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Introduction

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INTRODUCTION

JOEL K. GOLDSTEIN*

Brown v. Board of Education[1] is the seminal case of the Twentieth Century. Mere mention of the case can start discussion on any number of topics, all important and all that relate to, or were importantly affected by, *Brown*. Some of those discussions relate to the immediate subject of *Brown*: Was state-imposed racially segregated public education a violation of the Equal Protection Clause? What is the nature of race relations in America? How close are we to achieving a racially just society? How fair is our system of public education? Others might focus on *Brown* for its impact on institutions of government: What does *Brown* suggest about the nature of law and the judicial role? What role did *Brown* have in the proliferation of constitutional rights claimed since then? And what impact did it have on the relative roles and behavior of national and state government and of different institutions of the federal government? Finally, *Brown* suggests a range of historical questions, regarding the origins and nature of segregation and discrimination, the factors that produced the decision, and its impact, both immediate and over a longer period.

These are only a few of the rich body of topics that *Brown* invites, but more than enough to suggest that the fiftieth anniversary of *Brown* is an appropriate occasion to focus again on that historic case. On October 10, 2003, Saint Louis University School of Law held a day-long conference on *Brown* in anticipation of its fiftieth anniversary on May 17, 2004. The articles and essays published in this volume grew out of that event.

The conference was held as an expanded version of our annual Richard J. Childress Memorial Lecture. Named for a former dean of our law school,[2] the Childress Lecture has become the high point of the academic year since 2000.

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1. 347 U.S. 483 (1954).

2. The Childress Lecture was named for Richard J. Childress, dean of our law school from 1969 to 1976. The lecture commemorates the numerous contributions he made to the School of Law. He was a member of the faculty at the School of Law for almost thirty years, and served for fifteen years as associate dean and dean. In addition to his strong commitment to the School of Law, Dean Childress was dedicated to legal service, holding memberships in the American Law Institute and the Missouri Bar Committee on the Bill of Rights. He was a respected professor who was well-known for his broad and visionary approach to teaching constitutional law.

SAINT LOUIS UNIVERSITY SCHOOL OF LAW

Each year since then, an eminent legal scholar has delivered a lecture on a pressing topic in law and has published a major article in the *Saint Louis University Law Journal*.[3] A volume of the *Law Journal* is dedicated to publishing the lecture and articles, comments, and essays that accompany it on related topics.

This year's Childress Lecturer, William E. Nelson, continues that tradition. The Judge Edward Weinfeld Professor of Law at New York University School of Law, Professor Nelson is one of our nation's foremost legal historians. A prolific scholar, Professor Nelson's books include *The Fourteenth Amendment: From Political Principle to Judicial Doctrine*,[4] *Marbury v. Madison: The Origins and Legacy of Judicial Review*,[5] and *The Legalist Reformation: Law, Politics, and Ideology in New York, 1920–1980*.[6] Professor Nelson has managed to produce a large corpus of high-quality scholarship even while being heavily engaged in the life of his law school for nearly a quarter-century and while finding time to mentor and encourage dozens of young academics. His scholarship and contributions to legal education make him a model for others.

Professor Nelson has focused his lecture and Article on addressing a shift in the jurisprudence of legal realism that he connects to *Brown*. Professor Nelson's argument is rich and nuanced and cannot be adequately reduced to a single paragraph. In essence, he argues that *Brown* played a role in transforming the way in which law is conceived. Although legal realists have dominated the jurisprudential landscape of the country since the 1930s, legal realism has evolved and changed during that time. Before *Brown*, legal thinkers viewed judges as agents of society who made law conform to the wishes of society. After *Brown*, however, legal thinkers shifted their emphasis to view law as a force that determines the ultimate direction society takes.

The three commentators are uniquely positioned to discuss Professor Nelson's provocative claim. Judge Louis Pollak, former dean of Yale and University of Pennsylvania Law School, was, of course, the author of *Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler*,[7] one of the responses to Herbert Wechsler's controversial article[8] that questioned the

3. *See* Jerold H. Israel, *Free Standing Due Process and Criminal Procedure: The Supreme Court's Search for Interpretive Guidelines*, 45 ST. LOUIS U. L.J. 303 (2001); Harold Hongju Koh, *A United States Human Rights Policy for the 21st Century*, 46 ST. LOUIS U. L.J. 293 (2002); Thomas W. Merrill, *The Making of the Second Rehnquist Court: A Preliminary Analysis*, 47 ST. LOUIS U. L.J. 569 (2003).

4. (1998).

5. (2000).

6. (2001).

7. 108 U. PA. L. REV. 1 (1959).

8. Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HAR. L. REV. 1 (1959).

SAINT LOUIS UNIVERSITY SCHOOL OF LAW

rationale behind the *Brown* decision. Judge Pollak is joined by two authors of recent books dealing with *Brown*, Robert J. Cottrol, the Harold Paul Green Research Professor of Law at George Washington University Law School,[9] and Mary L. Dudziak, the Judge Edward J. and Ruey L. Guirado Professor of Law and History at University of Southern California School of Law.[10] Professor Jack Greenberg of Columbia, the long-time Director and Counsel of the National Association for the Advancement of Colored People (NAACP) Legal Defense and Education Fund, discusses insights on the role of *Brown* in American history from his recent experience in Budapest integrating Roma children into public schools.

The Supreme Court's recent decisions in the Michigan affirmative action cases[11] produce some opportunity to consider *Brown*'s legacy in at least one aspect of education. Dean Evan Caminker of the University of Michigan School of Law was among those who directed the Law School's defense in *Grutter v. Bollinger*.[12] He offers insights regarding the litigation strategy that helped shape the outcome of that case. Professor William LaPiana, the Rita and Joseph Solomon Professor of Wills, Trusts and Estates at New York Law School, has been engaged in a lengthy study of the LSAT. His Article presents insights into that instrument as a tool for admissions decisions. My Article argues that *Grutter* went well beyond the Court's 1978 decision in *Regents of University of California v. Bakke*[13] by expanding the parameters of the student diversity rationale underlying race-conscious admissions.

Finally, three leading young historians have contributed separate Articles from their larger studies that consider various aspects of the aftermath of *Brown*. Professor Kevin Kruse of Princeton University's Department of History focuses on the ways in which segregationists at the state level worked to thwart the implementation of *Brown*. Focusing on Georgia, he demonstrates how the strategies its leaders pursued eroded, rather than supported, the old racial caste system. Professor Tomiko Brown-Nagin, Associate Professor at Washington University School of Law, considers the ambivalence of African-Americans in Atlanta towards *Brown* and the impact of social dynamics in the black community on the implementation of *Brown*. Professor Anders Walker of the John Jay College of Criminal Justice examines the intersection between the southern judiciary and *Brown* to demonstrate the ways in which the decision catalyzed innovations in political and judicial technology.

9. *See* ROBERT J. COTTROL, RAYMOND T. DIAMOND & LELAND B. WARE, BROWN V. BOARD OF EDUCATION: CASTE, CULTURE AND THE CONSTITUTION (2003).

10. *See* MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY (2000).

11. Grutter v. Bollinger, 123 S. Ct. 2325 (2003); Gratz v. Bollinger, 123 S. Ct. 2411 (2003).

12. 123 S. Ct. 2325 (2003).

13. 438 U.S. 265 (1978).

SAINT LOUIS UNIVERSITY SCHOOL OF LAW

*Brown*and the questions it raises richly deserve our attention. It is accordingly appropriate that so many institutions are devoting some time this year to studying that decision. We believe this volume makes an important contribution to education about some of the issues *Brown* raises.