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# Book Review of Forced Justice: School Desegregation and the Law And Race Relations Litigation in an Age of Complexity

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David J. Armor, *Forced Justice: School Desegregation and the Law*, New York: Oxford University Press, 1995. Pp. xii + 271. \$35.00 (ISBN 0-19-509012-8).

Stephen L. Wasby, *Race Relations Litigation in an Age of Complexity*, Charlottesville: University Press of Virginia, 1995. Pp. xxii + 421. \$65.00 cloth; \$22.50 paper (ISBN 0-8139-1572-4; ISBN 0-8139-1573-2).

Since the Supreme Court's 1954 decision in *Brown v. Board of Education*, many Americans, particularly lawyers, have tended to view litigation as the most effective means of pursuing claims of racial justice and of redressing inequalities between whites and African Americans. Indeed, in the ensuing forty years since the *Brown* decision, a growing number of individuals and organizations have turned to the courts to pursue claims of justice. This increased reliance on the courts to secure social and political goals has drawn increasing interest from scholars. Although some scholars claim that courts have played a dominant role in the quest for racial equality as evidenced by the *Brown* decision, others argue that the courts are far more limited in their ability to achieve racial reform than the *Brown* experience might suggest. Still other scholars argue that courts, less constrained by political influence than are legislatures, have in fact done harm. Two recent books by social scientists who have spent years studying the effects of racial reform lit-

igation contribute to this growing literature on the use of courts to secure social reform: Stephen Wasby's *Race Relations Litigation in an Age of Complexity* and David Armor's *Forced Justice: School Desegregation and the Law*.

Although both Wasby and Armor examine the racial reform litigation of the post-*Brown* era, each probes different aspects of these litigation efforts. Wasby, who is more concerned with the process of racial reform litigation than with the substantive results achieved, analyzes the various factors that influence racial reform litigation. His basic theme is that the enormously complex social, political, and legal environment in which racial reform litigation operates inevitably leads to uncertain results that defy careful planning.

One of the more interesting issues that Wasby addresses is the division within the minority community over litigation goals. Because litigation goals are not constrained by the political process, it is possible for civil rights lawyers and plaintiffs (whether individuals or organizations) to pursue certain goals that a significant percentage of the minority community opposes. School desegregation litigation provides an example of such conflict: in a number of cities, such as Atlanta and San Francisco, the African-American community sharply divided over the question of whether to preserve neighborhood schools or to insist on extensive busing to improve racial balance. On several occasions, the litigating civil rights organization favored busing remedies whereas many African Americans residing in the affected community favored neighborhood schools. These ideological divisions within the minority community suggest some of the complexities that confront the civil rights advocate using litigation to achieve racial reform. They also suggest broader policy concerns about using the courts to achieve social and political goals.

As Wasby notes, this issue of conflict within the minority community over litigation goals has been exacerbated by the growth of special interest organizations devoted to pursuing claims of justice through the courts. One of the legacies of the NAACP's successful assault on school segregation in the *Brown* case has been the proliferation of organizations committed to using the courts to secure certain policy goals. For example, in the Supreme Court's 1989 abortion decision in *Webster v. Reproductive Health Services*, more than four hundred organizations presented their views to the Court as *amicus curiae*. As organizations increasingly engage in structural reform litigation, the potential for litigation that may not reflect the sentiments of affected constituencies will likely continue.

Wasby also explores what he calls "the myth of rights" that has influenced the preference among many civil rights organizations for litigation as opposed to political action. He suggests that by focusing on judicial enforcement of constitutional and legal rights of African Americans, civil rights lawyers may exaggerate the ability of litigation to accomplish racial reform and thus misallocate resources away from political mobilization that might be more effective at securing racial justice. Wasby does not ultimately answer the question of whether civil rights groups have misdirected their resources by focusing so much attention on litigation, but he does raise the issue in a provocative manner that invites further consideration of whether racial equality concerns are better addressed through political action as opposed

to the courts. In this way, Wasby suggests further inquiry for scholars of the twentieth-century black freedom struggle.

Armor, in his book, focuses less on the complexities confronting the racial reform litigator and more on the substantive results achieved as a result of this litigation. Armor, who limits his inquiry to school desegregation litigation, writes from the perspective of a social scientist who has spent over a quarter century examining the effects of school desegregation litigation and participating as an expert witness in a large number of school desegregation cases. Drawing on this experience, Armor concludes that efforts to improve educational quality through court-mandated busing plans have largely failed and issues a powerful indictment of basing legal policy on an educational theory—that racial mixing produces educational and social benefits—that Armor finds insupportable. He focuses in particular on school desegregation litigation after the Supreme Court's 1971 decision in *Swann v. Charlotte-Mecklenburg Board of Education* legitimated extensive desegregation remedies such as busing.

As Armor aptly notes, school desegregation law is grounded in what he calls the "harm and benefit" thesis. According to this thesis, racially segregated schools are harmful and racially mixed schools are beneficial in terms of the social, psychological, and educational development of children. In the late 1960s and 1970s, many courts implicitly—and some explicitly—embraced the harm and benefit thesis as a justification for extensive school desegregation remedies, influenced in part by the widely publicized Coleman Report of 1966 and an important 1967 study by the United States Commission on Civil Rights entitled "Racial Isolation in the Public Schools." During the 1970s and 1980s, however, the harm and benefit thesis came under attack as a growing number of social scientists questioned the effects of school desegregation on pupil development. Armor suggests that although some studies have found a positive correlation between desegregation and black educational achievement, most of the available evidence finds no such correlation and virtually no evidence finds enhanced white achievement due to racially mixed schools.

Like Wasby, Armor explores the split between civil rights organizations and many black parents concerning the wisdom of certain desegregation remedies such as busing. In Armor's view, many civil rights groups have oversold the benefits of school integration for black children. Moreover, Armor argues that although a higher percentage of black parents favor busing remedies than do white parents, a substantial percentage of black parents prefer neighborhoods schools to mandatory busing plans, a preference that most civil rights organizations do not respect.

Implicit in Armor's critique of school desegregation is a critique of litigation as a means of addressing social problems. Many proponents of sweeping desegregation remedies hoped, consistent with the harm and benefit thesis, that school desegregation would overcome troubling educational differentials between black and white children. Part of the burden of Armor's book is to argue that despite such lofty goals, racial mixing has failed to overcome the intractable problems confronting urban blacks. Courts and policymakers have been far too optimistic about the effects of racial mixing; as a result, Armor concludes, we have unwittingly disrupted urban schools in the pursuit of a goal that was unattainable through the chosen means.

As Armor's book suggests, school desegregation provides a wonderful context for exploring the intersection between constitutional doctrine and social science. Since the *Brown* decision, social science has been intimately related to the evolution of constitutional doctrine, particularly in the area of school desegregation. Indeed, some school desegregation jurisprudence has been based on the assumption that racial mixing has a positive effect on pupil achievement, an assumption that a growing number of social scientists have come to question. The evolution of school desegregation theory and case law suggests the peril of grounding constitutional doctrine in social theory.

Whether one agrees with Armor's critique of the social science data and of the benefits of school integration, Armor's book is a helpful analysis of the relevant data that should inform the ongoing and hotly contested debate over the benefits and costs of mandatory pupil reassignments in urban school systems.

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