distinctions on the basis of race.” [This quote is from his concurring opinion in *Adarand Constructors v. Peña* (1995).]

In place of the color-blind Constitution, the dissent would permit measures to keep the races together and proscribe measures to keep the races apart. Although no such distinction is apparent in the Fourteenth Amendment, the dissent would constitutionalize today's faddish social theories that embrace that distinction. The Constitution is not that malleable. . . . Indeed, if our history has taught us anything, it has taught us to beware of elites bearing racial theories. . . . Can we really be sure that the racial theories that motivated *Dred Scott* and *Plessy* are a relic of the past or that future theories will be nothing but beneficent and progressive? That is a gamble I am unwilling to take, and it is one the Constitution does not allow.

Justice Stevens (dissenting):

There is a cruel irony in The Chief Justice's reliance on our decision in *Brown v. Board of Education*. The first sentence in the concluding paragraph of his opinion states: "Before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin." . . . The Chief Justice fails to note that it was only black schoolchildren who were so ordered; indeed, the history books do not tell stories of white children struggling to attend black schools. In this and other ways, The Chief Justice rewrites the history of one of this Court's most important decisions.

. . .

The Court has changed significantly . . . It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision.

Justice Breyer (dissenting):

For much of this Nation's history, the races remained divided. It was not long ago that people of different races drank from separate fountains, rode on separate buses, and studied in separate schools. In this Court's finest hour, *Brown v. Board of Education* challenged this history and helped to change it. For *Brown* held out a promise. . . . It was the promise of true

racial equality—not as a matter of fine words on paper, but as a matter of everyday life in the Nation's cities and schools. . . .

. . . . Today, almost 50 years later, attitudes toward race in this Nation have changed dramatically. Many parents, white and black alike, want their children to attend schools with children of different races. Indeed, the very school districts that once spurned integration now strive for it. The long history of their efforts reveals the complexities and difficulties they have faced. And in light of those challenges, they have asked us not to take from their hands the instruments they have used to rid their schools of racial segregation, instruments that they believe are needed to overcome the problems of cities divided by race and poverty. . . .

The last half-century has witnessed great strides toward racial equality, but we have not yet realized the promise of *Brown*. To invalidate the plans under review is to threaten the promise of *Brown*. The plurality's position . . . is a decision that the Court and the Nation will come to regret.