

INTRODUCTION

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It has been nearly fifty years since the United States Supreme Court on May 17, 1954, in *Brown v. Board of Education*,¹ held out the vision of a society in which children of all races would attend school together² and would have equal opportunity to get the kind of education that would enable them to succeed as full participants in our democracy.³

It has been just over thirty years since the Supreme Court in *San Antonio Independent School District v. Rodriguez*,⁴ on March 21, 1973, limited that vision by declaring that education was not a fundamental right⁵ and that disparity in funding within a state's education system did not discriminate on the basis of any characteristic of which the "equal protection" clause⁶ should take special recognition.⁷

Justice Thurgood Marshall, who led the desegregation effort⁸ as a lawyer in *Brown*⁹ and many other cases, recognized the potential

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

2. *Id.* at 494 ("To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.").

3. *Id.* at 493 (holding that education "is the very foundation of good citizenship.").

4. 411 U.S. 1 (1973).

5. *Id.* at 35 ("Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.").

6. U.S. CONST. amend. XIV, § 1.

7. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973) ("We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class.").

8. From 1938 to 1961, Thurgood Marshall was the lead lawyer for the National Association for the Advancement of Colored People ("NAACP") and planned a string of cases up to and including the attack on school desegregation in the U.S. Supreme Court. See Mark V. Tushnet, *Marshall, Thurgood, in THE OXFORD COMPANION TO AMERICAN LAW* 543-45 (Kermit L. Hall ed., 2002).

9. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

limits that the *San Antonio*¹⁰ decision would place on the quest for equal educational opportunity. In a dissenting opinion¹¹ that was surely one of his finest works as a Justice, he decried the “retreat from our historic commitment to equality of educational opportunity”¹² and suggested that leaving equal opportunity to future legislative solutions would mean that “countless children unjustifiably receive inferior educations that [and here he was throwing the words of *Brown*¹³ back at the majority] ‘may affect their hearts and minds in a way unlikely ever to be undone.’”¹⁴

This Symposium is the result of a conference held at the American University Washington College of Law on March 20 and 21, 2003, entitled, “The Quest for Equal Educational Opportunity: *Brown* Nears 50, *San Antonio* Turns 30.”¹⁵ The goal of the conference and of the transcripts and papers prepared for this Symposium was to examine the history, context and current state of the promise of the historic decision in *Brown*.¹⁶ Rather than just celebrate that promise, the goal was to reflect on the influence of other legal and social developments, including the school finance issues in *San Antonio*,¹⁷ the effects of the resegregation of the nation’s schools,¹⁸ the debate over affirmative action and many other factors.

There can be no doubt that the decision in *Brown*¹⁹ is a national treasure. But as the landmark ruling turns fifty, *Brown*²⁰ must be more than an icon. It must continue to inspire those who believe in education as the key to the future to look for new ways to provide equal opportunity to quality education for all.

10. *San Antonio*, 411 U.S. at 28 (noting Justice Marshall’s dissenting opinion).

11. *Id.* at 70 (Marshall, J., dissenting).

12. *Id.* at 71.

13. 347 U.S. at 483.

14. *San Antonio*, 411 U.S. at 71-72 (Marshall, J., dissenting) (quoting *Brown*, 347 U.S. at 494).

15. The conference was made possible by the generous support of Dean Claudio Grossman of the Washington College of Law, and with the support and hard work of the *American University Law Review* and the Program on Law and Government.

16. 347 U.S. at 483.

17. *San Antonio*, 411 U.S. at 28.

18. See Greg Winter, *Schools Resegregate, Study Finds*, N.Y. TIMES, Jan. 21, 2003, at A14 (describing a new study by the Civil Rights Project at Harvard University showing increased racial isolation of black and Latino students in public schools).

19. 347 U.S. at 483.

20. *Id.*