In Brown v. Board of Education of Topeka, 347 U.S. 483, the Supreme Court ruled unanimously that state laws establishing racial segregation in public schools are unconstitutional, even where the segregated schools are otherwise equal in quality. As a matter of law, from 1896 until Brown was decided on May 17, 1954, states could require separate Black and White schools so long as they were equal. But as a matter of fact, segregated schools, especially in Southern states, were never equal. Teacher pay, physical facilities, textbooks, athletic programs for schools attended by Black children were allotted public funds at levels significantly lower than the same programs for schools that White children attended.

The preparation for Brown started long before 1954. In 1940, Thurgood Marshall founded the NAACP Legal Defense and Education Fund (LDF) to fight forced segregation and other racial inequities. A team of lawyers led by Marshall and Howard University law school Dean Charles Hamilton Houston traveled the nation representing Black families challenging state segregation laws in state and federal courts. Thurgood Marshall, the first African-American Supreme Court Justice, without the aid of Twitter, FB or Instagram, assembled a stellar legal team to mount the attack on segregation. Eventually, cases from Kansas, Delaware, South Carolina, Washington, DC and Virginia were consolidated for an appeal to the Supreme Court in 1952. The Court requested additional briefing and the case was reheard and decided in 1954.

An all-white and all-male Supreme Court issued the unanimous opinion. It is fortunate perhaps that Earl Warren, known better as the former moderate governor of California than for being a courtroom lawyer, insisted that the opinion be unanimous, in part to avoid further
dividing the opinion of the American people. Plessy and the separate but equal doctrine had been
the law of the land for more than 58 years. By 1954, most people could not remember 1896.
Warren was appointed by President Dwight Eisenhower to fill the vacancy on the court created
by the death of Chief Justice Vinson, who was reported to be skeptical of Thurgood Marshall’s
equal protection attack on state-sponsored segregation. Warren used his political skills to unite
the court, reasoning that a unanimous decision from the highest court in the land would leave
no doubt about the future direction of the nation.

With Brown v. Board the Supreme Court ruled against segregation for the first time since
Reconstruction. In declaring school segregation unconstitutional, the Court overturned the
longstanding “separate but equal” doctrine established nearly 60 years earlier in Plessy v.
Ferguson (1896). In Brown, the Supreme Court held that “separate but equal” facilities are
inherently unequal and violate the protections of the Equal Protection Clause of the Fourteenth
Amendment. The Court reasoned that the segregation of public education based on race instilled
a sense of inferiority that had a hugely detrimental effect on the education and personal growth
of African American children. Warren based much of his opinion on information from social
science studies rather than court precedent. The decision also used language that was relatively
accessible to non-lawyers because Warren felt it was necessary for all Americans to understand
its logic.

Many Southerners views on racial de-segregation remained unreconstructed nearly 100
years after the surrender of the Confederate States of America to General Ulysses S. Grant at
Appomattox Courthouse in 1865. Most Black Southerners lost the right to vote in the 1870s,
barely five years after the enactment of the 14th amendment affirmed the legal equality of all
U.S. citizens.

Southern politicians responded predictably to Brown. Almost immediately after Chief
Justice Earl Warren finished reading the Supreme Court’s unanimous opinion in Brown v. Board
of Education in the early afternoon of May 17, 1954, Southern white political leaders condemned
the decision and vowed to defy it. James Eastland, the powerful Senator from Mississippi,
declared that “the South will not abide by nor obey this legislative decision by a political body.”
Senator Harry Byrd of Virginia described the opinion as “the most serious blow that has yet been struck against the rights of the states in a matter vitally affecting their authority and welfare.”

Southern politicians did more than proclaim their opposition. They started segregation academies, stood in the school house door to block entry of Black students and set up think tanks at George Mason University to defy the law and Senator Byrd became the leading architect behind Virginia’s diehard “massive resistance” segregationist campaign. The most egregious proponents of school segregation simply closed the public schools. In response to a May 1, 1959 order to integrate, officials in Prince Edward County, Virginia closed its entire public school system for the next five years.

The true impact of Brown might not have been the de-segregation of public schools. Today, many public schools in the US are just as segregated as they were in 1954. The lasting legacy of Brown today is that de jure (legally required) segregation in any public function is illegal and unconstitutional.

In the face of this fierce and ongoing resistance, LDF sued hundreds of school districts across the country to enforce Brown. It was not until LDF’s later victories in Green v. County School Board (1968) and Swann v. Charlotte-Mecklenburg (1971) that the Supreme Court issued mandates that segregation be dismantled “root and branch.” As a result of this ruling, the public high schools in my home county of Greenville, SC were forcibly de-segregated in February 1970 with massive busing of Black students to formerly all-white schools and closing of formerly all-Black high schools.

In 1977, the legal rationale for school integration changed from remedying past discrimination (such as the “sense of inferiority” the Court attributed to segregation) to merely fostering a culture of “inclusion” first raised by Justice Powell in the Bakke case. Decided in the context of university admission practices, Bakke established a theory of reverse discrimination that dominates American jurisprudence today. The Bakke case divided the Court: Four justices agreed with Bakke that the university’s affirmative-action strategy violated Title VI because it assured that some Black applicants would get in. (Those justices did not take up the Fourteenth Amendment question.) And four other justices argued that the college’s quota system was permissible under both Title VI and the Fourteenth Amendment.
“I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it successful,” Justice Harry Blackmun, one of the supporters of the UC Davis quota system, wrote. “To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently.”

According to a recent Times article, “More than half of the nation’s schoolchildren are in racially concentrated districts, where over 75 percent of students are either white or nonwhite.” In addition, school districts are often segregated by income. The nexus of racial and economic segregation has intensified educational gaps between rich and poor students, and between white students and students of color. Although many students learn about the historical struggles to desegregate schools during the mid 20th century civil rights struggle, segregation as a current reality is largely absent from the curriculum.

What are the lessons from Brown:

1. There is no way to divorce politics from law. Justices’ political opinions inevitably influence their decisions and ought to be taken into account when they are nominated and confirmed to the federal bench. Warren was successful as a jurist because of his moderate political leanings, not in spite of them.

2. De facto school integration is at low ebb. The large body of evidence that school integration leads to racial equity should be studied and heeded by policy makers from school board to the U.S. Congress.

3. Brown forever made forced segregation illegal in every sphere, but de facto segregation remains widespread.

4. The law is a living breathing entity that changes in response to public opinion and pressure, but it often takes a long time to do so and it frequently does so in cycles of progress and reaction.

5. Politicians should attempt to unite the country around a shared agenda.