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The U.S. Supreme Court Jurisprudence and Reconsideration of Civil and States' Rights (*Brown v. Board of Education of Topeka*)

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Abstract

The U.S. Supreme Court jurisprudence has often delineated the borders of American racial politics. In some way, the Supreme Court decisions reflected economic, political, cultural, and ideological values of the contemporary society. The decision of *Plessey v. Ferguson* was a symbolic establishment of the separate but equal doctrine. It was also significant from the perspective of American federalism. In the 1950s, several rulings of the U.S. Supreme Court influenced American racial politics and paved the way for changes in the context of the development of civil rights. The decision of *Brown v. Board of Education of Topeka* was victory of the civil rights movement. It was perceived as a model for the subsequent cases. The U.S. Supreme Court rejected the right of interposition. It was assumed that the power to declare federal laws unconstitutional applied not to the state but only to federal judiciary.

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Streszczenie**Orzecznictwo Sądu Najwyższego Stanów Zjednoczonych
i zmiana podejścia do praw obywatelskich i praw stanów
(*Brown v. Board of Education of Topeka*)**

Orzecznictwo Sądu Najwyższego USA często wyznaczało granice amerykańskiej polityki rasowej. W pewnym sensie decyzje Sądu Najwyższego odzwierciedlały ekonomiczne, polityczne, kulturowe i ideologiczne wartości ówczesnego społeczeństwa. Orzeczenie w sprawie *Plessey v. Ferguson* było symbolicznym ustanowieniem doktryny *separate but equal*. Było również ważne z punktu widzenia federalizmu amerykańskiego, gdyż dotyczyło autonomii praw stanowych w kontekście regulacji dotyczących spółek działających w stanie. W latach 50. XX w. część orzeczeń Sądu Najwyższego wpłynęło na amerykańską politykę rasową i utorowało drogę zmianom w kontekście rozwoju praw obywatelskich. Decyzja w sprawie *Brown v. Board of Education of Topeka* była zwycięstwem ruchu na rzecz praw obywatelskich. Postrzegano ją jednocześnie jako wzór dla kolejnych spraw. Sąd Najwyższy Stanów Zjednoczonych odrzucił prawo do *interposition*. Uznano, że uprawnienie do uznania ustaw federalnych za niekonstytucyjne nie przynależy stanom, lecz sądownictwu federalnemu.

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I. Introductory remarks

The Supreme Court judgments of the last decade of the 19th century in the sphere of civil rights emphasized the significance of federal and state authorities in creating a new economical and social order. The U.S. Supreme Court jurisprudence has often delineated the borders of American racial politics. In some way, the Supreme Court decisions reflected economic, political, cultural, and ideological values of the contemporary society². The activities of the Supreme Court in the late 19th and early 20th centuries have been the subject of various interpretations in the American literature in the 20th and

² J.W. Ely, *The Fuller Court: Justices, Rulings and Legacy*, Santa Barbara-Denver-Oxford 2003, p. 4.

21st centuries³. Although some of its rulings were highly criticized and discussed, particularly those referring to racial segregation, at the turn of the 19th and 20th centuries, the Supreme Court restored its position in the American public life. The time of 1950s is associated with the reconsideration of civil and states' rights. *Brown v. Board of Education of Topeka* seems to be a landmark case here⁴.

Earl Warren was appointed Chief Justice by President Dwight D. Eisenhower in 1953⁵. Probably, Warren sought the Republican nomination in the 1952 presidential election, but at last, General Eisenhower was nominated by the party. That time, the United States and the Soviet Union with their allies were at the height of the Cold War. This political tension and difficult relations between two superpowers and Western and Eastern Blocks influenced not only international relations, but also some interstate affairs. It is interesting to consider that American officials were aware of the harm that racism and segregation played on the international image of the United States. Earl Warren was sometimes criticized for his anticommunist behavior. It is significant that the Warren Court presided over a major shift in American constitutional jurisprudence in the liberal direction.

Unfortunately, since the modest scope of this article does not allow for an exhaustive treatment of the subject, the present work is contributory in nature. The article focuses on the perception of the activities of the U.S. Supreme Court in the context of reconsideration of civil and states' rights in the 1950s, when desegregation ruling of *Brown v. Board of Education of Topeka* changed American racial politics and paved the way for the Civil Rights Act of 1964. The judgments and opinions of the Supreme Court are not exhaustively reviewed, and only some of them are selected for closer consideration. The main questions the present study strives to answer are: How can we assess the part of the U.S. Supreme Court in eradication of the separate

³ W.H. Rehnquist, *The Supreme Court. Revisited and Updated*, New York, 2001, pp. 100–110. About the American reform movements and contours of the Progressive Era, see more in E. Sokalska, *Searching for Progress: Progressivism and the U.S. Supreme Court Jurisprudence (some remarks)*, "Przegląd Prawa Konstytucyjnego" 2020, no. 5(57), pp. 443–462.

⁴ 347 U.S. 483 (1954).

⁵ Earl Warren was the 14th Chief Justice in American history. The length his tenure lasted over 15 years up to 1969.

but equal doctrine from the American legal system in the context of *Brown v. Board of Education of Topeka* and subsequent cases? What is the evaluation of the activities of the Supreme Court under Chief Justice Earl Warren?

In this particular study, the historic-descriptive method of theoretical analysis, and the formal-dogmatic method, precisely – the analysis of legal texts (according to the Polish typology), were applied to address the research questions and to reach some conclusions. The borders of racial politics delineated by the adjudications of the U.S. Supreme Court under Melville Fuller are presented in the first part of the article. Particularly, the ruling of *Plessy v. Ferguson* is taken into closer examination. The second part of the publication is devoted to the jurisprudence of the U.S. Supreme Court under Chief Justice Earl Warren and its impact on desegregation policies.

II. *Plessy v. Ferguson* and the separate but equal doctrine

After the American Civil War and the abolition of slavery in the 1860s, the constitutional amendments during the period of Reconstruction granted emancipation and rights of citizenship to all African Americans. Most of African American had been recently enslaved. In fact, slavery had always been the part of the fabric of American life⁶. It made a huge impact on the image of American society, its culture, economy, and politics. Despite the development of the civil rights movement in 1865–1896, especially in the South, black people were subjected to discrimination, they were deprived of civil rights. So-called Jim Crow laws were state and local laws which enforced racial segregation in the American states. Besides the Southern states, also other areas were affected by formal as well as informal policies of segregation. In fact, Jim Crow laws were upheld in the case of *Plessy v. Ferguson*, the case that will be discussed below.

It is significant that part of the U.S. Supreme Court in interpreting post-war amendments and Congress law, particularly those referring to the protection of civil rights, was unquestionable. The Supreme Court during Mel-

⁶ It is significant that even the American Constitution was an embarrassing compromise on slavery. Cf. J. Zajadło, *Konstytucja amerykańska jako kompromis – wstydlivy problem niewolnictwa*, “Gdańskie Studia Prawnicze” 2014, no. 31, pp. 481–494.

ville Fuller's tenure (1888–1910) had to confront with a variety of problems⁷. Although the direction of the Supreme Court rulings of that time has been controversial up to these days, it gave the sense of stability of the legal order⁸. It is significant that in a lot cases, ideological rather than legal dispute took place. Some decisions of the U.S. Supreme Court were not compatible with the visions of progressive reformers and reflected the ideological attitudes of the justices rather than an aspiration for reform⁹.

The borders of racial politics were often delineated by the Supreme Court adjudications¹⁰. Unfortunately, racial segregation had a lot of common with racism. The case of *Plessy v. Ferguson* seems to be one of the most important in this context. In 1881, the legislature of Tennessee mandated segregated railroad cars, and 33 states followed that decision over the next 26 years¹¹. In the case mentioned above the problem concerned civil rights in the context of segregated railroad cars. In 1890, it was enacted the Separate Car Act, which required racial segregation on railways. There were different railway cars for whites and non-whites.

It is argued that *Plessy v. Ferguson* was a symbolic establishment of the *separate but equal doctrine*. There were also subsequent rulings of the Supreme

⁷ Appointed by Grover Cleveland, he was the 8th Chief justice in American history. For more about Fuller's nomination and activities, see H.J. Abraham, *Justices, Presidents and Senators: A History of the United States Supreme Court Appointments from Washington to Clinton*, new and revised edn., Lanham 1999, pp. 113–115; C. Warren, *The Supreme Court in the United States History*, vol. 1, Boston 1922, pp. 413–450; J.W. Ely., *The Chief Justiceship of Melville W. Fuller 1888–1910*, Columbia 1995, pp. 3–24; W.L. King, *Melville Weston Fuller, Chief Justice of the United States, 1888–1910*, New York 1950, pp. 1–394. Fuller had to cooperate with the justices who represented different political visions and ideas, as Oliver Wendell Holmes, Jr., who presented liberal attitude. About Oliver Wendell Holmes, Jr., see Ł. Machaj, *Oliver Wendell Holmes and the beginnings of the United States Supreme Court's freedom of speech jurisprudence*, [in:] *Wybrane problemy nauki i nauczania prawa*, eds. E. Kozerska, P. Sadowski, A. Szymański, Opole 2010, pp. 143–145; M. Maciejewski, *Oliver Wendell Holmes*, [in:] *Leksykon myślicieli politycznych i prawnych*, eds. E. Kundera, M. Maciejewski, Warszawa 2006, p. 203; G.E. White, *Justice Oliver Wendell Holmes: Law and the Inner Self*, New York 1993, pp. 298–353, 378–411.

⁸ G. Górski, *Sąd Najwyższy Stanów Zjednoczonych do 1930 roku*, Lublin 2006, p. 228.

⁹ E. Sokalska, *Searching for Progress...*, pp. 451–454.

¹⁰ F. Longchamps de Bériér, *Antydyskryminacyjna dyskryminacja? Granice polityki rasowej zakreślone przez Sąd Najwyższy Stanów Zjednoczonych*, "Forum Prawnicze" 2010, no. 1(1), pp. 12–23.

¹¹ T.J. Davis, *Plessy v. Ferguson*, Santa Barbara 2012, p. xvii.

Court that touched the matter of racial segregation¹². The effect of the decision of *Plessy v. Ferguson* was immediate: segregated educational facilities, underfunded black schools, separate public institutions. It should be taken into consideration that *Plessy v. Ferguson* was also significant from the perspective of American federalism, because it touched the autonomy of state rights in the context of regulation concerning companies operating within a state.

III. The Warren Court and *Brown v. Board of Education of Topeka*

In the 1950s, several rulings of the U.S. Supreme Court influenced American racial politics and paved the way for changes in the context of the development of civil rights. Chief Justice Earl Warren presided over a major shift in the American constitutional jurisprudence¹³. The case of *Brown v. Board of Education of Topeka* seems to be significant here¹⁴. In *Brown v. Board of Education of Topeka* the Supreme Court declared state law that established separate public schools for black and white students to be unconstitutional. The decision overturned the previous ruling in the case of *Plessy v. Ferguson*. *Brown v. Board of Education of Topeka* concerned the

¹² E.g., *Louisville, New Orleans & Texas Railway Co. v. Mississippi, New Orleans & Texas Railway Co. v. Mississippi*, 133 U.S. 587 (1890); *Cumming v. Richmond County Board of Education*, 175 U.S. 528 (1899). For more about *Plessy v. Ferguson* and establishment of the separate but equal doctrine, see E. Sokalska, *The U.S. Supreme Court and the establishment of the separate but equal doctrine*, [in:] *Współczesne problemy praw człowieka: wybrane aspekty – Contemporary Problems of Human Rights: Selected Aspects*, eds. M. Mamiński, M. Rzewuski, Warszawa 2019, pp. 97–100; H.E. Groves, *Separate but Equal – The Doctrine of Plessy v. Ferguson*, “Phylon” 1951, vol. 12(1), pp. 66–72.

¹³ About constituting the Warren Court, see M.J. Horwitz, *The Warren Court and the Pursuit of Justice*, New York 1999, pp. 3–14. For more concerning the political environment of the court, see L.A. Powe Jr., *The Warren Court and American Politics*, Belknap Press 2000, pp. 1–566.

¹⁴ It is interesting to consider that in the previous year, the U.S. Supreme Court had considered *Bolling v. Sharpe* (374 U.S. 497 (1954)), in which it had dealt with constitutionality of segregation in the District of Columbia. In *Bolling v. Sharpe*, the school segregation was not addressed in the context of the 14th Amendment’s Equal Protection Clause, but it was held that school segregation was unconstitutional under Due Process Clause of the 5th Amendment. See also subsequent cases, e.g., *Holmes v. City of Atlanta*, 350 U.S. 879 (1955); *Mayor City of Baltimore v. Dawson*, 350 U.S. 877 (1955).

situation when black children were denied admission to schools where white children were taught. In 1951, the group of parents wanted their children to be admitted to public schools in their communities on a nonsegregated basis. They sued the Board of Education of the City of Topeka (Kansas) in the District Court. Under the permission of Kansas law, there were separate elementary school facilities for the blacks and whites, but the law did not require students' segregation. Some of the black children attended the schools which were situated a long distance from their places of living. The District Court ruled in favor of the Board of Education of Topeka (according to the precedence of *Plessy v. Ferguson*), despite the fact that some of the judges were of the opinion that segregation in public education harmfully affected black children.

Chief Justice Warren was personally convinced that segregation was morally wrong, therefore he wanted to reach an unanimous verdict. Some of the justices were reluctant to overturn precedence¹⁵. The Supreme Court heard the case in spring 1953, but it was not able to reach an unanimous verdict. The justices who were in favor of desegregation had to convince the rest of the Court that the unanimous decision should have been taken in order to avoid the further arguments of segregation supporters. Warren presented the argument that the main reason to continue segregation was an honest belief in the sense of intellectual and social inferiority of the black people. He was also of the opinion that *Plessy v. Ferguson* must be overruled in order to sustain the national perception of the Supreme Court as the legitimated institution that protects liberty and civil rights. Finally, the justices dropped their dissent and reached the unanimous decision. The crucial argument in the opinion was that the separation of black children from the others of similar age generates a feeling of inferiority in the community, and consequently it may affect their minds and deprive the children. Despite the fact that facilities and teachers were of equal quality, segregation of the blacks and whites was harmful to black students, therefore – unconstitutional¹⁶.

The decision of *Brown v. Board of Education of Topeka* was a victory of the civil rights movement. It also initiated the integration of black and coloured peo-

¹⁵ E. Cray, *Chief Justice: A Biography of Earl Warren*, Simon & Schuster, pp. 277–281.

¹⁶ For more about the case, see M. Tushnet, *I Dissent: Great Opposing Opinions in Landmark Supreme Court Cases*, Boston 2008, pp. 133–150.

ple. It was perceived as a model for the subsequent cases¹⁷. It should be also taken into consideration that the case also prompted a new wave of actions of the states intended on refraining from the Court's decision. In this context, revival of the states' rights under the doctrine of interposition took place¹⁸. In the nearest future, in the case of *Cooper v. Aaron* of 1958¹⁹, the U.S. Supreme Court rejected interposition in an explicit way. Federal courts consistently assumed that the power to declare federal laws unconstitutional applied not to the state but only to federal judiciary²⁰.

Decision in the school desegregation cases began the Warren Court's long involvement in the development of race relations law. Subsequent opinions also emphasized the universality, permanence, and enduring nature of the newly created constitutional doctrine²¹. The case of *Cooper v. Aaron* also touched the issue of desegregation. The school district of Little Rock in Arkansas launched its plan of desegregation in schools. At the same time, other school districts in the state opposed the ruling of the Supreme Court. Their intent was to continue desegregation at different pace. A state governor wished to have the state legislature to make it legal to segregate children in schools according to their race. The governor's argument was that the decision in *Brown v. Board of Education of Topeka* should not be binding on the state. New state law relieved the children from mandatory participation in integrated schools, and the school board of Little Rock continued the desegregation program. Some members of the school board filed suit in the District Court. They were of the opinion that the plan of desegregation should not have been continued, arguing that the governor and state legislature triggered a chaotic situation, and that the decisions even provoked public hostility to desegregation²².

¹⁷ For more about *Brown v. Board of Education of Topeka*, see, e.g., M.J. Horwitz, op.cit., pp. 15–31.

¹⁸ Interposition is a claimed right of a state to oppose actions of the federal authorities that the state deems unconstitutional.

¹⁹ 358 U.S. 1 (1958).

²⁰ E. Sokalska, *Legal and Political Dimensions of American Federalism: Development and Interpretations*, Olsztyn 2018, p. 303.

²¹ Cf. R.L. Carter, *The Warren Court and Desegregation*, "Michigan Law Review" 1968, vol. 67 (2), p. 238.

²² E. Sokalska, *Legal and Political Dimensions...*, p. 303.

The opinion of the Supreme Court stated that the action of the school board was taken in good faith. In fact, the official opposition of the state government to racial integration caused a problematic situation. In the context of Equal Protection Clause, it was constitutionally impermissible to maintain law and order when the black students were deprived of their equal rights under the law. Therefore, the Supreme Court and the 14th Amendment do not allow states to discriminate against children based on their race. Any of the states through its legislature may use elusive schemes to introduce segregation.

The Warren Court sought to strengthen and accelerate the desegregation process “by protecting and undergirding the peaceful self-help activities of those individuals and groups seeking to eliminate segregation”²³. In *Loving v. Virginia*²⁴ the Supreme Court struck down state anti-miscegenation laws regulated interracial marriage. Several landmark rulings in the 1960s transformed criminal procedure. In the context of the jurisprudence of the Warren Court in the 1950s, the interposition was not a valid constitutional doctrine because it blocked the enforcement of federal law. The supremacy of the federal judiciary was approved, therefore the power of federal authorities in the American federal polity was strengthened and supported.

It should be taken into account that the debate on the evaluation of the jurisprudence of the Warren Court is vivid even in the 21st century. In the perception of Professor Justin Driver, conservative scholars have long identified what they regard as innumerable mistakes of the Warren Court. More recently, some liberal scholars have begun to argue that the Supreme Court under Warren made substantial mistake – not by going excessively far, but by going insufficiently far in its constitutional interpretations. Professor Driver is of the opinion that scholarly debate concerning the Warren Court casts a long shadow over modern constitutional law²⁵. Liberal scholars of the previous generation viewed the Warren Court Justices “with admiration for helping to improve

²³ Cf. R.L. Carter, *op.cit.*, p. 239.

²⁴ 388 U.S. 1 (1967).

²⁵ See J. Driver, *The Constitutional Conservatism of the Warren Court*, “California Law Review” 2012, vol. 100(5), p. 1101. For more about the Supreme Court under Warren, see M.R. Belknap, *The Supreme Court under Earl Warren, 1953–1969*, University of South Carolina Press, 2005, pp. 1–406.

American society in significant ways”²⁶. Professor Driver identifies significant opinions in which the Court issued conservative constitutional rulings “even though plausible routes led to liberal outcomes”²⁷. In his perception, “examining the Warren Court’s overlooked tradition of constitutional conservatism not only demythologizes that institution and brings sharper focus to the constitutional past; it may also help to inspire a progressive reenvisioning of the constitutional future”²⁸. In fact, contrary to the claims of some scholars “who portray the Supreme Court as merely an incidental entity during the nation’s liberal ascent, the Warren Court deserves admiration [...]. Along with liberal admiration, the Warren Court Justices also deserve at least some measure of liberal condemnation”²⁹.

IV. Concluding remarks

The jurisprudence of the Supreme Court under Chief Justice Melville Fuller profoundly influenced the shape of legal order in the area of economic and labor law, which developed rapidly at the turn of the 19th and 20th centuries. The decision of *Plessey v. Ferguson*, even being criticized, legitimized racial segregation in the South and affected the American constitutional law. It should not be forgotten that it took over half century to eradicate the separate but equal doctrine from the American legal system.

The time of the 1950s is associated with the reconsideration of civil and states’ rights. Scholarly debate on the Supreme Court under Chief Justice Earl Warren is still vivid in America. The *Brown v. Board of Education of Topeka* decision fundamentally challenged the Southern way of life. Thanks to its significant rulings the Court helped to impose some liberal values on groups that were outliers to that tradition, particularly rural America and the white South.

It should be taken into account that, in some sense, *Brown v. Board of Education of Topeka* and subsequent rulings of the Supreme Court encouraged American Civil Rights Movement to strengthen their protests against racial

²⁶ J. Driver, *op.cit.*, p. 1166.

²⁷ *Ibidem*, p. 1102.

²⁸ *Ibidem*.

²⁹ *Ibidem*, p. 1166.

discrimination. This political movement and campaign lasted on an unexpected scale from 1954 to 1968. Mass protests and civil disobedience caused crisis situations. Productive dialogue between activists and federal, state, and local authorities brought notable effects³⁰.

In the 1960s, Americans expected the president and other federal representative bodies to answer a fundamental constitutional question if the constitution's prohibition of denying equal protection always bans the use of racial, ethnic, or gender criteria in an attempt to bring social justice and social benefits. Therefore, the Congress was asked by President John F. Kennedy for a comprehensive civil rights bill. After the assassination of Kennedy, President Lyndon B. Johnson secured the bill's passage the following year. In 1964, the Civil Rights Act³¹ was passed by the Congress in order to prohibit discrimination on the basis of race, color, religion, sex, or nationality. The Act strengthened desegregation of schools, the enforcement of voting rights, and prohibited discrimination in public accommodation and federally funded programs. It should be taken into consideration that the Act as the benchmark civil rights legislation was indirectly the fruit of the Supreme Court jurisprudence. Voting Rights Act of 1965 was a subsequent piece of federal legislation that touched civil rights³². The document was signed into law also by President Johnson during the height of the civil rights movement. Racial discrimination in voting was then prohibited.

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³⁰ More about the Civil Rights Movement, see, e.g., J. Williams, *Eyes on the Prize: America's Civil Rights Years, 1954–1965*, Penguin Books, New York 2002, 320 pp.; M.J. Horwitz, *op.cit.*, pp. 32–51.

³¹ Pub.L. 88–352, 78 Stat. 241.

³² Pub.L. 89–110, 79 Stat. 437. For more about the Act, see S. Schuit, J.C. Rogowski, *Race, Representation, and the Voting Rights Act*, "American Journal of Political Science" 2017, vol. 61 (3), pp. 513–526.

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