

Book Review

A Storm Over This Court: Law, Politics, and Supreme Court Decision Making in *Brown v. Board of Education*

Jeffrey D. Hockett

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The *Brown v. the Board of Education* decision of 1954 is considered a watershed moment not only for U.S. legal history but also for that country's modern history. Often referred to simply as *Brown*, the decision is still considered one of the key events of the nation's history through the mid-20th century. The case was actually named after the first of five plaintiffs from around the American South and Midwest who petitioned the federal government for constitutional rights to equal public education. As such, *Brown* did mark a period of change in American race relations for the better. The decision's centrality to this history rings true especially in relation to the acclaimed campaigns for rights waged by African American communities throughout the U.S. South, where legal or Jim Crow racial segregation existed from the mid-to-late-19th century.

Brown became the signpost for impending social change during the 1950s and culminated in the passage of civil rights legislation in 1964 and 1965. Collectively, this body of legal jurisprudence and congressional legislation ostensibly protected 14th Amendment rights once and for all. The march toward social change during this period was of course famously led by figures and organizations like Martin Luther King, Jr., and the Southern Christian Leadership Conference and other church and student based movements who came to symbolize civil rights struggles in the United States to the world. The *Brown* decision did legally overturn the *separate but equal* doctrine that had been enshrined in the *Plessy v. Ferguson* case of 1896 wherein Jim Crow forms of racial segregation in public accommodations, transit, restaurants, schools, etc., were enabled by the highest court of the land. After the *Brown* decision, ongoing racial inequalities rooted in longstanding forms of economic injustice continued. As such, many scholars of civil rights and education now look to broader chronologies, periodizations, and regional foci, notably through studies of racial injustice in northern urban areas where discrimination was more subtle, beyond the southern-based locales that *Brown* helped highlight (Hall, 2005). Still, because of its signal impact, the *Brown* decision remains a major point of departure and discussion for many about the history of this period.

As a result of its prominence in various historical literatures, the *Brown* decision has attracted a great deal of attention. As Jeffrey D. Hockett's *A Storm Over This Court: Law, Politics, and Supreme Court Decision Making in Brown v. Board of Education* (2013) demonstrates, interpretations of the case are invariably precise and highly focused in form since the scholarly work that needs to be marshaled in any new study of the subject is vast. Hockett's

work in political science and constitutional law here is no exception. The stated purpose of *A Storm Over This Court* is to challenge the “normative assessment of the Warren Court’s constitutional jurisprudence by demonstrating the problematic nature of an attitudinal account of the *Brown* decision” (p. 5).

Hockett seeks to challenge the received wisdom that the nine justices who decided on *Brown*, led by Chief Justice Earl Warren, did so mainly as a reflection of their policy values and attitudes. Hockett indicates how many scholars and pundits alike have perceived the *Brown* decision solely in these attitudinal, or as he defines it, “instrumental” (p. 5) terms. In this view, the *Brown* decision was mainly influenced by a liberalizing America, which for many conservatives then and now actually undermined proper and effective judicial process. Hockett notes how this view figures “prominently” (p. 5) and hence problematically in “contemporary conservative criticism of the jurisprudence of the Warren Court” (p. 5).

Alternatively, Hockett notes how many of the justices involved in the case were actually motivated by a diversity of factors—factors that also came from a non-instrumentalist or institutional basis. As such, justices were motivated by traditional views of the court’s historic mission, conflicting interpretations of the U.S. constitution and the history of appeals to 14th Amendment rights by minority groups. They were also motivated by the Cold War imperatives of the U.S. state and fears about whether such a decision would incite violence that the nation did not want to have on display. These factors all arguably influenced *Brown*’s vague language about the actual implementation of desegregation. As Hockett concludes, “multiple factors . . . influenced the justices in *Brown*” notably “those that focus on the interplay of instrumental and noninstrumental factors” (p. 13).

Of particular interest in Hockett’s study is the degree of attention he pays to the conference papers and notes drafted and re-drafted by the nine presiding Supreme Court justices at various stages of their decision-making process in *Brown* over the course of the early to mid-1950s. As Hockett writes, “We can acquire a sense of the Court’s institutional mission during a certain period of time only by examining conference notes, memoranda, draft opinions, and memoirs with a view to reconstructing the justices’ states of mind” (p. 95) in relation to the respective role each saw for themselves as part of the U.S. Supreme Court. What stands out in Hockett’s assessment is the degree to which these nine justices actually differed in terms of their personal views on American racial history as well as the relative impact on the case of the provocative social science evidence put forward by the petitioners. One of the most notable pieces of evidence was the famous black/white doll test conducted by Kenneth Clark and his graduate students in the late-1930s and 1940s, which demonstrated how many black children had potentially internalized racism because of their preference for white dolls.

Against the view that the Warren Court was merely part of the liberal shift in American racial politics at mid-century, Hockett reviews the contradictions of particular justices whose personal views on racial matters were never consistent. For Hockett, these contradictions undermine the attitudinal approaches to their decisions or even the possibility that the justices were profoundly transformed by the experience. Rather, southern justices like Hugo Black, who had been a member of the Ku Klux Klan, and Warren himself, who was governor of California when Japanese Americans were racially profiled and interned during World War II, had to find ways to combine their personal values and policy views with the institutional and strategic imperatives of affirming a unanimous decision to strike down the legality of Jim Crow.

In essence, Hockett suggests that these justices did not necessarily reconcile their policy preferences with prevailing liberal racial views. Rather, justices like Earl Warren found

“compelling the petitioners’ argument that segregation was part of a long-standing effort in the South to subjugate blacks, and that he accepted the corresponding view that the Court’s mission is to rectify such failings of Democratic government” (p. 180). Such judicial opinions were complex and certainly reflected liberal political currents during the mid-1950s to a degree. But, as Hockett indicates, these judicial decisions were more rooted in a strategic sense of the court’s historic mission to protect democratic citizenship rights as outlined in the U.S. Constitution.

Overall, *A Storm Over This Court: Law, Politics, and Supreme Court Decision Making in Brown v. Board of Education* offers a compelling, if highly-focused, account of U.S. Supreme Court decision-making. It would certainly interest advanced students of U.S. legal and educational history in particular. However, there are many other recent works by scholars such as Peter Irons (2002), Derrick Bell (2005), and Richard Kluger (2004) that would make more suitable and accessible starting points for understanding the larger historical significance of *Brown* to ongoing struggles against racial injustice and educational inequity which are once again front page news.

References

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