

RACE AND RACES

CASES AND RESOURCES FOR A DIVERSE AMERICA

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location. He may wait in line in the cafeteria and there stand and talk with his fellow students, but while he eats he must remain apart. * * *

Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State imposed restrictions which produce such inequalities cannot be sustained. * * *

We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws. See *Sweatt v. Painter*, 339 U.S. 629. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. 339 U.S. at 640-42.

2. If the Court believed that the facilities at the black law school in *Sweatt* did not equal that of the white law school, why did the Court not simply order more money to be spent on the black law school?

3. Mr. McLaurin's segregation from his white classmates hampered his "ability to study, to engage in discussion, and exchange views with other students." Does the Court's vision of education suggest an argument that supports diversity in education? Does this argument only apply to racial diversity?

4. In *Sweatt* the court said: "It may be argued that excluding petitioner from that school is no different from excluding white students from the new school. This contention overlooks realities." What realities does the argument overlook?

The mirror image argument, that all must be treated alike is a trap of liberal legalism. "Legal liberalism teaches us that all people should be treated equally, fairly, and the same. It is the solid underpinning of the notion of the color-blind Constitution * * *. It appeared when John F. Kennedy intoned, with great emotional force, 'Race shall play no part in American society.' This is our ideal, and it is attractive. The reality is that if we say race plays no part, then the invisible system of white privilege will inevitably continue." Stephanie M. Wildman with contributions by Margalynne Armstrong, Adrienne D. Davis & Trina Grillo, *Privilege Revealed: How Invisible Preference Undermines America* 170 (1996). How is the court able to avoid this trap in *Sweatt*, recognizing that exclusion from the majority institution is different from exclusion from the less privileged law school "for Negroes," yet unable to see the lack of parallelism in other cases of unequal privilege involving race or other identity categories?

BROWN v. BOARD OF EDUCATION

347 U.S. 483 (1954).

CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and differ-

ent local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they have been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the con-

adjust normally to his environment. In these days, 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.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: " * * * his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. 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. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the 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 and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system."

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

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 and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the