THE NAACP’S DESEGREGATION STRATEGY AS A RADICAL PROGRAM

Michael Banerjee
History 465: The Post World War II Civil Rights Movement
Dr. Sanders
October 5, 2014
On May 17, 1954, the United States Supreme Court handed down its unanimous decision in what was perhaps the most important and divisive case of the 20th century ("Brown v. Board of Education"). The opinion in the case of Brown v. Board of Education of Topeka, Kansas, penned by Chief Justice Earl Warren, stated “that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal” ("History of Brown v. Board of Education"). The Justices decided that the application of the “separate but equal” doctrine in public education violated the equal protection clause of the 14th Amendment to the United States Constitution ("Brown v. Board of Education"). This ruling was neither the result of happenstance nor luck; rather, it was the culmination of decades of work utilizing a stratagem conceived decades earlier. The National Association for the Advancement of Colored People (NAACP) was the main proponent of the aforementioned stratagem, which was essentially to combat the injustice of segregation through the court system. This was a radical tactic during this time on a number of levels. The Merriam-Webster Dictionary defines the term radical as “very new and different from what is traditional or ordinary” ("Radical"). When the NAACP’s program is considered within the rudimentary context of the modern day civil rights movement, the program seems to be conservative compared to the direct-action techniques employed by the likes of Dr. Martin Luther King, Jr.’s Southern Christian Leadership Conference and the Student Nonviolent Coordinating Committee (perhaps because the NAACP’s program was less visibly militant); however, when the program is evaluated within the broader context of American history and culture, it becomes axiomatic that this systematic attack on Jim Crow by way of the American court system was, contrary to
popular belief, a highly radical program. The NAACP’s strategy can be considered to be radical for two main reasons: the American court system had never before taken seriously the rights of black people and the program targeted segregation, which was a fundamental aspect of American life.

The term *Jim Crow* is “used to describe the segregation laws, rules, and customs which arose” during the era Rayford W. Logan (Pilgrim), an esteemed historian, referred to as the “Nadir Period,” or the lowest point in race relations in the United States (300). The Nadir Period began in 1877 and lasted into the 20th century (Logan 300). Jim Crow was actually the name of a character born out of the tradition of minstrelsy and portrayed by Thomas Dartmouth Rice, who would blacken his face in order to more effectively mock African Americans on stage for the amusement of Whites (Pilgrim). Jim Crow was a fiercely stereotypical depiction of a black man that reflected well how the racist element of the white majority in America viewed the black man—he was lazy, stupid, and childlike (Pilgrim). During this period, “Black Codes” were passed by state legislatures; these laws aimed to disenfranchise Blacks and to usher the malady of white supremacy into perpetuation (Pilgrim). After some time, the name *Jim Crow* came to describe these laws that both created new customs and reinforced existing ones in the interest of maintaining the racial status quo.

During the Nadir Period, black life was worth even less in American society than it had been during antebellum times. After the Civil War, Blacks were no longer considered chattel, and therefore no longer a commodity that would perform hard labor without compensation. During Reconstruction, federal troops continued to occupy the South, providing at least a modicum of protection for the African Americans residing in
“Dixie land” (Logan 300). In 1877, federal troops were withdrawn from the South and a reign of terror ensued (Logan 300). For Blacks, this reign of terror meant increased lynching, harassment, and intimidation. Almost 600 Blacks were lynched in Mississippi alone between 1880 and 1940 but no killers were ever brought to justice for these crimes (Dittmer 13). The federal government refused to intervene and courts, including the Supreme Court of the United States, for years suborned the extralegal killing, harassment, and intimidation of Blacks by ruling on the side of white supremacy rather than the side of justice. The Supreme Court’s devastating (albeit far from surprising) 1896 decision in Plessy v. Ferguson stated that “distinction between the white and colored races…must always exist so long as white men are distinguished from the other race by color” and that “separate but equal accommodations” were constitutionally acceptable (“Plessy v. Ferguson”). This decision established the doctrine of “separate but equal,” a perplexing interpretation of the Constitution, that was to be the law of the land for 58 years.

Beginning in the late 19th century, and spilling over well into the 20th century, the federal government and the courts both displayed an indifference, if not contempt, for the rights of black people.

It was out of the Nadir Period, during which Jim Crow’s reach and influence proliferated unabatedly, that the NAACP was founded. On February 12, 1909, around 60 people convened in response to a call issued by Dr. Henry Moscowitz, “to discuss racial justice” (“NAACP”). Of the approximately 60 people in attendance at this initial meeting, only seven were African American (“NAACP”). It is out of this meeting that the oldest and most influential civil rights organization in the United States would grow. The aim of this new organization “was to secure for all people the rights guaranteed in
the 13th, 14th, and 15th Amendments to the United States Constitution, which promised an end to slavery, the equal protection of the law, and universal adult male suffrage, respectively” (“NAACP”). These constitutional Amendments were products of Reconstruction, which is the period that took place between the Civil War and the Nadir (“Landmark Legislation”). Southern states made a mockery of these amendments by circumventing them in order to deny African Americans franchises such as voting. For years, the NAACP lobbied and marched in support of federal legislation to help enfranchise and advance African Americans (“PBS LearningMedia”). These efforts proved ultimately to be ineffective.

Walter White, who was at the time the Executive Secretary of the NAACP, wanted to pass federal anti-lynching legislation through Congress during President Franklin D. Roosevelt’s administration (“PBS LearningMedia”). Such a bill was introduced in 1938 but was subsequently killed in the Senate via filibuster (“PBS LearningMedia”). Charles Hamilton Houston, chief counsel for the NAACP, who presciently recognized the unlikelihood of Congress passing an anti-lynching bill, believed that the NAACP could channel their considerable resources into a more efficacious strategy (“PBS LearningMedia”). Houston believed that there were laws already in place that could be used to defeat Jim Crow, and time would prove him to be correct (“PBS LearningMedia”). The law that would become the basis for civil rights litigation was the 14th Amendment to the Constitution, which guaranteed all citizens to equal protection under the law (Conyers, Black, and Brittain 157).

The legal basis for Jim Crow-style segregation in the United States could be traced to the ruling in the case of Plessy v. Ferguson (“Plessy v. Ferguson." PBS).
Houston, realizing that the basis for segregation was the *Plessy* decision, and specifically the doctrine of “separate but equal” that was established by this decision, decided to target the foundation on which de jure segregation was predicated through his litigation campaign. Rather than demanding judges to overturn the *Plessy* ruling, which was unlikely to happen, Mr. Houston demanded that courts enforce the “separate but equal” doctrine, believing the standard would prove to be too expensive for states to maintain. Houston’s strategy was ingenious—demanding that the *Plessy* standard be upheld to benefit Blacks, when it had previously been used exclusively to the detriment thereof. Enforcing the *Plessy* decision would mean that for every tax-supported facility for Whites, there would have to be a facility of equal quality for Blacks.

Mr. Houston identified the tax-supported education system as the proverbial chink in Jim Crow’s armor, and did so for a number of reasons. Most importantly, educational disparity between the races was perhaps the most palpably unequal aspect of Jim Crow’s social construct. In fact, “southern states collectively spent less than half of what was allotted for white students on education for [B]lacks” (“NAACP History”). Furthermore, law schools were identified as a good starting point for the struggle for school integration (and for the integration of society in general) for two reasons: (1) African Americans graduating from law schools could use skills acquired in school to help advance the race through the courts and (2) law schools were almost exclusively male institutions (“NAACP History”). The first reason for selecting law schools correlated well with NAACP founder W.E.B. Du Bois’s notion of a “Talented Tenth,” or a class of well educated African Americans that would lead their race onward and upward (“W.E.B. Du Bois”). Black lawyers who received rigorous legal training could represent the best
interests of Blacks in court. As for the second reason, it is perhaps more salient to note who did not attend these institutions, rather than who did attend them. During the first half of the 20th century, few women attended law schools in the United States ("NAACP History"). During this same period, it was a commonly-held belief that school integration would lead to miscegenation, or mixing of the races through procreation, which was (and continues to be) one of the main fears of the white supremacist. The fact that most law students were male rendered moot the argument against integration in order to avoid miscegenation ("NAACP History").

The cases the NAACP decided to pursue were picked scrupulously—only those the Association stood a strong chance of winning were selected for litigation. A series of cases lead up to the monumental Brown decision that would declare segregation in public schools unconstitutional. The first of these cases was Murray v. Maryland, which was decided in 1936 ("History of Brown v. Board of Education"). This was not a Supreme Court case but is significant in that it resulted in the first ever court-ordered desegregation of a school. Attorneys Charles Hamilton Houston and Thurgood Marshall, who had studied under the tutelage of Houston at Howard University Law School, successfully represented Mr. Murray ("History of Brown v. Board of Education"). The two lawyers argued that in order to satisfy the Plessy ruling, the University of Maryland must accept Murray because he qualified for admittance to the school on all grounds excepting the fact that he was black and Maryland offered no law school for Blacks ("History of Brown v. Board of Education"). The language of the Maryland Court of Appeals decision was encouraging insofar as it held that federal laws must be enforced, even if that meant breaching a state law ("Pearson").
In Missouri, a black college-educated man by the name of Lloyd Gaines was denied admittance to the University of Missouri’s law school on the basis of his race (Wormser). Since Missouri did not have a law school for Blacks, the state offered to subsidize Gaines’s legal education in another state that offered a law school in which Blacks could enroll (Wormser). Houston proffered the following argument before the United States Supreme Court: in accordance with the “separate but equal” doctrine, Missouri was obligated to either admit Blacks to the University of Missouri’s segregated law school or build a separate law school for Blacks that was of equal quality (Wormser). The Supreme Court agreed with Houston’s argument, with their decision coming down in 1938, two years after Murray integrated the University of Maryland Law School (Wormser). The import of this decision cannot be overstated—“it meant that every state now had to either build a separate graduate school for [B]lacks or integrate” (Wormser).

In early 1946, Herman Marion Sweatt applied for admission to the University of Texas Law School, only to be denied entrance due to “the fact that he [was] a negro” (Hsu). In May of the same year, with the help of NAACP attorney Thurgood Marshall, Sweatt filed a lawsuit against University of Texas president Theophilus Shickel Painter in county court (Hsu). The University of Texas, in a lackluster, last minute attempt to comply with Plessy, built a separate law school for Sweatt (Hsu). Not only was the school inferior in terms of resources, faculty, and size, the school also lacked the opportunity for interaction with other law students, which is an essential dimension of legal education (Hsu). Marshall, utilizing the strategy devised by Charles Hamilton Houston in the 1930’s, argued the case in front of the Supreme Court, which would order
the University of Texas Law School integrated in 1950 (Hsu). The “separate but equal” doctrine was proving to be less practical in application than it was in abstraction.

When the Supreme Court ruled in favor of the plaintiffs in *Brown v. Board of Education of Topeka, Kansas*, which was actually one decision for five separate cases, segregation in public schools was deemed unconstitutional ("Brown v. Board of Education"). On behalf of the plaintiffs, NAACP attorney Thurgood Marshall successfully litigated the case ("Brown v. Board of Education"). *Brown* was the apex of the string of cases catalyzed by Charles Hamilton Houston in the mid 1930’s. Mr. Houston had decided to ask courts to uphold the standard of “separate but equal” created by the Court’s *Plessy* decision—a standard he knew would be too costly to maintain, leaving integration as the only other option (Wormser). Charles Hamilton Houston passed in 1950, meaning that by the time of the *Brown* decision in 1954, the chief strategist behind the NAACP’s desegregation strategy had been deceased for four years ("NAACP History"). Although he did not live to see the climax of the desegregation litigation campaign he had started, by 1950, it was pellucid that Jim Crow had been backed into a corner. On behalf of the plaintiffs in *Brown*, Mr. Marshall was able to challenge the “separate but equal” doctrine more directly than he and Mr. Houston had been able to do previously, benefitting from the wealth of new legal precedents he had helped create over the course of the previous two decades. Interestingly, the school district in Topeka, Kansas actually offered black students a school that was more or less equal in tangible terms to the white school but, Marshall argued, the separation of the races in public schools subjected black children to a feeling of inferiority and so it
follows, violated the 14th Amendment. In essence, the “tangibles” were equal in this case but it was the “intangibles” that made the difference (Hsu).

In response to the Brown decision, Southern Whites banded together in a massive effort to resist and defy the order from the highest court in the United States. The National NAACP office, like so many others, had initially underestimated “the ferocity of white resistance” (Dittmer 51-52). For many Whites, the Brown decision was an affront aimed at the crux of their cultural identity, as evidenced by the widespread resistance to and upset surrounding the ruling. Whites were quick to organize their resistance: less than two months after the Supreme Court handed down its decision in the Brown case, the first White Citizens’ Council was organized in Mississippi (Dittmer 45). White Citizens’ Councils, which were groups of middle and upper class Whites bent on maintaining segregation and white supremacy, soon came to be commonplace in recalcitrant states such as Mississippi (Dittmer 45). Though the methods of the Citizens’ Council were less brutish than those of the Ku Klux Klan, they were no less pernicious, as the two types of groups shared a common goal. Resistance to the Brown decision came not only from private citizens but also from public officials. In Mississippi, a state known to have practiced a particularly cruel form of slavery and to foster particularly poor race relations, the state legislature was willing to abolish the public education system altogether, rather than to integrate and offer all children in the state a decent education (Dittmer 38). The white response to the Brown decision, and by extension the decisions of the other previously mentioned cases, elucidates the radicalism of the NAACP’s program.
In summation, the NAACP’s strategy can be considered to be radical for two reasons: the American court system had never before taken seriously the rights of black people and it was now being forced to do so, and the program targeted segregation, which was an aspect of American life almost as fundamental as capitalism and democracy. The NAACP’s program did not merely seek to abolish a set of laws but rather sought to undermine, uproot, and obliterate a set of beliefs that had insinuated itself into American culture, and employed methods that had traditionally not been found in the black repertoire. When compared to the tactics used by other prominent, more visibly militant, civil rights organizations of the time, the NAACP’s program seems to be conservative but when the context is broadened, the radicalism of the NAACP’s program can be properly appreciated. The NAACP was winning cases in the United States Supreme Court during an era in which “merely bringing [a] case to trial was considered an achievement” (Parks 334). Forcing courts to recognize and protect the rights of African American citizens was not necessarily a new concept but the successful implementation of the idea was certainly new. The implications of this successful implementation were far-reaching and would alter the racial landscape in the United States, which make limpid the fact that the NAACP’s program was highly radical.
Works Cited


2014.


