When it was decided fifty years ago, Brown v. Board of Education [FN1] seemed like a revolution in law and justice. Justice Stanley Reed of Kentucky, the last holdout on the Court to endorse Chief Justice Earl Warren's opinion, said a few weeks after the Term that it was the most important case in his fifteen years on the bench "and that if it was not the most important decision in the history of the Court, it was very close." [FN2] Time magazine declared that, except for Dred Scott v. Sandford, [FN3] no other decision in the Court's history "was more important." [FN4] It was obvious how different those two cases were. Dred Scott was universally acknowledged as a "wrong" decision--often considered the worst decision in Supreme Court history [FN5]--while Brown was seen, in much of the nation, as a great moral victory. As the Cincinnati Enquirer noted, the Court had acted as "the conscience of the American nation." [FN6] African Americans were of course particularly pleased with the decision in Brown. Upon hearing about the result, Thurgood Marshall, who had successfully argued the case before the *974 Supreme Court, recalled, "I was so happy I was numb." [FN7] Nearly a half-century after the decision, Professor Jack Balkin of Yale Law School correctly observed that Brown "is the single most honored opinion in the Supreme Court's corpus." [FN8] Harvard's Morton Horwitz, one of the nation's leading legal historians, concluded that Brown is "perhaps the most important judgment ever handed down by an American Supreme Court." [FN9]

It is somewhat ironic, then, that on the fiftieth anniversary of Brown many scholars and some civil rights activists regard the decision as a failure. [FN10] Charles Ogletree, while acknowledging that he has personally benefited from the "blessings and good fortune" of growing up in the wake of Brown, [FN11] nevertheless reaches the "sad conclusion . . . that fifty years after Brown there is little left to celebrate." [FN12] Derrick Bell, the great civil rights activist, teacher, and scholar, has suggested that the decision perhaps did more harm than good. [FN13] He sees Brown as "unassertive" in its "finally failed implementation," [FN14] and he wonders about the importance of a decision that "accomplished so little." [FN15] Indeed, Bell has suggested that perhaps the Court should not have overturned the "separate but equal" doctrine set out in Plessy v. *975 Ferguson, [FN16] but rather should have enforced the "equal" prong of this test and required that Southern--and Northern--states give blacks equal education. [FN17]

Michael Klarman, a law professor at the University of Virginia, echoes this pessimism in his mammoth book From Jim Crow to Civil Rights. Klarman's book of course covers far more than Brown. It is at one level a constitutional history--or at least a Supreme Court history--of civil rights, but it goes beyond that narrow characterization. Klarman has fleshed out the Supreme Court history by drawing on NAACP papers and the personal papers of most of the members of the Warren Court. [FN18] At over 650 pages, Klarman's is a big book, too big to detail in any review. It is also a densely packed book, full of fascinating information, new ideas, and much food for thought. A major undertaking, Klarman's book makes a significant contribution to our understanding of race and law from 1896 to the 1960s. While many of Klarman's arguments and conclusions are ultimately problematic, the depth of his analysis, the sweep of his coverage, and the quantity of the information he conveys are enormously impressive. Particularly useful are Klarman's discussions of long-forgotten cases [FN19] and his use of those cases to illustrate some significant problems in our present-day
were involved in voter registration was far more radical than a few Virginia counties' closing of their schools to avoid integration.

After Brown, the most violent responses to civil rights continued to be focused not on schools, but on voting and other issues. Attempts to register voters provoked a number of murders, including those of Michael Schwerner, Andrew Goodman, and James Chaney in Philadelphia, Mississippi. [FN199] The Selma to Birmingham march led to the sickening attacks by the Alabama state police on marchers at the Edmund Pettus Bridge. That march focused on voter registration, not school integration. On that march the Klan murdered a white volunteer from Detroit, Viola Liuzzo, a mother of five children who came south to work for racial justice. [FN200] In 1964 Klansmen murdered Lemuel Penn outside of Athens, Georgia, because they incorrectly believed he had come from out of town to test the new Civil Rights Act. [FN201] The motivation for this murder had nothing to do with school integration. [FN202] *1015 Klarman argues that voting rights would have been a more productive route for ending segregation because voting would have led to a shift in political power. He asserts that Smith v. Allwright “had more dramatic short-term consequences for black voter registration than Brown had for school desegregation” (p. 454) and also argues that “southern whites were far less committed to preserving black disenfranchisement than they were to maintaining school segregation” (p. 200). [FN203] Yet Klarman later notes that in 1952 only twenty percent of Southern blacks could vote (p. 451) and that “southern whites would not permit most blacks to vote until Congress forced them to” (p. 452). Klarman observes that enfranchisement happened “only after Brown had elicited and exposed the most brutal aspects of Jim Crow, to the horror of national television audiences” (p. 452). Here Klarman is partially right but also deeply wrong. He is absolutely correct that the violence perpetrated on civil rights demonstrators changed “national opinion” (p. 452) and led to the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But the bulk of this televised violence [FN204] was not connected to Brown or school desegregation. The most dramatic violence--in Alabama, Mississippi, Louisiana, [FN205] and Georgia--came in response to voter registration drives and attempts to integrate public transportation and public accommodations. [FN206] In parts of Louisiana, for example, “[s]hootings and arson soon became commonplace” in the early 1960s when blacks tried to register to vote. [FN207] The violence perpetrated against advocates of black voting is precisely why a fight for voting rights was even more problematic and more dangerous than a fight for school integration.

Furthermore, voting rights might have been even harder to secure than school desegregation. The states required children to attend school. Thus, once assignments to integrated schools were made, the students had a legal right to attend them and the parents had a legal obligation to bring their children to school. If whites boycotted the *1016 schools, blacks would still have access to better schools. By contrast, there is no legal obligation to vote. Voting requires an act of will. But voters are reluctant to act if they fear violence or death by white terrorist organizations like the Ku Klux Klan or retribution by their white employers. Cumbersome registration procedures also inhibit voting by African Americans and other minorities. Today, most black children in the South attend schools that are no longer formally segregated. But large numbers of black adults--far more than whites--are not registered to vote. [FN208] To this day there are persistent allegations of intimidation by the police and other public officials of black voters in some Southern states. [FN209]

Klarman claims that “[b]y the early 1960s, most southern whites could probably have tolerated desegregated transportation and black suffrage, had Brown not converted all racial challenges, in their minds, into fundamental assaults on Jim Crow” (p. 442). This assertion is implausible given the violence that was occurring before Brown and given that most of the violence after Brown was not focused on school segregation issues. It is unlikely that Southern whites could have perceived demands for integrated transportation or the right to vote as anything but “fundamental assaults on Jim Crow,” even in the absence of Brown. How can Klarman imagine that demands for integrated transportation, or the right to vote, were not “fundamental assaults on Jim Crow”? Klarman seems to be arguing that Southern blacks should have quietly asked for piecemeal changes--bus integration, perhaps access to a lunch counter here and there, perhaps being allowed to vote in some places. He further imagines that the white South was willing to accept such incremental, piecemeal changes, but he believes that this opportunity for such gradualist chipping away at segregation was destroyed by Brown, which radicalized the South because it threatened all forms of segregation. However, Klarman's speculations about what might have been are undermined by the reality of what happened. Brown did not lead to any significant violence in the South. But the assaults on other pillars of segregation--transportation, public facilities, public accommodations, employment, and the voting booth--all resulted in strong and often violent resistance. Thus, Klarman's claim that Brown “provoked