

University of Southern California Law

From the Selected Works of Mary L. Dudziak

June, 2004

Brown as a Cold War Case

Mary L. Dudziak



Available at: https://works.bepress.com/mary_dudziak/12/

Brown as a Cold War Case

Mary L. Dudziak

"The United States Supreme Court has given a new definition to un-Americanism," Roscoe Drummond wrote in the European edition of the *New York Herald Tribune* on May 21, 1954, following the U.S. Supreme Court ruling in *Brown v. Board of Education*. "It has ruled that segregated public schools are un-Constitutional—and therefore un-American." The *Brown* decision was timely, he argued, "because it comes at a moment when our leadership of the free peoples demands the best . . . of what America is and can be." Drummond was not alone in calling segregation un-American. When the Topeka, Kansas, Board of Education, whose policies were before the Court in *Brown*, voted to abandon segregation before the Supreme Court ruling came down, a board member commented, "We feel that segregation is not an American practice." By 1954 many Americans had come to that conclusion about segregation, a widely practiced American institution.¹

Hearing speakers in 1954 call segregation "un-American" helps situate the school segregation cases within their cultural context. It was during the first decade of the Cold War, the era of Sen. Joseph R. McCarthy, during the heyday of the House Committee on Un-American Activities, that *Brown* was decided. American history texts often cover the McCarthy era and the *Brown* case in separate passages alongside each other, as partners in chronology alone, rather than as part of the same story. The case may seem to sit uncomfortably in the trajectory of the legal history of the 1950s. During the McCarthy era, after all, individual rights were restricted, but in *Brown*, individual rights were powerfully expanded. The Supreme Court decided *Dennis v. United States* in 1951, upholding prosecution of members of the Communist party based on evidence that they read the writings of Karl Marx and Friedrich Engels and talked about them. The Court decided *Harisiades v. Shaughnessy* in 1952, upholding the deportation of immigrants for past Communist party membership. Those cases sit alongside a case thought to be a highlight of American constitutional history. How

Mary L. Dudziak is Judge Edward J. and Rucy L. Guirado Professor of Law and History at the University of Southern California Law School.

For helpful comments on an earlier draft, I am grateful to Paul Finkelman, Dennis Hutchinson, Howard Gillman, Joanne Meyerowitz, Mel Urofsky, and an anonymous reader for the *JAH*. For help with research and other matters, I thank Greg Barchie, Susan Davis, Michael Fern, Winston Lin, and Hayes Robbins. I am also grateful to those who attended my lecture at the University of Iowa for their helpful questions and comments.

Readers may contact Dudziak at <mdudziak@law.usc.edu>.

¹ Roscoe Drummond, "Washington: The Supreme Court Confirms," *New York Herald Tribune* (European ed., Paris), May 21, 1954, p. 4; *Brown v. Board of Education*, 347 U.S. 483 (1954); Mary L. Dudziak, "The Limits of Good Faith: Desegregation in Topeka, Kansas, 1950–1956," *Law and History Review*, 5 (Fall 1987), 352.

can *Brown* and the Cold War be understood as part of the same story, the same historical moment?²

The standard way American legal history texts treat *Brown* and the Cold War is illustrated by a leading coursebook, Melvin I. Urofsky and Paul Finkelman's *A March of Liberty*. This excellent text covers the Cold War in one chapter, with readings on *Dennis v. United States* and other anticommunist cases from the 1950s and related matters. Race is not mentioned at all in the Cold War chapter. The Supreme Court's race cases are discussed in the next chapter, entitled "The Struggle for Civil Rights," which covers the landmark cases leading up to *Brown*, the National Association for the Advancement of Colored People (NAACP) legal effort, and other developments in civil rights law. The federal government appears in the story of *Brown* in the form of the Supreme Court. The struggle is one by lawyers to change an unjust legal regime. Its denouement is the Court's simple opinion in *Brown*. That treatment is consistent with a consensus narrative in American lawbooks: *Brown* is a straightforward story of the triumph of a progressive Court and a progressive Constitution, after a hard-fought battle by lawyers and litigants.³

A dichotomous narrative about 1950s cases flows from this characterization: McCarthyism on one side and civil rights on the other. The anticommunist cases had to do with national security issues, after all, something apparently not at stake in the civil rights context. On closer reflection, however, that categorization will not hold up.

² Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Boston, 1998); Michal Belknap, *Cold War Political Justice: The Smith Act, the Communist Party, and American Civil Liberties* (Westport, 1978); *Dennis v. United States*, 341 U.S. 494 (1951); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952). The literature linking civil rights and foreign relations during the Cold War is well developed and growing. On foreign relations and civil rights reform, see Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge, Mass., 2001); Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, 2000); Philip A. Klinkner with Rogers M. Smith, *The Unsteady March: The Rise and Decline of Racial Equality in America* (Chicago, 1999); and Azza Salama Layton, *International Politics and Civil Rights Policies in the United States, 1941–1960* (Cambridge, Eng., 2000). On race and foreign relations, see, for example, Brenda Gayle Plummer, *Rising Wind: Black Americans and U.S. Foreign Affairs, 1935–1960* (Chapel Hill, 1996); Gerald Horne, *Black and Red: W. E. B. Du Bois and the Afro-American Response to the Cold War, 1944–1963* (Albany, 1986); Penny M. Von Eschen, *Race against Empire: Black Americans and Anticolonialism, 1937–1957* (Ithaca, 1997); Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (New York, 2003); Brenda Gayle Plummer, ed., *Window on Freedom: Race, Civil Rights, and Foreign Affairs, 1945–1988* (Chapel Hill, 2003); Michael L. Krenn, *Black Diplomacy: African Americans and the State Department, 1945–1969* (Armonk, 1999); and Michael L. Krenn, ed., *Race and U.S. Foreign Policy from the Colonial Period to the Present: A Collection of Essays* (5 vols., New York, 1998). International perspectives on other topics appear in the work of leading American legal historians. On U.S. law as an export, see Lawrence Friedman, *American Law in the Twentieth Century* (New Haven, 2002), 572–87. On the United Nations in the context of the legal history of New York, see William E. Nelson, *The Legalist Reformation: Law, Politics, and Ideology in New York, 1920–1980* (Chapel Hill, 2001), 369–73. For a new essay that incorporates the Cold War history of *Brown*, see William E. Nelson, "Brown v. Board of Education and the Jurisprudence of Legal Realism," *St. Louis University Law Review*, 48 (forthcoming, 2004).

³ Melvin I. Urofsky and Paul Finkelman, *A March of Liberty: A Constitutional History of the United States*, vol. II: *From the Founding to 1890* (New York, 1988), 773–92. The omission of race is especially curious in the Cold War chapter's discussion of the Bricker Amendment to the U.S. Constitution, proposed in 1952, which would have limited the enforcement of treaties within the United States. A central motivation was to make international human rights treaties unenforceable within the United States, lest they invalidate southern racial policies. Duane Tananbaum, *The Bricker Amendment Controversy: A Test of Eisenhower's Political Leadership* (Ithaca, 1988), 1–15. The best version of the standard history of *Brown* remains Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York, 1976).

Among the elements left out of Urofsky and Finkelman's story of *Brown* is the role of the U.S. Justice Department, which filed amicus curiae (friend of the court) briefs in the cases leading up to *Brown* and in *Brown* itself. The Justice Department briefs gave only one reason for the government's participation in the cases: segregation harmed U.S. foreign relations. As the United States argued in the *Brown* amicus brief, "the existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries. Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith." World attention to U.S. race discrimination was "growing in alarming proportions," and school segregation in particular was "singled out for hostile foreign comment." Because of this, Secretary of State Dean Acheson concluded in a statement quoted in the brief, race discrimination "remains a source of constant embarrassment to this Government in the day-to-day conduct of its foreign relations; and it jeopardizes the effective maintenance of our moral leadership of the free and democratic nations of the world." The secretary's argument was not speculative. U.S. State Department files from the period are full of reports from the field that racial problems in the United States harmed U.S. relations with particular nations and compromised the nation's Cold War objectives.⁴

Cold War concerns provided a motive beyond equality itself for the federal government, including the president and the courts, to act on civil rights when it did. But if we strip the story of the complications of the Cold War, what remains is a romantic tale of heroic litigants, lawyers, and judges who did the right thing. There was much heroism and sacrifice in civil rights history, but as Derrick A. Bell Jr. and others have argued for decades, the history of American civil rights reform is not a straightforward tale of a struggle for justice, but a complex story that includes self-interest and limited commitments. Nevertheless, the story of *Brown* as a struggle for simple justice is replayed throughout standard treatments of American law.⁵

Examining *Brown* as a Cold War case complicates this narrative. This essay will take up the question of how it affects the story to set *Brown* in the Cold War chapter

⁴ Dudziak, *Cold War Civil Rights*, 80–81; Mary L. Dudziak, "Desegregation as a Cold War Imperative," *Stanford Law Review*, 41 (Nov. 1988), 61–120. Thousands of records on this topic can be found in Decimal File 811.411, Records of the Department of State, RG 59 (National Archives, Washington, D.C.). See generally Dudziak, *Cold War Civil Rights*; and Borstelmann, *Cold War and the Color Line*.

⁵ Derrick A. Bell Jr., "*Brown v. Board of Education* and the Interest-Convergence Dilemma," *Harvard Law Review*, 93 (Jan. 1980), 518; Alan David Freeman, "Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," *Minnesota Law Review*, 62 (July 1978), 1049–1119. On American legal scholars' reverence for *Brown*, see Laura Kalman, *The Strange Career of Legal Liberalism* (New Haven, 1999). The narrative that treats *Brown* as separate from the Cold War has been resilient and is prominent in works by leading scholars. See Kermit L. Hall, *The Magic Mirror: Law in American History* (New York, 1989), 322–24; and David P. Currie, *The Constitution in the Supreme Court: The Second Century, 1888–1986* (Chicago, 1990), 377–85. There are other important debates about the role and importance of *Brown*, centering particularly on whether the Court's rulings actually desegregated schools, whether judicial action was legitimate or antidemocratic, and whether *Brown* rested on sound constitutional interpretation. See Lucas A. Powe Jr., *The Warren Court and American Politics* (Cambridge, Mass., 2000); James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled History* (New York, 2001); Robert J. Cottrol, Raymond T. Diamond, and Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and Constitution* (Lawrence, 2003); and Jack M. Balkin, ed., *What Brown v. Board of Education Should Have Said: America's Top Legal Experts Rewrite America's Landmark Civil Rights Decision* (New York, 2001).

of American legal history books and to examine the case in an international context. Contextualizing and internationalizing *Brown* does not simply provide new details to a preexisting narrative. Viewing *Brown* as a Cold War case helps us rethink the story itself.

The connections between *Brown* and the Cold War are so ubiquitous in the primary sources that it is more difficult to explain them away than to find a place for them in the historical narrative. In the American press, for example, *Brown* was called a "Blow to Communism." The *Pittsburgh Courier* said that *Brown* would "stun and silence America's Communist traducers behind the Iron Curtain. It will effectively impress upon millions of colored people in Asia and Africa the fact that idealism and social morality can and do prevail in the United States, regardless of race, creed or color." Sharing this concern, the *San Francisco Chronicle* suggested that the ruling's greatest impact would be "on South America, Africa and Asia," since it would restore the faith of their people in the justice of American democracy.⁶

Brown was also a major international story. The decision was on the front page in all the daily newspapers in India. Under the headline "A Great Decision," the *Hindustan Times* of New Delhi suggested that "American democracy stands to gain in strength and prestige from the unanimous ruling. . . . The practice of racial segregation in schools . . . has been a long-standing blot on American life and civilization." An editorial in the *West African Pilot*, published in Lagos, Nigeria, argued that the decision "is of particular significance and special interest to Africans and people of African descent throughout the world." According to the paper:

It is no secret that America is today hailed as leader of the democratic world. This carries with it a great deal of moral responsibility. Firstly, it entails that the American concept and practice of democracy within its own territories should acknowledge the necessity of equal opportunity for all citizens, no matter the racial origin. Secondly, it implies that the United States should set an example for all other nations by taking the lead in removing from its national life all signs and traces of racial intolerance, arrogance or discrimination for which it criticises some other nations.

The paper argued that American actions, because they had global impact, could affect racial policies in other nations. The *West African Pilot* asserted that abolishing racism in the United States "would be the greatest possible assurance of America's good faith and sincerity towards the establishment of a true world-wide democracy."⁷

⁶ The *New York Herald Tribune* and *Pittsburgh Courier* quoted in the *New York Times*, May 18, 1954, p. 2; *San Francisco Chronicle*, May 18, 1954, p. 18.

⁷ Donald D. Kennedy to Walter White, Oct. 12, 1954, Folder: Supreme Court—School Case—Foreign Press—June–Dec. 1954, box A619, General Office Files, Group II, National Association for the Advancement of Colored People Papers (Manuscript Division, Library of Congress, Washington, D.C.); "A Great Decision," *Hindustan Times* (New Delhi), May 20, 1954, Folder: Supreme Court—School Case—Foreign Press—1952–May 1954, *ibid.*; *West African Pilot* (Lagos), May 22, 1954, p. 2. Referring to an architect of apartheid in South Africa, the *West African Pilot* editorial suggested that "Dr. Malan would think twice before pursuing his racialist policy any further if America abolished all signs of racial discrimination in her own land." On the United States and South Africa, see Thomas Borstelmann, *Apartheid's Reluctant Uncle: The United States and Southern Africa in the Early Cold War* (New York, 1993).

A writer for the Australian *Sydney Morning Herald* echoed much of the world's press.

To-day's thinking on the civil rights of Negroes in America is a product of the changes that have occurred as a consequence of two world wars. In the attempt to exert international leadership in a context with world Communism, the United States has been severely handicapped by what the non-white race have felt about the treatment of Negroes in America. The most powerful item of propaganda available to Communists has been the alleged second-class citizenship of more than 15 million of these Americans. . . . To-day . . . the U.S. Supreme Court's decision should go a long way toward dissipating the validity of the Communist contention that Western concepts of democracy are hypocritical.⁸

The international impact of *Brown* was followed by civil rights activists in the United States. The NAACP had a keen interest in the international reaction to *Brown*. The organization's 1954 annual report argued that "it was not the NAACP alone which benefited" from the decision. It had "lessened" the "pressures of world opinion" and "eased" "the burdened conscience of the United States" because "steady progress towards integration undermined the charge of hypocrisy, so often and so effectively leveled against our country whenever our national leaders espouse human freedom." Walter White, the organization's executive secretary, sought details of the international press reaction and wrote to American ambassadors in at least thirteen nations inquiring about evidence of "increased faith in the American democratic process and in the United States itself" flowing from the *Brown* decision. Showing that an NAACP case aided American international prestige served two important interests. First, it gave civil rights activists important leverage. The argument that social change aided U.S. foreign relations could be used to further the NAACP's social change agenda. Second, showing that NAACP efforts enhanced American international prestige helped the NAACP argue that its work promoted, rather than undermined, the nation's Cold War interests. During the Cold War, when civil rights activists were red-baited as subversives, that could help the organization weather criticism.⁹

In response to his queries, White received evidence of the broad international reaction to the decision. For example, Clare Boothe Luce, the U.S. ambassador to Italy, wrote that "the Court's decision and the events following it have been watched with great interest by Italian public opinion. On balance, I think the result has been, not only to give Italians a fresh reminder of the meaning of American democracy, but also to cut the ground from under the anti-American propaganda put out by the Communists on this point." In Israel, U.S. Ambassador Francis H. Russell suggested

⁸ *Sydney Morning Herald*, May 22, 1954, p. 3. U.S. press coverage of *Brown* also emphasized the Cold War impact of the case. See Dudziak, *Cold War Civil Rights*, 107–12.

⁹ *The Year of the Great Decision: NAACP Annual Report, 46th Year, 1954* (New York, 1955), 3, K—Printed Matter, box K1, Group II, NAACP Papers; White to Horace A. Hildreth, Sept. 16, 1954, Folder: Supreme Court—School Case—Foreign Press—June–Dec. 1954, box A619, General Office Files, *ibid.*; Doug McAdam, *Political Process and the Development of Black Insurgency, 1930–1970* (Chicago, 1982); Doug McAdam et al., eds., *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings* (New York, 1996); Manning Marable, *Race, Reform, and Rebellion: The Second Reconstruction in Black America, 1945–1982* (Jackson, 1984), 12–42; Gerald Horne, *Communist Front? The Civil Rights Congress, 1946–1956* (Rutherford, 1988); Anderson, *Eyes off the Prize*.

that "the Supreme Court decision has done much to strengthen belief in the essential democracy of American life." There was little in the Soviet press because, the U.S. ambassador to the Soviet Union thought, *Brown* "so obviously contradicts Communist propaganda." *Izvestia* saw the case as an example of the United States' "demagogic gestures intended for export." Noting the delay in implementing desegregation authorized by the *Brown* opinion, the paper suggested that "the decision of the U.S. Supreme Court has a purely masking character and that it was taken only for propaganda purposes."¹⁰

The U.S. government worked to foster a positive overall international reaction to *Brown*. "You may imagine what good use we are making of the decision here in India," the U.S. ambassador to India, George V. Allen, wrote to Walter White. The United States Information Service (USIS) in India circulated a press release calling the decision "another milestone in the American Negro's steady progress toward full equality as a citizen." Immediately after *Brown* was decided, the Voice of America broadcast the news to the world. When school began in fall 1954, the USIS planned to show a film in ninety countries depicting white and African American students going to school together in Baltimore, Maryland.¹¹

The role of American diplomats was not restricted to efforts to play up the ruling after the fact. When the U.S. government filed an amicus brief in *Brown* supporting the NAACP position, it relied on State Department materials on the impact of American racism on U.S. foreign relations. The Justice Department presented those arguments to a Court familiar with them. But evidence of American justices' concern about the global impact of American race discrimination will not generally be found in Supreme Court case files, a traditional source for legal history research. Instead, it can be found in justices' letters, speeches, foreign travel files, and personal files. For example, when Justice William O. Douglas traveled to India in 1950, the first question he was asked was, "Why does America tolerate the lynching of Negroes?" In his book *Strange Lands and Friendly People*, Douglas wrote that he had learned from his travels that "the attitude of the United States toward its colored minorities is a powerful factor in our relations with India." Chief Justice Earl Warren echoed Douglas's concerns about international perceptions of the United States in a 1954 speech to the American Bar Association. "Our American system like all others is on trial both at home and abroad," he suggested. "The way it works, the manner in which it solves the problems of our day; the extent to which we maintain the spirit of our Constitution with its Bill of Rights, will in the long run do more to make it both secure and the object of adulation than the number of hydrogen bombs we stockpile." Because

¹⁰ Clare Boothe Luce to White, Sept. 24, 1954, Folder: Supreme Court—School Case—Foreign Press—June–Dec. 1954, box A619, General Office Files, Group II, NAACP Papers; Francis H. Russell to White, Oct. 18, 1954, *ibid.*; Charles E. Bohlen to White, Oct. 9, 1954, *ibid.*; S. Kondrashov, "Judges and Governors: International Notes," *Izvestia*, June 23, 1954 (U.S. Embassy translation), *ibid.*

¹¹ For George V. Allen's statement to White, see the quotation in Mr. Ivy to White, June 4, 1954, *ibid.*; "Ban on School Segregation Another Milestone in Negro Progress," United States Information Service, India, May 21, 1954, Folder: Supreme Court—School Case—Foreign Press—1952–May 1954, *ibid.*; "U.S. Makes Film of Negro, White Mixed Schools: World Showing," *London Daily Telegraph*, Sept. 10, 1954, Clippings, Folder: Supreme Court—School Case—Foreign Press—June–Dec. 1954, *ibid.*

of his role in *Brown*, Warren became an effective ambassador for American democracy overseas. When he traveled to India in 1956, substituting for President Dwight D. Eisenhower, Warren was introduced at Delhi University as a man who needed no introduction, for he "rose to fame in 28 minutes of that Monday afternoon as he read out his momentous decision outlawing racial segregation in American public schools." When Warren traveled to Moscow in 1959, the first question he was asked was about race discrimination in the United States. In the summer of 1963, when the Kennedy administration was gravely concerned about the impact of American civil rights problems on U.S. foreign affairs, Warren traveled to Africa, a region of particular concern, and addressed progress in American race relations in a speech in Kenya.¹²

The *Brown* decision came as a relief to the State Department. Although the ranks of American diplomats would remain overwhelmingly white for many years, promoting an image of racial integration and equality in America had been an important objective. American racial progress was a regular feature of American propaganda in the years before *Brown*. The United States responded to widespread international criticism of American racism with an effort to construct a counternarrative of American racial progress. That narrative was captured in the pamphlet *The Negro in American Life*, which was published in many languages and distributed around the world. The pamphlet argued that the great change in the United States from the 1850s to 1950 was evidence of the superiority of democracy as a system of government. The nation's history of slavery was therefore not avoided in American propaganda, but embraced. If the nation had progressed from a base line of enslavement of African Americans to a free, if still not quite equal, society in a mere hundred years, then democracy, it was argued, was a system of government that facilitated such progress. Not accomplished by "dictatorial fiat," which the pamphlet suggested was characteristic of Communism, gradual progress was presented as a superior form of social change, and American democracy as a superior form of government. The history of racism in the United States, a liability in the Cold War, was thus reinterpreted into a strategic asset. The story of race in America became a story of the supremacy of democracy over Communism. In the face of continuing racial problems in the early 1950s, U.S. propaganda insisted that racism was not a fundamental national value, and that it was going away. *Brown* therefore served as an important reinforcement of the State Department's arguments about the nature of the U.S. Constitution and the inevitable character of American racial progress.¹³

¹² William O. Douglas, *Strange Lands and Friendly People* (New York, 1951), 296; Dudziak, *Cold War Civil Rights*, 104–5. On Earl Warren's speech to the American Bar Association, see *New York Times*, Aug. 20, 1954, Clippings (microfilm: reel 42), Papers of the United States Information Agency (John F. Kennedy Library, Boston, Mass.). "Chief Justice Warren in India," *Baltimore Sun*, Oct. 1, 1956, India 1956 Correspondence, Clippings, Photographs (Folder No. 1), box 56, Foreign File, Personal Papers, Earl Warren Papers (Manuscript Division, Library of Congress); Dudziak, *Cold War Civil Rights*, 105–6, 108–9; "Warren Still Talks Politics," *Montgomery Alabama Journal*, Aug. 20, 1959, Folder: Germany—1959 Speeches—Clippings—Pamphlets (Folder No. 2), box 57, Foreign File, Personal Papers, Warren Papers; United States Information Service, "Text of Speech by U.S. Chief Justice Earl Warren at Gloucester Hall, on July 25, 1963," Folder: Kenya—1963, box 60, *ibid.*; Berl Bernhard interview by Mary L. Dudziak, July 2003, audiotape (in Mary L. Dudziak's possession).

¹³ Krenn, *Black Diplomacy*; Plummer, *Rising Wind*, 269–73; *The Negro in American Life* (c. 1950), folder 503, box 112, series II, Chester Bowles Papers (Manuscripts and Archives, Yale University Library, New Haven, Conn.); Dudziak, *Cold War Civil Rights*, 107–12.

For all the excitement about *Brown*, what was the decision's impact? *Brown* was an unusual case, departing from the normal rule in American law that where a right has been violated, there is a remedy. The 1954 decision postponed consideration of remedies for one year. Then, in *Brown v. Board of Education (II)* in 1955, the Court suggested that the "private interests" of the plaintiffs in desegregated schools must be balanced against the "public interest" in accomplishing desegregation in an orderly manner. As a result, desegregation should proceed "with all deliberate speed." Segregated school districts were not yet required to integrate. The named plaintiffs in the cases were not granted the right to attend a desegregated school, at least for the time being.¹⁴

In the consensus narrative about *Brown*, the Court's delay in ordering a remedy is often seen as a statesmanlike effort to avoid racial conflict. The debate focuses on whether the Court's judgment on how to avoid conflict was correct, and on how conflict shaped continuing desegregation efforts. But it is also true that actual desegregation in southern schools was not essential to address international concerns about the nature of a government whose constitution appeared to accommodate segregation. The next major school segregation crisis—in Little Rock, Arkansas, in 1957—illustrates that point. The Little Rock crisis was worldwide news. President Eisenhower's decision to send federal troops to ensure that nine African American students could attend Central High School won praise in the international press. It served as evidence that the U.S. federal government was behind *Brown*, even if some state governments were recalcitrant. However, Arkansas eventually responded to the Little Rock crisis with a complex "pupil placement law" that established procedures for determining whether a child could change schools. The discretion granted to school authorities under such placement laws ensured that much segregation could be accomplished bureaucratically. Although the international press covered U.S. civil rights with care, when challenges were brought to pupil placement laws in southern states and the U.S. Supreme Court upheld the laws, newspapers that had followed the Little Rock crisis in detail did not cover those decisions. By bureaucratizing segregation, southern states had brought it below the radar of international opinion. The abstract principle of *Brown* seemed to be the thing needed to maintain American prestige. In that sense, *Brown* and the Little Rock crises successfully protected the image of American democracy, even if they did not actually desegregate schools.¹⁵

¹⁴ *Brown v. Board of Education (Brown II)*, 349 U.S. 294 (1955).

¹⁵ On desegregation after *Brown I* and *Brown II*, see, for example, Urofsky and Finkelman, *March of Liberty*, II, 785–91; Jennifer Hochschild, *The New American Dilemma* (New Haven, 1984); Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change? American Politics and Political Economy* (Chicago, 1991), 70–71; Michael J. Klarman, "How *Brown* Changed Race Relations: The Backlash Thesis," *Journal of American History*, 81 (June 1994), 81–118; Michael J. Klarman, "*Brown*, Racial Change, and the Civil Rights Movement," *Virginia Law Review*, 80 (Feb. 1994), 7–150; Patterson, *Brown v. Board of Education*, 118–28; L. A. Powe Jr., "The Supreme Court, Social Change, and Legal Scholarship: A Review Essay," *Stanford Law Review*, 44 (July 1992), 1615–41; and Peter H. Schuck, "Public Law Litigation and Social Reform: A Book Review of *Hollow Hope* and *Rebellious Lawyering*," *Yale Law Journal*, 102 (May 1993), 1763–86. Dwight D. Eisenhower, *The White House Years: Waging Peace, 1956–1961* (Garden City, 1965), 162; Dudziak, *Cold War Civil Rights*, 118–26, 133–37, 148–51; Mary L. Dudziak, "The Little Rock Crisis and Foreign Affairs: Race, Resistance, and the Image of American Democracy," *Southern California Law Review*, 70 (Sept. 1997), 1641–1716; Cary Fraser, "Crossing the Color

For its objective of managing the nation's international prestige, the U.S. government got what it needed in *Brown* and Little Rock. Iconic cases set the image of American race relations in the international press. Continuing inequality in local communities could be explained away as a by-product of American federalism and one that would inevitably fade away in the inexorable march of progress made possible by American constitutionalism. It was, at least, a story that worked in U.S. propaganda, a narrative maintained by the U.S. government through the difficult years of the 1960s, when the civil rights movement kept American racism in the world press.¹⁶

Although *Brown* is still held up as a high point in American legal history, the case ultimately came under assault. In a 2001 collection of essays in which prominent legal scholars rewrote the Court's opinion, Derrick Bell wrote a dissent, arguing that in *Brown* the Court overestimated the power of law to achieve social change and underestimated the pervasiveness of racism. In spite of criticism, *Brown* remains an icon, a symbol of the promise of law. Isolating *Brown* from its international context helps sustain an argument that what happened in *Brown* was accomplished by litigants, lawyers, and judges within the boundaries of the American legal system. Domesticating the case elevates the role of the legal system as an engine of progressive social change. Law was put to much good use during the civil rights era. But examining the broader forces producing legal change helps us see *Brown's* historical contingency. *Brown* was the product of converging domestic and international developments, rather than an inevitable product of legal progress.¹⁷

Historians and legal scholars might raise important objections to the Cold War narrative of *Brown*. By drawing attention to the impact of *Brown* on U.S. foreign relations, an international frame might seem to take the story out of the streets and local communities where school desegregation struggles played out and to encourage an outdated, top-down approach to writing history. Scholarship on race and foreign relations has relied in part on government records and has examined the role of elites in managing the impact on foreign affairs of civil rights in America. Such work should not, however, be seen as in opposition to grass-roots history. In his important book, *I've Got the Light of Freedom*, Charles M. Payne eloquently argued against a "homogenized" narrative of civil rights history. The work of Payne, John Dittmer, and others illuminates the way attention to local struggles reshapes the narrative of civil rights history. Attention to the impact of civil rights on foreign affairs is another route away from a homogenized history. Local and transnational histories can also

Line in Little Rock: The Eisenhower Administration and the Dilemma of Race for American Foreign Policy," *Diplomatic History*, 24 (Spring 2000), 233-64; Azza Salama Layton, "International Pressure and the U.S. Government's Response to Little Rock," *Arkansas Historical Quarterly*, 56 (Autumn 1997), 257-72.

¹⁶ Dudziak, *Cold War Civil Rights*, 140-48.

¹⁷ Derrick A. Bell, "Bell, J., Dissenting," in *What Brown v. Board of Education Should Have Said*, ed. Balkin, 185-200; Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy, 1960-1972* (New York, 1990). For a discussion of legal scholarship on *Brown* as evidence of law as a progressive force, see Kalman, *Strange Career of Legal Liberalism*.

work together. It was only because of the "local people" who shouldered the work of organizing at the grass roots that civil rights conflicts in American communities resonated around the world. The local civil rights struggles inspired independence movements in other nations, just as U.S. civil rights activists developed their ideas in part in response to developments overseas. The U.S. civil rights movement had an impact on American international prestige, giving civil rights activists important leverage at home.¹⁸

Another objection might be that interpreting *Brown*, a constitutional landmark, as in part a product of the Cold War might lend support to a domestic version of Cold War triumphalism in which the case becomes evidence the Cold War was good for the country. That objection cannot be maintained if the limits of *Brown* and the full impact of the Cold War on the civil rights movement are taken into account. In *Cold War Civil Rights*, I did not argue, as has sometimes been suggested, that the Cold War was "good" for the civil rights movement. Cold War-era red-baiting of activists harmed the movement and destroyed lives. Instead, I argue that while the Cold War narrowed acceptable civil rights discourse and led to sanctions against individuals who stepped outside those narrow bounds, within them it gave the movement important and effective leverage. It opened an opportunity for what Derrick Bell has called a "convergence of interest" between the U.S. government and the movement. The Cold War *simultaneously* harmed the movement and created an opportunity for limited reform.¹⁹

Legal scholars might object to viewing *Brown* alongside *Dennis* as a Cold War case because that is not how legal thinking is organized. We put cases dealing with one doctrine (the equal protection clause) in one category and cases dealing with a separate doctrine (the First Amendment) in another. We "shepardize" cases, taking one strand out of the law and pulling it to examine what is attached. That is how lawyers identify a relevant line of cases that matter to a legal argument. It is also the way law is learned. Our courses and our casebooks are largely organized according to such doctrinal categories. From that perspective, *Brown* is an equal protection case, and *Dennis* a First Amendment case. They are different topics and belong in different chapters.

While categorizing cases this way might be good when writing a brief, it is important for legal historians to work against our very ways of learning law when they construct barriers that interfere with our ability to see connections across categories. In *Dennis*, the anticommunist case, for example, lacking hard evidence of the harm of

¹⁸ Charles M. Payne, *I've Got the Light of Freedom: The Organizing Tradition and the Mississippi Freedom Struggle* (Berkeley, 1995); John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (Urbana, 1994); Von Eschen, *Race against Empire*; James Forman, *The Making of Black Revolutionaries: A Personal Account* (New York, 1972); Yvette Richards, *Maida Springer: Pan-Africanist and International Labor Leader* (Pittsburgh, 2000); Gerald Horne, *Race Woman: The Lives of Shirley Graham DuBois* (New York, 2000); James Meriwether, *Proudly We Can Be Africans: Black Americans and Africa, 1935-1961* (Chapel Hill, 2002).

¹⁹ Bell, "Brown v. Board of Education and the Interest-Convergence Dilemma," 518. On the damaging impact of the Cold War on civil rights activists, see, for example, Horne, *Communist Front*; Martin Duberman, *Paul Robeson* (New York, 1989); Timothy B. Tyson, *Radio Free Dixie: Robert F. Williams and the Roots of Black Power* (Chapel Hill, 2001); and Kenneth O'Reilly, *Racial Matters: The FBI's Secret File on Black America, 1960-1972* (New York, 1991).

Communist party actions, Justice Felix Frankfurter's concurring opinion argued that the Court should take "judicial notice" of the threat of Communism. The authority he cited was not case law, but an article in the *New York Times Magazine*.²⁰ He thought that the Court should act in part on the basis of what the justices knew about the world they inhabited. In their world, he thought, Communism and domestic subversion were serious threats. Having discussed that issue in *Dennis* and having faced it in other Cold War-related cases, members of the Court could not simply have forgotten about it when they read the Justice Department's warning about the impact of *Brown* on foreign affairs. Although the two cases address different constitutional arguments, the justices brought the same understanding of their world to their work on any of the cases they considered.

This is a long way of saying that *Brown* belongs in the Cold War chapter of American legal history. Seeing *Brown* as a Cold War case does not simply acknowledge the evidence all over the historical record. It also helps us to see in *Brown* an important element to look for elsewhere. Once the United States took on the role of a world leader and argued that its system of government was a model for the world, the world took an interest in American justice. Struggles over rights in American law had international as well as domestic implications. During *Brown's* anniversary year, rather than shoring up the boundary between the domestic and the foreign and safeguarding the consensus narrative, we might examine other border points where the domestic and the foreign become intertwined, other moments when judicial moorings in domestic affairs shifted when moved by international currents.²¹ As we face new questions about the nation's role in the world in our own day, there is surely no better time to let the world into American legal history.

²⁰ *Dennis v. United States*, 341 U.S. at 553-57 (Frankfurter, J., concurring). Felix Frankfurter quoted from George F. Kennan, "Where Do You Stand on Communism?," *New York Times Magazine*, May 27, 1951, p. 7.

²¹ On a contemporary example of the impact of international affairs on domestic law, see Christopher Eisgruber and Lawrence Sager, "Civil Liberties in the Dragon's Domain: Negotiating the Blurred Boundary between Domestic Law and Foreign Law after 9/11," in *September 11 in History: A Watershed Moment?*, ed. Mary L. Dudziak (Durham, 2003), 163-79; and John Strawson, ed., *Law after Ground Zero* (London, 2002).