

The Limitations of Legal Remedies

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On July 28 2007, the Supreme Court essentially overturned the 1954 *Brown v Board of Education* case by arguing that race can no longer be used explicitly by school districts to integrate schools. While liberals bemoan the decision and conservatives celebrate it, some of us are irritated by those on both sides who give legal decisions far more credit than they deserve, particularly when being factored into how history happens. This is not to say that the long, disciplined and courageous struggle to overturn the 1896 Supreme Court ruling—*Plessy v Ferguson* (legalizing racial apartheid)—was not important. But the role that legal battles play in social change is celebrated too often at the expense of the essential role that nonviolent direct action plays in causing fundamental change in society.

Legal decisions may or may not be enforced. President Andrew Jackson expressed an understanding of this when the Supreme Court insisted in 1832 that the United States had a legal responsibility to defend the Cherokee Nation against white encroachment. President Jackson publicly declared that the Justices could not enforce their interpretation of the law; meanwhile, he used his executive power to support the displacement of the Cherokees in direct opposition to the Supreme Court ruling.

When the Supreme Court unanimously declared in 1954 “separate is inherently unequal,” it lifted the spirits of all those who wished to see an end to segregation in the South. Thurgood Marshall, the architect of the *Brown* decision, thought that his legal team had finally won “that one case to end all of it.” Twenty-three years later, he looked back and realized that “We all shouted and sat down . . . [instead], we should have sat down and planned*The other side did* [my emphasis].”

In 1955, the Court decided that it was up to district courts to figure out how to implement the 1954 decision “with all deliberately speed.” This lack of any specific deadline allowed segregationists time to create an infrastructure of resistance. Because of the effectiveness of their planning, it took the next ten years of nonviolent direct action to break down the organized resistance to integration. One wonders how different the history of those ten years might have been if civil rights activists had understood in 1954 what Marshall only realized in hindsight, that they had to anticipate federal executive foot dragging and the power of the newly created White Citizens Councils.

Legal decisions in and of themselves do not create change. Court decisions and legislation only contribute to fundamental change when activists use such legal landmarks as leverage for nonviolent direct action. For example, The NAACP won a huge victory in 1949 (*Morgan v Virginia*) when the Supreme Court declared that segregation on interstate buses was illegal. But it took the Freedom Riders of 1961 to effectively prod the federal government to enforce that decision.

It is important to study the details of the Civil Rights movement in its historical context to get ready to be ready. We need to understand what we can do today in order to be prepared to take advantage of the next historical moment that presents us with an opportunity to challenge the power structure in this country. We need to learn, among many other lessons, that legal victories are necessary but not sufficient. This can help us understand why there has not (yet!) been another social movement since the Southern Freedom struggle ignited a national challenge to a society organized around fear, greed and war. For more of this kind of history, contact the San Francisco Freedom School at www.educationanddemocracy.org.