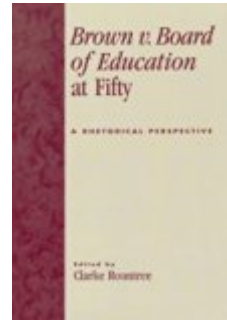


**Clarke Rountree, ed..** *Brown v. Board of Education at Fifty: A Rhetorical Perspective*. Lanham: Lexington Books, 2004. xix + 199 pp. \$24.95, paper, ISBN 978-0-7391-1459-9.



**Reviewed by** Tim Boyd

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This neat collection of essays offers a series of intriguing, though not groundbreaking, analyses of the role of rhetoric in legal strategy and court decisions regarding segregation between the 1890s and the 1950s. From the outset, this reviewer must make a qualifying comment about the opinions that follow: lacking any background in rhetorical theory, it is not possible for me to say whether this work offers anything particularly new to those interested in rhetoric as a separate area of study. For Rountree, however, viewing the story of the *Brown* decision via the perspective of rhetoric--described in the introduction as "the adjusting of ideas to people and of people to ideas" (p. xii)--provides new insights for historians as well as legal scholars. The six essays that follow do throw up some interesting angles for historians to consider.

The first essay, by Marouf Hasian, deals with the social and political context of the 1896 *Plessy* decision. Hasian argues that this decision is too often seen as an aberration from accepted American jurisprudence and one which simply pitted those favoring civil rights for blacks against those

who opposed them (p. 2). In fact, argues Hasian, there was a great deal of disagreement within the Louisiana black community over just which blacks deserved equal rights, and several of the Creole leadership espoused a consciously class-based argument designed to win the favor of wealthy whites. Likewise, Louisiana's white community was divided over the question of granting "social" versus "civil" rights to African Americans. In the end, the rhetorical strategy of portraying *Plessy* himself as seeking to deprive others of their social rights in the name of his civil rights was a key underpinning of the Supreme Court's 1896 ruling.

Daniel Mangis reconsiders another aspect of the *Plessy* ruling--the much-quoted dissent by Justice John Harlan. Mangis argues that Harlan has been too often depicted as possessing a "prophetic" vision of American race relations that would eventually be vindicated by the Civil Rights Movement (p. 23). In particular, his description of the constitution as "color-blind" has been accepted into the canon of constitutional law by both liberals and conservatives alike (p. 38). Yet, Harlan's

dissent did not dispute the majority's view of white supremacy. Instead, Harlan argued that such supremacy could only be sustained through an adherence to constitutional principles—including equality of rights. Mangis points out that Harlan makes no comment on the morality of segregation, he is merely concerned with its constitutionality. Harlan's eventual finding that mandatory segregation is not constitutional is rooted far more in his Presbyterian and federalist outlook than in any sense of racial egalitarianism (pp. 26-27).

If Harlan's dissent has served the historical role of a clarion call for future generations to fight for principle, Rountree's portrayal of the NAACP's legal strategy for overturning *Plessy* is a portrait in pragmatism. Using the conceptual tools from rhetorical theory of "prospective argument" (adopting rhetorical strategies designed not for an immediate triumph, but for long-term success) and "stage setting" (picking your arguments and battles depending on your audience and location), Rountree charts the rhetorical evolution of the NAACP's gradual and ultimately successful attempt to undermine segregation in graduate education as a first step towards ending segregated education generally. In particular, Rountree highlights the NAACP's concerns to find ably qualified plaintiffs (of impeccable character and academic record) and suitable locations (starting with Maryland not Mississippi) to establish precedents which by the 1950s had put the doctrine of "Separate but Equal" in American education firmly on the defensive.

The constitutional toppling of segregated education in the 1954 *Brown* ruling is the subject of David Droge's essay, which is perhaps the most interesting of the whole collection. Starting with a review of the criticism that the *Brown* decision has received for its use of social science as evidence (the famous "black dolls" experiment being a case in point), Droge argues that Earl Warren's decision to include sociological argument in his

opinion served a specific rhetorical purpose. Most immediately, Warren and others felt it was necessary to challenge the *conservative* sociology of white supremacy and social Darwinism which underlay the *Plessy* decision. In part, this was so that a unanimous opinion could be given—several justices did not want to rule that the court had been in error in 1896, but were willing to accept that if *scientific evidence* had changed since then, the opinion might also need to be changed. Additionally, however, the social science evidence being used fit the classic profile of the "culturally deprived" African American who only wanted to be given a chance to be included in white society that dominated the postwar "liberal orthodoxy" (pp. 112-113).

This liberal consensus faced challenges from many sides, but in the immediate aftermath of *Brown* it seemed to face the greatest one from the "Massive Resistance" movement. Ann Burnette looks at the rhetoric employed by the leaders of Massive Resistance in Virginia. She shows that the political leaders of the movement sought to couch their appeal in terms of the "constitutional argument" regarding states' rights (p. 125). Being able to use historical and philosophical underpinnings was designed to give their argument more rhetorical power. However, Burnette, argues, segregationists such as James J. Kilpatrick could not avoid falling back onto basic racial prejudice in their arguments, suggesting that their own words played a large part in casting doubt on the states' rights argument (p. 138).

Finally, Ann Gill analyzes the Supreme Court's own attempts to turn back the states' rights argument in the rhetoric the justices employed in two major decisions—*Brown II* in 1955 (the implementation decision calling for "all deliberate speed" in school desegregation) and *Cooper v. Aaron* in 1958 (dealing with the actions of Arkansas during the Little Rock desegregation crisis). In both cases, Gill says, the Court sought the rhetorical strategy most likely to provide legitimacy for its verdict,

and thereby ensure compliance. In 1955, the Court hoped that an accommodationist outlook--which emphasized the importance of "good faith" on all sides--would be the most productive. When this failed to quell resistance, the Court adopted much stronger and forceful language to assert its authority in the 1958 case. As well as being important steps in the move towards legally desegregating American schools, the two rulings offer a sharp contrast in style, organization and purpose even though both are essentially concerned with maintaining the same principle.

Each of these six essays contains some thought-provoking discussions. Many of the points they dwell on will not be new to historians of the periods they discuss. For example, that there were class divisions within the African-American community in 1890s New Orleans, or that the language employed in the Supreme Court rulings of the 1950s was a reflection of the political concerns about compliance (not to mention overseas opinion of the United States) will not be news to anyone who has studied these moments in American history. However, by asking us to look again at things that might be familiar, but to do so from a different angle, this collection nonetheless serves a useful purpose. One example of this is the discussion over the actual social science evidence that was submitted to the Court in the *Brown* case and what that evidence argued, compared to which parts of the evidence were selected to be included in the ruling, and what those selections were intended to demonstrate.

There are also some weaknesses in the book. For a start, each essay seems to recap the same basic story of the history of the Supreme Court and segregation before getting to its own topic. This can be frustrating to read several times over. Interpretively, there are moments when it seems too much is read into specific incidents--for example, the decision to select the light-skinned Homer Plessy to challenge the segregation law may have been related to class divisions in black society. It

was also important, however, that Plessy be able to "pass" for white and get into the "whites only" section in order to actually break the law--something a darker-skinned African American would not have succeeded in doing. Finally, and this is something of a minor point, the title is somewhat misleading. It is described as a review of the *Brown* decision "at fifty," but half the essays deal with 1896-1954 and none of them move beyond 1958 in their time frame. Anyone looking for a review of how *Brown* has played out in the last fifty years would do better to consult, for example, James Patterson's *Brown v. Board of Education: A Civil Rights Milestone and its Troubled Legacy* (2001).

Overall, this collection of essays will not likely overturn anyone's views of the legal history of segregation, but it does a good job of providing an interesting additional tool, the rhetorical perspective, for those with an interest in the interaction between law and race in American history.

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