

3.12: Balancing Minority and Majority Rights

Explain how the Court has at times allowed the restriction of the rights of minority groups and at other times has protected those rights.

Constitutional provisions and the language of our laws require constant attention and interpretation. We rely on the U.S. Supreme Court to provide clarity. Former Chief Justice Charles Evans Hughes said it best, "We are under a Constitution, but the Constitution is what the judges say it is." This helps explain why the arc of civil rights in American history is an inconsistent story. At times our courts have restricted minority rights. And at other times they have protected those rights. This becomes all the more apparent when looking at a number of specific examples.

Jim Crow laws and other deeply rooted practices institutionalized racism and discrimination. White supremacy was the law of the land for a long time. In notable cases like *Plessy v. Ferguson* (1896) the Supreme Court validated these laws. In *Plessy* the Court established the "separate but equal" precedent, a doctrine that prevailed for over fifty years. Though it paid lip service to equality the "separate but equal" doctrine legitimized a discriminatory culture. It rendered our egalitarian ideal as a bounced check. More importantly it appeared to uphold a concept loathed by our constitutional framers, a tyranny of the majority.

It took a brave and courageous Supreme Court and its new chief justice to overturn the *Plessy* precedent in 1954. Inspired by the diligent advocacy of the NAACP and other black interest groups, the *Brown v. Board of Education* case took on the common practice in the south to segregate the public-school system. The Court invalidated race-based segregation based upon a close reading and interpretation of the Fourteenth Amendment's "equal protection" clause. In the unanimous Court opinion Chief Justice Warren wrote:

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...

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 [black] group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [hold back] the educational and mental development of [black] children and to deprive them of some of the benefits they would receive in a racially integrated school system...

We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The Brown ruling was met with defiance. Implementation would not be easy. The Court ruled in the following year, in a case referred to as Brown II, that enforcement of desegregation would fall to both the local school districts and federal district courts. Desegregation must be realized “with all deliberate speed.” Every arm of government had for a long-time upheld majority rule over Southern school practices. In the Brown case, however, the Courts recognized the legitimacy of minority rights and overturned race-based discrimination in school.

It should be noted that majorities still maintained some semblance of power, even in the area of public education following the Brown case. A common strategy used in America to integrate public schools was to bus students, at times great distances. In 1974 the Court, in the case *Miliken v. Bradley*, acknowledged that segregation is not always the result of racially based discriminatory policy. Plans to bus students across district lines took the Brown precedent too far. School segregation based upon personal choice, rather than government policy, was beyond the reach of the Brown precedent. The tension between majority rule and minority rights continues. Another battleground for civil rights in our time has been the public policy of affirmative action.