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HOPELESSLY HOLLOW HISTORY: REVISIONIST DEVALUING OF *BROWN v. BOARD OF EDUCATION**

David J. Garrow†

THE professorial urge for interpretive novelty can sometimes open an audience's eyes to new historical evidence, or provide a new lens through which readers can reexamine familiar accounts and the causal assumptions underlying them. On other occasions, however, that deep-seated desire for novelty leads instead to revisionist interpretations whose rhetorical excesses are quickly revealed for what they are when old, but indisputable historical evidence, is inconveniently brought back to the pictorial foreground.

Michael J. Klarman's *Brown, Racial Change, and the Civil Rights Movement*¹ does get one substantial portion of its interpretative review quite correct, for there is little question that *Brown I* and *II* did indeed "propel[] southern politics dramatically to the right on racial issues"² and thereby produced "a southern political climate in which racial extremism flourished."³ Gerald N. Rosenberg's wholly unpersuasive contention that Professor Klarman in this context "overstates *Brown's* influence"⁴ because the decision was "merely a ripple"⁵ with only "a negligible effect"⁶ on intensifying southern segregationist sentiment is so thoroughly rebutted and

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¹ Michael J. Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 Va. L. Rev. 7 (1994).

² *Id.* at 11; Gerald N. Rosenberg, *Brown is Dead! Long Live Brown! The Endless Attempt to Canonize a Case*, 80 Va. L. Rev. 161 (1994).

³ Klarman, *supra* note 1, at 117.

⁴ Rosenberg, *supra* note 1, at 163.

⁵ *Id.* at 165.

⁶ *Id.* at 163.

disproved by a credible and copious scholarly literature that no further rejoinder is required.⁷

While Professor Rosenberg aims his fire at the strongest aspects of Klarman's analysis, Mark Tushnet rightly comments that "*Brown* was more important than Professor Klarman makes it out to be"⁸ and he expresses appropriate regret that "Klarman's account has the peculiar and no doubt unintended effect of substantially reducing the apparent role of African Americans as historical agents."⁹ But Tushnet, after rightly acknowledging that the most historically troublesome portions of Klarman's article are those that concern *Brown*'s impact on black southerners rather than those dealing with the decision's effects on segregationist whites, then makes the erroneous and wholly unnecessary "provisional[]" concession that "*Brown* may have had little to do with the initiation"¹⁰ of black southerners' most significant subsequent initiative, the Montgomery bus boycott of 1955-56. He noncommittally notes that "[i]f *Brown* had an important connection to the Montgomery bus boycott, it would be an important part of the story of the transformation of race relations," and he rightfully remarks that "Professor Klarman's discussion of the possibility of such a connection is inadequate."¹¹

While Professor Tushnet correctly observes that *Brown* "may have provided the civil rights movement with a moral resource,"¹² he, like Klarman and Rosenberg before him, is surprisingly unaware of how much easily available evidence there is that testifies to the *direct* influence of *Brown* on the instigation of the 1955 Montgomery boycott. Almost every significant black Montgomery

⁷ See, e.g., Numan V. Bartley, *The Rise of Massive Resistance* 67-81 (1969) (tracing the development of southern resistance to integration following *Brown*); Michal R. Belknap, *Federal Law and Southern Order 27-52* (1987) (same); Earl Black, *Southern Governors and Civil Rights* 339 (1976) (same); Herbert Shapiro, *White Violence and Black Response* 409-20 (1988) (same); Francis Wilhoit, *The Politics of Massive Resistance* 27-55 (1973) (same).

⁸ Mark Tushnet, *The Significance of Brown v. Board of Education*, 80 Va. L. Rev. 173, 173 (1994).

⁹ *Id.* at 174.

¹⁰ *Id.* at 178.

¹¹ *Id.*

¹² *Id.* at 182. See also William H. Chafe, *Civilities and Civil Rights* 86 (1980) (noting that after *Brown*, increased numbers of black adults wanted to press for speedy integration of previously all-white schools).

activist of that time has without prompting spoken of *Brown's* importance for the bus protesters. Even more notably, the most important and impressive contemporaneous document reflecting the boycott's early roots makes the direct linkage to *Brown* undeniably explicit. It is highly regrettable that in the rush toward interpretive novelty, such crucial firsthand evidence is overlooked or not sought out. Only accounts that fully consider such evidence can provide a thorough and dependable rendition of the past.

Professor Klarman accurately indicates that *Brown* was not *the* "inaugural event of the modern civil rights movement,"¹³ and forthcoming works on early civil rights activism in Mississippi, Louisiana, and Alabama by prominent civil rights historians John Dittmer, Adam Fairclough, and J. Mills Thornton III will soon underline that point with a locally oriented richness that existing scholarship has so far largely lacked. But Professor Klarman needlessly offers the hypothetical contention that "a transformation in American race relations was . . . a virtual inevitability"¹⁴ by 1950, a highly optimistic assertion that leads him to claim that *Brown* was "unnecessary from the perspective of long-term racial change."¹⁵ He continues with the even more dubious argument that "regardless of *Brown*, the underlying forces for racial change," such as international events and the increasing emergence of a black middle class, "would have led to congressional legislation to squelch"¹⁶ the most visible manifestations of southern segregation. Some pages later, however, Professor Klarman appears to contradict his earlier declarations, at least in part, by acknowledging that "the transformative legislation of 1964 and 1965 was anything but inevitable from the vantage point of the early 1960s."¹⁷

Professor Klarman's most serious and fundamental error lies in dismissing far too readily what he terms "the conventional wisdom . . . that *Brown* raised the hopes and expectations of (mainly southern) blacks, prodding them to adopt a more aggressive civil rights posture by rendering more realistic the possibility of genuine racial

¹³ Klarman, *supra* note 1, at 13.

¹⁴ *Id.* at 71.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 75 n.326.

¹⁷ *Id.* at 139.

change.”¹⁸ Klarman acknowledges how that interpretation “does possess a certain inherent plausibility,” and he further admits that “[a]necdotal evidence supports this proffered link.”¹⁹ He also concedes that one “would be mistaken to deny *Brown*’s inspirational impact on American blacks.”²⁰ However, Klarman nonetheless asserts that such a view “substantially overstate[s] *Brown*’s impact,”²¹ and most astoundingly, Klarman even goes so far as to claim that “the *Brown* decision was a relatively unimportant motivating factor for the civil rights movement.”²²

Klarman strives to support this stunningly dismissive interpretation by asserting that the Montgomery boycott, for example, had “very little connection to the *Brown* decision.”²³ He asserts that

[the Supreme Court’s ruling] seems to have had little to do with the boycott. That black Montgomeries had been filing political complaints against seating practices on city buses well before 1954 argues against the causal influence of *Brown*. . . . Perhaps most significantly, the fact that the Montgomery protesters did not initially demand an end to segregation . . . suggests that *Brown* was not their motivating force.²⁴

Although the Montgomery protest did indeed begin with a goal of winning improved bus seating practices rather than the complete elimination of bus segregation, and although some black Montgomeries had been discussing how to win improved treatment for black bus riders since at least as early as 1950,²⁵ Klarman unfortunately ignores the profusion of firsthand evidence that testifies to just how strong an influence *Brown* had on Montgomery’s

¹⁸ Id. at 77.

¹⁹ Id. at 79.

²⁰ Id. at 80.

²¹ Id. at 77.

²² Id. at 82 n.353 and at 84 (asserting that *Brown* “did not” provide “critical inspiration for the modern civil rights movement”).

²³ Id. at 78.

²⁴ Id. at 82 n.353.

²⁵ See *The Montgomery Bus Boycott and the Women Who Started It: The Memoir of Jo Ann Gibson Robinson* 15-17 (David J. Garrow ed., 1987); David J. Garrow, *The Origins of the Montgomery Bus Boycott*, 7 *Southern Changes* 21-27 (Oct.-Dec. 1985), reprinted in *The Walking City: The Montgomery Bus Boycott, 1955-1956*, at 607-19 (David J. Garrow ed., 1989).

black activists.²⁶ The most chronologically immediate example of that influence is the letter that the Women's Political Council ("WPC") president, Jo Ann Robinson, sent to Montgomery Mayor W.A. Gayle on May 21, 1954—just four days after *Brown I*—politely threatening "a city-wide boycott" if humiliating seating policies were not improved.²⁷ Robinson's letter made no explicit reference to *Brown*, but Mrs. Rosa Parks, whose December 1, 1955, arrest for refusing to surrender her bus seat supplied the opportunity for the WPC to put its boycott plan into action, has emphasized that after *Brown*, "African Americans believed that at last there was a real chance to change the segregation laws."²⁸

While Parks and Robinson may well have been the two most significant figures in the advent of the 1955 Montgomery boycott, many other leading participants also subsequently testified to the importance and influence of *Brown*. Reverend Edgar N. French, a relatively unheralded figure who played a crucial role on the boycott's first day,²⁹ later reflected upon how "[t]he Supreme Court decision of 1954 restored hope to a people who had come to feel themselves helpless victims of outrageous and inhuman treatment."³⁰ Reverend Martin Luther King, Jr., whom the Montgomery protest catapulted toward national and international fame, likewise emphasized in 1958 that *Brown* "marked a joyous end to the long night of enforced segregation" and "brought hope to millions of disinherited Negroes who had formerly dared only to dream of freedom."³¹ The Supreme Court's ruling, King tellingly added, "further enhanced the Negro's sense of dignity and gave him even greater determination to achieve justice."³²

²⁶ Klarman is not alone in making such an error. See Gerald N. Rosenberg, *The Hollow Hope* 134-38 (1991) (asserting that *Brown* had little impact on the bus boycott).

²⁷ Robinson to Gayle, 21 May 1954, reprinted in *The Montgomery Bus Boycott and the Women Who Started It*, supra note 25, at viii; see also David J. Garrow, *Bearing the Cross* 15 (1986) (describing the events following Robinson's letter). In *The Hollow Hope*, Rosenberg acknowledges the striking timing of Robinson's letter, but minimizes its importance. See Rosenberg, supra note 26, at 136-37 n.21.

²⁸ Rosa Parks, *Rosa Parks: My Story* 100 (1992).

²⁹ See Garrow, *Bearing the Cross*, supra note 27, at 21-22.

³⁰ Edgar N. French, *Beginnings of a New Age*, in *The Angry Black South* 33 (Glenford E. Mitchell & William H. Peace III eds., 1962).

³¹ Martin Luther King, Jr., *Stride Toward Freedom* 191 (1958).

³² *Id.*

Professor Rosenberg, writing in 1991, sought to dismiss King's 1958 comments about the importance of *Brown* by quoting only King's passing observation that *Brown* of course could not explain why the landmark bus protest erupted in *Montgomery*,³³ rather than somewhere else. Rosenberg did not quote the earlier portion of that same sentence, where King observed that *Brown*'s impact might indeed "help explain why the protest occurred when it did,"³⁴ nor did Rosenberg present King's immediately preceding sentence, where the young minister noted how "[s]ome have suggested" that *Brown* "had given new hope of eventual justice to Negroes everywhere, and fired them with the necessary spark of encouragement to rise against their oppression."³⁵ Indeed, Reverend Ralph D. Abernathy, recalling a 1954 conversation with both King and King's predecessor as pastor of Montgomery's Dexter Avenue Baptist Church, recounted how "[w]e all agreed that *Brown* versus Board of Education had altered forever the conditions on which the continuing struggle would be predicated. . . . It now appeared as if the law was on our side, that the federal government might eventually be pressed into service in our fight for freedom."³⁶

"[T]he law itself," Martin Luther King, Jr., observed in 1958, "is a form of education," and "[t]he words of the Supreme Court, of Congress, and of the Constitution are eloquent instructors."³⁷ The unsolicited testimony of many Montgomery activists attests to how directly and powerfully *Brown* educated and instructed them, and Professor Tushnet rightly and tellingly asks whether those boycott leaders "would have been so persistent" in maintaining their 381-day protest "had they not known that one of the nation's major

³³ See *id.* at 64; Rosenberg, *supra* note 26, at 137-38. Professor Rosenberg also incorrectly asserts, erroneously citing Garrow, *Bearing the Cross*, *supra* note 27, at 15, that "King mentioned *Brown* in his December 5 speech at the first mass meeting of the boycotters." See Rosenberg, *supra* note 26, at 136-37 n.21. King did refer to the Supreme Court, and to the U.S. Constitution, but he made no explicit reference to *Brown*. See Martin Luther King, Jr., Address at the Holt Street Baptist Church, Montgomery, Alabama (Dec. 5, 1955) (transcript on file with the Virginia Law Review Association).

³⁴ See King, *Stride Toward Freedom*, *supra* note 31, at 64.

³⁵ *Id.* at 64; Rosenberg, *supra* note 26, at 136-38. Thus Professor Tushnet's warning against the dangers of "law-office history," Tushnet, *supra* note 9, at 173, should be targeted well to the northwest of Charlottesville.

³⁶ Ralph D. Abernathy, *And the Walls Came Tumbling Down* 126 (1989).

³⁷ King, *supra* note 31, at 199.

governing institutions had endorsed the principle for which they were contending” and had they “not believed that ultimately their legal challenge would prevail.”³⁸

Perhaps most pointedly of all, a development crucial to the sustenance and eventual success of the Montgomery boycott unfortunately escapes Professor Klarman’s explicit attention: only the existence of *Brown* allowed the federal district court that heard the protesters’ constitutional challenge to Montgomery’s segregated buses to hold in June of 1956 that such seating practices violated the Fourteenth Amendment.³⁹ The ruling was all but essential both to the protesters’ willingness to continue their struggle and to their ultimate victory, and any discussion of the relationship between *Brown* and the Montgomery boycott that overlooks the directly precedential fashion in which *Brown* contributed to the litigation and resolution of *Browder v. Gayle* is just as remiss as is one which ignores the evaluations of *Brown*’s importance offered by such notable boycott participants as Parks, King, and Abernathy.

Professor Klarman’s strenuous efforts to downplay the motivational and educational impact of *Brown* also leads him to assign excessive importance to other factors that, while important, nonetheless counted for significantly less than *Brown* and ensuing Supreme Court rulings such as *Cooper v. Aaron*.⁴⁰ Klarman characterizes “the changing international status of blacks” as “an important impetus” to American civil rights activism, and argues that “[t]he stunning successes of nonwhite independence movements around 1960 demonstrated to American blacks the feasibility of racial change.”⁴¹ Yes, to some degree they no doubt did, but Klarman’s apparent implication—that such foreign developments

³⁸ Tushnet, *supra* note 9, at 179.

³⁹ *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), *aff’d* 352 U.S. 903 (1956); see also *South Carolina Elec. & Gas Co. v. Flemming*, 351 U.S. 901 (1956) (dismissing discrimination claim due to lack of finality), *aff’g* *Flemming v. South Carolina Elec. & Gas Co.*, 224 F.2d 752 (4th Cir. 1955) (reversing trial court’s dismissal of discrimination claim brought by a black woman forced to change her seat on the bus by a bus driver in accordance with South Carolina law); Catherine A. Barnes, *Journey From Jim Crow* 116-22 (1983) (noting the impact of *Flemming* on desegregation).

⁴⁰ 358 U.S. 1 (1958).

⁴¹ Klarman, *supra* note 1, at 82, 83.

were *more*⁴² influential a stimulus than such heavily publicized and constantly noted U.S. constitutional precedents as *Brown* and *Cooper*—requires more credulity than even friendly readers should bestow.

Professor Klarman also stubs his toe slightly by overstating the immediacy of what he terms “the tidal wave of hysteria which swept the South after the *Brown* decision.”⁴³ Although he passingly acknowledges in one footnote how, with the relative exception of Mississippi, “the backlash against *Brown*” was noticeably delayed rather than immediate,⁴⁴ Klarman fails to weigh the findings of earlier historians, who like Michal Belknap, have stressed that “[d]uring the first eight months after the *Brown* decision, relative calm prevailed throughout the South.”⁴⁵ As other scholars have noted, the Supreme Court’s actual ruling in *Brown I* did not come as all that much of a surprise to well-informed southern politicians,⁴⁶ and in at least one large southern state, North Carolina, political figures such as Governor William B. Umstead “initially greeted the *Brown* edict with grudging acceptance, and in some cases warm approval.”⁴⁷ As William Chafe has detailed, in Greensboro, North Carolina, the city school board immediately approved a resolution pledging implementation of *Brown* by a vote of six to one, and the city’s leading newspaper, the *Greensboro Daily News*, quickly voiced its editorial support for the board’s action.⁴⁸

Two of the South’s most knowledgeable political historians have additionally emphasized how the Supreme Court’s relative moderation in its *Brown II* ruling of May 1955 was “a victory for the white South,”⁴⁹ and a host of historians have noted how the southern “backlash” against *Brown* actually seemed to get underway

⁴² “Alternative factors, having nothing to do with the Supreme Court, appear to account at least well as *Brown* does for the timing of the civil rights revolution.” Klarman, *supra* note 1, at 84.

⁴³ *Id.* at 87-88.

⁴⁴ *Id.* at 97 n.419.

⁴⁵ Belknap, *supra* note 7, at 29; see also Wilhoit, *supra* note 7, at 27 (“[T]here appears to have been initially more calm resignation than rebellion among whites, more fatalism than rabid defiance.”); *id.* at 40 (noting that early southern white reactions to *Brown* included “an unexpected amount of praise”).

⁴⁶ See Robert J. Norrell, *Reaping the Whirlwind* 87 (1985).

⁴⁷ Chafe, *supra* note 12, at 65.

⁴⁸ *Id.* at 16, 57.

⁴⁹ Earl Black & Merle Black, *Politics and Society in the South* 94 (1987).

neither with *Brown I* nor *Brown II* but instead with the February 1956 battle over the short-lived desegregation of the University of Alabama by Autherine Lucy.⁵⁰ For white racists in Alabama, the Lucy challenge to the state's completely segregated system of higher education came just as the two-month-old Montgomery bus boycott was beginning to draw violent opposition and was reaching its most intensely conflictual—and newsworthy—moments. Then, just a few additional weeks later, on March 12, 1956, came the dramatic and remarkable “Southern Manifesto,” the most frontal and high-status assault ever mounted on *Brown*.⁵¹ As even this brief synopsis should suggest, any thorough study of the degree to which the existence of the Montgomery protest stimulated and further intensified white opposition, and how the Lucy challenge signified and highlighted the newly apparent threat of *Brown*, is likely to conclude that more credit for the segregationist escalation should be given to the black activists of Montgomery—and less to the almost two-year-old ruling in *Brown*—than is presently the case in Professor Klarman's analysis.⁵²

Hence it is largely true, as Professor Rosenberg observes above, that “it was not the *Brown* decision but rather the visceral challenge to segregation of blacks acting in the local areas that engendered a violent response” by segregationist southern whites.⁵³ However, when Professor Rosenberg further states that “it did not require a Court decision to spur extreme segregationist politics and violent resistance once local blacks started their challenge,”⁵⁴ he simplifies and unintentionally obscures the complicated, multiplicative influence that the concatenation of *Brown*, the Montgomery boycott and the Autherine Lucy challenge, among other factors, all represented to the southern segregationist status quo of 1956. When Professor Rosenberg contends that “[t]he civil rights movement *on its own* created a sufficiently violent response to pressure the federal government to act”⁵⁵ against segregationist illegalities,

⁵⁰ See, e.g., Belknap, *supra* note 7, at 29 (detailing Lucy's subsequent expulsion).

⁵¹ See Wilhoit, *supra* note 7, at 51-55.

⁵² See Bartley, *supra* note 7, at 146, 282-85; Belknap, *supra* note 7, at 29; Wilhoit, *supra* note 7, at 46-48.

⁵³ Rosenberg, *supra* note 6, at 168.

⁵⁴ *Id.*

⁵⁵ *Id.* at 163.

he, much like Professor Klarman, unfortunately fails to appreciate the interactive manner in which *Brown* and the newly intensified black activism of 1956 combined to begin evoking the heightened segregationist response that Professor Klarman subsequently reports and summarizes so well.

In time, a thorough and careful review of the contemporaneous, post-*Brown* press—i.e., both white and black newspapers from May 18, 1954, onward—ought to provide us with a far more richly detailed basis for detailing and evaluating the motivational and inspirational impact of *Brown* than does any and all scholarship that yet exists. Such a review cannot, of course, take place in isolation from other contextual factors that present-day commentators have not yet appropriately weighed—such as the additional but oftentimes overlapping anti-Supreme Court sentiment that began to emerge following the Court's highly publicized and then-controversial rulings in anti-Communist "subversion" cases⁵⁶ such as *Watkins v. United States*,⁵⁷ *Sweezy v. State of New Hampshire*,⁵⁸ and *Yates v. United States*.⁵⁹ Only in the wake of such thorough scholarly inquiry will wide-ranging interpretive generalizations of full dependability finally be possible. Until that oftentimes difficult and enervating research is carried out, industrious commentators would be well-advised to keep their professional desire for interpretive novelty in check, for rhetorically excessive overstatements and oversimplifications oftentimes do turn out to be hopelessly hollow once a fuller understanding of the historical record is brought to bear.

⁵⁶ See generally C. Herman Pritchett, *Congress Versus the Supreme Court, 1957-1960* (1961) (noting how congressional anti-Court sentiment was stimulated by both the decisions in the subversion cases and by the Supreme Court's antisegregation rulings).

⁵⁷ 354 U.S. 178 (1957).

⁵⁸ 354 U.S. 234 (1957).

⁵⁹ 354 U.S. 298 (1957), overruled by *Burks v. United States*, 437 U.S. 1 (1978).