

place in civil rights history. Jack Bass shows how a remarkable cadre of progressive judges in the lower federal courts (most of them Republican appointees) were critical to enforcing *Brown's* mandate. Alan Richard returns to Clarendon County, South Carolina, to probe lingering tensions in a rural locale where school desegregation plaintiffs fifty years ago were brutally repressed. Michael Honey illuminates the ways in which desegregation struggles have intersected with efforts to advance the interests of urban black workers. Peter Schrag and Claude M. Steele each offer concrete strategies for improving the lot of disadvantaged minority students today. And the diverse participants in the forum that follows weigh the impact of *Brown* on an American

society still afflicted by profound racial inequalities.

A recurrent message in this issue is that *Brown v. Board of Education* and its companion cases contributed in a major way to bettering America by delegitimizing racial segregation in public schooling. A second key theme, however, is that *Brown's* promise remains, to a considerable extent, unfulfilled. Jim Crow schooling is not a wrong inflicted in ancient times on people long since dead; it is an all too recent injustice that created unhealed wounds. A century ago, W.E.B. Du Bois wrote the famous words, "The problem of the twentieth century is the problem of the color line." Despite all that has changed since *Brown*, his words remain a challenge for the twenty-first. ■

## A FORUM

# Beyond Black, White and *Brown*

*Thanks to the civil rights revolution, de jure segregation is dead. But vast social, economic and educational inequalities continue to plague American society. Moreover, while the black-white paradigm has never fully described American race relations, we are far more aware today than in the past of the multiracial nature of our society. With this in mind, we asked a range of scholars, writers and activists to reflect on the legacy of Brown and the prospects for future change. Should education be the primary focus of social activism? What strategies will most effectively promote educational betterment in black and other communities? Can we expect the courts to play a role at the forefront of change, as they did for much of the 1950s and '60s, and if not, what other institutions are positioned to adopt that role? Is the goal of educational desegregation irrelevant today? Their responses follow.*

—The Editors

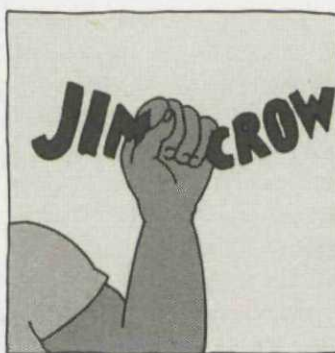


## Adolph Reed Jr.

It's almost difficult for me to take in that the *Brown* decision was handed down fifty years ago this May. It's so vivid a part of the swirl of dramatic events that punctuated and shaped my childhood: the Montgomery bus boycott, the lynching of Emmett Till, Little Rock—all of which occurred within three years of *Brown*.

The United States has changed radically during the half-century since that momentous ruling, and it's good to recall that it has. It's important especially to recognize how striking political and social change has been in the South. Those who can't remember the old Jim Crow regime can be too easily seduced by a rhetoric that stresses the magnitude and injustice of contemporary inequalities by minimizing the significance of the victory against segregation. Those who lived under the old regime know better.

The segregationist regime in the South encompassed far more



than the "separate but equal" doctrine that *Brown* overturned in public education, far more than the petty apartheid reflected in WHITES ONLY or COLORED ONLY signs. It was a codified social order, a system of state-sponsored and state-enforced racial domination. It wasn't about prejudice and bigotry. Though it certainly fed on and legitimized both, it was fundamentally about who could claim the rights and protections of citizenship and who couldn't. And it was always at least as much about imposing and stabilizing a pattern of social relations rooted in the political economy's class and power dynamics as it was about formal commitment to an ideology of white supremacy.

It was also finite. It was the expression of reactionary elites' victory in the nearly thirty-year struggle over the terms on which a post-slavery Southern social order would be built. The Jim Crow regime sanctified in the infamous *Plessy* doctrine was only fully consolidated between 1890 and 1910. Its institutional back was broken by 1965. That is, all four of my grandparents were at least adolescents by the time the system was solidly entrenched; its legal foundations were destroyed before I was old enough to vote.

In 1954, or even 1955 or '57, few imagined that the system wouldn't last another generation. Even activists weren't prepared for the prairie fire of insurgency that opposition to Jim Crow ignited between the mid-1950s and mid-1960s. *Brown* was both illustration of and impetus for that change. It was also a culmination of decades of careful strategizing and organizing, of protracted legal struggle, against one facet of the segregationist order—a point where its separate-but-equal sophistry was most vulnerable—led by the NAACP and its allies.

Scholars and ideologues of one sort or another continue to debate the precise role that *Brown* played, how important it was, in bringing down Jim Crow. These debates can be more or less useful or interesting analytically. They can help to sharpen perspective on different facets and nuances of the movement and its time. But they are ultimately irresolvable. All we can say is that *Brown* was a current in a stream of activism that swelled into an



irrepressible torrent of opposition over the ensuing decade.

This is where the greatest lessons of *Brown* lie for our time. First, actions by and pressure on government can help change fundamental social relations and the nature of the terrain for political action. Second, political movements ferment slowly and grow in relation to their efforts to change actual policies. Third—and perhaps most important to keep in mind for a younger generation that has known only Reaganism or the Democrats’ “Me Too, But Not So Much” response—moments of sharp social change can condense abruptly, when least expected.

*Adolph Reed Jr. is professor of political science at New School University.*



## Pedro Noguera and Robert Cohen

**A**lthough the US Supreme Court called for school integration to proceed with “all deliberate speed” in the wake of its *Brown* decision a half-century ago, progress toward integration has been depressingly slow.

By the tenth anniversary of *Brown* only 1.17 percent of black schoolchildren in the eleven former Confederate states were attending integrated schools. With pressure from the civil rights movement, the federal government took on a more assertive role in promoting school busing, so that by the time of the twentieth anniversary, in 1974, real progress had been made and 46.3 percent of black students were attending integrated (white majority) schools. However, in the past twenty years this progress has come to a halt. White flight from the cities and several setbacks in the courts have together undermined the goals of *Brown*. Sadly, on *Brown*’s fiftieth anniversary the only deliberate speed we see is toward resegregation; today less than a third of African-American students attend racially integrated schools.

The de facto segregation of so many of our nation’s schools is no longer an issue that generates conflict and controversy. Like the growing prison population and homelessness, racial segregation is accepted as a permanent feature of life in America. Across the country, schools are segregated in terms of race and class, and as was true before *Brown*, the vast majority of poor children are relegated to an inferior education.

For this reason, those who still regard the goals of *Brown* as important find themselves in a quandary. Given that white flight and legal barriers have made integration nearly impossible to achieve, the only way to revive the legacy of *Brown* may be to push for equity in the conditions under which children learn. Thus, efforts to pursue equalization in funding such as New York’s Campaign for Fiscal Equity may be the only means available to insure that poor children are not permanently relegated to woefully inadequate schools. In effect, this means taking several steps back, to reclaim the unfulfilled promise of *Plessy v. Ferguson*: separate but equal. As problematic as this may be, it is the only course of action available to pursue justice in educational policy in areas where racial integration is no longer likely.

Outside of urban areas, there are still a number of school districts that have defied the trend toward resegregation and that remain relatively integrated. Most of these are located in inner-ring suburban communities, and many are in university towns.

In some cases they are liberal communities that have viewed support of school integration as a matter of principle: proof of a commitment to tolerance, openness and racial justice.

Yet despite their support for “diversity,” in almost all these communities the goals of *Brown* remain unfulfilled. In such communities minority students are more likely to be tracked into remedial courses or special education, to be suspended or expelled, or to be excluded from honors and gifted classrooms. Enrollment numbers give the impression that schools are integrated, but closer scrutiny reveals they are segregated within.

Education remains the best hope for the poor and the powerless, and one of the few means of reducing the profound disparities in wealth and opportunity that characterize American society. But we have a long way to go to fulfill the promise of *Brown*. The fiftieth anniversary of the decision should cause us to reflect on where we stand as a nation in our effort to undo the legacy of slavery, racial discrimination and injustice. It should also move us out of the complacency that has allowed the gains of the civil rights movement to be reversed.

*Pedro Noguera is a professor in the Steinhardt School of Education at New York University. His most recent book is City Schools and the American Dream (Teachers College). Robert Cohen is associate professor at the Steinhardt School. His most recent books are The Free Speech Movement: Reflections on Berkeley in the 1960s (University of California), co-edited with Reginald E. Zelnik, and Dear Mrs. Roosevelt: Letters From Children of the Great Depression (University of North Carolina).*



## Mari Matsuda

**N**ew York Times columnist John Tierney chided candidate John Edwards for lamenting the little girl without a coat, who prays for warm weather. The anecdote misleads, he suggests, since coats “typically sell for about \$5 in thrift shops.” Funny, I have seen that coatless child. A DC public school teacher whispered a request to me: “Find a coat for her.”

This is what urban teachers see: children who wolf down their free breakfast because it’s their first meal since they left school yesterday; children with sores on their bodies, untreated because there is no health insurance; children with fevers sent to school because there is no backup childcare; and, yes, shivering children on winter days, coatless for any number of poverty’s reasons—including the fact that the consignment stores with the \$5 winter coats have relocated to the neighborhoods where the *New York Times* writers live. Can I get a witness?

No, because the urban intelligentsia have abandoned the public school system. A friend writes recently about his peer group’s choices:

“Very few of us sent our kids to our neighborhood public elementary schools, especially if those schools have high percentages of poorer kids, immigrants and limited-English kids. Here’s what most of our friends did: 1. sent their kids to private schools; 2. moved to a district that has good public schools; 3. using superior knowledge and connections, sent their kids to better alternative public schools and magnet schools.... The folks I’m talking about are public interest lawyers, NLG members, partners in



minority law firms, founders and board and staff of community and public interest organizations, etc., and me."

This e-mail could have come from many of my closest friends, or, I suspect, from a large number of *Nation* readers. *Brown v. Board of Education* ended the formal segregation we were born into. We learned politics in the movement to make *Brown's* promise our lived reality. We marched for civil rights, linked arms to stop eviction, sang "We Shall Not Be Moved" with tear-stained conviction and then walked quietly away from public schools. In the beginning it was called white flight, but the friend who writes to me is not white, and neither are the peers he is talking about. In my DC neighborhood, black parents as well as white choose against the local school.

Here is what you don't see if you are not inside that school: heroic teachers and real learning occurring alongside unconscionable neglect of human needs. Because I see many strengths still intact, my children remain in neighborhood schools. I deploy privilege from my back pocket to help make those schools work and, I confess, to retain the exit option if it comes to that. A plea to my peers: Before you pull out, make sure it is as bad as you are imagining it is, and do the impossible. Cleanse your imagination of racism.

Without witnesses, without the influence and entitlement that educated parents bring, it is hard to muster the political will to provide the simple things we need to fix our public schools: well-maintained buildings; a textbook for every child; well-trained and well-paid teachers; small classes; wrap-around social services; rich curriculum that includes the art, music and sports that we cut long ago; early intervention for the at-risk; and enrichment programs to retain the privileged and their much-needed social capital. It is no mystery. The privatizers have hoodwinked us into believing that public education, like poverty, is hopeless.

We, the richest, most powerful nation on the planet, could solve our social problems in a heartbeat. I don't have to tell *Nation* readers where the money went instead of to the schools, but I do want to tell you this: Enter your neighborhood school, if not as a parent, then as a tutor. Witness both the good and the abomination. If you see it, your outrage will remind you of what you know how to do. Make power concede to struggle for our children. All of our children.

Mari Matsuda is writing a book, with Charles Lawrence, on the abandonment of public education.



## Frank H. Wu

The 1954 Supreme Court decision in *Brown v. Board of Education* is perhaps the most important judicial ruling in the history of our diverse democracy. It deserves to be more than merely symbolic, as admired as it is empty. Ever since the Justices ruled that the doctrine of racial segregation was constitutionally wrong, even if it were somehow hypothetically separate but equal (never mind that separate had never been equal), much of the nation has engaged in "massive resistance," even shutting down public schools rather than admit black students.

Ironically, passive indifference has succeeded where massive

resistance failed. The orders of desegregation have not created an imperative for integration. To the contrary, the High Court has rendered judgments since *Brown* that insure its ineffectiveness. The Court has, for example, endorsed racial divisions if they coincide with city-suburb boundaries, and has accepted racial patterns that emerge from housing choices.

Even at the level of technical doctrine, it is not clear what *Brown* means—if it means anything substantive at all. The controlling precedent for the interpretation of the Fourteenth Amendment's guarantee of equal protection has become, instead of *Brown*, the cases allowing the internment of Japanese-Americans during World War II. It was not *Brown* but *Hirabayashi v. United States* and *Korematsu v. United States* that created the notion of "strict scrutiny" as it applies to racial classifications. Indeed, a law school graduate sitting for the bar exam could not be fairly tested on the implications of *Brown* but must be able to recite the factors involved in strict-scrutiny review.

This is bizarre. After all, *Brown* was a case everyone understood to be about race, arising from the ongoing subjugation of African-Americans, in which the Justices unanimously reached a result that virtually all now celebrate as right. In contrast, *Hirabayashi* and *Korematsu* were cases the majority denied were about race, addressing the situation of Japanese-Americans during the alleged exigencies of wartime, in which the Justices were divided but acquiesced in a government program virtually all now condemn as wrong.

We can confirm the demotion of *Brown* and the accompanying promotion of *Hirabayashi* and *Korematsu* by reading the Supreme Court's affirmative action opinions. In *Bakke*, *Adarand* and the recent University of Michigan litigation, the Justices have cited not *Brown* but *Hirabayashi* and *Korematsu*. They have insisted that efforts to remedy racial discrimination, like any bigotry of the Jim Crow era, must conform to strict-scrutiny review. When Justice Sandra Day O'Connor announced that diversity was a compelling state interest and the use of race as a factor was narrowly tailored, she was finding that affirmative action passed the strict-scrutiny test.

Supporters of affirmative action invoke the spirit of *Brown*; opponents of the programs complain that there is no comparison to be made. Yet if *Brown* is to stand for something, ought it not at least to stand for the proposition that, if we believe we must have institutions that are inclusive, we also should take action to insure that they are so?

Frank H. Wu, a professor of law at Howard University, is the author of *Yellow: Race in America Beyond Black and White (Basic)*.



## Asa Hilliard III

"Segregation," "desegregation," "integration" and "assimilation" are key words that have served as lenses through which racial inequity and oppression through schooling have been viewed and understood. This language is not a compatible fit with the real world of schools, teaching and learning, nor does it reflect an understanding of the full dimensions of the problem.



Before *Brown*, Carter Woodson and W.E.B. Du Bois were among the few who grasped the robustness of the white supremacy social order, and its manifestation in the structure and function of the schools. Segregation was not merely the coerced separation of the "races" in schools. It was a total structure of domination, which included the uses of all major societal institutions—law, mass media, criminal justice, religion, science, school curriculum, spectator sports, art, music, etc.

These agencies provided the propaganda and legitimacy that resulted not only in coerced physical segregation but in a false school curriculum; the control over African schooling by segregationists; the defamation of African culture; the disruption of African institutions of family, ethnic group identity and solidarity; prevention of wealth accumulation; blocked access to communication; the teaching of white supremacy and African inferiority; and more. The *Brown* decision addressed mainly two things: physical segregation and financial inequalities in school funding. While *Brown* was a major challenge to the structure of racial domination by heroic advocates and activists, the decision fell far short of addressing the totality of the school problem, which continues to lie in the larger domination structure. "Integrating" the schools did not eliminate the ideology of white supremacy from which "segregation" derived.

In the absence of a real understanding of the structure of domination, some of the worst elements of segregation have returned, in new guises. Tracking is less visible, but it persists. Today's scripted, standardized, cookie-cutter, minimum-competency managed instruction, sometimes by private contractors, with severely reduced parent and community involvement, is offered mainly in low-income minority cultural group schools. Affluent public or private schools rarely if ever use the scripted, non-intellectual robotic programs. This is the new segregation.

We must ask not merely "Were the schools 'desegregated' or 'integrated?'" but "Has the achievement of African children improved significantly? Has the curriculum been desegregated? What explains the massive decline in the African teaching and leadership force in the schools?" Teachers and administrators receive little in the way of robust multicultural content and perspectives in their own training. The celebration of heroic individuals and their singular "contributions" during Black History Month cannot substitute for the evolving story of a people that is reflected in all curriculum areas. Patterns of African worldviews, cultural creativities, spirituality and value systems, political and economic challenges, etc., provide a context for individual actions that is missing in many schools.

*Brown* was mainly about black and white. Now a rainbow of other ethnic groups has arrived to share in the "savage inequalities" that persist. This presents major challenges, conceptual and structural, calling for a whole new resolve, and resources to provide truly equal opportunities to learn. Currently marginalized educators who have always achieved excellence, regardless of social class or ethnicity, ought to be leading our schools, systems and policy, not those newcomers to education who are "experimenting," often with ideas imported from the corporate world. Though Mexican, Hmong, Chaldean, Haitian and other immigrant children may not have experienced the pre-*Brown* or even the post-*Brown* apartheid, they do experience some of the residual effects of segregation structures, such as the white-supremacy ideologies

that foster low expectations, low support commitment, alien and remote school leadership and detrimental school practices.

In the final analysis, our problems are not professional or pedagogical. The question is, Will we recognize and nurture the natural genius in all children, or will we tolerate the "savage inequalities" in services?

*Asa Hilliard III, a teacher, psychologist and historian, is the Fuller E. Callaway Professor of Urban Education at Georgia State University. He is founder and vice president of the Association for the Study of Classical African Civilizations.*



## Patricia Sullivan

*Brown v. Board of Education* stands as a high-water mark in the modern civil rights movement. It represents the triumph of an improvisational legal campaign that joined a hard-edged litigation strategy with a twenty-year-long organizing effort throughout the South. NAACP lawyers and activists recruited plaintiffs, cultivated local support and helped lay the groundwork for a protracted challenge to racial segregation. Schools and education were at the center of the campaign. Charles Houston, the architect of this effort, warned that blacks would be subject to even greater oppression unless they continually fought for "identical quality and quantity of educational opportunity [for] all citizens regardless of race, creed, or color."

In May 1954 the Supreme Court concurred with the arguments put forward by NAACP counsel. "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education," the Court held. "Such an opportunity... is a right which must be available to all on equal terms." The Court further ruled that "separate educational facilities" are "inherently unequal." *Brown* ushered in a decade of protest that succeeded in dismantling Jim Crow. Effective school desegregation, however, would not begin in the South until the late 1960s.

In the aftermath of the *Brown* ruling, NAACP general counsel Robert L. Carter, who argued three of the cases making up *Brown*, took the legal campaign for school desegregation north. By then, half of African-Americans lived outside the South, and the vast majority attended segregated schools. During the 1960s Carter and his associates worked to establish that whenever school assignment policies or organization produced inferior education of black children, whether intentional or not, it was a violation of the Fourteenth Amendment's mandate that black children receive equal educational opportunity. The Court refused to support such an expansive reading of *Brown*. A relatively brief experiment with court-ordered busing in the 1970s to correct intentional segregation advanced the desegregation process in selected areas. But white flight, along with federal policies and court rulings, narrowed the application of this strategy, and the Supreme Court ultimately lifted these orders and ruled that race-conscious remedies themselves were unconstitutional.

In 2004 the profile of educational opportunity for a significant segment of African-American children mirrors the pre-*Brown* era. Predominantly black and minority schools are most often housed in crumbling facilities, suffer from starved budgets and



lack essential resources. The persistence of racial inequality—as measured by income, joblessness and underemployment, and rates of incarceration—is closely linked to an educational system that barely functions for a large number of black children and fails to address the needs of many more.

Although *Brown* has not achieved its primary purpose—to guarantee equal educational opportunity for all African-American children—its mandate is written into law and history and continues to shape the struggle for racial and social justice. Innovative leadership committed to the long haul has been the hallmark of past efforts and continues to be essential. Among hopeful developments are the growing efforts to “fix the schools” in poor neighborhoods and create quality education where children live. School equalization suits seek an opening toward this end, along with experimental schools and programs anchored in the communities they are designed to serve.

The Algebra Project, founded and directed by civil rights activist Robert Moses, offers a compelling model for ways of engaging communities in the transformation of their schools and providing children with access to math literacy, a fundamental tool for full participation in contemporary society. Moses traces a direct link between the struggle for equal education today and the civil rights struggles of the past. Reforms will do little to promote structural change, he explains, without an ongoing effort to empower the affected communities “to demand access to literacy for everyone.” This, in the end, is *Brown*’s most enduring legacy.

*Patricia Sullivan teaches history at the University of South Carolina and is the author, most recently, of Freedom Writer: Virginia Foster Durr, Letters From the Civil Rights Years (Routledge).*



## Jacquelyn D. Hall

A monumental victory when it first appeared, the *Brown* decision now threatens to become a bulwark of inequality. The glory of *Brown* was its ringing endorsement of educational equality and its understanding that—in the face of centuries of forced segregation, economic exploitation and cultural denigration—separate could never be equal. It is not the decision itself but the way we remembered it that has gone wrong, for a flawed “master narrative” prevents *Brown* from speaking effectively to the challenges of our time. That narrative confines the civil rights movement to the years between the Supreme Court decision and the 1965 Voting Rights Act and to the goal of formal equality before the law. This truncated story line makes it all too easy for conservatives to misappropriate the *Brown* decision as a triumph for colorblindness and use it to reify a legal fiction that draws a sharp line between de jure and de facto segregation.

Nineteen fifty-four was a pivotal moment in a long civil rights movement, whose goals went far beyond ending de jure segregation. This nationwide struggle was rooted in the liberal and radical milieu of the late 1930s, emerged decisively with the great migration of blacks to the cities during World War II and continued through the 1970s, when civil rights advocates fought to make use of the gains they had won.

A black-union-left coalition led the movement in the 1940s.

Pursuing a social democratic vision in which political, social and economic rights were fused, it won landmark victories, including mass unionization, the desegregation of higher education, fair employment and open housing laws. On the other side stood a Congressional alliance of conservative Southern Democrats and Northern Republicans, along with the first generation of “suburban warriors,” who were encouraged by government policies and profit-hungry real estate companies to shut out black homeowners and devise student assignment plans that deepened segregation in the North and West. The cold war gave the civil rights movement’s enemies a devastating weapon: a red scare that equated social provisions with socialism, severed civil rights from economic justice and narrowed the political discourse on which later activists could draw.

When the movement re-emerged in the mid-1950s, it struck at the racial order’s Achilles’ heel: state-mandated apartheid in the South. Combining moral force with strategic brilliance, it enlisted the Supreme Court, forced the hand of the federal government and brought local opponents to their knees. But physical separation was never white supremacy’s major goal. Segregation insured racial hierarchy and a cheap, undereducated, politically demobilized and racially divided labor supply. This system of “racial capitalism” deprived blacks and many poor whites not only of civil rights but of social and economic citizenship as well.

By the time the legal edifice of segregation crumbled, moreover, state-subsidized suburbanization had already spatialized race, blurring the line between de jure and de facto segregation in both the South and the North. For that reason, farsighted civil rights activists fought against what has now become judicial principle: the assumption that only recent, intentional, provable, state-sponsored segregation is actionable at law—an assumption that does not necessarily flow from *Brown* and that flies in the face of history, but has now been enshrined by the courts.

In the late 1960s and early ’70s, civil rights activists returned to the economic issues of the 1930s and ’40s. At the same time, a combination of court oversight and grassroots pressure gave the South the most integrated school system in the country. Too often desegregation was a cultural one-way street, in which black teachers were fired and cherished black institutions were destroyed. Yet interviews conducted by the Southern Oral History Program at the University of North Carolina suggest that for many students in the 1970s, the experience was life-changing in ways that cannot be captured by the statistical studies on which judgments about the success or failure of integration too often rely.

We now face a situation in which the federal courts are preventing local communities from pursuing race-conscious policies, while segregated housing remains deeply entrenched. The result will be two school systems: one filled with nonwhite children from low-income families and one with middle-class children, most of whom are white, along with our most qualified teachers.

We cannot address this crisis by commemorating the *Brown* decision in the register either of triumph or declension. Instead, we must grapple with the long civil rights movement as an unfinished revolution whose gains are once again being partially reversed. The culprit now, as in the past, is not just overt racism



but public policies that are ostensibly colorblind, yet deliberately shape the landscape of race. We need stories that dramatize that hidden reality, stories that have no satisfying upward or downward arc, stories that call us to a struggle whose end is still not in sight.

*Jacquelyn D. Hall, who teaches at the University of North Carolina, is director of the Southern Oral History Program. She is a fellow at the Radcliffe Institute for Advanced Study at Harvard University.*



## Jonathan Kozol

Although the subject is seldom talked about in public-policy debate, I believe the goal of educational desegregation is as relevant today as it has ever been. Virtual apartheid is a fact of life in almost every urban school I visit nowadays. "During the 1990s," as the Harvard Civil Rights Project has observed, "the proportion of black students in majority white schools" decreased "to a lower level than in any year since 1968." In most of the schools I visit, black and Hispanic students make up more than 95 percent of the population.

There is, moreover, little pretense any longer that these schools, while obviously separate, are somehow of equal quality to those attended by the children of the mainstream of society. Despite a number of hard-won legal victories that, in principle at least, compel a state to offer what is known as "adequate provision" to the children of a segregated district, grave inequities persist. Three times in the past seven years, Ohio's highest court has found the education finance system in that state unconstitutional, but the governor and legislative leaders have defied these court decisions with impunity. In Illinois, after many years of legal action, inequalities remain intractable: The children of all-black East St. Louis receive a public education worth \$8,000 yearly, while the children of Lake Forest, a predominantly white suburb of Chicago, receive \$18,000. In New York City, despite a victorious legal action brought by the Campaign for Fiscal Equity, per pupil spending (\$10,500) remains half that of the rich Long Island suburb of Manhasset, where some \$21,000 is invested yearly in each child's education.

Even in those cases where per pupil spending in an inner-city district may approach the levels of surrounding suburbs, other forms of inequality remain entrenched. The squalor of decrepit infrastructure, the assignment of the least prepared and often uncredentialed teachers to the schools in greatest need, the demoralization of intensely concentrated poverty and the visceral message given to children by the very fact of racial sequestration continue to be potent forces in perpetuating the caste divisions of American society.

The punitive testing and accountability agendas set in place in the past decade have not lessened these divisions and, indeed, have deepened them by forcing many inner-city schools to gravitate to drill-and-grill curriculums, keyed tightly to the isolated particles of knowledge to be tested by exams, which leave no room for the more wholesome and authentic forms of learning that cannot be measured by empirical assessments. Critical consciousness in schools like these has been subordinated to the goal

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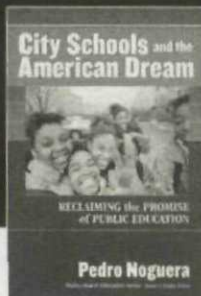
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of turning children of minorities into examination soldiers—unquestioning and docile followers of proto-military regulations. (The former head of the Chicago Public Schools, indeed, referred to “training manuals” for the National Guard as the model that inspired him to choose these methods of instruction.) The insidious acceptance of apartheid pedagogies as the favored instruments of teaching for apartheid’s children thus compounds the many other inequalities these children face.

No matter what the present disposition of the federal courts, activists ought to be raising hell in the suburban districts that surround our major cities to break down the barriers to residential integration and, as a half-step in that direction, to expand the voluntary interdistrict school desegregation programs that exist already. In Boston, more than 3,000 children now participate in such a program and attend the schools of more than thirty suburbs. There are an additional 16,500 on the waiting list. Similarly long waiting lists exist in other cities. Whatever the rhetoric one sometimes hears from racial separatists, the overwhelming numbers of the parents of black children—those, at least, with whom I speak regularly—have not renounced the dream embodied in the words of *Brown*, and they refuse to settle for the tainted promises held out by *Plessy v. Ferguson*. Those waiting

lists for hundreds of our very best suburban schools should represent a pressing challenge to the multitude of thoughtful liberals who live within those districts but refuse to speak out boldly on this issue.

This is only one of several areas in which young activists ought to be challenging their elders. They should be mobilizing, too, against the mania of high-stakes testing and the associated policies of nonpromotion and nongraduation that are driving an increasing number of black and Latino students to drop out of high school altogether. They ought to be demanding that the presidential candidates speak out forthrightly on these issues. Instead of pressing the candidates merely to modify the more draconian aspects of “No Child Left Behind,” they ought to be asking why this simple-minded and destructive legacy of President Bush ought not to be overthrown in its entirety. Hard issues need hard questions. On all these fronts, a tough and restless grassroots activism that refuses to romanticize and justify apartheid education is as badly needed now as it was fifty years ago.

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AT THE TIME, THE JUSTICES HAD DOUBTS THAT *BROWN* WAS RIGHTLY DECIDED.

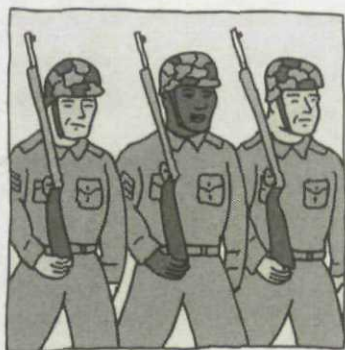
# It Could Have Gone the Other Way

MICHAEL J. KLARMAN

In the fifty years since it was decided, *Brown v. Board of Education* has become a legal icon. The rightness of this famous decision invalidating racial segregation in public schools is no longer open to debate. Conservative legal commentators and prospective judicial nominees still criticize many landmark decisions of the Warren Court, but not *Brown*. No constitutional theory or theorist failing to support the result in *Brown* will be taken seriously today.

Such was not always the case. A Gallup poll taken the summer after *Brown* revealed that nearly half of all Americans opposed the decision. In the 1950s, eminent judges and law professors—including the great jurist Learned Hand—questioned whether it was rightly decided. Perhaps most surprisingly, the Justices who decided the case had grave doubts themselves whether invalidating school segregation was legally justified.

In a memorandum dictated the day *Brown* was decided, Justice William O. Douglas observed that a vote taken after the case was first argued in 1952 would have been “five to four in favor of the constitutionality of segregation in the public schools.” Jus-



tice Felix Frankfurter’s head count was only slightly different: He reported that a vote taken at that time would have been five to four to overturn segregation, with the majority writing several opinions.

*Brown* was hard for many of the Justices because it posed a conflict between their legal views and their personal values. The sources of constitutional interpretation to which they ordinarily looked for guidance—text, original understanding, precedent and custom—indicated that school segregation was permissible. By contrast, most of the Justices privately condemned segregation, which Justice Hugo Black called “Hitler’s creed.” Their quandary was how to reconcile their legal and moral views.

Frankfurter preached that judges must decide cases based on “the compulsions of governing legal principles,” not “the idiosyncrasies of a merely personal judgment.” In a 1940 memorandum, he noted that “no duty of judges is more important nor more difficult to discharge than that of guarding against reading their personal and debatable opinions into the case.”

Yet Frankfurter abhorred racial segregation. In the 1930s he served on the legal committee of the NAACP, and in 1948 he hired the Court’s first black law clerk, William Coleman. Nonetheless, he insisted that the Court could invalidate segregation only if it was found legally as well as morally objectionable.

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