SYMPOSIUM INTRODUCTION

COMMEMORATING BROWN AND THE CIVIL RIGHTS ACT: LEARNING FROM THE PAST AND HOPING FOR THE FUTURE

Kristi L. Bowman

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In 1954, the Supreme Court decided Brown v. Board of Education;\(^1\) ten years later, Congress enacted the Civil Rights Act.\(^2\) These two monumental changes in American law dramatically expanded the educational opportunities of racial and ethnic minority children across the country. They also changed the experiences of white children, who have learned in increasingly diverse classrooms. 2014 is an anniversary year for those two historical events and, like many anniversaries, it causes us to reflect on how far we have come and yet how far we also have to go.

\(^{1}\) 347 U.S. 483 (1954).
To encourage such reflection, Michigan State University has sponsored dozens of programs across campus to explore the impact of those changes. One of those programs was an outstanding symposium co-hosted by the Michigan State Law Review, the Michigan State University College of Education, and the University of Missouri–Kansas City College of Law in April 2014.

The live symposium, which was shared via a two-day videoconference between MSU and UMKC, traced the narrative of school desegregation and integration in the United States. It featured individuals who participated in major cases as plaintiffs and community activists; lawyers who represented parties in these cases; and scholars from various disciplines who are considered many of the nation’s leading school desegregation scholars. We are honored to collect some of their contributions in this symposium issue and to collect others in a book forthcoming with Michigan State University Press.

It is particularly important for us at Michigan State to commemorate Brown and the Civil Rights Act because of Michigan State’s comparatively small but nonetheless meaningful contributions to Brown and to the Civil Rights Movement. A Michigan State sociology professor, Dr. Wilbur Brookover, was an expert witness for the NAACP in the Brown v. Board of Education trial. Dr. Brookover was examined by Jack Greenberg, and his testimony helped the NAACP establish what would become a key premise of the Brown decision: that segregation harmed African-American children. A few years later, Little Rock Central High School became one of the most contentious sites of school integration. When those brave African-American students collectively known as “the Little Rock Nine” neared high school

5. Id.
9. Id. at 164-65.
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graduation, Michigan State University recruited them.\textsuperscript{10} Two of them enrolled here in East Lansing; Ernest Green received a B.A. and M.A. from MSU, and Carlotta Walls LaNier attended MSU for two years before transferring to and graduating from Colorado State College (now the University of Northern Colorado).\textsuperscript{11} Accordingly, we begin this issue of the Law Review by dedicating it to former Michigan State University President John Hannah, with a piece written by David Thomas.\textsuperscript{12}

The first three articles in the issue then establish an important foundation for discussing racial and ethnic educational opportunity today. The first piece is actually a transcript of the opening panel at the April symposium, which focused on the 1946 federal district court decision Mendez v. Westminster.\textsuperscript{13} Sylvia Mendez and her brother Gonzalo Mendez tell us about their experience as Latino children who were denied enrollment at the town’s “white” school. We also hear about how their parents remembered their roles in a case that was the first successful school desegregation lawsuit in federal court, and a major victory for Latinos’ and Latinas’ educational rights. Documentary filmmaker Sandra Robbie adds important social context to the discussion; Judge Frederick Aguirre provides perceptive legal commentary; and political scientist Dr. Philippa Strum discusses some of the challenges involved in conducting research about school desegregation.

We then feature a unique article by Professor Steven Calabresi and Michael Perl, which argues that Brown v. Board of Education was rightly decided on originalist grounds.\textsuperscript{14} As one would expect, their historical research is exhaustive, and the resulting article is an important contribution to the literature. Next, because school desegregation and school finance litigation are both rooted in a desire to ensure that disadvantaged children receive the same educational opportunities as their more advantaged peers, it is fitting to include an insightful article about the relationship between these two litigation strategies by MALDEF Senior Regional Counselor.

\textsuperscript{11} Id.
David Hinojosa, who has litigated many such cases, and Karolina Walters. As Hinojosa and Walters argue, despite extensive school finance litigation over the past few decades, students still have vastly different equal educational opportunities. Continued and increasingly nuanced school finance litigation is likely a necessary, but not sufficient, part of achieving the promise of Brown.

Based on that excellent foundation, the issue turns to analyses of educational opportunity today. Supreme Court decisions set limits for policy approaches; thus, the second part of the issue begins with an essay by Dean Erwin Chemerinsky, which analyzes the Court’s most recent desegregation decision from 2007: Parents Involved in Community Schools v. Seattle School District No. 1. Chemerinsky helpfully contextualizes the Court’s 4-1-4 decision and then parses it, culminating with a discussion of the impact of Parents Involved on school districts and in courts.

Adding to Dean Chemerinsky’s analysis, Professor Darrell Jackson discusses in great detail the integration efforts in Seattle and Louisville, effectively engaging the work of the National Academy of Education to underscore the legitimacy and importance of the goals pursued by the Seattle and Louisville districts. Focusing on the goal of closing the racial and ethnic achievement gap, Jackson also discusses how school districts can insulate themselves from liability if they adopt voluntary integration strategies. Also considering what it means to live in a post-Parents Involved world, Professor Erica Frankenberg analyzes voluntary integration efforts in sixty-nine school districts across the country. That Frankenberg has compiled what is likely a close-to-comprehensive list of districts across the country that are engaging in voluntary integration is by itself a significant contribution to the literature; in addition to this important contribution, she carefully explains the legal and political reasons why voluntary integration plans are few and calls for

18. Id. at 669-75.
creative policymaking going forward to ensure Brown’s goal of equal educational opportunity.

One of those creative policymaking approaches is the subject of Professor Maurice Dyson’s article. The innovative federal “Promise Zones Initiative” Dyson writes about is based on the assumption that disrupting cycles of poverty and disadvantage requires a multi-faceted approach; accordingly, the initiative is sponsored by the U.S. Departments of Education, Housing and Urban Development, Justice, and Agriculture. Dyson thoughtfully discusses the types of education reform these zones should seek to include (and avoid) if the schools in these zones are able to transform themselves. Two more creative policymaking approaches are the subject of Professor Benjamin Superfine and Jessica Gottlieb’s innovative article. They argue that another way in which education reform can pursue the goals of Brown and the Civil Rights Act is via two types of reform sweeping statehouses across the country: teacher evaluation and accountability systems, and collective bargaining. The laws that regulate the employment of more than 3 million public school teachers across the United States are not often discussed as part of an “education rights” agenda, and Superfine and Gottlieb’s article shows us how shortsighted this oversight has been.

Considering new litigation and policy strategies is important, and so too is reconsidering foundational assumptions. Accordingly, this issue concludes with an article by Professor Atiba Ellis in which he argues for recapturing the potential of the civil rights model by focusing on race- and class-conscious remedies. Ellis’s article is a rich, ambitious, theoretically grounded response to the claims of post-racialism that pervade the Parents Involved plurality decision and that have gained so much traction in our society. Although it does not focus on education specifically, education advocates, and many others, have much to learn from Ellis’s piece.

Taken together, these contributions have tremendous breadth and depth. They provide important insights into the past, present, and future of the struggle for racial and ethnic—and socioeconomic—equality in our public schools. They provide hope for using law as one tool, among many, to change a broken educational system. This is important, because hope is needed: In fall 2014, nearly 50 million students are enrolling in public schools in the United States. Across the country, those students will attend schools that are increasingly isolated by race and ethnicity. The physical isolation is mirrored in test scores: despite decades of reforms, white students (as a group) continue to outperform their African-American and Latino and Latina counterparts. These disparities not only persist along the lines of race and ethnicity, though—they also remain along lines of socioeconomic status and language.

To be sure, the days of Jim Crow and invidious school segregation are far behind us. But, equal educational opportunities and schools that reflect the diversity of our communities are far ahead.
