Time Matters

The U. S. Supreme Court's Consideration of the Past, Present, and Future in *Brown v. Board of Education*

Sevan G. Terzian
University of Florida

Introduction

Conceptions of time are inherent in educational thought. These include questions about how long it takes teaching and learning to occur; how groups of students can develop and learn at the same rate; how much time students should devote to their studies each day; the appropriate amount of time for completing a test or assignment; and how the daily and yearly school schedules should be constructed. Furthermore, because the issues associated with questions such as these impact different groups of people in distinct ways, time as it pertains to schooling is a source of conflict and often exacerbates social inequalities. In other words, prevailing conceptions of time are powerful and can reveal and perpetuate dominant ideologies (Mahadeo, 2024; Mills, 2020; Saul, 2020; Thompson, 1967). Historians of American schooling can therefore benefit from focusing on constructions and prescriptions of time, particularly as these institutions have had the power to promote educational equity or injustice.

This essay considers the salience of time in reexamining a landmark moment in American educational history: the Supreme Court's *Brown*

Sevan G. Terzian is a professor in the School of Teaching & Learning of the College of Education at the University of Florida, Gainsville, Florida, and the president of the History of Education Society for 2025-2026. Email address: sterzian@coe.ufl.edu

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v. Board of Education opinion of 1954 that unanimously declared legally mandated racial segregation to be unconstitutional and the *Brown II* decree of 1955 on how desegregation should proceed. Utilizing archival evidence including internal memoranda, personal correspondence, and early drafts of the rulings, it argues that the Justices' considerations of time reveal both ambiguities and conflicting notions of why, how quickly, and even whether desegregation needed to occur. Specifically, the Court's perceptions of the past through legal precedents, the present socio-political context of the postwar era, and future projections of desegregation and White resistance, demonstrate that the Justices were ambivalent about the rights of African Americans as full citizens of the United States. As Derrick Darby and John Rury (2018) discuss in their book, *The Color of Mind*, dignitary injustice takes place when people endure "the denial of their dignity, or inner worth as persons" and "happens when schools prevent blacks and whites from relating as equals" (142). Although the Supreme Court ruled unanimously against legally mandated racial segregation, its characterizations of the past, present, and future nonetheless perpetuated the dignitary injustice of African Americans.

Past

In justifying the landmark *Brown* opinion of May 17, 1954, Supreme Court Chief Justice Earl Warren directed a good deal of attention to the past. As with any judicial deliberations, the Court considered legal precedents spanning multiple generations including the enactment of the Fourteenth Amendment in 1868 during Reconstruction and the 1896 ruling sanctioning *de jure* racial segregation in *Plessy v. Ferguson*. From 1953-1954, the Court had sought to discern the historical circumstances surrounding the adoption of the Fourteenth Amendment along with its "scope and purpose" (Earl Warren Papers, box 571, folder 3, 3). Justice Felix Frankfurter, in his memorandum to the Court dated May 27, 1953, acknowledged that "neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation at the public school level" (Earl Warren Papers, box 570, folder 3, 2). Yet the possibility remained that the framers of the law anticipated that future Congresses or the Supreme Court would someday outlaw racial segregation.

Frankfurter's clerk, Alexander Bickel, subsequently researched and drafted a history of Congressional deliberations on Reconstruction-related legislation that was made available to the Court in De-

cember 1953. Bickel's account noted that voting on the Fourteenth Amendment in 1866 had been strictly along party lines, with 120 legislators in favor (all Republicans) and 32 opposed (all Democrats) (Earl Warren Papers, box 571, folder 2). The Court also considered arguments from the lawyers involved in the current segregation cases as well as federal officials about the Fourteenth Amendment's intent. Despite these efforts, Warren admitted that "the historical approach leads to no conclusive answer" (Earl Warren Papers, box 571, folder 3, 3). Part of the complicating difficulty involved the political climate in the immediate aftermath of the Civil War and the probationary status of the former Confederate states when "emotion was still high." From Warren's perspective, the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments had been "adopted under circumstances unlike those attending the adoption of the Constitution and all other of the amendments" (Earl Warren Papers, box 571, folder 3, 3-4).

In the *Brown* ruling of 1954, Warren acknowledged that because public schooling had not yet become prevalent in much of the United States when the Fourteenth Amendment was enacted, it was difficult to pinpoint "its intended effect on public education" (*Brown et al v. Board,* 1954). This especially appeared to be the case in the South where "private groups" had controlled the education of White children, and states had outlawed the schooling of Black children. From its vantage point in 1954, the Court considered the education of African Americans immediately following the Civil War to have been "almost nonexistent" and believed that "practically all of the race were illiterate" (*Brown et al v. Board,* 1954). Indeed, Southern states had long prohibited the education of enslaved people. Furthermore, punishments inflicted on Blacks who had been caught learning to read or teaching others to do so included whipping, amputation, and sometimes death (Anderson, 1988; Cornelius, 1983).

The Supreme Court's historical account nonetheless overlooked the motivation and agency of Black communities in pursuing educational opportunities both during slavery and immediately following emancipation. As historians James Anderson (1988), Christopher Span (2009), and others have vividly demonstrated, for example, many enslaved people associated literacy with empowerment. This conviction can begin to explain why thousands of southern Blacks, roughly five percent of the population, had surreptitiously learned to read as early as 1860. In addition, African Americans created Sabbath schools and free schools independent of northern missionary groups and the Freedmen's Bureau in a quest for self-determination. Many of these began before the Emancipation Proclamation of 1863 and well preceded the

enactment of the Fourteenth Amendment in 1868 (Givens, 2021; Span, 2009; Anderson, 1988). The Freedmen's Bureau's Superintendent of schools, John W. Alvord, moreover, recognized that Black children's school enrollments in 1865 in places like the District of Columbia, Virginia, and Louisiana approximated or exceeded overall attendance in many parts of the North (Anderson, 1988). Thus, in acknowledging ambiguities surrounding the intent and reach of the Fourteenth Amendment, the Court diminished the educational motivations of southern Blacks in implying that they were unwitting and passive victims of racial oppression. A characterization of the past such as this could have bolstered arguments in the mid-twentieth century that *de jure* segregation was inherently unjust. But the Court also misrepresented African Americans as having been relatively helpless and unaware of literacy's liberating potential—a portrait that perpetuated their dignitary injustice. Attending to legal precedents and seeking to interpret them through particular historical contexts is therefore one prominent temporal aspect of the *Brown* decision of 1954.

Present

The Supreme Court's *Brown* ruling also focused on present societal conditions. Despite its consideration of legal precedents, Warren confessed that "we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written" (*Brown et al v. Board,* 1954). The consequences of legally mandated racial segregation in education therefore needed to be weighed in the context of mid-twentieth century American society. Unlike in 1868 when the Fourteenth Amendment had been enacted, Warren proclaimed: "Today, education is perhaps the most important function of state and local governments… Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment" (*Brown et al v. Board,* 1954). The educational stakes for how the Fourteenth Amendment should be interpreted appeared to be higher than ever (Patterson, 2001).

In an earlier and unpublished draft of the opinion rendered on May 17, 1954, Warren had written more extensively about the heightened significance of formal education in the lives of American youth. Beyond the academic knowledge students would gain, he contended, schooling represented "the main process by which children evolve into the men and women they become." Much depended on "the composition of the student body," which created "the atmosphere of the classroom" that

schoolchildren "unconsciously absorbed." Because schooling occurred "during the most formative period in a person's life," it possessed the power to shape beliefs and attitudes comprising the American polity: "for nurturing or counter-acting those feelings and convictions which are essential for the relationship of equality in the discharge of a common citizenship." As the civic "training ground of children," it had become especially vital for schools to be racially inclusive. It is worth noting that Warren also asserted that in larger American society "whites and Negroes mingle without discrimination, as fellow citizens possessed of the same political rights and subject to the same duties" (Earl Warren Papers, box 571, folder 3). It is possible that this was a strategic characterization to show that racially segregated schools were anomalous in an otherwise racially equal society. However, given the prevalence of racial violence, housing discrimination, and political disenfranchisement of African Americans in the mid-twentieth century U.S., Warren's account ignored deeply rooted racial injustices. This may be one reason that this elaborated discussion of education's importance did not remain in the Court's official opinion of May 17.

In the actual *Brown* opinion, Warren's reference to the school's function in preparing youth "for later professional training" reflected a growing vocational mission that had emerged in Progressive Era education. By the postwar era, educational attainment had reached unprecedented levels, partly because most jobs demanded at least a high school education. In 1940, for example, 14.6 percent of Black teenagers in the South attended secondary school, while 39.3 percent of White teenagers did so. By 1960, the proportion of teenagers in the South enrolled in secondary school had risen to 53 percent of Blacks and 66 percent of Whites (Rury & Hill, 2012). These figures represent both the growing presence of schooling in the lives of American youth as well as an enduring (but narrowing) racial gap in secondary school attendance among Southern adolescents. In its 1954 opinion, the Supreme Court recognized that educational attainment and achievement were likely to determine a student's economic and social opportunities.

It is also important to consider what Warren's reference to "awakening the child to cultural values" may have meant in his present moment of the early 1950s. In the immediate wake of the Korean War, and the escalating Cold War and atomic arms rivalry between the United States and Soviet Union, many American schools taught students that their nation prized individual freedoms for a fair and materially abundant society. Yet enduring manifestations of racial oppression, with segregated schooling as a notorious example, conflicted with claims that American society valued civic equality and was morally superi-

or to its communist rival (Dudziak, 2011; Bartley, 1996). At the same time, American schools and emerging forms of mass media frequently promoted cultural conformity to middle-class values. Experts on childhood stressed the importance of being well-adjusted to existing social norms. As historian Steven Mintz (2004) and others have explained, the rise of social institutions in the postwar era—churches, television, schools—fostered a peer culture among youth that encouraged national allegiance, a tendency to get along with others, and social conformity (Boyer, 1994; Brown, 1988; Gilbert, 1986). If national unity was necessary for the United States to confront the Soviet Union, perhaps the Court was implying that separating Black and White students undermined that ideal. But it also meant that the welfare of Black Americans mattered only because the international reputation of the United States amid the Cold War would be jeopardized: a manifestation of interest convergence. In this sense, the Court's consideration of the present domestic and global socio-political contexts perpetuated dignitary injustice toward African Americans.

Future

Much of the justification behind the Supreme Court's 1954 opinion that racial segregation was unjust derived from its consideration of consequences for children's development: the temporal dimension of the future. Warren wrote that separating Black children from Whites instilled "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" (*Brown et al v. Board,* 1954). Indeed, a central feature of the NAACP's case against de jure segregation relied on studies conducted by psychologist Kenneth Clark on Black children in Clarendon County, South Carolina. Specifically, Clark had contended that school segregation fostered feelings of inadequacy that caused Black youth emotional harm well into the future. The validity and implications of Clark's experiments were contested at the time and in ensuing years by both opponents of desegregation and some African American leaders (Patterson, 2001). However, the Supreme Court in 1954 found his claims to be persuasive and cited his research in declaring that "separate educational facilities are inherently unequal" (*Brown et al v. Board,* 1954).

Nonetheless, fundamental questions remained regarding how desegregation should come about in the face of White opposition and outright hostility. In May 1953, one year before the *Brown* opinion, Frankfurter had drafted a memorandum for his fellow Justices that anticipated resistance to a possible ruling outlawing racial segrega-

tion. He characterized the problem as "psychological," requiring "the adjustment of men's minds and actions to the unfamiliar and unpleasant" (Earl Warren Papers, box 570, folder "Segregation Cases O.T. 1952," 1). Frankfurter was referring implicitly to attitudes of White segregationists that needed to be considered: not so much those of African Americans. "Time, in turn, is the ameliorative factor in the process of adjustment," he contended, and he searched for a way for "the minds of those who are opposed to a change…[to]…accustom themselves to the idea of it long before they may be confronted with it" (Earl Warren Papers, box 570, folder "Segregation Cases O.T. 1952," 1). To that end, Frankfurter asked whether his colleagues thought that it was appropriate for the Supreme Court to prescribe "an effective adjustment from existing segregated systems to a system not based on color" (Earl Warren Papers, box 570, folder "Segregation Cases O.T. 1952, 2").

In the months immediately following its May 1954 opinion, the Court observed that most Southern states were "watchful[ly] waiting" and had "neither attempted to desegregate immediately nor made elaborate plans to evade desegregation" (Earl Warren Papers, box 574, folder 4, 16). In other instances, conflicts erupted when districts attempted to desegregate schools gradually. On September 7, for example, 11 Black teenagers enrolled in the formerly all-White high school in Milford, Delaware. Hundreds of White parents soon protested and some threatened violence, while many White students at the high school refused to attend. These developments prompted the district to close its schools on September 21. After the schools reopened a few days later, the 11 Black students were no longer permitted to enroll in the high school. Those students subsequently rejected the state's provision of bus transportation to attend a high school in Dover and chose instead to attend one in Georgetown (Felix Frankfurter Papers, box 219, reel 130, folder "Delaware," 26). From the U.S. Supreme Court's perspective, the timing and pace of Milford School Board's initiative contributed to local White resistance, because it had begun desegregating "without advance warning and consultation with local residents" (Earl Warren Papers, box 574, folder 4, 23).

For its part, Delaware's Supreme Court had not questioned the finality of the federal government's unanimous opinion against *de jure* segregation. But it did struggle to determine whether Black children had "an immediate right" to gain access to White schools: "has the Supreme Court of the United States said that the states with school segregation laws *must* proceed with desegregation *at the present time*" (Frankfurter Papers, box 219, reel 139, folder "Delaware," 11)? Part of the ambiguity was that the U.S. Supreme Court had rendered an

opinion about the unconstitutionality of legally mandated racial segregation but had not specified how or when the newly granted rights of Black Americans should be realized. Because the U.S. Supreme Court had not provided "a decree directing immediate admittance" and instead had "postponed for further argument," Delaware's judiciary concluded that without a remedy, "the right is not a present enforceable one" (Frankfurter papers, box 219, reel 139, folder "Delaware," 14). Delaware's Supreme Court also referenced a legal case in Florida about whether a local district could raise funds to build racially separate high schools. Florida's Supreme Court had ruled on November 15, 1954 that bonds for constructing racially separate high schools remained legal, because "interim educational facilities" were necessary for what would likely be "a long period of time" in the desegregation of its schools (Frankfurter Papers, box 219, reel 139, folder "Delaware," 10). As a result, Delaware's judicial leaders concluded that segregated states were not compelled "*at the moment*, to desegregate their schools" (Frankfurter Papers, box 219, reel 139, folder "Delaware," 12). Frankfurter acknowledged that Delaware's State Board of Education appeared ready to accept a federal decision mandating that African American students be granted immediate access to the White schools. But he recommended that the Court remain silent until it issued a decree on how desegregation should occur (Frankfurter Papers, box 219, reel 139, folder "Delaware").

The U.S. Supreme Court had been weighing multiple options about the process and timing of school desegregation. A letter dated June 24, 1954 from Justice Harold Burton to Warren, for instance, had recommended "gradual integration, such as beginning with the lower grades and proceeding to higher grades at the rate of one year at a time, thus keeping pace with the age of the integrated lower grades as the pupils grow older" (Warren Papers, box 574, folder 3, 1-2). Over that summer, Warren tasked his newly arrived law clerk, Gerald Gunther, along with five additional Supreme Court Justices' law clerks, with formulating recommendations for a decree on this matter. By November, the group had compiled and distributed to the Justices an 81-page "Segregation Research Report" addressing various aspects of the problem including how Southern populations had responded to the Brown opinion since May. The six law clerks shared their recommendations for a segregation decree with the nine judges in April 1955 (Davidson et al., 2005).

Through their research and deliberations, this "committee of six" devoted significant attention to questions surrounding "time for compliance." They were divided on the issue. One clerk held that the courts should insist that school districts desegregate immediately. But the

other five clerks believed that a decree demanding immediate desegregation would "be ignored by almost all elements in the South" as "arbitrary and unreasonable." The Court's ruling should therefore allow for "some gradualism." At the same time, these five clerks opposed "complete silence from the courts on time limits." "The mere passage of time without any guidance and requirements by the courts produces rather than reduces friction," they contended: "It smacks of indecisiveness, and gives the extremists more time to operate." As a result, they recommended some compromise between mandating immediate desegregation and abstaining from specifying any timetable (Warren Papers, box 574, folder 3, 5).

Beyond these general points, the clerks were in further disagreement on the matter of time. One believed that district courts should specify the timetable for desegregation "in light of local conditions and sentiment." Another clerk was of the view that local districts should be required to devise desegregation plans for the Court to approve, and that proposals eschewing any immediate desegregation could be acceptable if the transition were completed within 12 years. A third clerk took the opposite stance in rejecting all gradual desegregation. He believed that gradualism would "greatly weaken the Court's moral position" and lamented "the extreme injustice of condemning half a generation of Negro school children to a segregated system." Furthermore, he expressed apprehension that "militant segregationists" would only become emboldened by any concessions to gradual or delayed desegregation. This clerk anticipated that gradual desegregation would not diminish "the real dangers inherent in the shock of Negro children attending white schools." He also argued that starting desegregation in the earliest grades would increase the likelihood that "the younger Negro children may more easily be scared out of white schools" (Warren Papers, box 574, folder 3, 6).

The remaining three clerks believed that a maximum of one year constituted "the passage of a reasonable time" for districts to demonstrate "good faith compliance" while acknowledging that "total desegregation" required longer than that. They were open to the possibility that a state could satisfy the Court's decree "by desegregating one class at a time, which would mean a lapse of 12 years before total compliance." In such a scenario, good faith compliance would require "showing that some classes are now desegregated," even if the overall process of school desegregation was "not complete at the time of suit." At the same time, these three clerks feared that a Supreme Court decree that was silent on the matter of time would be problematic, because "to say nothing about gradual plans may make widespread compliance im-

probable." They therefore envisioned a compromise "that some action of an affirmative and demonstrable nature must be undertaken immediately, but that so long as efforts along these lines are continued in good faith, the states are allowed a reasonable time to carry them out" (Warren Papers, Box 574, folder 3, 6-7).

Ultimately, the majority view among five of the six law clerks relegated the immediate educational rights of African Americans to a low priority. On one hand, they suggested that by requiring districts to take initial steps toward desegregation, such a decree would prevent "the decision from becoming a dead letter." And while allowing local judges the latitude to account for specific circumstances, the Supreme Court would provide "explicit Court support for their actions." On the other, these clerks believed that if the Supreme Court allowed for flexibility in the methods and time in desegregating schools, it "would indicate to the South that the Court understands and is sympathetic to the problems which the decision raises in their states." In omitting demands for immediate desegregation, their recommendations "would prevent the decision from being completely unenforceable in the deep South." Instead, the Court would be satisfied if districts demonstrated "*substantial* compliance." "Practically speaking, it seems more important at the present time," they wrote, "to get a few Negroes into white schools than to require overall, immediate desegregation, unacceptable to white Southerners" (Warren Papers, box 574, folder 3, 6-10). On this point, the clerks made it clear that their primary concern was not with assuring educational equality for all African American schoolchildren.

Like the "committee of six," Justice Frankfurter attempted to anticipate future consequences in considering how the Court should issue a ruling on remedying racial segregation in public schooling. One option would be to deliver a "bare bones" decree tasking the lower courts to orchestrate desegregation. For Frankfurter, this path would "maximize flexibility" in accounting for "relevant local circumstances." "Local passions aroused by last May's decisions," he wrote to his fellow Justices in April 1955, "would thereby be absorbed or tempered." However, Frankfurter also worried that local judges would encounter immense community pressure. "It is easy to foresee that this would result in drawn-out, indefinite delay," he declared, as even well-meaning local judges would be "unduly delaying attainable desegregation." Frankfurter acknowledged that the U.S. Supreme Court could establish a specific "time limitation" by when local desegregation had to occur. "Yet any limitation short of 'the coming school year' or that of 1956 might well turn out to be a period during which nothing would be done," he predicted, "and either of these dates would surely be ar-

bitrary limitations, incapable of compliance wholesale." One possible remedy would be to order the local courts to "require desegregation as soon as practicable" and to provide multiple "progress reports" to the U.S. Supreme Court. Nonetheless, Frankfurter feared that such actions would be perceived by local communities as "an imposition of our will" and that "it would tend to alienate instead of enlist favorable or educable local sentiment" (Frankfurter Papers, box 219, reel 139, folder 2, 1-3). Frankfurter appears to have been most concerned with the potential reactions of local Whites whose resistance could forestall desegregation and weaken the Court's authority. His efforts to foresee future consequences of the bare bones decree option did not seem to account for the needs or even the moral dignity of Black schoolchildren, their families, and communities.

Frankfurter had weighed several alternative decrees that he eventually discarded. One would have entailed the creation of "Special Masters" appointed by the Court to issue specific mandates to desegregate. The other would have tasked the district courts to issue customized desegregation decrees in harmony with broad standards defined by the Supreme Court (Frankfurter Papers, box 219, reel 139, folder 2, 2). Frankfurter had initially preferred the latter option, because he believed that district courts were in the best position to "take into account prevailing local attitudes and customs." Handwritten revisions of this memorandum from February 1955 also reveal his puzzlement about the time that desegregation would require. For example, he initially wrote that "where feasible, desegregation should take place at once." But he edited that to read: "where feasible, desegregation should be ordered to be introduced at once." The key difference here is that the second version of this passage conceded that desegregation would not need to be immediate and implied that it could entail a prolonged and contested process. Frankfurter also thought it reasonable for the Court to instruct the district courts that "in no event may the transition last longer than one school cycle of 12 years" (Frankfurter Papers, box 219, reel 139, folder 2, 2). Even though Frankfurter dropped this point from consideration, it reveals his preoccupation with future conflicts over the nature and pace of racial desegregation.

The Justices met on April 16, 1955 to discuss how a remedy to desegregation should be formulated. They considered items that should not be part of the forthcoming decree, some of which were temporal in nature. They weighed the desirability of not specifying a "time limit" nor prohibiting "step-by-step integration." The Justices pondered withholding "specific instructions to the courts below concerning methods of compliance and prevention of evasion." They also agreed to avoid

statements anticipating that "possible future suits" could arise. Omissions such as these reflected Frankfurter's apprehensions about future White resistance to any desegregation mandates that could weaken the Supreme Court's authority in American society. They also indicated the prevailing tradition of local control in American schooling. Most importantly, they did not prioritize the immediate educational needs of African American children and their families in light of a long history of exclusion and discrimination. In their deliberations, the Justices did acknowledge that "the plaintiffs' rights are personal and present" and that "the burden rests upon the defendants to establish the need for additional time to overcome the relevant local administrative problems" (Warren Papers, box 574, folder 3, 1-3). Nonetheless, district courts could still allow for a prolonged process of racial desegregation—at the expense of African Americans.

Chief Justice Warren authored the Court's official decree of May 31, 1955, colloquially known as *Brown II*. It acknowledged the temporal dimension inherent in legal decisions mandating change: "the complexities arising from the transition to a system of public education freed of racial discrimination." Yet the Court did little to clarify how long school desegregation should take and what conditions needed to be met. On one hand, the ruling pointed to "the personal interest of the plaintiffs" who were seeking access to all-White schools "as soon as practicable on a nondiscriminatory basis" (*Brown et al v. Board of Education II,* 1955, 3). The Court also stated that the lower courts involved in the desegregation cases would "require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954 ruling." That sort of language implied that plans for desegregation in some form—even if not actual desegregation—needed to begin right away. On the other, the decree anticipated "that additional time is necessary to carry out the ruling in an effective manner." It would then be incumbent on the defendants of those desegregation cases to demonstrate to the lower courts "that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." The Court also ordered that the Black plaintiffs in Delaware be granted "immediate admission" to the all-White schools and that Delaware's Supreme Court retain authority for any future legal proceedings on the issue. But in the other cases, it directed the district courts to take actions "necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases" (*Brown et al v. Board of Education II,* 1955, 4-5). Phrases including references to "the earliest practicable date" and "all deliberate speed"

were notoriously ambiguous about how quickly school desegregation needed to occur (Klarman, 2004).

This is not to suggest that the Justices' choice of language was capricious. In the days leading up to the May 31 ruling, Frankfurter had lobbied Warren on multiple occasions about the need to add the words "with all deliberate speed" and to remove "at the earliest practicable date." Frankfurter had borrowed the phrase from a Supreme Court ruling in 1911, and he believed that it would communicate "that it takes time to get enforcement" (Warren Papers, box 574, folder 3, 1). He subsequently explained that he anticipated great difficulty for the Court "to get obedience from a state for a decision highly unpalatable to it" For that reason, Frankfurter argued that the phrase would "habituate the public's mind" that racial segregation had become unconstitutional but "that we are at the beginning of a process of enforcement and not concluding it" (Warren Papers, box 574, folder 3, 1). A draft of the ruling dated May 24 had included a handwritten insertion of "with all deliberate speed" replacing "at the earliest practicable date" (Warren Papers, box 574, folder 3, 4). But both phrases would remain in the final decree.

Fifty years following the *Brown II* decision, four of the law clerks who had worked for the Supreme Court Justices in 1954-1955 suggested that too much had been made of the decree's ambiguous language regarding time. According to Warren's former clerk, Earl Pollock, the phrase "with all deliberate speed" had become unjustifiably "demonized" in implicating the Court for not conveying "the sufficient degree of militancy or strength in its implementation decision" (Davidson et al., 2005, 858). Pollock, along with three other former clerks, believed that it ended up having no bearing on the extent of ensuing resistance to desegregation or the persistence of unequal educational opportunities for African Americans. Nonetheless, it was exceedingly unlikely that Warren could have forged unanimity among the judges in the Court's original *Brown* decision if mandating immediate desegregation had been a serious consideration. "As far as I understood it, there was not any chance whatsoever that the Court would ever issue a 'forthwith' decree," Pollock recalled: "I don't think it was ever seriously considered by anyone" (Davidson et al., 2005, 850; Kluger, 1976). Instead, there appeared to have been broad acceptance among the Justices that school desegregation would be gradual, "because of the fear of violence, school closings, fear of the Court issuing orders that they could not enforce, and fear that the prestige of the Court in that event would take a terrific licking" (Davidson et al., 2005, 849).

Regarding the law clerks' research and recommendations in the months leading up to the *Brown II* decree, former clerk E. Barrett

Prettyman, Jr. mused in 2005 that they had been partly responsible for convincing the Justices that "desegregation had to take place over a period of time" and that the district courts should have flexibility in overseeing how it would be implemented (Davidson et al., 2005, 860). Yet Prettyman acknowledged that the decree itself was ambiguous: "It was perfectly clear that something had to begin right away, but I think what people couldn't quite understand, and I'm not sure they still do, is then what? I mean, how long do you get? Do you do it by school class years? Do you do it by six months or ten years or a lifetime" (Davidson et al., 2005, 878)? Daniel Meador, who had clerked for Justice Hugo Black, reflected that the ambiguity of the phrase "all deliberate speed" elicited "a collective sigh of relief across the South. They were off the hook immediately." The absence of a deadline to desegregate "meant that it was something for another day" (Davidson et al., 2005, 879). As historian Michael J. Klarman (2004) has argued, many African American leaders felt let down by the Court's vague endorsement of gradualism and that *Brown II* represented "a solid victory for white southerners" (318). This is not to suggest that a decree mandating immediate desegregation would have prevented the widespread resistance across the U.S. South in the ensuing years and decades. But the Court's vague declaration in 1955 did play a role in perpetuating racial segregation.

On the day of the decree, Frankfurter congratulated the Chief Justice for the ruling in a private letter. He acknowledged that the long-term consequences and legacies of the Court's actions would take time to realize: "The harvest of today's planting won't be fully assessed for many a day." Still, Frankfurter predicted that future generations would view the Court favorably for how it formulated its decree on how desegregation should take place. "For me it's a safe bet that the wisest historians of the Court a half century hence will acclaim the long-headed wisdom of what your opinion said," he wrote, "and no less so what it did not say" (Warren Papers, box 574, folder 3, 1-2). Frankfurter's praise for Warren here seems to have been about protecting the Court's reputation by omitting specific demands to districts and states for the time required to desegregate that could not be enforced. It conveyed little if anything about honoring the moral dignity of African Americans. Legislative and executive ambivalence during the late 1950s and early 1960s only served to further weaken the judicial branch's stance. It would not be until a decade following the Brown rulings when the Civil Rights Act of 1964 and the Voting Rights Acts of 1965 would affirm that racial desegregation had to occur immediately: in the present moment.

Conclusion

Among the relatively few researchers acknowledging the centrality of time in educational thought and practice, Julia Duncheon and William Tierney (2013) have argued that "the notion of time pervades educational discourse" and that constructs of time determine how "policymakers conceive of schooling, educators design their instruction, and students acquire skills and knowledge" (237-238). Others have recognized that temporal constructs informing educational policies have the power to foster social equity or discrimination (Saul, 2020; Compton-Lilly, 2016; Kakkori, 2013; Orellana & Thorne, 1998). In the case of the *Brown* rulings of 1954 and 1955, particular interpretations of the past informed the Supreme Court's decisions that in some ways diminished the educational agency of Black Americans. Despite deeply researching the circumstances surrounding the passage of the Fourteenth Amendment, Frankfurter, Warren, and the other Justices ignored evidence of Sabbath schools and other formal educational initiatives that the formerly enslaved people had created for themselves. The Court's rationale for redressing educational inequalities in the present, moreover, reflected political worries about the Cold War, national unity, and a quest for economic abundance in a capitalist society: not so much for redressing longstanding racial injustices in the United States. Most notably, competing conceptions of how soon racial desegregation needed to occur in the future were in fact expressions of deeply rooted racial conflict in American society that prioritized the needs of White southerners and the political sanctity of the U.S. Supreme Court. As a result, most of the Court's constructions of the past, present, and future did little to honor the agency and moral dignity of Black Americans. Instead, they reflected and perpetuated what Darby and Rury (2018) have termed the "Color of Mind" ideology: that Black people are inferior and therefore deserve fewer societal opportunities than White people. By viewing the Court's landmark *Brown* decisions and private deliberations primarily through a temporal lens, we are therefore better able further our understanding of how and why their promise for remedying generations of racial injustice have remained largely unfulfilled.

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