

## Foreword

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## FOREWORD

PHILIP WEINBERG<sup>†</sup>

This Symposium issue of the *St. John's Law Review* both celebrates the most significant Supreme Court decision of the twentieth century, *Brown v. Board of Education*,<sup>1</sup> and recognizes how far we have yet to go to truly fulfill its momentous goals.

*Brown*, decided fifty years ago, belatedly put an end to the egregious judicial approval of racial segregation in *Plessy v. Ferguson*,<sup>2</sup> where the Supreme Court adopted the view that “[i]f one race be inferior to the other socially, the Constitution . . . cannot put them upon the same plane.”<sup>3</sup> Only Justice Harlan dissented from this display of homage to bigotry.<sup>4</sup>

Justice Thurgood Marshall, who led the fight as an advocate to overturn *Plessy* and continued in his years on the Court to speak for equality, summed up pre-*Brown* history when he noted that “during most of the past two hundred years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro.”<sup>5</sup> *Brown* was aptly described in Richard Kluger’s *Simple Justice* as a decision that “represented nothing short of a reconsecration of American ideals.”<sup>6</sup>

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<sup>1</sup> 347 U.S. 483 (1954).

<sup>2</sup> 163 U.S. 537 (1896).

<sup>3</sup> *Id.* at 552.

<sup>4</sup> *See id.* at 552–64 (Harlan, J., dissenting).

<sup>5</sup> *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 387 (1978) (Marshall, J., concurring and dissenting).

<sup>6</sup> RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 710 (1976).

This Symposium issue contains remarks as to *Brown's* tremendous social and cultural impact and details the vast effect that the decision had on the Nation from 1954 as well as its current role in shaping the American educational system. Professor Jack Greenberg of Columbia Law School, who argued one of the five appeals consolidated in *Brown* on behalf of the plaintiff African-American pupils, vividly recounts the strategy leading to the Court's ruling, as well as its resonance today.<sup>7</sup> As he notes, issues of school segregation, and how to deal with its effects, persist in other countries, as evidenced by the exclusion of Roma (Gypsy) children from schools in Eastern Europe. Attorney General Nicholas de B. Katzenbach, who played a key role in the Justice Department in enforcing *Brown* against defiant resistance in the deep South, describes those battles eloquently.<sup>8</sup> Professor John C. Brittain explains of a largely successful attempt to apply *Brown* to Hartford's virtually segregated public schools several decades later.<sup>9</sup>

The other speakers' remarks discuss the enormous problems that continue to beset public education in this country—half a century after *Brown*. The nation is still haunted by the specter of bygone segregation, along with insufficient resources for schools and inequities stemming from vast disparities in the tax revenues available. Michael Rebell, executive director of New York's Campaign for Fiscal Equity, addresses some of these complex issues as he describes his recent, dramatic victory in the New York Court of Appeals, which mandates adequate state funding for New York City's public schools.<sup>10</sup> This landmark decision holds that pupils in New York City have been denied the resources for a "sound, basic education" and finds that the New York Constitution guarantees these rights to all children. In response to this decision, Governor Pataki has appointed a commission to determine how best to meet the court's directive.<sup>11</sup>

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<sup>7</sup> See Jack Greenberg, *Remarks of Jack Greenberg*, 78 ST. JOHN'S L. REV. 259 (2004).

<sup>8</sup> See Nicholas de B. Katzenbach, *Remarks of Nicholas de B. Katzenbach*, 78 ST. JOHN'S L. REV. 277 (2004).

<sup>9</sup> See John C. Brittain, *Remarks of John C. Brittain*, 78 ST. JOHN'S L. REV. 281 (2004).

<sup>10</sup> *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 801 N.E.2d 326, 769 N.Y.S.2d 106 (2003); see Michael Rebell, *Remarks of Michael Rebell*, 78 ST. JOHN'S L. REV. 263 (2004).

<sup>11</sup> *Campaign for Fiscal Equity*, 100 N.Y.2d at 902, 801 N.E.2d at 328, 769

More recently, the *Brown* battle has moved from dismantling the system of segregation to achieving diversity in classrooms, particularly at the university level. The other Symposium writers approach this issue from various perspectives. Professor Juan Perea of the University of Florida Law School and Professor Michelle Adams of Seton Hall Law School defend the recent Supreme Court decision in *Grutter v. Bollinger*,<sup>12</sup> which upheld the University of Michigan Law School's process of taking race into account in student admissions.<sup>13</sup> Professor Peter Schuck of Yale Law School emphasizes the need to achieve economic equality,<sup>14</sup> while Richard D. Kahlenberg of the Century Foundation questions the Court's reasoning in *Grutter*.<sup>15</sup>

Our history of racial inequality continues to cast its shadow over education at every level, from the struggle to provide adequate elementary and secondary schooling where funds are lacking, to the concern over achieving diversity in colleges and graduate schools. The *Brown* decision—now a half century old—stands as a beacon on a rocky coast, illuminating both the dangers we have overcome and the shoals we must yet avoid.

Thanks are due to Dean Joseph Bellacosa for his unflinching support and eloquent remarks at this Symposium; to Professors Rosemary Salomone, John Barrett, and Leonard Baynes, of this law school, for their suggestions and participation; to the *St. John's Law Review* for preparing and editing this issue, and particularly to Executive Articles Editor Timothy Casey, for helping to organize the program; and, of course, to all the speakers, who helped make the event, and this Symposium issue, memorable.

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N.Y.S.2d at 108.

<sup>12</sup> 123 S. Ct. 2325 (2003); see Juan Perea, *Remarks of Juan Perea*, 78 ST. JOHN'S L. REV. 307 (2004); Michelle Adams, *Remarks of Michelle Adams*, 78 ST. JOHN'S L. REV. 289 (2004).

<sup>13</sup> See *Grutter*, 123 S. Ct. at 2347.

<sup>14</sup> See Peter Schuck, *Remarks of Peter Schuck*, 78 ST. JOHN'S L. REV. 311 (2004).

<sup>15</sup> See Richard D. Kahlenberg, *Remarks of Richard D. Kahlenberg*, 78 ST. JOHN'S L. REV. 295 (2004).

