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Book Review

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**Book Review: From the Grassroots to the Supreme Court: Brown V. Board of Education and American Democracy, by Peter F. Lau (ed)**

*FROM THE GRASSROOTS TO THE SUPREME COURT: BROWN V. BOARD OF EDUCATION AND AMERICAN DEMOCRACY* EDITED BY PETER F. LAU (DURHAM AND LONDON: DUKE UNIVERSITY PRESS, 2004) 406 pages.<sup>1</sup>

BY CAROL A. AYLWARD<sup>2</sup>

Anthologies are, by nature and design, compilations of stories/narratives written by many writers with differing perspectives, experience, and knowledge about a given topic. Their goal is to provide the reader with a broad understanding of the topic under consideration. Many anthologies, however, do not succeed in this quest.

Peter F. Lau, the editor of *From the Grassroots to the Supreme Court: Brown v. Board of Education and American Democracy*, succeeds where other editors of anthologies have not. Not only does he provide the reader with a coherent overview of the United States Supreme Court's historic civil rights case of *Brown v. Board of Education*,<sup>3</sup> the decision that overturned *Plessy v. Ferguson*<sup>4</sup> and held that segregated schools were inherently unequal and a violation of the

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<sup>1</sup> [Lau].

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<sup>3</sup> 347 U.S. 483 (1954).

<sup>4</sup> 163 U.S. 537 (1896) [*Plessy*].

Fourteenth Amendment to the United States Constitution;<sup>5</sup> but Lau also provides an enlightening summary of an important period in American history.

Peter F. Lau successfully brings together many diverse voices, including grassroots activists, judges, lawyers, and participants in *Brown* and other civil rights cases whose articles complement each other in a nearly seamless web. In the Introduction to the book, Lau notes that “[t]his collection of original essays brings together innovative scholarship about *Brown* that combines the tools of legal analysis with those of social, political, and cultural history.”<sup>6</sup>

And so it does. Beginning with grassroots activism and the infamous *Plessy* decision, this anthology, compiled in recognition of the fiftieth anniversary of the *Brown* decision, takes the reader on an historical and contemporary journey through the morass that is race relations in the United States, including, but not limited to, the issue of segregation in education. Uniquely, it does this not just through the prism of the Black/White binary of traditional civil rights scholarship and Critical Race Theory,<sup>7</sup> nor through the traditional vehicle of “top down” critique;<sup>8</sup> but also through the critiques of other racialized groups

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<sup>5</sup> U.S. Const. amend. XIV, § 1.

<sup>6</sup> Peter F. Lau, “Introduction” in Lau, *supra* note 1 at 1.

<sup>7</sup> For some (there are many) examples of scholarship that have mainly focused on the Black/White binary, in the United States or elsewhere, see Kimberlé Crenshaw *et al.*, eds., *Critical Race Theory: The Key Writings That Formed The Movement* (New York: New Press, 1995); bell hooks, *Feminist Theory From Margin To Center* (Boston: South End Press, 1984); and Audre Lorde, *Sister Outsider: Essays And Speeches* (Trumansburg, NY: The Crossing Press, 1984). However, Critical Race Theory and traditional civil rights scholarship have more recently been criticized for their inability to “transcend” the Black/White binary. Examples of this critique include Richard Delgado & Jean Stefancic who at page 11 of their book *Critical Race Theory: An Introduction* (New York: New York University Press, 2001) ask the question: “Does American racial thought contain an implicit Black-white binary, an unstated dichotomy in which society comes divided into two groups, whites and blacks, so that non-black minority groups, such as Filipinos or Puerto Ricans, enter into the equation only insofar as they are able to depict themselves and their problems as like blacks?” They answer this question in Chapter 5. See also Richard Delgado & Jean Stefancic, eds., *Critical Race Theory: The Cutting Edge*, 2d ed. (Philadelphia: Temple University Press, 2000); Kevin R. Johnson, “Roll Over Beethoven: ‘A Critical Examination of Recent Writing About Race’” (2003-2004) 82 Tex. L. Rev. 717.

<sup>8</sup> “Top down” critique refers to scholarship/analysis that looks at the civil rights movement and civil rights cases like *Brown v. Board of Education* from the contribution of civil rights leaders like Martin Luther King, Jr., or the lawyers, judges, and civil rights organizations like the NAACP; rather than from the contribution of grassroots activists and ordinary Black people embroiled in the struggle. For some examples of this kind of “top down” analysis, see Jack Greenberg, *Crusaders In The Courts: How A Dedicated Band Of Lawyers Fought For The Civil Rights Revolution* (New

in American society at the grassroots (“bottom up”) level, as well as at the level of critical, sociological, and legal scholarship.

One of the most important achievements of this book is its focus on *Brown* and the NAACP’s legal strategy to combat segregation as only one of the tactics in the struggle for civil rights. It attempts, and generally succeeds, in bringing to the attention of the reader the complete struggle for civil rights that was fought, not just in the courts by NAACP lawyers, but in the streets by the people.

Thus, the four parts of this anthology have themes corresponding to either the “grassroots” struggle for equality: “Historical Contexts: Views from the Grassroots” (Part I); the “legal struggle” for equality: “Advocates, Judges, and the Making of *Brown*” (Part II); and a combined grassroots and top down view: “Historical Impact: Views from the Grassroots” (Part III). Part IV of the anthology “Life, Law, and Culture in Post-*Brown* America” brings the reader full circle and leaves us with an overview of the challenges still facing Black and other racialized groups in a United States where “race still matters.”

Lau’s selection for the first chapter in this anthology, the article by Blair L.M. Kelley, entitled “*Plessy* and Early Challenges to the Doctrine of ‘Separate, but Equal,’” is an appropriate place to begin this account of *Brown v. Board of Education*. Kelley notes that the infamous case of *Plessy* is the “benchmark for Jim Crow legislation”<sup>9</sup> in the United States and that it established “the precedent” of the “equal, but separate”<sup>10</sup> doctrine in education and other social contexts that *Brown* would eventually overturn. Kelley’s article sets the overall theme of the anthology by setting out the “broader social circumstances from which

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York: BasicBooks, 1994); Mark V. Tushnet, *The NAACP’s Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 1987); Thurgood Marshall & Roy Wilkins, “Interpretation of Supreme Court Decision and the NAACP Program” (1979) 86:6 *Crisis: A Record of the Darker Races* 205; David J. Armor, *Forced Justice: School Desegregation And The Law* (New York: Oxford University Press, 1995); and Stephen L. Wasby, Anthony A. D’Amato & Rosemary Metrailler, *Desegregation from Brown to Alexander: An Exploration of Supreme Court Strategies* (Carbondale, IL: Southern Illinois University Press, 1977).

<sup>9</sup> Blair L.M. Kelley, “*Plessy* and Early Challenges to the Doctrine of ‘Separate, but Equal’” in Lau, *supra* note 1, 19 at 19.

<sup>10</sup> *Ibid.*

*Plessy* emerged”<sup>11</sup> and throughout the article informs the reader of this “less well probed”<sup>12</sup> aspect of the *Plessy* decision.

The second chapter by Vicki L. Ruiz, entitled “Tapestries of Resistance: Episodes of School Segregation and Desegregation in the Western United States,” informs the reader about segregation in education (and other social spheres) as it affected the Latino and other communities of colour. Here, Ruiz discusses the segregation in education of Latino children and discusses the case of *Méndez v. Westminster*,<sup>13</sup> challenging the “separate but equal” doctrine nine years before the *Brown* decision was rendered by the Supreme Court. This chapter tells the little-known story of the fight against segregated schools by Latino children and their families as well as Asian Americans, Mexican Americans, and American Indians. Ruiz forces the reader to look beyond the Black/White binary. This chapter demonstrates most vividly the “parallel strategies” of “diverse groups” in the western United States and how these strategies for “addressing injustice” came together in the *Méndez* case.<sup>14</sup> Ruiz also points out that it was in this case that Thurgood Marshall first used social science research before the court, a strategy that would be repeated successfully in the *Brown* case.

The third chapter, by Raymond Gavins, is entitled “Within the Shadow of Jim Crow: Black Struggles for Education and Liberation in North Carolina.”<sup>15</sup> In keeping with the overall theme of “top down” and “bottom up” accounts and interpretations of the *Brown* decision, it tells the story of the struggle for equality through the voices of those who experienced the effects of Jim Crow first hand. As well, Kara Miles Turner, in her piece entitled “Liberating Lifescritps: Prince Edward County, Virginia, and the Roots of *Brown v. Board of Education*,” tells the reader about the teenagers who in 1951 went on strike against segregated schooling.<sup>16</sup> She points out that these children were able to

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> 64 F. Supp. 544 (S.D. Cal. 1946).

<sup>14</sup> Vicki L. Ruiz, “Tapestries of Resistance: Episodes of School Segregation and Desegregation in the Western United States” in Lau, *supra* note 1, 44 at 44.

<sup>15</sup> Raymond Gavins, “Within the Shadow of Jim Crow: Black Struggles for Education and Liberation in North Carolina” in Lau, *supra* note 1, 68 at 68.

<sup>16</sup> Kara Miles Turner, “‘Liberating Lifescritps’: Prince Edward County, Virginia, and the Roots of *Brown v. Board of Education*” in Lau, *supra* note 1, 88.

take on this fight because of the “activism and cultural groundwork laid by [their] forefathers and foremothers.”<sup>17</sup> Miles Turner documents the importance of historical and generational community activism on the civil rights movement and on the school desegregation cases.

Peter F. Lau in the next chapter of Part I, “From the Periphery to the Center: Clarendon County, South Carolina, *Brown*, and the Struggle for Democracy and Equality in America,” provides a lesson in the history of the NAACP’s origins and its legal strategies to overturn public school segregation.<sup>18</sup> Lau makes it clear that initially the NAACP’s strategy was not to openly challenge Jim Crow through a direct attack on segregated public schools, but to challenge Jim Crow through the back door of equalization of Black and White schools and Black and White teachers’ salaries. Lau’s chapter is also extremely informative about the depth of White supremacy and the extent to which some Whites would go to maintain it. Lau also gives a moving impression of the personal costs to individual Blacks fighting for equality.

Part II of the anthology addresses “Advocates, Judges, and the Making of *Brown*.” Larissa M. Smith, in her article “A Civil Rights Vanguard: Black Attorneys and the NAACP in Virginia,” focuses on the role of the Black attorney in the struggle for civil and legal rights.<sup>19</sup> She describes the role of individual Black attorneys including, among others, Charles H. Houston, who was appointed Dean of Howard University Law School in 1930. Houston, she notes, “charged his students with the mission to be ‘social engineers’ and ‘group interpreters.’ ... Houston instructed his students to take the lead in organizing their communities and in engineering struggles to gain full equality before the law for African Americans.”<sup>20</sup> Smith concludes that “NAACP attorneys not only defended the legal rights of African Americans who challenged segregation but also participated in the emerging assault on segregation in all areas of southern life.”<sup>21</sup>

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<sup>17</sup>*Ibid.* at 89.

<sup>18</sup> Peter F. Lau, “From the Periphery to the Center: Clarendon County, South Carolina, *Brown*, and the Struggle for Democracy and Equality in America” in Lau, *supra* note 1, 105.

<sup>19</sup> Larissa M. Smith, “A Civil Rights Vanguard: Black Attorneys and the NAACP in Virginia” in Lau, *supra* note 1, 129.

<sup>20</sup> *Ibid.* at 130.

<sup>21</sup> *Ibid.* at 142.

Similarly, Patricia Sullivan, in her article "Prelude to *Brown*: Education and the Struggle for Racial Justice during the NAACP's Formative Decades, 1909-1934," discusses the limitations of *Brown* and the "growing number of scholars"<sup>22</sup> decrying these limitations. She concludes that in order to understand the significance of *Brown*, one must understand how it fits into the overall struggle and the "broader strategy" used by the NAACP in its fight against segregation. Race and racial discrimination, she notes, were not strictly a "southern problem." These problems also affected Blacks outside the "Jim Crow South."<sup>23</sup>

Christopher W. Schmidt, in his contribution to this anthology, "J. Waties Waring and the Making of Liberal Jurisprudence in Postwar America," discusses the role of this White liberal federal judge from Charleston, South Carolina in "the struggle for African American equality."<sup>24</sup> Judge Waring's "most lasting contribution to American history was his role in *Brown v. Board of Education*."<sup>25</sup> Schmidt recounts a fascinating and little-known account of Waring's dissenting opinion in the case of *Briggs v. Elliott*,<sup>26</sup>

in which the majority upheld the legality of segregated schools in Clarendon County, South Carolina. ... Despite the failure of the Supreme Court's unanimous opinion [in *Brown*] to even mention Judge Waring's dissent [in *Briggs*], in many respects *Brown* followed the legal and moral reasoning that Waring had outlined three years earlier.<sup>27</sup>

Schmidt also recounts the personal cost to Waring, who was by birth part of the White elite of Charleston, and his eventual departure from the city and state of his birth.

Another enlightening contribution to this book is that of Michael J. Klarman, who, in his article "*Brown v. Board of Education*: Law or Politics?" provides insight into the collective thinking of the Supreme Court justices around the school desegregation cases that made up the case formally known as *Brown v. Board of Education*. Klarman deconstructs the narrative of each justice and explores the

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<sup>22</sup> Patricia Sullivan, "Prelude to *Brown*: Education and the Struggle for Racial Justice during the NAACP's Formative Decades, 1909-1934" in Lau, *supra* note 1, 154 at 154.

<sup>23</sup> *Ibid.* at 168.

<sup>24</sup> Christopher W. Schmidt, "J. Waties Waring and the Making of Liberal Jurisprudence in Postwar America" in Lau, *supra* note 1, 173 at 173 [Schmidt].

<sup>25</sup> *Ibid.* at 174.

<sup>26</sup> 98 F. Supp. 529 (E.D.S.C. 1951).

<sup>27</sup> Schmidt, *supra* note 24 at 175.



political, moral, and legal implications of their positions on the desegregation cases.

Part III of the anthology, "Historical Impact: Views from the Grassroots," begins with a chapter by Tomiko Brown-Nagin, entitled "The Impact of Lawyer-Client Disengagement on the NAACP's Campaign to Implement *Brown v. Board of Education* in Atlanta."<sup>28</sup> Brown-Nagin's contribution is a must-read for those interested in the connection between lawyers and clients in the context of social change lawyering. Brown-Nagin debunks the myth that "history is only made in traditional seats of power."<sup>29</sup> Her purpose is to enlighten the reader about the connection between the "local community" and the litigation goals of the national NAACP and how "the unique characteristics of a given community advanced or hindered local school desegregation efforts."<sup>30</sup> Brown-Nagin also addresses the controversial subject of internal Black community conflicts.

Just as Brown-Nagin highlights the significance of the local community in the civil rights movement and the desegregation cases, Christina Greene, in her chapter entitled "'The New Negro Ain't Scared No More!': Black Women's Activism in North Carolina and the Meaning of *Brown*," highlights the significance of the contribution of Black women and Black youth in both the wider civil rights struggle and the desegregation cases.<sup>31</sup> Without the activism, organizing and courage of Black women, Black mothers, and Black youth, there would have been no *Brown*. While many readers may instinctively know that Black women played an important and essential role in the fight for equality, many may not know the historical details of this role as documented by Greene.

Laurie B. Green, in her contribution, "The Rural-Urban Matrix in the 1950s South: Rethinking Racial Justice Struggles in Memphis," also provides the reader with a rare glimpse into the inner struggles of the Black community.<sup>32</sup> She notes that

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<sup>28</sup> Tomiko Brown-Nagin, "The Impact of Lawyer-Client Disengagement on the NAACP's Campaign to Implement *Brown v. Board of Education* in Atlanta" in Lau, *supra* note 1, 227.

<sup>29</sup> *Ibid.* at 227.

<sup>30</sup> *Ibid.* at 228.

<sup>31</sup> Christina Greene, "'The New Negro Ain't Scared No More!': Black Women's Activism in North Carolina and the Meaning of *Brown*" in Lau, *supra* note 1, 245.

<sup>32</sup> Laurie B. Green, "The Rural-Urban Matrix in the 1950s South: Rethinking Racial Justice Struggles in Memphis" in Lau, *supra* note 1, 270.

[r]ecent civil rights studies have taken issue with earlier accounts of the civil rights movement by painstakingly showing that *Brown* itself did not launch the movement; that in fact local struggles had been ongoing since the Second World War, if not before; and that local people sometimes in conjunction with national civil rights figures, were the engines for the movement.<sup>33</sup>

Madeleine E. López, with her contribution, "New York, Puerto Ricans, and the Dilemmas of Integration," also shows that

Jim Crow and public school segregation were not simply a southern problem. ... The doctrine of "separate but equal" did not solely affect African Americans. People of color across the racial spectrum endured segregation in both de facto and de jure forms throughout the country.<sup>34</sup>

She notes that scholars have

devoted little attention to the issue of segregation and the meaning of *Brown* beyond the black-white and southern parameters of traditional civil rights historiography. This bias has marginalized the experiences of other racial and ethnic communities in relationship to *Brown* and left unexplored the decision's broader ramifications in battles over the desegregation of public schools.<sup>35</sup>

López takes the reader beyond the notion of segregation based on skin colour (the Black/White binary) and instead focuses attention on cultural and linguistic matters.

Finally, Part IV of the book, "Life, Law and Culture in Post-*Brown* America," begins with an admonition by Waldo E. Martin Jr. in his chapter entitled "'Stretching Out': Living and Remembering *Brown*, 1945-1970."<sup>36</sup> He reminds the reader of the terrible consequences of White supremacy in the United States. He tells the story of the immediate impact of the *Brown* decision on one of the children who would later become one of the "Little Rock Nine." This child was the victim of an attempted rape by a White man on the day that the Supreme Court rendered its decision in *Brown*. Martin also tells of the lynching of Emmett Till and its continuing impact on the Black psyche.

These and countless incidents of violence against Blacks before and after the *Brown* decision are gruesome reminders of the "perils,

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<sup>33</sup> *Ibid.* at 271.

<sup>34</sup> Madeleine E. López, "New York, Puerto Ricans, and the Dilemmas of Integration" in Lau, *supra* note 1, 300 at 300.

<sup>35</sup> *Ibid.*

<sup>36</sup> Waldo E. Martin Jr., "'Stretching Out': Living and Remembering *Brown*, 1945-1970" in Lau, *supra* note 1, 321.

costs, and setbacks as well as the prospects, benefits, and triumphs – the downside as well as the upside [of the civil rights struggle].”<sup>37</sup> Martin notes that in order to “gauge the influence of *Brown*, we must look carefully at many episodes in the years 1954-55 and their short- and long-term ramifications . . . . We must closely inspect and analyze the lived experiences of ordinary folks.”<sup>38</sup>

In Part IV of this book, the reader is taken on the continuing journey of the legacy of *Brown*, including an analysis of the most recent Supreme Court decisions on affirmative action and the admission of Black students to institutions of higher education. Martin, for example, discusses the fact that on a “growing number of black and white college campuses many black student activists sought to create strongholds of liberation and laboratories for the study of the African American experience.”<sup>39</sup>

Part IV continues in this vein with Mark V. Tushnet’s “The Supreme Court’s Two Principles of Equality: From *Brown* to 2003.” Here, Tushnet describes the problem with the remedy phase of the Supreme Court’s decision in *Brown II*, which provided that “courts should order desegregation to occur “with all deliberate speed.”<sup>40</sup> Tushnet, in a cogent and concise manner, describes the “fundamental” question that arose and continues to this day: “What does the equal protection clause protect against or, even more broadly, what notion of equality are Americans committed to?”<sup>41</sup> Tushnet describes the two possible answers to this question and notes that the question “remains open as the United States addresses issues of equality in the twenty-first century.”<sup>42</sup>

Davison M. Douglas is the final contributor to this anthology. In “*Brown v. Board of Education* and Its Impact on Black Education in America,” he sums up the most obvious impacts of the *Brown* decision

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<sup>37</sup> *Ibid.* at 322.

<sup>38</sup> *Ibid.* at 323.

<sup>39</sup> *Ibid.* at 337.

<sup>40</sup> Mark V. Tushnet, “The Supreme Court’s Two Principles of Equality: From *Brown* to 2003” in Lau, *supra* note 1, 340 at 342.

<sup>41</sup> *Ibid.* at 340.

<sup>42</sup> *Ibid.* at 358.

over the last fifty years.<sup>43</sup> These include an important impact on the judiciary and its role in social and “institutional” reform. It has also had an impact on the wider civil rights movement including the enactment of civil rights legislation expanding the principles of *Brown* into other areas including housing and voting rights. Douglas, however, asks the pertinent question: “[W]hat has been the impact of *Brown* on the education of black children in America?”<sup>44</sup> His answers are fascinating and constitute one of the best analyses of the impact of *Brown* on those most affected by it: the Black children of the United States.

While not perfect (it suffers from the ill of most anthologies in that it can at times appear repetitious), this anthology is a very good and educational read. More than an overview of the United States Supreme Court’s history-changing civil rights case of *Brown v. Board of Education*, it is also an enlightening overview of an important period in American history.

The writing style of the contributors to this anthology lends itself well to the legal professional, the sociologist, the historian, and the lay reader. For, as Peter F. Lau points out in the conclusion to the book, entitled, “*Brown* and Historical Memory,”

This volume of essays represents a challenge both to the notion that race has ceased to exist as a significant factor in American life and to the notion that progress over race, segregation, and discrimination is either inevitable *or* impossible.<sup>45</sup>

Much can be gleaned from this anthology for those interested in learning the true history of the civil rights movement in America, and the varied collaborative strategies that can be used in the fight for human dignity and civil rights. I would highly recommend this book to anyone interested in the historical and ongoing struggle for civil and educational rights of peoples of colour in the United States and around the world.

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<sup>43</sup> Davison M. Douglas, “*Brown v. Board of Education* and Its Impact on Black Education in America” in Lau, *supra* note 1, 361.

<sup>44</sup> *Ibid.* at 363.

<sup>45</sup> Peter F. Lau, “Conclusion: *Brown* and Historical Memory” in Lau, *supra* note 1, 383 at 384.