

Judicial Power and Public School Desegregation



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Introduction

By the end of this unit, students should be able to explain the following:

- How state-level pressures, along with individual judicial preferences, affected federal district and circuit court judges in the aftermath to the *Brown* decisions, and
- The general constraints that impede or allow courts from bringing about major social change.

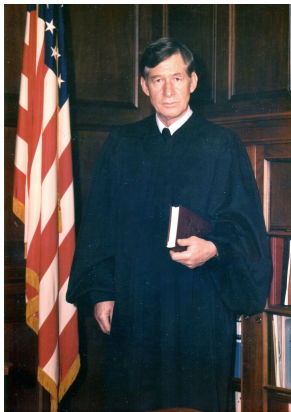


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The men in the middle

- Who are the 58 judges Peltason describes, and what of their courts?
- Which of these face/exhibit more/less support for desegregation?
- How are these men different from their southern state court counterparts?



Frank Johnson (1918-1999)



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The problem with *Brown*

- What types of orders did litigants favor in implementing *Brown*, and how did the Supreme Court respond?
- How did the decision empower local district judges to act with discretion?
- How did it embolden the segregationists?



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With all deliberate delay

- Who were the “moderates” and “segregationists”?
- How did segregationists weaponize the federal courts’ own processes?
- How were school board officials frequently caught up between courts, voters, and legislatures?



Little Rock, Arkansas



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“As long as we can legislate, we can segregate.”

- What were the obstacles to bringing a lawsuit from black parents?
- How did segregationists attempt to erect legal roadblocks for those who might attempt a federal suit?
- What kinds of token policies did jurisdictions erect to slow-walk desegregation? How could judges respond?



T. Whitfield Davidson (1876-1974)



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The uses and abuses of violence

- The “Southern Manifesto” and implicit blessings of violence
- What did (in)tangible violence, or threats, used?
- How could local authorities/judges constrain/exacerbate the forces of violence using police powers (Tuscaloosa, AL; Little Rock, AR; Mansfield, TX; Nashville and Clinton, TN)?



Clinton, TN High School (1958)

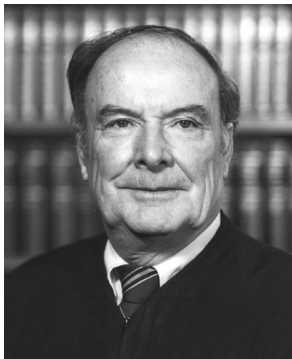


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Louisiana—the last step before secession

- Role of moderates, federal government, and Catholic church in New Orleans
- What role did the Louisiana executive and legislative branches play in obstructing the courts?
- How did the federal courts and judges respond?



Skelly Wright (1911-1988)



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The problem with courts and social change

- Social reformers often litigate because they presume this strategy to be the most effective toward achieving their goals.
- But the lessons associated with *Brown* suggest there are limits to what courts can accomplish on their own.



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The dynamic vs. the constrained court

- Dynamic: “[C]ourts [are] powerful, vigorous, and potent proponents of [social] change.”
- Constrained: “[A court’s] ability to produce political and social change is limited... [It] can do little more than point out how actions have fallen short of constitutional or legislative requirements and hope that appropriate action is taken.”



Gerald Rosenberg



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Structural constraints

- Constraint 1: Limited nature of constitutional rights
- Constraint 2: Lack of judicial independence
- Constraint 3: Lack of implementation powers



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Conditions for court effectiveness

- Condition 1: Courts may produce social reform when other actors offer positive incentives to induce compliance.
- Condition 2: Courts may produce social reform when other actors impose costs for non-compliance.
- Condition 3: Courts may produce social reform when judicial decisions can be implemented by the market.
- Condition 4: Courts may produce social reform by providing cover for individuals crucial to implementation who are also willing to act.



Background: The K12 desegregation cases

- *Brown I & II* (1954 & 1955)
- *Cooper v. Aaron* (1958)
- *Swann v. Charlotte-Mecklenburg BOE* (1971)
- *Milliken v. Bradley* (1974)



Sabotage in Michigan

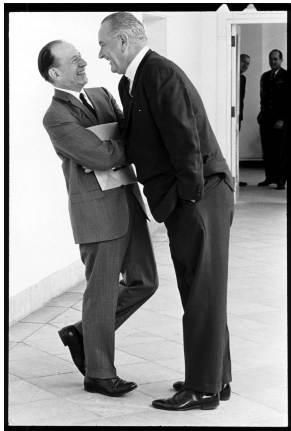


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Congressional and executive responses

- Civil Rights Acts of 1957, 1960, and 1964
- Elementary and Secondary Education Act of 1965
- Department of Health Education and Welfare



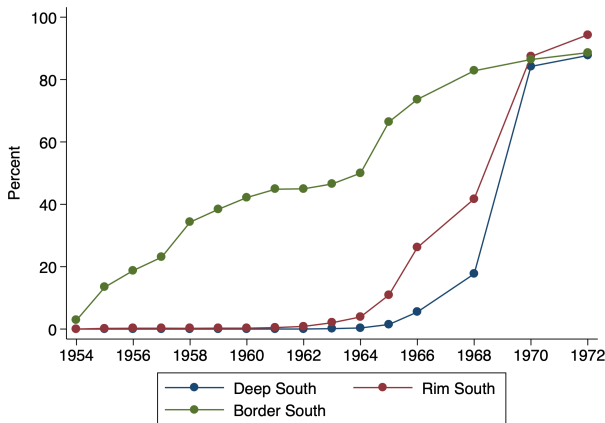
The “Johnson Treatment”



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Empirical analysis of K12 desegregation



Percent of black school-children enrolled in schools with whites



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Source of K12 desegregation

Years	Courts	HEW	State/Local	Total
1954-65	14.6	22.0	63.4	100.0
1966-67	11.1	26.4	62.5	100.0
1968-69	41.1	32.6	26.4	100.1
1970-71	50.0	28.5	21.5	100.0
1972-73	21.8	9.1	69.1	100.0
1974-75	28.3	13.2	58.5	100.0

Percent of superintendents indicating who made them desegregate



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Higher education

- *Missouri ex. rel. Gaines v. Canada* (1938)
- *McLaurin v. Oklahoma Board of Regents* (1950)
- *Sweatt v. Painter* (1950)

Year	South		Border	
	#	%	#	%
1963	4,639	na	na	na
1965	12,054	1.9	6,607	2.5
1966	20,788	2.6	14,102	4.9
1970	na	3.5	na	3.0
1978	na	8.5	na	5.1

Percent of students enrolled at non-HBCU public universities who are black

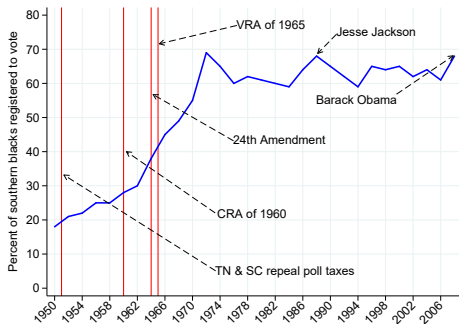


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Voting

- *Smith v. Allwright* (1944)
- Civil Rights Acts of 1957 and 1960
- 24th Amendment (1964)
- Voting Rights Act of 1965



Percent of black voting age population registered to vote



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Did *Brown* indirectly further civil rights?

- If the Court failed directly to bring about significant social change with its orders in *Brown*, perhaps it still managed to affect developments in civil rights more indirectly.
- How might the Court have indirectly influenced the development of the Civil Rights Movement, and what evidence would we need to observe in order to draw a causal arrow between the Court and significant social change?



Potential indirect effects of *Brown*

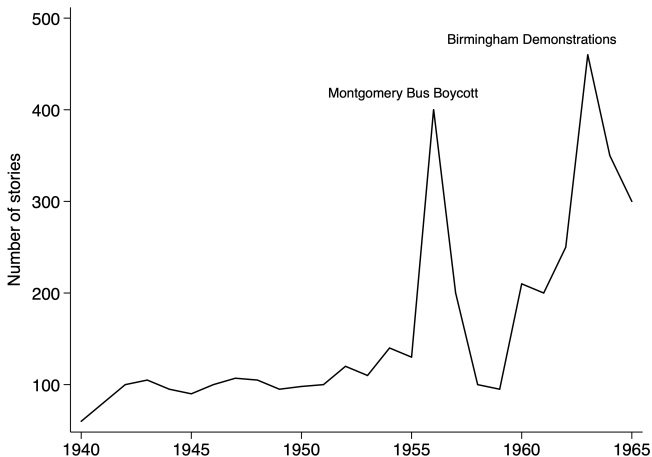
- Political salience
- Elite attitudes and agenda
- Public opinion



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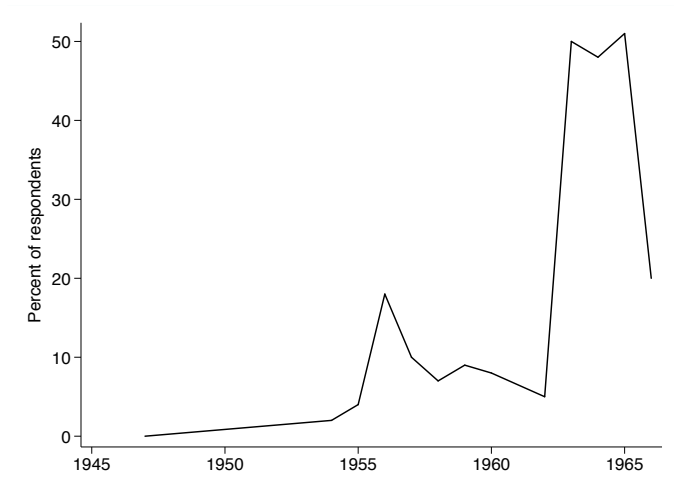
Magazine coverage of civil rights (1940-65)



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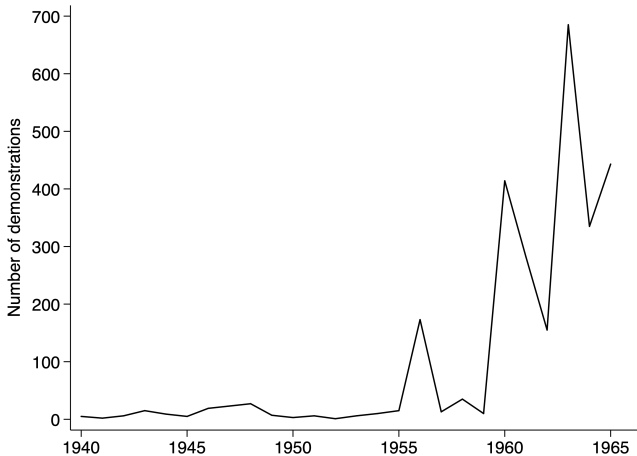
“The most important problem today”: Civil rights



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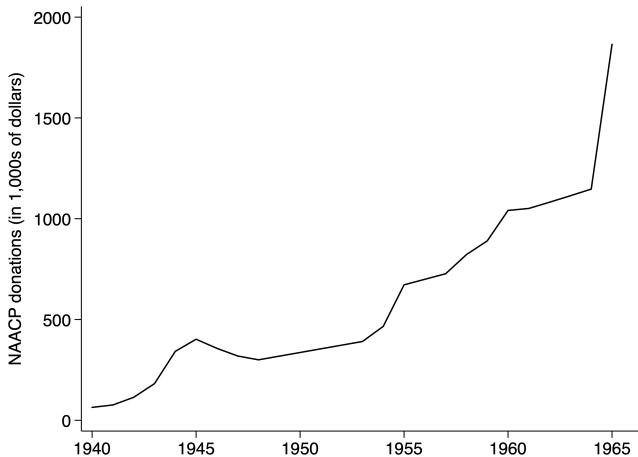
Civil rights demonstrations (1940-65)



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Funds donated to the NAACP (1940-65)



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Membership in the NAACP (1944-65)



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Conclusion

- Due to their lack of enforcement powers, courts will struggle to accomplish major social change on their own, as has been demonstrated through the desegregation crisis in the South.
- Rather, it takes the dedication of grassroots activists who can sway elected policymakers to provide the necessary incentives—direct and indirect forces—to achieve broader socio-political changes.



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