

BROWN

RACIAL SEGREGATION IN EDUCATION

Well before the 1880s and 1890s, states imposed school segregation by law. State Supreme Courts (incl. MA, OH, CA, NY, & IN) upheld these laws even after the passage of the 14th Amendment.

Cory v. Carter (Indiana Supreme Court, 1878): The state constitution “was made and adopted by and for the exclusive use and enjoyment of the white race.”

JIM CROW LAWS

“Jim Crow”: Thomas “Daddy” Rice had a minstrel show in the 1830s called “Jump Jim Crow”, in which he blackened his face, danced and sang in a way that reflected the worst black stereotypes.

Southern States passed “Jim Crow” laws mandating racially segregated parks, libraries, hotels, restaurants, theaters, and public transportation. From 1896 to 1938, these laws were upheld as constitutional under the “separate but equal” doctrine of *Plessy v. Ferguson*.

MCLAURIN

A 1941 Oklahoma law mandated racial segregation in Oklahoma schools. George McLaurin, a black retired professor and citizen of Oklahoma, with an MA in hand, was denied admission to the Ph.D. program of Univ. of Oklahoma graduate school of education. A District Court ordered the State to provide him with the education he sought.

Oklahoma then amended its laws to allow for the admission of blacks to universities that offered degrees not offered by State supported schools reserved for blacks, whereupon McLaurin was admitted to the Ph.D. program in education at the Univ. of Oklahoma.

The catch: The amended law required universities to offer programs to blacks “on a segregated basis.”

At first, McLaurin was required to sit apart at a designated desk in an anteroom adjoining the classroom, surrounded by a rail with a sign stating “Reserved for Colored”; to sit at a designated desk on the mezzanine floor (rather than the main floor) of the library; and to sit at a designated table and to eat after all the white students had finished eating in the school cafeteria.

McLaurin objected to these demeaning measures. The university then removed the rail and the sign, allowed McLaurin to sit in the classroom (rather than in the anteroom), to study on the main floor of the library, and to eat in the cafeteria at the same time as other students. But in the classroom, library, and cafeteria, he was still required to sit in a designated area or at a designated desk.

THE DECISION

McLaurin v. Oklahoma State Regents (1950)

Chief Justice Fred Vinson (a Truman appointee) argued that the amended Oklahoma statute violated the EP Clause.

Vinson relied on the “separate but equal” doctrine, holding that Oklahoma’s attempt to accommodate McLaurin by separating him from other students in the way it did deprived him of an education on equal terms with white students.

THE IMPORTANCE OF INTANGIBLES

Before *McLaurin*, State courts measured equal opportunity in education in tangible currency (buildings, teachers, teaching materials, etc.).

In the *McLaurin* decision, Vinson claimed that equality of opportunity requires more than equality of “tangibles”: it also requires equality of “intangibles”.

“The State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that [he] is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.”

SWEATT

Heman Sweatt, a black postal worker, was denied admission to UT Law School in 1946, because the Texas Constitution had been amended to prohibit blacks from attending “white” schools. Sweatt filed suit in state court, which held that since Texas had not provided a law school that would admit blacks, the State was violating the EP Clause by denying Sweatt admission to the UT Law School.

The state court gave UT six months to make alternative arrangements that would enable it to avoid violating Sweatt’s right to equal protection. By December 1946, UT officials had drafted plans to open a separate law “school” for blacks in February 1947. The new

law “school” would occupy 4 basement rooms in an Austin office building, and would have part-time UT law school faculty and no library.

UT claimed that the new law “school” was “substantially equal” to the UT Law School. Sweatt refused to register at the new “school” and took his case to the US Supreme Court, charging that his equal protection rights would continue to be violated under the new plan.

THE DECISION

Sweatt v. Painter (1950)

Vinson held that UT’s plan to open a new law school reserved for blacks violated its duty under the EP Clause to provide “substantially equal” educational opportunities to blacks, and ordered that Sweatt be admitted to the UT Law School.

As in *McLaurin*, Vinson relied on the “separate but equal” doctrine, despite Thurgood Marshall’s argument that *Plessy* should be overturned.

TANGIBLES

Vinson cited the tangible differences between UT Law School and the new law school for blacks: “We cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the UT Law School is superior.”

INTANGIBLES

As in *McLaurin*, Vinson also cited differences in intangible factors: “What is more important, the UT Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close.”

BROWN = FOUR CASES

Briggs v. Elliott (South Carolina)
Brown v. Board of Education (Kansas)
Davis v. County School Board (Virginia)

Gebhart v. Belton (Delaware)

All four States either required or permitted public school boards to operate their schools on a segregated basis.

THE ISSUE

The US Supreme Court faced the question of whether de jure segregation in State educational facilities violates the EP Clause, and therefore whether to overturn the “separate but equal” doctrine announced in *Plessy*.

Earl Warren, newly appointed to the Court by President Eisenhower, crafted a unanimous opinion.

THE DECISION

Limitations of Original Intent

The Framers of the 14th Amendment differed as to what they intended the Amendment to accomplish.

We cannot know what they would have said if the question of segregation in public schools had been put to them, because public education was virtually nonexistent in the South, and very rudimentary in certain areas in the North, in 1868.

PRECEDENTS

Plessy had been interpreted to require “substantial equality” in educational facilities, where this sort of equality was to be measured in tangible terms.

Sweatt did not require the Court to revisit *Plessy*, since it was obvious in *Sweatt* that the facilities being offered to black law students were clearly unequal to those on offer to white law students in all tangible respects.

THE ARGUMENT

1. Equal protection of the laws requires protection of the right to equality of opportunity.

“It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has

undertaken to provide it, is a right which must be made available to all on equal terms.”

2. Equality of opportunity requires more than equality in tangible characteristics: it also requires equality in intangible characteristics.

Precedents: *Sweatt, McLaurin*

3. De Jure segregation, in and of itself, is responsible for inequality of intangible characteristics, particularly with respect to matters affecting a child’s sense of self-respect and self-worth. [See Clark’s Doll Test]

“Segregation has a detrimental effect upon colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children.”

CONCLUSION

4. De Jure educational segregation by a State denies to black children the equal protection of the laws.

“We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs are, by reason of the segregation complained of, deprived of the equal protection of the laws.”