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The Power of the Court: Racial Discrimination as Evidenced through Supreme Court Decisions
After 1954

by

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Abstract

This thesis reviews the way in which Supreme Court cases address racial discrimination from 1954 to 2014 and the impact that these decisions have had on society and politics. The focus will be on four monumental decisions: *Brown v. Board of Education of Topeka* (1954), *Loving v. Virginia* (1967), *Batson v. Kentucky* (1986), and *Schuette v. Coalition to Defend Affirmative Action* (2014). It is evident through an analysis of the cases and similar literature, that the Supreme Court has been striving to address the issue of racial injustice in a manner that assists the fight for equal rights. Although the decisions may not have immediate effects, the Supreme Court in these post-1954 decisions shows a desire to remedy past discriminatory tendencies and ideologies in the United States. However, these efforts are often criticized as being insufficient.

Keywords: Racial discrimination, Supreme Court, post-1954

Introduction

When questioning the development of race relations in the United States, American citizens look for guidance from the branch of government that is meant to be least swayed by political and social rhetoric, the Supreme Court. This group of highly respected Justices has been pivotal in the transformation of numerous schools of thoughts, most notably those surrounding race and race discrimination. It is important to assess the Supreme Court's role in the changes made to relationships between the races in America, and the inadvertent discernment that arose from their rulings. This thesis will concentrate primarily on the analysis of race discrimination as evidenced through Supreme Court decisions. To do so, it will focus on monumental court rulings that involved parties of color and proceed to examine the impact of the results on people of color in America. Due to the large quantity of incredibly dense court briefings and material, this thesis defines the scope of its inquiry to a few 1954 to 2014 cases. The primary research question will therefore be: In what way has the United States Supreme Court addressed the issue of racial equality from 1954 to 2014?

Racial discrimination is not a new topic in America, but has been receiving a considerable amount of attention as of late. The presence of groups calling for the empowerment of colored individuals and for the removal of systematic oppression in the United States has been slowly rising over the past few years. This trend is reminiscent of the struggle faced by minorities during the Civil Rights Movement of 1954 (Patterson 2006). Although many scholars address the legislative branch when criticizing the reformation of racial discrimination, it is also essential to analyze the judiciary branch's impact on race issues in America. The government of the United States is comprised of three separate branches- the executive branch, the legislative branch, and the judicial branch- each is responsible for ensuring Constitutional rights are

protected for all American citizens. The highest court in the nation, the Supreme Court, has traditionally dealt with a myriad of diverse issues ranging from civil rights to income tax. This paper will act as an evaluation of the way in which the Supreme Court attempts to resolve the concern surrounding rights for colored people. More specifically, it will analyze the following: *Brown v. Board of Education of Topeka* (1954), *Loving v. Virginia* (1967), *Batson v. Kentucky* (1986), and *Schuette v. Coalition to Defend Affirmative Action* (2014), and the impact (or lack thereof) that each, respectfully, has had on achieving racial equality.

Methodology

By examining United States Supreme Court decisions in the above referenced cases, one can trace the involvement of the Court in issues of racial discrimination. These cases were chosen due to their importance in the legal field, and their continued reference by legal scholars. This thesis addresses the question of how the Supreme Court deals with racial injustice in America, and whether the Court had any impact on societal and political beliefs. This thesis was framed through the execution of research within legal forums and databases, which measured the impact of each Supreme Court case. Additionally, a deep analysis of the Justice's intentions when drafting their opinions was helpful in further assessing the connection between the fight for equality and the nation's highest court. After the review of numerous referenced articles with strong emphasis on the Supreme Court, it is evident that the Court intended to balance the rights allocated to all American citizens, but at times was unable to completely impact the social and political environment.

Background

The United States Supreme Court is composed of nine appointed and approved Justices, one of which acting as Chief Justice. Traditionally, the court has been a means by which presidents spread their political party's ideology to a branch that does not typically fluctuate for years (Epstein & Walker 2016). With this, it must be understood that the Supreme Court is influential in the way that it decides on cases that are brought onto their docket. The Court has the ability to create and strengthen precedent which will later guide other Justices and judges in deciding multiple cases to come. This power is given to the Supreme Court, and is not taken lightly, due to the way precedent impacts future interpretations. Essentially, many suggest that there is a seemingly capricious quality to the law. The responsibility of the Supreme Court to protect and promote the rights allocated in the United States Constitution is one that they should not slight. Through these decisions, politicians in the legislature and leaders in the executive branch are given guidance for what they are constitutionally sanctioned to control. Although considerable disagreement may exist over the extent of Supreme Court power, recent studies have challenged the customary belief that the Court yields no substantial influence (Hall 2014). Through this perspective, it is then adequate to assess the cases that the Court chooses and their possible impact on racial discrimination.

The adoption of the Fourteenth Amendment in 1868 shifted many legislative policies associated with racial discrimination in the United States, but not in a manner that eliminated these faults (Klarman 2010). Although racial injustice is still evident in today's society, the United States government made an effort through the Fourteenth Amendment to essentially disassociate themselves politically from the issue of discrimination. There is no way to avoid the fact that America was built on racist ideologies and the belief that white people are the superior

class. This self-evident oppression was ostensibly fought throughout the Civil War, yet brought on a system of white supremacy that persisted, arguably until today (Patterson 2006). Typically, when discussing the fight against racial discrimination in America, people address the efforts made during the Civil Rights Movement. However, the time period after 1954 is also notable in that minorities continued to demand equality across the board (politically, educationally, socially, etc.). The civil rights movement shifted to a new phase after 1968, which essentially introduced the struggle for equality in education, politics, the military, and jobs (MacLean 2008). Groups such as the The National Association for the Advancement of Colored People (NAACP) continue their advocacy until today, by bringing cases to the Supreme Court and awaiting decisions to shift political attitudes and to break down segregation. The expansion of equality can be seen through the actions taken by Supreme Court Justices in the following cases, whether each had an impact on society and politics is a question that will be further explored throughout this paper.

Brown v. Board of Education of Topeka (1954)

In May of 1954, the United States Supreme Court consolidated five cases arising from the States of Kansas, South Carolina, Virginia, Delaware, and Washington, D.C. (*Brown v Board of Education* 1954). In each respective case, African American youth were denied entrance into white schools on account of their race. Posterior to the decision in *Plessy v Ferguson*, segregation in educational facilities was made legal, so long as the facilities were “substantially equal” (1896). Before the cases were argued in the Supreme Court, a majority of the circuit court judges decided that the separation was permissible under the standards set forth by *Plessy v Ferguson* (1896). The Supreme Court in Delaware stood alone in its finding that the African American youth had to be admitted into the white public school, only because it was superior to

the colored school. The National Association for the Advancement of Colored People (NAACP) drafted an appeal to directly challenge the system put forth by *Plessy* (1896).

Mr. Chief Justice Warren and the other eight Justices unanimously agreed that racial separation in educational facilities is inherently unequal (*Brown v Board of Education* 1954). It is important to note the language associated with the opinion and manner by which the Justices come to this conclusion. The opinion successively establishes a ground through which subsequent Justices are able to look towards for precedent on modern cases (Combs 2005). Chief Justice Warren writes, “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” (*Brown v Board of Education of Topeka* 1954). The Justices basically agree that the systematic enactment of racial discrimination is harmful to the growth of American citizens. It is unjustified and unconstitutional to separate children based on their race, due to the fact that it does not allow for proper education. In addition, the Supreme Court utilized social science, rather than court precedent, to justify the opinion. Chief Justice Warren’s Court was one of the first to delegitimize the bigotry within the education system. Through a review of psychological studies, the Court concluded that classifying youth on the basis of race creates impending inferiority complexes that may negatively affect black children's ability to learn. Additionally, the Court concluded that, “...even if the tangible facilities were equal between the black and white schools, racial segregation in schools is "inherently unequal" and is thus always unconstitutional” (McBride 2006).

This 1954 case set the stage for many other monumental Supreme Court decisions. The opinion delivered by Mr. Chief Justice Warren encouraged subsequent Justices to focus on the

relationship between injustice and race. The influence of *Brown I* (1954) was not as widespread and immediate as the Justices would have wanted. The Court was forced to issue similar decisions, and encourage the legislative branch to pass legislation in order to fortify the constitutional rights of *all* Americans. Many scholars agree that *Brown* leaves a “troubled legacy”, whereby the Supreme Court attempted to influence the educational system yet had trouble implementing the decisions across the nation (Tushnet 2004). In fact, a study issued in 2003 by Gary Orfield’s Harvard Civil Rights Project, found that, “...as of the 2000-2001 school year, white students, on average, attend schools where 80% of the student body is white. Many, if not most, predominately black and Latino schools have substantially inferior resources to those provided to white schools in the same school system: teachers are less experienced in the minority schools, students have more behavioral problems, and academic out-put is almost uniformly poor” (Bell 2005). Essentially, scholars such as Bell and Tushnet believe that the *Brown* (1954) decision was merely a means to project the rights outlined in the Fourteenth Amendment. The lack of explicit power to directly enforce its decisions in all social/political arenas that the Supreme Court must enforce their decisions may be a factor that limits the influence they had on politics at the time of *Brown*. It is important to note, however, that the *Brown* decision mobilized the civil rights movement by allowing participants to believe that success is possible (Klarman 2004). While it is obvious that this Supreme Court decision did not have immediate effects on racial discrimination, especially in the South, *Brown* did set the stage for many more decisions that would strengthen the African American effort for equality.

Loving v Virginia (1967)

In another class action suit involving racial inequality, the Supreme Court was able to assess the constitutionality of anti-miscegenation laws. This 1967 case dealt with a biracial

couple, Mildred Jeter and Richard Loving, who were married in the District of Columbia before returning to their home in Virginia. The Lovings were then convicted of violating the Virginia Code which banned the intermarrying of white and colored persons. This was considered a felony punishable for up to five years (*Loving v Virginia* 1967). Virginia, and sixteen other States, enforced anti-miscegenation laws by relying on precedent established in *Naim v Naim* (1965) and the notion that the requirement of equal protection is satisfied so long as white and colored participants were similarly punished (*Loving v Virginia* 1967). The American Civil Liberties Union (ACLU) by request of the Lovings, took on the case and were able to bring it before the United States Supreme Court. The state of Virginia justified the statute by urging the Court to respect the state's Tenth Amendment right to supervise marriages. However, the Supreme Court in a unanimous decision found that the anti-miscegenation laws were inherently a means to motivate the White Supremacist doctrine. The Virginia law had no legitimate purpose "independent of invidious racial discrimination," which is not permissible under the Fourteenth Amendment's Equal Protection Clause (*Loving v Virginia* 1967).

Notable to the efforts of the Supreme Court in this particular case, was the identification of colored individuals as a classification that is subject to the most rigid scrutiny. While the Court reiterates its prior position that "...marriage is a social relation subject to the State's police power," it does not mean that the State has unlimited power to surpass the mandate of the Fourteenth Amendment (*Loving v Virginia* 1967). Specifically, the Fourteenth Amendment was put in place to disqualify and eliminate all state sources of defamatory racial injustice. The Court insisted that the government's institutionalized racism arose from the White Supremacy doctrine, which henceforth has no scientific or rational basis for existence. *Loving* illustrates the Court's repudiation of government policies that disadvantage minorities, or are laden with racial

stereotypes (Epstein & Walker 2016). By doing so, the Supreme Court announced to the states and the remaining two branches, that America is not in the business of restricting or criminalizing interracial interaction. The fact that there were no actions taken against interracial colored individuals who married one another led the Supreme Court to be certain that the seventeen states were strengthening injustice by only criminalizing white/colored relationships.

Determining the impact of this case yields two separate findings: there was an effect on accessibility of marriage licensing for a wider range of people, and that it may have bolstered the fight for equality. The decision forced government agencies to reform the system by which they operate, in that it compelled them to comply with the ruling that anti-miscegenation laws were unconstitutional. Colored people and white people could freely and legally marry one another, without the fear of prosecution. This is not to say, however, that there was no societal opposition to this newly formulated decision (Wallenstein 1995). What is interesting is that both African American press and white press were seemingly favorable to the Loving's story, although many southern whites were weary of the effects this could have on the prevalence of biracial children (Hoewe & Zeldes 2012). The Supreme Court essentially ensured that the states can not issue punishments to interracial couples, but did not provide any direction on how these states could ensure that their citizens are socially protected under the law. In addition to strengthening the battle for racial equality and unionization, the *Loving* decision is also utilized today for defending same-sex marriage equality (Duncan, 1998). Richard Duncan, in his analysis of morality and the issue of marriage equality states:

I celebrate two things. First, I celebrate the eminent rightness of the Court's decision in *Loving* and its steadfast opposition to a racist definition of civil marriage. Second, I celebrate moral discernment, an attribute that continues to inform the common sense of the community, but which is in danger of becoming "the duty that dare not speak its name"[3] in the legal academy and elsewhere among the "herd of independent minds" (Duncan 1998).

It is clear through an analysis of the literature and a review of the Supreme Court's implications and influences, that the *Loving* decision was more successful than the *Brown* decision in effecting political and social change in racial discrimination. For years prior to the pivotal 1967 decision, marriage rights were limited to those who wished to pursue relationships with individuals of the same race. White and colored people are now allocated the same marriage freedom within the government; according to Duncan, "public morality triumphed over social pathology" (Duncan 1998).

Batson v Kentucky (1986)

In 1986, almost two decades after the passage of the Civil Rights Act, the Supreme Court was charged with questioning the American judicial branch. In previous decisions, the U.S. Supreme Court found that it is unconstitutional to try a colored individual without allowing for the possibility of colored people on the jury. Decisions such as these were often manipulated, such as in the *Batson* case. The Supreme Court assessed situations where prosecutors attempted to limit the participation of racial minorities on juries. In *Batson*, the prosecutor utilized peremptory challenges to eliminate four African American jurors, leaving an all-white jury (*Batson v Kentucky* 1986). James Batson, a black man who was indicted for a burglary charge, was denied retrial by the Kentucky Supreme Court, even though his attorney claimed that the jury which convicted him was unjustly chosen. Batson's attorney brought forth the question of whether the use of peremptory challenges to remove people based on race violated the Sixth and Fourteenth Amendments. In a 7-2 decisions, the Supreme Court found that the prosecutor's utilization of the peremptory challenges was indeed unconstitutional. In a rather lengthy opinion accompanied by many concurrences, Justice Lewis Powell held that racial discrimination in the

selection of jurors deprives the community and the defendant of equality under the constitution (*Batson v Kentucky* 1986). Justice Powell writes on behalf of the majority:

“The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice. See *Ballard v. United States*, 329 U. S. 187, 329 U. S. 195 (1946) ; *McCray v. New York*, 461 U.S. 961, 968 (1983) (MARSHALL, J., dissenting from denial of certiorari). Discrimination within the judicial system is most pernicious because it is "a stimulant to that race prejudice which is an impediment to securing to [black citizens] that equal justice which the law aims to secure to all others." *Strauder*, 100 U.S. at 100 U. S. 308” (*Batson v Kentucky* 1986).

The Court heavily addressed precedent built in cases such as *Swain v Alabama* (1964) and *Strauder v West Virginia* (1880), but strengthened their finding through interpretation of the rights given to Americans in the Constitution. Defendants are to be granted equal and impartial trials in compliance with the Sixth Amendment, and the Equal Protection Clause of the Fourteenth Amendment protects *all* people regardless of color.

The *Batson* decision represents a vital shift in the Supreme Court doctrine governing the selection of juries; prior to this, the Justices were uninvolved in prosecutor’s usage of peremptory challenges (Epstein & Walker 2016). The court was especially persistent in its claim that it historically condemned discrimination based on race, although the decision in *Swain* suggests otherwise. Justice Marshall’s concurring opinion raises the question of allowing prosecutors freedom to discriminate against blacks, so long as they held discrimination to an “acceptable level” (*Batson v Kentucky* 1986). Justice Marshall’s concern is not without merit, it is only in a “particularly flagrant case where a defendant [will] be able to establish a prima facie case to require judicial inquiry into the prosecutor’s motives” (Pizzi 1987). Each of the Justices that writes a concurring or dissenting opinion addresses the utilization of the Equal Protection Clause rather than the Sixth Amendment when deciding the *Batson* case; there was much to

process in the means of future application and understanding of this monumental decision. Justice Rehnquist's dissent is noted for being a disappointment in the redirection of minority rights in the United States. He insists that there is nothing fundamentally wrong with the exclusion of black jurors when the defendant is black, so long as the state is performing the same action with defendants of other minorities (*Batson v Kentucky* 1986).

Although it is still unconstitutional for a prosecutor to directly issue a peremptory challenge on a colored individual simply due to their race, the area of jury selection permits this to happen indirectly (Sommers & Norton 2006). The Supreme Court, again, attempted to positively influence race relations in the United States, yet in turn issued a ruling that was less than satisfactory. The practical implications of *Batson* are evident through research done to assess the utilization of peremptory challenges in jury selection. Sommers and Norton's study finds that, "even when attorneys consider race during jury selection, there is little reason to believe that judicial questioning will produce information useful for identifying this" (2006). Factually, therefore, the decision formulated in *Batson* does not fully impact the justice system the way that it should. In a time where the misuse of judicial and criminal justice power is prevalent and under careful review in the United States, the Supreme Court is looked towards to influence the equitable and conscientious enforcement of the branch that they lead.

Unfortunately, as evident through numerous studies, such as Sommers and Norton's, the ambiguity in the *Batson* decisions does not adequately address the issues concerning race discrimination specifically in the judicial system. The balancing of the Sixth and Fourteenth Amendment must be assessed, in order to provide for all Americans, regardless of color, representation under the law in situations where their life, liberty, and justice are at stake.

Schuetz v Coalition to Defend Affirmative Action (2014)

One issue that is constantly being questioned in the Supreme Court is the usage of Affirmative action in higher education. These affirmative action programs began as early as the 1940s and received their most momentous boost when labor forces were instructed to ensure contracting was non-discriminatory (Epstein & Walker 2016). This system was created to remedy past racially discriminatory behaviors in educational and employment facilities; these organizations were incredibly racist in how they chose students and employees. The executive branch in numerous orders attempted to countermeasure the effect that this racial discrimination had on past generations, by ensuring that traditionally disadvantaged groups were no longer discriminated against. More than twenty years ago, in *Regents of the University of California v Bakke* (1978), the Supreme Court began addressing affirmative action, and subsequently reshaping the understanding of it to fulfill demands from all sides of the issue. In this situation arising from Michigan, a 2006 election led to the proposition to amend the state constitution to constrain all race-and sex-based preferences in employment and education (*Schuetz v Coalition to Defend Affirmative Action* 2014). A collection of interest groups assembled the Coalition to Defend Affirmative Action, and filed suit against the governor on the grounds that this amendment violated the Fourteenth Amendment's Equal Protection Clause. The question the Supreme Court faced was whether Michigan's state constitutional amendment to prohibit preferential treatment in universities to those who have suffered racial-and sex-based inequality was unconstitutional.

Justice Anthony Kennedy delivered the 6-2 decision for Schuetz, claiming that the Equal Protection Clause is not violated by the prohibition of preferential treatment in universities. The plurality held that the attempt to protect the interests of racial minorities may potentially bolster

the exact bigotry that they were tasked to alleviate (*Schuette v Coalition to Defend Affirmative Action* 2014). The Justices wanted to ensure that, “individual liberty has constitutional protection, but the Constitution also embraces the right of citizens to act through a lawful electoral process, as Michigan voters did” (*Schuette v Coalition to Defend Affirmative Action* 2014). The Supreme Court is allowing the state voters to decide whether they believe affirmative action is a necessary tool to balance the opportunities given to white Americans and their colored counterparts. Race-based affirmative actions has not been struck down through this latest decision, however the Court is now handing the responsibility to the states on implementation. What can be seen through the efforts of the Supreme Court Justices is that they are taking the “color-blind” approach to resolving the issue of racial discrimination. Scholars such as Michael Klarman have heavily opposed the Justice’s take on affirmative action over the years, insinuating that the highest court is simply not performing well enough in this regard. Decisions such as *Schuette* simply frame affirmative action into a remedial method that is no longer necessary. Klarman passionately states in his assessment of the Supreme Court:

“On affirmative action, the court's overall record has been mixed since Bakke. The more conservative justices have almost invariably voted to invalidate such programs, while the liberal justices have almost always voted to sustain them. Individual cases generally have been determined by the votes of swing justices first Powell, and then Sandra Day O'Connor. But the court has invalidated more affirmative action programs than it has sustained.

The hostility to affirmative action reflects a constitutional double standard on the part of the conservative justices. They are the same justices who, in cases involving abortion or physician assisted suicide, profess commitments to judicial restraint, democratic decision making, respect for states’ rights, and an interpretive methodology of textualism and originalism. Yet all those considerations point in the direction of permitting race based affirmative action. To argue for striking it down is to allow unelected judges to invalidate the preferences of state and local governments on a thin constitutional basis” (Klarman 2013).

Virtually, Klarman suggests that the Court has continuously failed to solidify an opinion about the “do’s and don’ts” of affirmative action. This has led to the misunderstanding and misuse of this remedial tool throughout the nation, ridding it of its potential glory.

The Supreme Court has acted to allow universities to utilize Affirmative action as corrective measures, but has not positively impacted societal beliefs regarding racial discrimination. If anything, the way by which the Court goes about its analysis of affirmative action only adds to the potential for public sectors to misconstrue the policy to aid those who are not qualified enough as is (Strauss 1995). However, the potential for future discrimination in higher educational facilities is possible without the presence of policies that help to facilitate the admissions process and limit possible means of covering up evidence of discriminatory actions. Through an analysis of the literature, the Supreme Court has failed to truly impact racial discrimination through cases such as *Schuette*.

Conclusion

The United States has had issues with racial discrimination since the beginning of its creation. People of color were oppressed due to the belief in white supremacy; this persists until this day, with people of color struggling to be equal to white people. Although the predominate form of racism is no longer overt, the United States continues to channel its deep-rooted injustices. In turn, when considering the historical framework of America, and the way by which the government influences the people and itself, the Supreme Court is one important actor. The highest court of the land is responsible for the balancing of constitutional rights and the ability to freely express beliefs and opinions. However, through an analysis of several monumental cases, it appears the Supreme Court lacks substantial power to truly impact the struggle for equality.

Although there is still time for the Supreme Court to impact social and political change as it has for different issues, how the Court has been operating does not seem to be able to dramatically reduce racial injustice. While it is not the intention to completely dismiss the efforts of the Court to promote racial equality, the analysis of these cases proves that there is still a considerable amount of effort that should be done to fully utilize the power of the Supreme Court. An obvious issue in the court is outlined by Bell, who states that “...under the guise of color-blindness, this Court has naturalized and evacuated race as a matter of law. The result is that the Court now treats all race conscious efforts to eradicate racial inequality as conceptually equivalent to acts designed to install racial hierarchy” (Bell 2004). Scholars concerned with the potential to turn race relations into an obligatory issue rather than a moral and political one urge the Court to take into consideration how they make their decisions.

Klarman states in his assessment of the Supreme Court’s way of deciding cases:

Those who wrote and ratified the [Fourteenth] Amendment (and their constituents) were too racist to forbid all racial classifications: They thought that laws disenfranchising blacks, excluding them from jury service, segregating them in schools, and forbidding interracial marriage were plainly constitutional” (Klarman 2013).

This analysis perfectly warns of the potential misinterpretation of racial discrimination issues in the Supreme Court. It is the responsibility of every Justice to allow for the growth and success of *all* racial minorities in the United States. While their efforts have been noticed, there is still a considerable amount of work that must be done to ensure that politicians and citizens alike are recognizing the struggles faced by people of color. It is true that the Supreme Court must focus on constitutionality, but they must also remember that the Framers did not live in a similar time period. The five referenced cases above sum up the work that the Supreme Court has done

between 1954 to present, and the analysis of their impact proves that there is still much more to do.

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