

COMPLIANCE WITH BROWN V. BOARD OF EDUCATION: THE ROLE OF THE
ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

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In Brown v. Board of Education (1954), a unanimous U. S. Supreme Court found forced separation of the races in public schools to be a violation of the equal protection of the laws guaranteed by section one of the Fourteenth Amendment. The justices, however, did not provide a remedy to the black plaintiffs. Instead, they called for additional argument in the fall term of the Court. A year later, in Brown v. Board of Education (1955), the Court again failed to provide immediate relief. It ordered the U. S. District Courts to dismantle the dual school systems in the Southern and Border States “with all deliberate speed.” In response, nearly all the Southern governors and U. S. Congressmen and Senators representing the South vowed massive resistance to the Court’s decision in the Southern Manifesto. Because federal district judges serve on courts located in their home communities, the judges tasked with the implementation of Brown were reluctant to order desegregation and tolerated a variety of delaying tactics employed by state attorneys general. Compliance with the highest court in the land’s unanimous decision was slow indeed. South Carolina held out longest. It did not desegregate any of its schools until 1966 and did not end all official segregation until 1970.

This paper is an analysis of the factors associated with compliance in the eleven States of the Deep South. It seeks to show that the single most important event in effecting compliance with Brown v. Board of Education was congressional enactment of the Elementary and Secondary Education Act of 1965. This hypothesis is based on the

observation that the pace of compliance increased dramatically in 1966. Congress in 1964 enacted the Civil Rights Act, which prohibited any agency receiving federal funds from discriminating on the basis of race. The law did not have an immediate impact because there was little federal funding of education in 1964. The following year, however, Congress followed up by passing the Elementary and Secondary Education Act, which dramatically raised the amount of federal aid to education. Southern states had to make a difficult choice. If they continued to operate dual school systems in defiance of the federal judiciary, they would lose eligibility for millions of federal dollars and the opportunity of lessening the burden on state and local taxpayers. The theoretical basis of the hypothesis is that elected officials respond more readily to proffered rewards than to threatened punishments (Lasser, Limits of Judicial Power).

Litigation.

At the time of the first decision in 1954, seventeen southern states and the District of Columbia required that all public schools be racially segregated. A few northern and western states, including Kansas, left the issue of segregation up to individual school districts. Unlike most districts in the state, the Topeka school district had chosen segregation. Brown was a collection of four cases, from South Carolina, Virginia, Delaware and Kansas, all class action suits, where the plaintiff was suing in behalf of himself and “all others similarly situated.” The plaintiffs’ names were listed alphabetically in the complaint. Thus Oliver Brown’s name appeared first. The Supreme Court provided no immediate relief to the victorious plaintiffs in the 1954 decision. In April 1955 the court heard thirteen hours of arguments over four days on how to end segregation in the public schools. Ultimately, in Brown II (1955), the Supreme Court turned the implementation of desegregation over to the United States district courts in the

South. The district courts were ordered to desegregate schools with “all deliberate speed,” an ambiguous phrase that allowed many Southern judges to avoid desegregation for years. Linda Brown, seven years old when her father filed the lawsuit to desegregate the Topeka schools, did not attend an integrated school until she had reached junior high school. None of the children of the twenty plaintiffs in the Clarendon County, South Carolina, case ever attended integrated schools.

The Court invited the attorneys general from all of the states as well as from the federal government to present their views on the question of relief raised by Brown I. Along with the United States and the parties involved in Bolling v. Sharpe (1954), the segregation case from the District of Columbia, state officials from Arkansas, Florida, Maryland, North Carolina, Oklahoma, and Texas filed briefs and participated in the oral arguments.

Brown II did not mandate an immediate cessation of segregation, nor did it set a time table for eradicating school segregation. The Court remanded the cases to the District Courts where they had originated with orders to require the school districts to “make a prompt and reasonable start toward full compliance.” (Brown II, p. 300). Chief Justice Earl Warren, author of Brown II, directed the lower courts to fashion their decrees using principles of equity. Judges can issue two kinds of remedies, remedies at law or remedies in equity. A legal remedy in a civil suit typically is an award of monetary damages. Equitable relief frequently takes the form of an injunction, which can be specific, such as an order to stop dumping chemicals into a stream, or which can be quite broad and detailed, such as an elaborate plan gradually to transform a dual school system into a single, unitary one. The Supreme Court, in Brown II, was aware of the scope of these plans, which would have to take into account school administration, transportation,

personnel, admissions policies, changes in local and state laws, and school construction.

Symbolic Politics.

Brown is an excellent example of the twentieth-century phenomenon of “symbolic politics.” After the Second World War, prosperity spread to most of American society. Even the relative income of black Americans rose compared to the prewar period, largely as a result of massive migration from the rural South to the urban, industrial North. Although the civil rights campaign launched by the National Association for Colored People (NAACP) and the Legal defense Fund (LDF) in the 1930s had as its stated aim an end to black poverty, by the 1950s it was emphasizing rights and equality, two non-material goals. If material gains were the main object, then Thurgood Marshall would have continued to accept Plessy v. Ferguson as the law of the land and to call for separate black schools that were materially the same as the white schools. Instead, he claimed that separate schools could never be equal because of intangible differences between white and black schools. He objected to the symbol of the Negro school. In the words of Justice John Marshall Harlan in his Plessy v. Ferguson (1896) dissent, segregation was “a badge of servitude,” a symbol of inferiority. For Southerners, the Jim Crow system was a highly visible symbol of white supremacy, a symbol that constituted “victory” in the Civil War. Racial segregation was the legacy of the Confederate veterans who had regained the right to vote and to hold public office after the withdrawal of federal troops in 1877. The former rebel soldiers gained control of the state legislatures and the governorships and passed laws requiring the separation of the races over the next twenty years.

Chief Justice Earl Warren and the eight associate justices responded to the NAACP’s effort to achieve non-material legal goods by giving the plaintiffs in Brown a

symbolic victory. Legally-imposed separation of the races in the public schools, said the unanimous Court, violates the equal protection clause of the 14th Amendment. Black children have a right to attend the school nearest their home. In school assignment, they must be treated equally with white children. With the stroke of a pen, the Supreme Court of the United States destroyed the most important symbol of white supremacy.

Symbolic victory, however, was all the judicial system could give. Courts, by themselves, lack the means to destroy deeply-ingrained social customs and dismantle venerated social institutions. Law, by itself, cannot change strongly-held opinions, rooted in keenly-felt self-interest. The limitations of judicially-engineered social change are amply illustrated by the antebellum judicial fiasco of Dred Scott v. Sandford (1857). The South was determined to preserve slavery by extending it to the western territories, thereby increasing the number of pro-slavery members of Congress. Stymied by opposition in Congress, advocates of slavery turned to the third branch of government. Chief Justice Roger B. Taney, joined by four fellow Southerners, seized the opportunity provided by a suit brought by abolitionists to make clear that Congress had the power to exclude slavery from the territories. Instead, the Court ruled that the Missouri Compromise of 1820, which had banned slavery in much of the unsettled land in the West, was unconstitutional. To deprive a settler of his slave, said Taney, is a deprivation of property without due process of law, prohibited by the Fifth Amendment. The decision was timed to end the civil war in Kansas Territory, where proslavery settlers were battling with antislavery settlers to gain control and determine whether Kansas entered the Union as a slave or free state.

The Kansas Jayhawks, however, ignored the Court's opinion and continued to oppose the entry of Southern, slaveholding migrants. Congress defied the Court and

admitted both Kansas and Nebraska as free states. The Republican Party ignored the Court. Abraham Lincoln, Republican candidate for the U. s. Senate from Illinois, gave a speech following the decision in which he said the Court had no power to make policy for the nation. Its power was confined to rendering judgment in disputes between individuals. The only power the Court had was to say that Dred Scott was still a slave. It had no authority to legalize slavery in the territories. Only the national legislature could make such a broad policy decision, he said. The only consequence of the decision was to make the South realize that they could no longer rely on the federal government protect their interests and that, to preserve and expand Negro slavery, they would have to secede from the Union. Dred Scott was a symbolic victory for the South, but it did not translate into a material gain. Southern slave owners received the “right” to carry their human chattels to the territories, and the Court said that slaves and hogs were “equally” property. Public opinion in the North, however, did not agree, and the Court was feckless to convince Northerners otherwise. Neither Congress nor the president came to the Court’s assistance, and Dred Scott remained a dead letter. Likewise, Brown provided a symbolic victory for blacks but no material benefit. For ten years, it was equally a dead letter in the Deep South. The key difference between the two landmark decisions of the Court was the shift in public opinion in the North, in response to white resistance and repression in the South, that galvanized the president and Congress to take concrete steps to enforce the Court’s desegregation decision.

After 1857, the prestige of the Supreme Court fell to a low point not experienced since its very first years. Congress thought so little of the highest court in the land that it began tinkering with its membership on a regular basis, letting the number of justices fall from nine to seven and then raising it again to as high as ten, as a means of manipulating

its decisions. The Warren Court, likewise, took a risk with its controversial decision in Brown. Southern members of Congress introduced bill after bill in the 1950s and 1960s to curb the jurisdiction of the federal courts, and efforts were made to impeach Chief Justice Warren. In 1958 a court-curbing bill nearly passed the Senate. The Warren Court's civil libertarian decisions in favor of political dissidents had alarmed conservative Republicans, who joined with Southern Democrats to strike back at what they considered a dangerously liberal Court.

Limits of Judicial Power

Warren knew that he could not enforce his decision to stop separating the races in the schools (Kluger, Simple Justice, p. 535). The Court under Chief Justice Fred Vinson also understood this reality. It hesitated in 1952, ordering that the case be postponed until the 1953 term. The Warren Court hesitated, ordering that a hearing on remedies be postponed until the 1954 term. In a civil lawsuit such as Brown, there is a plaintiff and a defendant. The plaintiff, Oliver Brown, was claiming that the defendant, the Topeka Board of Education, was denying his daughter's constitutional right to attend public school on a nonsegregated basis. The Supreme Court agreed with the plaintiff's claim. There is a fundamental principle in Anglo-American jurisprudence: "Wherever there is a right, there is a remedy." Once the Court acknowledged that the Topeka Board of Education had violated Linda Brown's right, the justices should have provided her with a remedy. Remedies for deprivation of federal constitutional rights were readily available in 1954. The Court could have ordered the Board of Education to provide monetary compensation to the Brown family for the harm Linda suffered due to racial segregation. The Court could have declared a "personal and present" right under the U. S. Constitution, making denial by a school official a federal crime. The Court could then

have ordered the Department of Justice to initiate criminal proceedings against the school board members (Blaustein and Ferguson, Desegregation and the Law, p. 161). Using its equity powers, the Court could have ordered the school board immediately to stop violating Negro children's rights and to admit them to the white schools, no later than September 1954. Thurgood Marshall, on behalf of the plaintiffs, had requested that the school district lines be shifted so that the two races could share the schools equally. The Court could have requested President Dwight Eisenhower to issue a statement that federal marshals and troops would assist the Court in implementing Brown when the school year began four months later.

Of course, none of this happened. The Court refused to apply "shock therapy" to Southern society. Warren established an anomaly in American law—a right without a remedy. He knew that he was no longer in the realm of law; he had passed into the sphere of policy, where compliance involved the investment of resources and the use of force on a scale far beyond that available to judges presiding over civil suits. The most that he could do was to interpret the Constitution and wait to see how public opinion, the president and the Congress would respond. President Eisenhower, he knew, had no interest in forcing the South to integrate its public facilities. Prior to the Court's announcement of its decision in May 1954, Eisenhower invited Warren to the White House, where John W. Davis, the attorney representing South Carolina in the desegregation cases, was also a guest. The president obviously had invited Warren in order to influence his decision by putting the Southern states in the best possible light.

Justice Hugo Black, of Alabama, warned Warren that the South would engage in demagoguery and violence and that the decision would be unenforceable. In conference discussions during consideration of the Brown case, Black recalled the sad experience of

Prohibition, where the president and Congress provided only lackluster support for enforcement of the Eighteenth Amendment and noncompliance became the rule. He cautioned his brethren against issuing a decision that would be unenforceable and that could damage the Court's prestige (Newman, Hugo Black, pp. 439-440).

Chief Justice Warren and the eight associate justices knew instinctively in 1953 that the Court could not by judicial fiat end the Southern practice of legally mandating the separation of the races. State legislatures and city councils excluded blacks from nearly all types of facilities opened to the public, including those privately owned. Blacks did not enjoy access to the best municipal golf courses, swimming pools, parks, schools, drinking fountains, waiting areas or seats on public busses, or to the finest restaurants, hotels, or theatres, all of which were reserved for whites. The Jim Crow laws, moreover, which were enforced strictly throughout the South, rested on deeply rooted social customs, conventions that did not tolerate mixing of the races on the level of equality. These conventions, in turn, rested on the widespread belief, held perhaps by ninety percent of white Southerners, that persons of African descent whose ancestors were brought to the United States as slaves constituted a class of people inferior in every respect to persons of European descent, whose ancestors had settled North America and founded the United States of America. To grant the descendants of slaves full legal, political and social equality would lead inexorably to the mixing of the races and thereby the degradation of European-American society. This fear of the "Africanization" of the white community was felt most strongly in the counties where whites were in the minority. The so-called Black Belt stretched from Virginia through the Carolinas, Georgia, Alabama, Mississippi and Louisiana. Ironically, the most deeply entrenched segregated institution was the public schools, where parents' natural concern for their

children's welfare was amplified by their fear of blacks.

Defendants did comply with the first judicial decisions ending segregation in education. In Sweatt v. Painter (1950), the Supreme Court decided that the University of Texas had to integrate its law school, and the law school complied almost immediately. Desegregation of elementary and secondary schools, however, was a far different issue than integrating graduate programs at state universities, involving small numbers of blacks. After these successes in desegregating law and graduate schools, the Supreme Court in 1954 could have chosen to continue the tactic of attacking Jim Crow where there was the least resistance and invited cases challenging segregated golf courses and beaches. Another easy choice would have been for the Court to let its decision in Plessy v. Ferguson (1896) stand but insist in the five cases brought by the NAACP Legal Defense Fund that the District of Columbia and the Southern and Border states equalize funding for white and black schools. The justices, however, chose to attack segregation at its most heavily fortified point, where immediate success was least likely. Without the support of the executive and legislative branches of government, courts cannot effect a social revolution on the scale required by such a project, where not only behavior must change but also attitudes and opinions.

Defiance.

The historic 1954 ruling of the Supreme Court of the United States in Brown v. Board of Education, which abolished legal segregation in public schools, set off an immediate and vocal reaction from political leaders in the South. Southern politicians later expressed their opposition in "The Southern Manifesto," presented by a group of 100 Southern members of the U.S. Congress in March 1956. Sam J. Ervin and others: "We regard the decision of the Supreme Court in the school cases as a clear abuse of

judicial power. It climaxes a trend in the Federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people.” It invoked the doctrine of interposition, or nullification. Nineteen U. S. Senators and 81 House Members signed the Southern Manifesto.

Southern Congressmen pointed out that the original Constitution does not mention education. Neither does the 14th amendment nor any other amendment. The debates preceding the submission of the 14th amendment, they claimed, clearly show that there was no intent that it should affect the systems of education maintained by the States. The signers pledged themselves to use all lawful means to bring about a reversal of a decision they regarded as contrary to the Constitution and to prevent the use of force in its implementation. The manifesto commended “those states which have declared the intention to resist” (Yudof, Kirp, van Geel, and Levin, 1987, p. 499). Senator Strom Thurmond (D-SC), remarked, “The people and the States must find ways and means of preserving segregation in the schools. Each attempt to break down segregation must be fought with every legal weapon at our disposal.”

The school board in Little Rock, Arkansas, three days after Brown I, began preparing for desegregation. Its plan called for implementation to begin in September 1957 and to end in 1963. The state legislature, however, intervened. In February 1957, it passed two laws intended to thwart implementation of Brown. On September 2, 1957, the day before nine black children were to enroll in all-white Central High School, Governor Orval Faubus called out the National Guard and banned colored students from the school. A U. S. District Court judge enjoined the governor from carrying out his order, but the police removed the nine children from the school building, which was surrounded by a large hostile crowd. President Dwight Eisenhower, on September 25,

sent federal troops to Little Rock and federalized the Arkansas National Guard. Eight of the nine students completed the school year at Central High School. The federal district court, however, the following year granted a request from the Little Rock school board to postpone its desegregation plan. The U. S. Supreme Court, in an unusual special term, heard oral arguments on September 11, 1958, and unanimously denied the school board's request. Neither the governor nor the legislature, said the Court, can deny the minority students' constitutional rights.

By 1955 white opposition in the South had grown into massive resistance, a strategy to persuade all whites to resist compliance with the desegregation orders. It was believed that if enough people refused to cooperate with the federal court order, it could not be enforced. Tactics included firing school employees who showed willingness to seek integration, closing public schools rather than desegregating, and boycotting all public education that was integrated. The White Citizens Council was formed and led opposition to school desegregation all over the South. The Citizens Council called for economic coercion of blacks who favored integrated schools, such as firing them from jobs, and the creation of private, all-white schools.

Virtually no schools in the South were desegregated in the first years after the Brown decision. In Virginia one county did indeed close its public schools. In Little Rock, Arkansas, in 1957, Governor Orval Faubus defied a federal court order to admit nine black students to Central High School, and President Dwight Eisenhower sent federal troops to enforce desegregation. The event was covered by the national media, and the fate of the Little Rock Nine, the students attempting to integrate the school, dramatized the seriousness of the school desegregation issue to many Americans. Although not all school desegregation was as dramatic as in Little Rock, the

desegregation process did proceed—gradually. Frequently schools were desegregated only in theory, because racially segregated neighborhoods led to segregated schools. To overcome this problem, some school districts in the 1970s tried busing students to schools outside of their neighborhoods.

In 1962 a black man from Mississippi, James Meredith, applied for admission to University of Mississippi. His action was an example of how the struggle for civil rights belonged to individuals acting alone as well as to organizations. The university attempted to block Meredith's admission, and he filed suit. After working through the state courts, Meredith was successful when a federal court ordered the university to desegregate and accept Meredith as a student. The governor of Mississippi, Ross Barnett, defied the court order and tried to prevent Meredith from enrolling. In response, the administration of President Kennedy intervened to uphold the court order. Kennedy sent federal marshals with Meredith when he attempted to enroll. During his first night on campus, a riot broke out when whites began to harass the federal marshals. In the end, two people were killed, and several hundred were wounded.

The link between white defiance and presidential action is clearest in the relationship between Alabama Governor George Wallace and President John F. Kennedy. When Wallace threatened to block the desegregation of the University of Alabama in 1963, the Kennedy Administration responded with the full power of the federal government, including the U.S. Army, to prevent violence and enforce desegregation. The showdowns with Barnett and Wallace pushed Kennedy, whose support for civil rights up to that time had been tentative, into a full commitment to end segregation. In June 1963 Kennedy proposed civil rights legislation.

The justices did succeed eventually but not in the way they envisaged in 1954 or

1955. Warren hoped that once separate schools were declared unconstitutional school boards in the South would comply voluntarily with desegregation plans devised by federal district judges. He did not anticipate the massive resistance that elected officials would lead to the court's decision. Nor did he expect the indifference that President Dwight Eisenhower and the Congress exhibited toward the goal of dismantling Jim Crow. Nor did he foresee the violent reaction of blacks to the whites' willingness to use force to prevent compliance with Brown. The hostile crowds that threatened, intimidated and spat upon black children in Little Rock in 1958 and yelled obscenities at blacks attempting to enroll in white universities in Mississippi in 1962 and Alabama in 1963 and the use of vicious dogs and fire hoses by white police officers on black demonstrators in Birmingham in 1963 precipitated both a non-violent and violent civil rights movement that produced the March on Washington in 1963 and urban riots in 1965. Direct action by the victims of segregation awakened the executive and legislative departments of the federal government.

The President and Congress Respond.

In the decade following Brown I, progress in implementation was not speedy. As of 1964, only 2.14% of black children in seven of the eleven southern states attended desegregated schools (Horowitz & Karst, 1969). The only compliance had taken place in Kentucky, Mississippi, Oklahoma and West Virginia. Between 1958 and 1963, the Supreme Court accepted only one school desegregation case from the South, of the dozens that went to them on appeal. In June 1963, it decided Goss v. Board of Education of the City of Knoxville. In its decision, the Court struck down a "freedom of choice" plan, in which black students could choose to transfer to a white school. This plan expanded the attendance zones for both black and white schools. Each child could pick a

school within his or her zone. The students, however, had to apply to attend a different school and school personnel frequently disapproved interracial transfers (Gordon, 1994, p. 311). The Court reasoned that under these circumstances very few black children would even apply and that little desegregation would occur.

In 1963 President John F. Kennedy asked Congress to enact the first Civil Rights Act with real teeth since Reconstruction. Congress obliged the following year. In his June 1963 civil rights message, Kennedy threatened a “cutoff of federal funds by federal authorities for noncompliance in desegregation orders” (Bolner and Shanley, Busing, p. 134). Congress also responded in 1965 to President Lyndon B. Johnson’s request to enact a Voting Rights Act, a law that insured that white politicians in the South could no longer ignore black grievances.

Most important of all, Congress answered President Johnson’s call to provide substantial funding for public schools. White resistance to Brown stirred blacks to take direct action to protest the continued denial of equal treatment. Direct action included demonstrations, protests, freedom rides, sit-ins, protests and riots. The national media heavily covered these dramatic expressions of anger. Members of Congress could not ignore scenes on their television screens such as police dogs and firefighters using high-pressure hoses attacking protestors in Birmingham, Alabama. White opinion in the North solidified against the stubborn Southern segregationists and constituents in the North demanded that their representatives and senators take action. Congress, under the leadership of President Johnson, passed far-reaching legislation, including the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Elementary and Secondary Education Act of 1965. Title VI of the ESEA authorized cutoffs of federal funds to school systems that continued to practice de jure separation of the races.

The Elementary and Secondary Education Act of 1965.

Congress in 1964 passed the first civil rights law since Reconstruction. Title VI of the Civil Rights Act of 1964 authorized the federal government to cut off federal funds to school districts that were not in compliance with Brown v. Board of Education. Title VI also empowered the U. S. Attorney General to file suits for desegregation of public schools. No longer did black plaintiffs or the NAACP have to rely on private funds to finance desegregation litigation. On December 31, 1964, the Office of Education within the Department of Health, Education and Welfare sent out instructions and compliance forms to more than 25,000 school districts. These guidelines were the first efforts by the executive and legislative branches to assist the U. S. Supreme Court in implementing Brown v. Board of Education. The judiciary by itself between 1954 and 1964 had integrated less than two percent of black school children in the South (Metcalf, 1983, p. 6).

The Civil Rights Act was not immediately effective because most of the funds spent by school districts came from state and local governments. On April 11, 1965, however, President Lyndon Johnson signed the Elementary and Secondary Education Act. The law dramatically increased the amount of federal funding for public schools, from a few million to more than one billion dollars a year, and, for the first time, the threat of a cut off of federal funds became a powerful inducement to comply with federal desegregation orders. The Title I appropriation for fiscal year 1968 was \$1.2 billion, distributed to schools with large numbers of children from families that earn less than \$3,000 a year (90th Congress, 1967). The amount appropriated under Title I of ESEA soon grew to several billions (Caldas and Bankson, 2003, p. 28). The money was most welcome in the poor school districts of the rural South. In the first three years of the law,

the federal government funded libraries in 3600 schools (90th Congress, 1968, p. 40).

The change in the pace of compliance was remarkable. In 1965 95% of Southern black students still attended all-black schools (Rossell, 1990, p. 4). In the fall of 1966, only 14% of black children of school age attended predominantly white schools. In 1968 the U. S. Department of Health, Education and Welfare (HEW) issued guidelines for desegregation that eliminated “free choice” plans and endorsed means, such as busing, that did in fact eliminate vestiges of the discredited dual school system. School districts that could not demonstrate real desegregation faced a cut off of federal funds. The Office of Civil Rights within HEW was responsible for enforcement. By January 1969, HEW had issued more than 200 fund terminations under Title VI of the Civil Rights Act of 1964 (Stephan and Feagin, 1980, p.p. 17-18).

The money released by the ESEA was particularly attractive to Southern school districts because it was targeted to help districts with large numbers of pupils from low-income families. Under Title I it provided funds for what was termed “compensatory education,” education designed to compensate for the educationally impoverished environment into which these children were born. By the fall of 1972, a higher percentage of black children in the South attended predominantly white schools (44%) than in the North, where the comparable percentage was 29%. Once the financial incentive provided by the ESEA was provided, the rural districts in the South found it fairly easy to comply with Brown by dismantling the old dual systems. Desegregation of urban areas was much more complicated, however, because white flight to the suburbs had left relatively few whites in the urban core. Compliance with Brown in Southern cities resulted in mostly all-black public schools (Stephan and Feagin, 1980, pp. 18-19).

The reality was that no federal court could by itself desegregate the schools. Most

federal judges in the South refused to force local school boards to dismantle dual systems of public schools. They implicitly conspired with the segregationists to continue the status quo. A handful of judges, however, including J. Skelly Wright in New Orleans, John Minor Wisdom on the Fifth Circuit and Frank Johnson in Alabama took their duties as outlined in Brown II seriously (Holland, “J. Skelly Wright”). These U. S. District and Circuit Court judges in the South who attempted to implement Brown, however, failed. Between 1955 and 1960 federal judges in the South held more than 200 hearings concerning school desegregation. All that was achieved was token desegregation in a few cities, such as Miami, Little Rock, Nashville and Houston (Peltason, Fifty-Eight Lonely Mem, p. 132). Most of the fifty-eight federal district and circuit judges in the South did not show enthusiasm for enforcing desegregation until the mid-1960s, after Congress, the Justice Department and the Department of Health, Education and Welfare provided resources and coercive power to enforce judicial orders (Patterson, Brown v. Board, p. 91).

Before 1965 there was very little compliance with Brown. Legal scholar Walter Gellhorn described the pace of desegregation during these years as that “of an extraordinarily arthritic snail” (cited in Wilkinson, From Brown to Bakke, p. 102). By 1964, only 1.2 percent of black children in the eleven Southern states attended racially mixed schools. Almost all black children in the South who entered the first grade in 1954 graduated from all-black high schools in 1966. By 1963, even Thurgood Marshall admitted that the case-by-case litigation approach could not overcome determined white opposition. Only the president and Congress could overcome massive resistance, he came to believe (Patterson, Brown v. Board, p. 115).

President Eisenhower opposed legislation to prohibit racial discrimination in

employment and the allocation of federal funds to any recipient who practiced or approved segregation (Mayer, 1986, p. 46). Eisenhower believed that any federal action to bring about integration would violate the constitutional authority of the states and would be ineffective. He believed that improvement in race relations could only succeed if it came from local communities.

The Justice Department could make a difference when it chose to act. In 1955 the school board of Hoxie, Arkansas, admitted 25 blacks to the white public schools. White opposition, however, forced the schools to close. The Eisenhower Justice Department, however, intervened and filed a brief in federal court, which the court of appeals upheld. The schools reopened on a desegregated basis (Peltason, Fifty-Eight Lonely Men, pp. 149-150). The following year, a federal court ordered desegregation of the schools in Clinton, Tennessee. John Kasper, executive secretary of Seaboard Citizens' Council of Washington, D. C., organized opposition among whites in Clinton. The federal judge issued a restraining order, which Kasper ignored. The Department of Justice decided to support the judge and charged Kasper and sixteen others with contempt of court. Kasper was convicted and jailed (Peltason, Fifty-Eight Lonely Men, pp. 151-154).

After Kennedy was assassinated in November 1963, the new president, Lyndon Johnson, strongly urged its passage as a tribute to Kennedy's memory. Over fierce opposition from Southern legislators, Johnson pushed the Civil Rights Act of 1964 through Congress. It prohibited segregation in public accommodations and discrimination in education and employment. It also gave the executive branch of government the power to enforce the act's provisions. In response to the civil rights protests, Congress passed new and stronger civil rights laws in 1964, 1965 and 1968. The Civil Rights Act of 1964 prohibited racial discrimination in public education, public

accommodations and by employers or voter registrars. The Voting Rights Act of 1965 suspended the use of voter-qualification tests such as literacy tests and later amendments to the act banned their use. The 1968 act outlawed racial discrimination in federally funded housing projects.

Lyndon Johnson proved to be a stronger advocate of change in race relations than any previous president. Johnson, a Texan, had been inspired by President Franklin D. Roosevelt's plan to bring America out of the Depression through large-scale intervention in the economy by the federal government. Johnson, like Roosevelt, had a firm belief in the capacity of government to resolve social ills and make life better for disadvantaged people. Johnson made the Civil Rights Act, the Voting Rights Act and the Elementary and Secondary Education Act central pillars of his comprehensive legislative program that he called the Great Society. Johnson aimed the Civil Rights Act directly at Southerners and put the full force of the federal government behind the battle against apartheid. The bill was a comprehensive effort to end de jure segregation. It prohibited racial discrimination in employment and public accommodations. It authorized the Department of Justice to bring suits against school boards and other public officials who refused to desegregate the schools, thus lifting the burden of litigation off the shoulders of the Legal Defense Fund and black parents. Most importantly, the bill threatened to cut off federal aid if a state continued to practice segregation.

One of the first effects of the bill was in the effort to desegregate the schools in Drew, Mississippi, a small town in the heart of the Delta. After resisting for eleven years, the school board admitted seven black children to the all-white schools in 1965 after federal authorities took steps to cut off federal aid (Curry, Silver Rights). These three laws, the Civil Rights, Voting Rights and Elementary and Secondary Education Acts, did

more to change educational policy in the South in two years than the hundreds of lawsuits and judicial decrees had accomplished in twelve.

President Johnson persuaded Congress to pass the Voting Rights Act of 1965, which suspended the use of literacy and other voter qualification tests. Later amendments banned these tests, which often prevented blacks from voting. In the three years following its enactment, almost a million more blacks in the South registered to vote. By 1968 black voters were having a significant effect on Southern politics. During the 1970s blacks were seeking and winning public offices in majority-black electoral districts.

Emergency School Aid Act.

Another example of how Congress has used the carrot to assist the federal courts in achieving desegregation was the Emergency School Aid Act of 1972. George Wallace's victory in the Florida Democratic primary in 1972 impressed President Richard Nixon, who was seeking re-election as the Republican nominee. Wallace's popularity arose from his opposition to court-ordered busing to desegregate schools. Nixon understood that judicial coercion was producing a backlash among the American people. On March 16, 1972, Nixon asked Congress to limit sharply the federal courts' desegregation powers. The president also proposed providing financial incentives to school districts to comply with desegregation orders (Ehrlander, 2002, p. 23). Congress responded by enacting the Emergency School Aid Act (ESAA). School districts had to submit applications, and grants were awarded on a competitive basis. The funds could only be used to remedy problems caused by implementation of a desegregation plan, including the isolation of minority students within formerly all-white schools. They could not be used to pay for programs ordered by the court in a desegregation order. The

major uses of ESAA funds were developing human relations programs for students, parents and school staff, providing remedial programs in the basic skills, and developing magnet schools. White flight is one of the major consequences of implementation of desegregation plans. ESAA funds financed many magnet programs in urban school systems. Magnet schools are a means of achieving racially mixed schools without coercion. The concept is to add innovative and unique programs to a largely black school that are so attractive that white parents will send their children to it, thereby achieving racial balance (Hughes et al., 1980, pp. 124-125).

Percentage of Black Students in Schools with 90% or Greater Black Enrollment, 1970-1975 (Rist, 1979, p. 5)		
Year	National	South
1970/1971	46.44	34.20
1971/1972	42.60	26.62
1972/1973	42.00	25.72
1973/1974	40.84	23.54
1974/1975	40.53	23.37

Compliance.

Federal dollars have proven to be the most effective incentives to desegregate the schools. The first real compliance with Brown occurred when Congress for the first time made substantial federal money available for public schools in 1965. The Elementary and Secondary Education Act of 1965 was a centerpiece of Johnson’s Great Society program. For the first time, Congress provided significant federal aid to public schools. The Southern states, with large poor, black populations, were particularly interested in

the law because it provided in Title I substantial funding for “compensatory education” to aid disadvantaged children. It was a carrot designed for Southern school districts, especially in the Black Belt states of the Deep South, where resistance to racial integration was the strongest (Graham, The Uncertain Triumph, p. 203). Federal assistance to education, including Title I funding, grew steadily over the years ahead. Federal aid to schools rose by nearly fivefold from \$2.7 billion in 1964 to \$14.7 billion in 1971. Federal dollars soon constituted 30 percent of the budget of many Southern school systems. The Office for Civil Rights within HEW demonstrated its resolve when it terminated federal funding for several districts that did not meet HEW guidelines.

There were virtually no black students in majority white schools in the South as late as 1960, six years following Brown I. Between 1960 and 1970, however, the percentage jumped to 35% (Vergon, 1994, p. 484). More than one million black students entered majority-white public schools for the first time between 1968 and 1972 (U. S. Commission on Civil Rights, 1975). Nearly 1000 school districts implemented court orders calling for complete desegregation during this period, spurred on by the administration of Richard Nixon (Vergon, 1994, p. 483).

Between 1964 and 1965, the percentage of black students who attended majority-white schools, the definition of desegregation employed by HEW, rose from 11 to 16 percent in the Southern states, and from 2 percent to 6 percent in the Deep South. The biggest increase was in the five Deep South states between 1966 and 1967, when the percentage of black students in majority-white schools skyrocketed to 14 percent (Orfield and Yun, Resegregation, p. 13). By 1968 19 percent of black students attended integrated schools in the South (Hochschild, Thirty Years After Brown, p. 4). The long-awaited evidence of substantial compliance empowered the Supreme Court to issue decisions in

school segregation cases again for the first time since 1958. It ruled in 1964 in Griffin v. County School Board of Prince Edward County, Va. that a school district could not close the public schools in order to evade desegregation. The school board tried to offer tuition grants to parents so that their children could attend private schools. The Court ordered the public schools to reopen, declaring “the time for ‘mere deliberate speed’ had run out.” In 1968 in Green v. County School Board of New Kent County, Va., the Court, inspired by the success of HEW guidelines, ruled that lower federal courts should use their equity power to achieve racially balanced public schools. Giving black parents “freedom of choice” was not sufficient. Affirmative measures, such as assigning pupils and teachers to achieve racial balance in particular schools and busing, were required, said the Court, a point reiterated three years later in Swann v. Charlotte-Mecklenburg Board of Education. By 1971, everywhere in the South open defiance of the Court’s decision in Brown had collapsed.

The law gave new powers to the Department of Health, Education and Welfare, which issued desegregation guidelines to Southern school districts. In order to qualify for federal funds, school boards had to comply with these often highly detailed and specific guidelines. Federal judges found it convenient to incorporate the guidelines into their desegregation orders. Recalcitrant boards faced the cutoff of federal dollars and a finding of contempt of court. In March 1968 HEW ordered all non-compliant districts to submit plans for complete racial balance by the fall of 1969. This was the first time that Southern school officials had faced percentage-specific orders with a strict deadline attached. They complied rather than lose millions of dollars of federal aid. By 1970, the combination of executive, legislative and judicial pressure at the federal level finally overcame the last vestiges of Southern resistance to compliance with Brown. The Voting

Rights Act, moreover, had divided Southern whites, with Republicans continuing to oppose desegregation and white Democrats now endorsing it in order to win black votes.

The availability of federal money continued to influence desegregation into the 1980s. Federal judges discovered that the availability of federal funds to support magnet schools in urban areas where more than 50% of the students are black often slowed down the flight of white children to private and suburban schools (Gordon, 1994).

Conclusion.

When it comes to desegregation, rewards have been shown to be more effective in securing compliance than punishment. Rossell concluded in 1990 “incentives do indeed produce more desegregation than mandatory plans” (p. 187). The history of compliance with Brown v. Board of Education supports the conclusion that the carrot is more effective than the stick in effecting compliance with judicial decisions that require massive changes in the behavior of large numbers of people. More research, however, is needed to make the argument compelling that the Southern school districts that complied with desegregation orders in 1966, 1967, 1968, 1969 and 1970 were motivated in large part by the fear of loss of millions of dollars in Title I grants for which non-compliant districts were ineligible. Two additional inquiries suggest themselves. The first involves conducting interviews or finding transcripts of previous interviews where school district administrators and school board members talk about why they abandoned a policy of defiance and embraced compliance in the late 1960s. A second line of research is to correlate the amount of federal funds received by a sample of school districts in the years 1966-1970 with the percentage of black students enrolled in previously all-white schools.

Whatever the role of Title I or the ESAA, the President, Congress and the federal bureaucracy were more effective in achieving desegregation than the federal courts. The

difficulties that the judiciary encountered in desegregating the public schools of the South highlight the limitations of the courts as instruments of social change. The judicial branch, however, played an essential role in effecting this great social experiment. The Supreme Court acted as America's "bully pulpit," by drawing the nation's attention to social injustice (Canon, "The Supreme Court," p. 637). By invoking massive resistance from white Southerners, the Court indirectly ignited a civil rights movement that included direct action. Direct action, in turn, helped turn public opinion in the North against Southern defiance and made it politically feasible for a majority of Congress to pass landmark civil rights legislation that broke the back of segregation. The most important of these laws was the Elementary and Secondary Education Act that provided the financial incentive to operate a unitary system of public schools in the South.

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