

# From Racial Liberalism to Racial Literacy: *Brown v. Board of Education* and the Interest-Divergence Dilemma

Lani Guinier

---

On its fiftieth anniversary, *Brown v. Board of Education* no longer enjoys the unbridled admiration it once earned from academic commentators. Early on, the conventional wisdom was that the courageous social engineers from the National Association for the Advancement of Colored People Legal Defense and Educational Fund (NAACP LDEF), whose inventive lawyering brought the case to fruition, had caused a social revolution. Legal academics and lawyers still widely acclaim the *Brown* decision as one of the most important Supreme Court cases in the twentieth century, if not since the founding of our constitutional republic. *Brown's* exalted status in the constitutional canon is unimpeachable, yet over time its legacy has become complicated and ambiguous.<sup>1</sup>

The fact is that fifty years later, many of the social, political, and economic problems that the legally trained social engineers thought the Court had addressed through *Brown* are still deeply embedded in our society. Blacks lag behind whites in multiple measures of educational achievement, and within the black community, boys are falling further behind than girls. In addition, the will to support public education from kindergarten through twelfth grade appears to be eroding despite grow-

---

Lani Guinier is Bennett Boskey Professor of Law, Harvard Law School. The phrase "interest-divergence dilemma" in the title of this essay modifies and elaborates on the "interest-convergence dilemma" proposed by Professor Derrick Bell.

I thank Stephanie Camp, Kevin Gaines, Danielle Gray, Evelyn Brooks Higginbotham, Ken Mack, Joanne Meyerowitz, Frank Michelman, Martha Minow, Gerald Torres, and David Wilkins for enormously helpful comments on earlier drafts. Jay Cox, Jeneé Desmond, Amos Jones, and Nathan Kitchens provided excellent research assistance. Susan Armeny, Lori Creed, Jeneé Desmond, Amos Jones, and Samuel Spital provided very useful editorial and substantive feedback.

Readers may contact Guinier at <lguinier@law.harvard.edu>.

<sup>1</sup> On the importance of the *Brown* decision, see Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York, 1994), 197; James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York, 2001), xxvii–xxviii; Jordan Steiker, "American Icon: Does It Matter What the Court Said in *Brown*?", *Texas Law Review*, 81 (Nov. 2002), 305; Martin Guggenheim, "Symposium: Translating Insights into Policy: Maximizing Strategies for Pressuring Adults to Do Right by Children," *Arizona Law Review*, 45 (Fall 2000), 779; David A. Strauss, "Interdisciplinary Approach: Afterword: The Role of a Bill of Rights," *University of Chicago Law Review*, 59 (Winter 1992), 547; and Jack M. Balkin, ed., *What Brown v. Board of Education Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision* (New York, 2001), 3. See also Ronald S. Sullivan Jr., "Multiple Ironies: *Brown* at 50," *Howard Law Journal*, 47 (Fall 2003), 29.

ing awareness of education's importance in a knowledge-based society. In the Boston metropolitan area in 2003, poor people of color were at least three times more likely than poor whites to live in severely distressed, racially stratified urban neighborhoods. Whereas poor, working-class, and middle-income whites often lived together in economically stable suburban communities, black families with incomes above \$50,000 were twice as likely as white households earning less than \$20,000 to live in neighborhoods with high rates of crime and concentrations of poverty. Even in the so-called liberal North, race still segregates more than class. Gerald N. Rosenberg, emphasizing the limited roles courts can generally play, bluntly summed up his view of *Brown's* legacy: "The Court ordered an end to segregation and segregation was not ended." If *Brown* was a decision about integration rather than constitutional principle, Mark Tushnet observed in 1994, it was a failure.<sup>2</sup>

Even as constitutional principle, the Court's analysis and the formal equality rule it yielded became more troubling in the intervening years. Presented with psychological evidence that separating black children from whites "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone," Chief Justice Earl Warren led the Court to declare segregation unconstitutional. *Brown's* holding became the gold standard for defining the terms of formal equality: treating individuals differently based on the color of their skin was constitutionally wrong. However, once the Court's membership changed in the 1970s, advocates of color blindness used *Brown's* formal equality principle to equate race-conscious government decisions that seek to develop an integrated society with the evils of de jure segregation. The new social engineers on the right adapted the Warren court's rhetoric to create a late twentieth-century constitutional principle that forbids government actors to remediate societal discrimination. They changed *Brown* from a clarion call to an excuse not to act.<sup>3</sup>

The academy has produced a host of explanations for the discontinuity between *Brown's* early promise and its present reality. Some scholars have challenged the Warren court's motives; others have criticized its reasoning; still others have found fault

<sup>2</sup> Nancy McArdle, "Beyond Poverty: Race and Concentrated-Poverty Neighborhoods in Metro Boston," Dec. 2003, *The Civil Rights Project, Harvard University* <[http://www.civilrightsproject.harvard.edu/research/metro/poverty\\_boston.php](http://www.civilrightsproject.harvard.edu/research/metro/poverty_boston.php)> (Jan. 22, 2004). For figures on declining levels of school-age children enrolled in Boston public schools by race and as total percentages of the population, see "Lessons for the Boston Schools," *Boston Globe*, March 14, 2004, p. A1. After ten years of court-ordered desegregation, barely 1% of black children in the eleven southern states attended school with whites, according to Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago, 1991), 52. See also Adam Fairclough, *Better Day Coming: Blacks and Equality, 1890–2000* (New York, 2001), 329; Patterson, *Brown v. Board of Education*, 202–4, 211–12, 229, 231; and Lani Guinier, "Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals," *Harvard Law Review*, 117 (Nov. 2003), 113, 118–19nn24–27. Mark Tushnet, "The Significance of *Brown v. Board of Education*," *Virginia Law Review*, 80 (Feb. 1994), 175.

<sup>3</sup> *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). Decisions that rejected race-conscious governmental policies and/or required a showing of prior intentional discrimination to justify a limited racial classification as a remedy include *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978); *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *Wygant v. Jackson Board of Education*, 476 U.S. 267, 274 (1986) (plurality opinion); and *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 496 (1989). The Court held that a school desegregation plan must be limited to districts with an actual history of racial discrimination in *Milliken v. Bradley*, 418 U.S. 717, 744–45 (1974).

with its method of implementation. For example, focusing on motivation, Derrick A. Bell Jr. questioned the case's power to promote social justice because it was shaped, not by the intentional coalescing of a transforming social movement that reached across boundaries of race and economic class, but by the calculated convergence of interests between northern liberals, southern moderates, and blacks. The resulting alliance was temporary, lacked deep populist roots, and built on a tradition of treating black rights as expendable. For throughout United States history, Bell contended, the rights of blacks have regularly been sacrificed to preserve the greater interests of the whole society.<sup>4</sup>

In an influential article published in 1980 in the *Harvard Law Review*, Professor Bell concluded that the *Brown* decision represented the interest *convergence* between blacks and middle- and upper-class whites:

[The] principle of "interest convergence" provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites. However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper-class whites. . . . Racial remedies may instead be the outward manifestations of unspoken and perhaps subconscious judicial conclusions that the remedies, if granted, will secure, advance, or at least not harm societal interests deemed important by middle and upper-class whites.<sup>5</sup>

In the post-World War II period the alignment of interests of a biracial elite shifted to accommodate legal challenges to Jim Crow, Bell argued. The Court gave its imprimatur to the desegregation of public schools to add legitimacy to the U.S. struggle against Communism; to reassure blacks that precepts of equality heralded in World War II would be applied at home (and thus to quiet the resentment and anger of black veterans who returned from the war only to be denied equality); and to eliminate an important barrier to the industrialization of the South and the transition from a plantation to a modern economy. Consistent with Bell's interest-convergence thesis, Philip Elman, special assistant to the attorney general, filed a brief on behalf of the United States in which he framed the problem of racial discrimination "in the context of the present world struggle between freedom and tyranny."<sup>6</sup>

<sup>4</sup> Derrick A. Bell Jr., "*Brown v. Board of Education* and the Interest-Convergence Dilemma," *Harvard Law Review*, 93 (Jan. 1980), 518–33.

<sup>5</sup> *Ibid.*, 523.

<sup>6</sup> For the interest-convergence principle framed broadly, see Derrick A. Bell, *Race, Racism, and American Law* (Boston, 1980). On desegregation and the Cold War, see Greenberg, *Crusaders in the Courts*, 164–65; Mary L. Dudziak, "Desegregation as a Cold War Imperative," *Stanford Law Review*, 41 (Nov. 1988), 61–120; and Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, 2000). On the arousal of civil rights consciousness among blacks during World War II, see, for example, Earl Lewis, *In Their Own Interests: Race, Class, and Power in Twentieth-Century Norfolk, Virginia* (Berkeley, 1991), 173–76; Martin Sosna, *In Search of the Silent South: Southern Liberals and the Race Issue* (New York, 1977); and Michael J. Klarman, "Brown, Racial Change, and the Civil Rights Movement," *Virginia Law Review*, 80 (Feb. 1994), 17–18. On desegregation and southern industrialization, see *ibid.*, 56. The brief on behalf of the United States is quoted in Yale Kamisar, "The School Desegregation Cases in Retrospect: Some Reflections on Causes and Effects," in *Argument: The Oral Argument before the Supreme Court in Brown v. Board of Education of Topeka, 1952–55*, ed. Leon Friedman (New York, 1969), xiv. On Special Assistant to the Attorney General Philip Elman, see Robert J. Cottrol, Raymond T. Diamond, and Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and the Constitution* (Lawrence,

The ideals of racial liberalism helped fashion the legal strategy of the biracial elite. Racial liberalism emphasized the corrosive effect of individual prejudice and the importance of interracial contact in promoting tolerance. Racial liberals stressed the damaging effects of segregation on black personality development to secure legal victory as well as white middle-class sympathy. The attorneys in *Brown* and their liberal allies invited the justices to consider the effects of racial discrimination without fear of disrupting society as a whole. The Court responded by seeking to mollify southern whites even as it declared the end to the de jure separate but equal system. Yet, to the extent that *Brown* reflected the alliance of some blacks and some upper-class whites unthreatened by desegregation, it left out crucial constituencies for change, including southern black educators and poor rural blacks.<sup>7</sup>

Reservations also abound about the Court's reasoning, which was influenced by the litigation tactics of *Brown's* advocates and allies. The lawyers wanted to dismantle segregation so that all black children would have access to resources presumptively enjoyed by all white children. The lawyers chose to achieve their goal by encouraging the Court to assume the role of protecting black children from the intangible effects of stigma and self-hate. This intangible damage thesis seemed to offer the best possible means of directly dismantling Jim Crow (de jure, formal inequality) and *indirectly* dismantling its effects. Unfortunately, in this court-centered universe, the tactic of desegregation became the ultimate goal, rather than the means to secure educational equity. The upshot of the inversion of means and end was to redefine equality, not as a fair and just distribution of resources, but as the absence of formal, legal barriers that separated the races.

Advocates for the NAACP made a conscious choice to abandon cases that demanded that states equalize the facilities, staff, and budgets of separate white and black schools to focus the Court's attention on segregation itself. As part of their litigation strategy, they appended studies by social scientists to their brief in *Brown*. The plaintiffs' attorneys successfully mobilized social scientists to support the fight against segregation, presenting racism as pathological because of the "toll it took on the black psyche." In a magisterial study, Daryl Michael Scott faulted the Court's dependence on psychological damage imagery to demonstrate the intangible costs of segregation. Segregation's evils had social and economic, not just psychological, ramifications.

---

2003), 161–62. On the embarrassment to foreign visitors who were mistaken for American blacks, see Brief for the United States as Amicus Curiae at 4–5, *Brown v. Board of Education*, 347 U.S. 483 (1954) (No. 1).

<sup>7</sup> The Court itself refocused on segregation per se: "Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education." *Brown v. Board of Education*, 347 U.S. at 492. On racial liberalism, see Daryl Michael Scott, *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880–1996* (Chapel Hill, 1997), xiii. On constituencies *Brown* ignored, see David S. Cecelski, *Along Freedom Road: Hyde County, North Carolina, and the Fate of Black Schools in the South* (Chapel Hill, 1994), 8, 12. According to the National Association for the Advancement of Colored People (NAACP) lawyer Constance Baker Motley, many black teachers became major foes of school desegregation after *Brown*. See Adam Fairclough, *Teaching Equality: Black Schools in the Age of Jim Crow* (Athens, Ga., 2001), 62–65, esp. n. 46. See also Martha Biondi, *To Stand and Fight: The Struggle for Civil Rights in Postwar New York City* (Cambridge, Mass., 2003), 164–65, 170–71, 180–85.

Even more, as others have pointed out, the psychology of segregation did not affect blacks alone; it convinced working-class whites that their interests lay in white solidarity rather than collective cross-racial mobilization around economic interests. Writing in 1935, W. E. B. Du Bois described the “public and psychological wage” paid to white workers, who came to depend upon their status and privileges as whites to compensate for low pay and harsh working conditions.<sup>8</sup>

The Court’s reasoning suffered once it considered the caste system of Jim Crow narrowly, as a function of individual prejudice. The Court’s minimalist analysis had legal, sociological, and psychological consequences. In legal terms, the focus on prejudice alone cast a long doctrinal shadow, allowing subsequent courts to limit constitutional relief to remedying acts of *intentional* discrimination by local entities or individuals. Absent evidence that local officials or state actors intentionally manipulated school boundaries *because of racial animus*, *Brown*’s principled conclusion ultimately excused inaction in the face of a gradual return to racially segregated schools that are unquestionably separate *and* unequal. The sociological ramifications—that de facto separation became invisible—were predictable, given the Court’s lopsided psychological framing. The Court’s measure of segregation’s psychological costs counted its apparent effect on black children without grappling with the way segregation also shaped the personality development of whites. This analytic asymmetry influenced the reaction of blue-collar whites and arguably re-stigmatized blacks. The decision modified but did not eliminate “the property interest in whiteness” that Du Bois earlier observed and that came to define the Court’s equal protection jurisprudence. As Cheryl I. Harris has written, “*Brown I*’s dialectical contradiction was that it dismantled an old form of whiteness as property while simultaneously permitting its reemergence in a more subtle form” by failing to redress “inequalities in resources, power, and, ultimately, educational opportunity.”<sup>9</sup>

Other scholars deplore the Court’s remedial approach as overly deferential to southern whites; some also criticize integration efforts as benefiting very few poor blacks. What blacks won was not freedom, but tokenism. A cadre of middle-class

<sup>8</sup> The social scientist survey on the psychological effects of segregation submitted to the Supreme Court as an appendix in *Brown* is cited in Kenneth B. Clark, *Prejudice and Your Child* (Boston, 1955), 39–41. Scott, *Contempt and Pity*, xii–xiv, 125–26, 138; W. E. B. Du Bois, *Black Reconstruction in America, 1860–1880* (New York, 1935), 700.

<sup>9</sup> For an example of the judiciary’s perception of racism as a matter of prejudice, see Justice Anthony M. Kennedy’s concurrence in *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 374–75 (2001). On the development of a specific intent theory of equal protection, see John Charles Boger, “Willful Colorblindness: The New Racial Piety and the Resegregation of Public Schools,” *North Carolina Law Review*, 78 (Sept. 2000), 1794. *Washington v. Davis*, 426 U.S. 229 (1976); *Mobile v. Bolden*, 446 U.S. 55 (1980). On the cost of segregation to black schoolchildren and ultimately their communities, one source noted “the contrasts in support of white and Negro schools are appalling . . . the median expenditure per standard classroom unit in schools for white children is \$1,160 as compared with \$476 for Negro children.” See Brief of the American Federation of Teachers as Amicus Curiae at 9, *Brown v. Board of Education*, 347 U.S. 483 (1954) (No. 1). Derrick A. Bell, “Bell, J., Dissenting,” in *What Brown v. Board of Education Should Have Said*, ed. Balkin, 185–200. Stephen E. Gottlieb, “*Brown v. Board of Education* and the Application of American Tradition to Racial Division,” *Suffolk University Law Review*, 34 (2001), 282–83. See also George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia, 1998), 34. But contrast Fairclough, *Teaching Equality*, 66. Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review*, 106 (June 1993), 1714.

blacks has enjoyed the privileges of upward mobility, but for the mass of blacks (and poor and working-class whites), educational opportunities remain beyond reach.<sup>10</sup>

A few scholars have sought to demonstrate that a bench-based, lawyer-crafted social justice initiative was ill equipped to address complex social problems. *Brown* actually had little effect on educational opportunity, Michael J. Klarman has argued, serving instead to reenergize white racial consciousness, while providing little in the way of integrated or improved educational facilities. Without executive and legislative branch leadership, the courts could not bring about the dynamic social change envisioned by the *Brown* lawyers. The federal judge John Minor Wisdom, renowned for his landmark decisions ordering desegregation in the wake of the Supreme Court's ruling in *Brown*, was candid about the lack of judicially inspired progress in the face of fierce white backlash. Like Wisdom, Rosenberg concluded that "the courts acting alone have failed." It was not until nonviolent and courageous civil rights activists were violently brutalized on national television that blacks won their "freedom" from state-sanctioned oppression. But they won through legislative action, which was after all the more democratic and sustaining force for change.<sup>11</sup>

Beyond the academic debates, many black activists struggle to reconcile their early optimism and contemporary hopelessness. A sense of lost opportunity has sparked increasing cynicism among some. There is an eerie nostalgia for the feeling of community that was destroyed post-*Brown*. As Adam Fairclough has noted, school integration has long divided the black community. For a surprising number of blacks, the question is not whether we mistook integration for the promised land. Confusion, even skepticism, reigns in some quarters over whether the promised land can exist in a United States that has yet to come to terms with the way slavery and the racialized compromises it produced shaped our original understanding of the nation as a republic.<sup>12</sup>

<sup>10</sup> On the Court's deference to southern whites, see Harris, "Whiteness as Property," 1753n9. For criticism of integration efforts, see Derrick A. Bell Jr., "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation," *Yale Law Journal*, 85 (March 1976), 470–516. For a critique of Bell's view that it was middle-class blacks who sought integration, see Tomiko Brown-Nagin, "Race as Identity Caricature: A Local Legal History Lesson in the Salience of Intra-racial Conflict," *University of Pennsylvania Law Review*, 151 (June 2003), 1913–76. On tokenism, consider that as recently as 2002, in a flagship state school that was the subject of a precedent on which *Brown* relied, nearly 90% of the undergraduate classes "with five to twenty-four students had no or only one African American to contribute their experiences or perspectives to a class discussion." Office of Admissions, University of Texas at Austin, "Diversity Levels of Undergraduate Classes at the University of Texas at Austin, 1996–2002," Nov. 20, 2003 <<http://www.utexas.edu/student/admissions/research/ClassroomDiversity96-03.pdf>> (Feb. 3, 2004). Cf. *Sweatt v. Painter*, 339 U.S. 629 (1950).

<sup>11</sup> Michael J. Klarman, "How *Brown* Changed Race Relations: The Backlash Thesis," *Journal of American History*, 81 (June 1994), 81–118; Klarman, "*Brown*, Racial Change, and the Civil Rights Movement," 7–150. Some commentators have suggested Klarman may have exaggerated the possibilities of northern and southern biracial cooperation or treated the role of litigation without sufficient nuance. See, for example, David Garrow, "Hopelessly Hollow History: Revisionist Devaluing of *Brown v. Board of Education*," *Virginia Law Review*, 80 (Feb. 1994), 151. Robert Korstad and Nelson Lichtenstein, "Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement," *Journal of American History*, 75 (Dec. 1988), 787. On the role of courts in implementing desegregation, see *U.S. v. Jefferson County Board of Education*, 372 F. 2d 836, 847 (1966); Rosenberg, *Hollow Hope*, 52.

<sup>12</sup> Cecelski, *Along Freedom Road*, 8, 10, 12, 15, 34, 36. Cf. Fairclough, *Better Day Coming*, 148, 219, 221–23; and Fairclough, *Teaching Equality*, 62–65. Patterson, *Brown v. Board of Education*, xxvi–xxix, 201–5. See also Bell, "Serving Two Masters," 470–516.

Racism—meaning the maintenance of, and acquiescence in, racialized hierarchies governing resource distribution—has not functioned simply through evil or irrational prejudice; it has been an artifact of geographic, political, and economic interests. In the United States racism was foundational, indeed constitutional. Mainstream historians are now busy tracing the constitutional legacy of the three-fifths clause that gave southern states, and most often southern plantation owners, disproportionate electoral clout at the national level. For roughly 50 of our country's first 72 years, the presidency was won by southern slave owners. Indeed, before and after the Civil War the social alliances between northern and southern elites encouraged both to suppress the ideological dissonance of a country "of free men" that "worshipped liberty while profiting from slavery" and "left the public arena to men of propertied independence." Such histories remind us that the northern "lords of the loom" and the southern "lords of the lash" were complicit in the maintenance of slavery and its aftermath. As David Brion Davis has explained, the South may have lost the Civil War battles, but it won the ideological civil war, propagating white acceptance nationwide of both "Negro inferiority" and white supremacy for most of the nineteenth and twentieth centuries.<sup>13</sup>

Under those circumstances, it is an open question whether any legal analysis, even one grounded in more rigorous social science research or employing a more balanced assessment of segregation's causes and effects, could have accomplished the goals of the *Brown* attorneys or could now accomplish the massive tasks that still await us: to extirpate a complex system of relationships that have tortured this country from its earliest beginnings and then to refashion a new social and economic order in its place. Formal legal equality granted through the courts could never guarantee economic, political, and social opportunity for the mass of blacks, for whom civil rights alone were not the measure of success. Their struggle was for "jobs and freedom" and encompassed many of the principles of self-government and property ownership that animated the early American revolutionaries.<sup>14</sup>

While Bell focused on interest *convergences* to explain the limited reach of the Court's initiative in *Brown*, geographic, racial, and class-based interest *divergences* were also at work ordering social, regional, and class conflict between northern and southern elites; between white elites and poor whites, north and south; between poor blacks and poor whites, whose concern was not unequal treatment, but the maldistribution of resources and opportunity; and between poor and middle-class blacks, who arguably benefited most. When *Brown* is read in light of these divisions, it is clear that the task confronting those who took on Jim Crow would prevent even the most

<sup>13</sup> For a definition of racism, see Lani Guinier and Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (Cambridge, Mass., 2002), 302. On the role of racial hierarchy in American history, see, for example, David Brion Davis, "Free at Last: The Enduring Legacy of the South's Civil War Victory," *New York Times*, Aug. 26, 2001, sec. 4, p. 1; Garry Wills, "The Negro President," *New York Review of Books*, Nov. 6, 2003, pp. 45, 48–49; Gordon S. Wood, "Slaves in the Family," *New York Times*, Dec. 14, 2003, sec. 7, p. 10; and Lipsitz, *Possessive Investment in Whiteness*, 18. Eric Foner, *The Story of American Freedom* (New York, 1998), 31–32; Henry Wiencek, "Yale and the Price of Slavery," *New York Times*, Aug. 18, 2001, p. A15; Davis, "Free at Last," 1.

<sup>14</sup> Biondi, *To Stand and Fight*, 183; Foner, *Story of American Freedom*, 21.

ambitious policy-minded experts from challenging white supremacy as it reemerged in new garb. The social engineers in *Brown* identified state-sponsored segregation as the visible manifestation of American racism. This understandable preoccupation with de jure segregation disabled the plaintiffs' attorneys and their liberal allies from comprehending Jim Crow as the visible manifestation of a larger, constantly mutating racialized hierarchy. That hierarchy was racialized both by elites to consolidate their power and privilege and by poor whites to palliate their own debased circumstances.

*Brown's* legacy is clouded at least in part because post-World War II racial liberalism influenced the legal engineers to treat the symptoms of racism, not the disease. Their strategy was to eliminate desegregation, which they assumed would strike a fatal blow to racialized hierarchies. The lawyers' assumption and its corollary remedial emphasis were limited by the nature of their allies, who wanted to do good without sacrificing any of their own privileges, believing integration was possible without significant resource redistribution. The legal engineers failed to anticipate the downsides of a singular preoccupation with desegregation because their analysis essentialized all white children, without identifying the regulatory role race and class played within the white community. The lawyers and their allies went to court to enforce a right without consciously considering the remedy, which ended up re-stigmatizing blacks, reinforcing white working-class fear of economic downward mobility, and reserving for a privileged few the resources they needed to learn. Finally, while dismantling Jim Crow was a noble imperative, the lawyers did not realize that the disease Jim Crow betokened could and did easily reappear in a new guise. Racism was not ended by the defeat of Jim Crow, even in school systems that achieved unitary status. As Judge Robert Carter, one of the NAACP LDEF lawyers in *Brown*, has since written, "Both northern and southern white liberals and blacks looked upon racial segregation by law as *the primary* race relations evil in this country. It was not until *Brown I* was decided that blacks were able to understand that the fundamental vice was not legally enforced *racial segregation* itself; that this was a mere by-product, a symptom of the greater and more pernicious disease—white supremacy."<sup>15</sup>

Even when race is no longer explicitly coded by appearance or ancestry, the allocation of seats in a classroom, the use of buses to transport schoolchildren, or the hue of the dolls with which those children play, race is, and was, about the distribution of power. Race in the United States is a by-product of economic conflict that has been converted into a tool of division and distraction. It is not just an outgrowth of hatred or ill will. Racism has had psychological, sociological, and economic consequences that created the separate spheres inhabited by blacks and whites in 1954 but extended well beyond them.

<sup>15</sup> On racism as the "dominant interpretative framework" for understanding and securing social stability in the United States, see Bell, "Bell, J., Dissenting," 185, 187–190. See also Lipsitz, *Possessive Investment in Whiteness*, 2, 19. On the difficult relationship between the legal rights in *Brown* and potential remedies, see Jack M. Balkin, "Brown v. Board of Education—A Critical Introduction," in *What Brown v. Board of Education Should Have Said*, ed. Balkin, 64–71. Robert Carter, "A Reassessment of *Brown v. Board*," in *Shades of Brown: New Perspectives on School Desegregation*, ed. Derrick A. Bell (New York, 1980), 23. See also Kenneth B. Clark, "The Social Scientists, the *Brown* Decision, and Contemporary Confusion," in *Argument*, ed. Friedman, xl. Lewis, *In Their Own Interests*, 199–200.



To address the full range of racialized inequities in this country, racial justice advocates need to move beyond the early tenets of racial liberalism to treat the disease and not just its symptoms. A first step would be to make legible racism's ever-shifting yet ever-present structure. The oppressive conditions that most blacks still confront must not be ignored, but the continuing puzzle is how to address the complex ways race adapts its syntax to mask class and code geography. Racism is a structural phenomenon that fabricates interdependent yet paradoxical relationships between race, class, and geography—what I am calling the interest-divergence dilemma. It is the interest-divergence dilemma that requires a new racial literacy, meaning the capacity to decipher the durable racial grammar that structures racialized hierarchies and frames the narrative of our republic. To understand why *Brown v. Board of Education* has not lived up to its promise, I propose a paradigm shift from racial liberalism to racial literacy.

### Racial Liberalism and the Interest-Divergence Dilemma

Post–World War II racial liberalism rejected scientific racism and discredited its postulate of inherent black inferiority. At the same time, racial liberalism positioned the peculiarly American race “problem” as a psychological and interpersonal challenge rather than a structural problem rooted in our economic and political system. Segregation was a “symptom of some psychological maladjustment” among those who imposed it; it was also a source of psychological maladjustment among those who were subjected to it. Reeling from the horrors of fascism abroad, fearing the specter of totalitarian domination, and facing continued pressure to fight racial inequities at home, proponents of greater tolerance suggested that racism was irrational and would surrender to logic and interpersonal contact. Equality before the law, through the persistent pursuit of civil rights, was the goal. That goal would be realized through racial integration. And that goal, in its singular and universalistic truth, would provide the ultimate reconciliation. The defining elements of postwar racial liberalism were its pragmatic devotion to a single strategy, its individualized and static view of American racism, and its focus on top-down social reform.<sup>16</sup>

The coalition promoting racial liberalism took hold only after northern elites began to align their interests with black emancipation rather than with the interests of their putative southern counterparts who used legal segregation to preserve upper-class power. In the shadow of the Cold War, international pressure and elite-dominated racial liberalism gave the civil rights quest moral and strategic heft; but it also reconfigured civil rights advocacy. According to some scholars, the alliance between middle-class blacks and white moderates filled the void as labor influence eroded in the late 1940s due to anticommunist assaults, the slow pace of reform through administrative changes, and union leaders' unresponsiveness to the specific needs of black union members. The result was a more conservative civil rights movement.

<sup>16</sup> While color blindness was also a goal, most racial liberals were willing to endorse a temporary period of race consciousness. On racial liberalism, see Scott, *Contempt and Pity*, xiii.

Martha Biondi has argued that anticommunism propelled desegregation efforts while displacing grass-roots movements that had focused on building economic coalitions across lines of race.<sup>17</sup>

In the struggle between grass-roots insurgency emphasizing both political and economic issues and top-down elite control of a social agenda based on a single principle, the elites prevailed. Relying on psychological evidence of the intangible damage segregation does to black personality development, the strategic shift to challenge Jim Crow enabled many white allies to maintain their social and economic advantages without giving up the moral high ground. While anticommunist fervor helped fuel the willingness of national elites to take on segregation, it also channeled dissent from the status quo into status-based legal challenges that focused on formal equality through the elimination of *de jure* segregation.<sup>18</sup>

Scholars such as Biondi have suggested that biracial activism around common economic interests existed prior to, and was displaced by, *Brown*, while others find minimal evidence of such coalitions. The real surprise, the latter have argued, has been the antipathy to the civil rights movement that northern working- and lower-middle-class whites displayed. Guided by the assumption that closer contact with whites would assure dignity and citizenship rights for blacks, the “new integrationist orthodoxy” failed to connect its version of the psychology of blacks with an equally probing analysis of the psychology of whites. The bargain struck by northern elites—that desegregation would restore credibility to the United States during the Cold War and provide social stability as it eased the dissonance experienced by black veterans returning from World War II—disregarded the substantial investment poor whites had in their superior social status vis-à-vis blacks.<sup>19</sup>

North and south, many working-class and poor whites had acquired an investment in white racial privilege even before the decision in *Brown*. Not surprisingly, remedies involving desegregation evoked virulent hostility among such whites, who were the people initially targeted by those remedies. After the Supreme Court’s decision in *Milliken v. Bradley*, which held that only districts found to have intentionally discriminated could be subject to a school desegregation plan, they became the group of whites most affected by desegregation in both North and South, as wealthier whites fled inner cities for surrounding suburbs. Even the most committed proponents of racial integration of the schools acknowledge that it is poor rather than rich whites who have experienced dislocation in the transition to integrated schools. As

<sup>17</sup> On the creation of a more conservative civil rights movement, compare Biondi, *To Stand and Fight*, 171, 182–83; Lewis, *In Their Own Interests*, 144–46, 165; and Korstad and Lichtenstein, “Opportunities Found and Lost,” 800–801, 804–5.

<sup>18</sup> Biondi, *To Stand and Fight*, 171; Scott, *Contempt and Pity*, 184; Lewis, *In Their Own Interests*, 148, 165, 199–202.

<sup>19</sup> On the new integrationist orthodoxy, see Biondi, *To Stand and Fight*, 182–83. On the extent of biracial activism and the antipathy of northern working-class whites toward coalition building, compare Klarman, “*Brown*, Racial Change, and the Civil Rights Movement,” 102–3; Thomas J. Sugrue, “Crabgrass-Roots Politics: Race, Rights, and the Reaction against Liberalism in the Urban North, 1940–1964,” *Journal of American History*, 82 (Sept. 1995), 551–78; and Arnold R. Hirsch, “Massive Resistance in the Urban North: Trumbull Park, Chicago, 1953–1966,” *ibid.*, 522–50. On social scientists’ underestimates of the effect of racism on blacks and whites in North and South, see Clark, “Social Scientists, the *Brown* Decision, and Contemporary Confusion,” xl–xlv, xlix.

Bell has recognized, poor whites and blacks have much in common, yet poor whites “feared a loss of control over their public schools,” a loss “intensified by the sense that they had been betrayed.”<sup>20</sup>

Racial liberalism identified a thin slice of the problem, while the multiple interest divergences that defined the country in 1954 continued to incubate. The conflicts were transformed but not overcome. Indeed, in the petri dish of racial liberalism, those conflicts were allowed to fester. Ironically, the change the racial liberals wrought was not always the change they sought. A preliminary, and mostly tentative, review of the historical literature suggests that the *Brown* Court’s doctrine that “separate but equal is inherently unequal” had unanticipated consequences. It intensified divergences between northern elites and southern whites, solidified the false interest convergence between southern white elites and southern poor whites, ignored the interest divergences between poor and middle-class blacks, and exacerbated the interest divergences between poor and working-class whites and blacks.

### *Interest Divergence: Racialized Geography and the Psychology of White Solidarity*

Unlike the Jim Crow system it challenged, *Brown*’s asymmetric focus on the psychological damage segregation did to blacks gave the psychological benefits segregation conferred on whites short shrift. In the ideology of racial liberalism, the class and geographic interests of rural and poor southern whites—and of working-class northern whites—also receded from view. That inattention had two consequences. First, many poor and working-class whites saw themselves as victims. Second, they saw desegregation as downward economic mobility. To poor whites, compulsory association with blacks brought no added value and endangered the sense of autonomy and community they did have. *Brown*’s racial liberalism did not offer poor whites even an elementary framework for understanding what they might gain as a result of integration. Neither the opinion nor the subsequent legal strategy to implement *Brown* made clear that segregation had offered elites an important means of exercising social control over poor and working-class whites as well as a means of dominating or dis-advantaging blacks.<sup>21</sup>

<sup>20</sup> *Milliken v. Bradley*, 418 U.S. 717 (1974). On desegregation and white flight, see Paul Gewirtz, “Remedies and Resistance,” *Yale Law Journal*, 92 (March 1983), 628–65; Jeffrey A. Raffel, *The Politics of School Desegregation: The Metropolitan Remedy in Delaware* (Philadelphia, 1980), 177; and Finis Welch and Audrey Light, *New Evidence on School Desegregation* (Washington, 1987), 74. For the debate on whether white flight was a response to school desegregation, see Gary Orfield, *Must We Bus? Segregated Schools and National Policy* (Washington, 1978); Gary Orfield and David Thronson, “Dismantling Desegregation: Uncertain Gains, Unexpected Costs,” *Emory Law Journal*, 42 (Summer 1993), 759–90; and Charles T. Clotfelter, “Are Whites Still Fleeing? Racial Patterns and Enrollment Shifts in Urban Public Schools, 1987–1996,” *Journal of Policy Analysis and Management*, 20 (Spring 2001), 199–221. See also James S. Coleman, Sara D. Kelly, and John A. Moore, *Trends in School Segregation, 1968–73* (Washington, 1975), 53–80; and David J. Armor, *Forced Justice: School Desegregation and the Law* (New York, 1995), 174–93. On poor whites weathering the transition to integrated schools, see Gary Orfield, “Metropolitan School Desegregation: Impacts on Metropolitan Society,” *Minnesota Law Review*, 80 (April 1996), 831. Bell, “*Brown v. Board of Education* and the Interest-Convergence Dilemma,” 525. See also Linda Hamilton Kreiger, “The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity,” *Stanford Law Review*, 47 (July 1995), 1240.

<sup>21</sup> Beth Roy, *Bitters in the Honey: Tales of Hope and Disappointment across Divides of Race and Time* (Fayetteville, 1999), 318; Pete Daniel, *Lost Revolutions: The South in the 1950s* (Chapel Hill, 2000), 270. Many whites believed

Little attention was paid to the disparities between the educational resources of poor and working-class whites and those of more affluent whites, who had access to better education through private school or geographic mobility. Although whites in the aggregate enjoyed educational resources that far exceeded those available to blacks, poor whites, especially in rural communities in the South, were often educational orphans. Levels of schooling declined with falling income more precipitously in the South than in other parts of the country. In 1940 nearly three-quarters of the wealthiest seventeen-year-olds in the South, but less than one-sixth of the poorest, had completed at least eleven years of schooling. There were also rural-urban disparities. According to the 1950 census, among southerners in their late twenties, the state-by-state percentages of functional illiterates (defined as people with less than five years of schooling) for whites on farms overlapped with those for blacks in cities. In most southern states, more than half of urban whites in their late twenties had completed high school, but less than a quarter of whites of the same age living on farms had done so. The majority of southern whites, considering older and younger people and farm, village, and city dwellers, were semiliterates (defined as those with less than twelve years of schooling) who shared disadvantages with blacks, while an affluent white minority completed elementary and high school, standing far apart from the rest of the whites and from virtually all blacks.<sup>22</sup>

Ideologically committed to an integrationist orthodoxy, racial liberalism initially failed to contemplate a mechanism for acknowledging the psychological paradox of poor whites or their need for greater material resources and other tangible benefits. As a result, poor whites experienced desegregation, in Bell's terminology, as a net "loss." That sense of loss was exploited by demagogic politicians, who have successfully used racial rhetoric to code American politics to this day and who continue to solidify the original bargain between poor and wealthy southern whites. Regional differences remain pronounced, as evidenced in the "red" and "blue" states that defined media maps of the 2000 presidential election. And yet regional differences are less evident when race and class are disaggregated.<sup>23</sup>

In the South, for example, integration was successfully portrayed as downward mobility through compulsory association with blacks. The dramatic events accompa-

---

that if race relations changed, they could only lose social status and power. See Robert J. Norrell, *Reaping the Whirlwind: The Civil Rights Movement in Tuskegee* (New York, 1985), 107.

<sup>22</sup> C. Arnold Anderson, "Social Class Differentials in the Schooling of Youth within the Regions and Community-Size Groups of the United States," *Social Forces*, 25 (May 1947), 440, 436; C. Arnold Anderson, "Inequalities in Schooling in the South," *American Journal of Sociology*, 60 (May 1955), 553, 549, 557. See also Allison Davis, "Socio-Economic Influences upon Children's Learning," in *Proceedings of the Midcentury White House Conference on Children and Youth*, ed. Edward A. Richards (Raleigh, 1951), 7; Robert L. Marion, *Rural Education in the Southern United States* (Austin, 1979); and Rashi Fein, "Educational Patterns in Southern Migration," *Southern Economic Journal*, 32 (July 1965, part II), 106–24.

<sup>23</sup> Bell, "*Brown v. Board of Education* and the Interest-Convergence Dilemma," 525; Armor, *Forced Justice*, 174–93, 206–7. See also Charles E. Kimble, "Factors Affecting Adults' Attitudes toward School Desegregation," *Journal of Social Psychology*, 110 (April 1980), 216. On regional differences based on race, see, for example, Thomas Byrne Edsall with Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York, 1991). On maps that color code the electorate, with red for Republican states and blue for Democratic states, see Robert David Sullivan, "Beyond Red and Blue," *Commonwealth Magazine* <[http://www.massinc.org/commonwealth/new\\_map\\_exclusive/beyond\\_red\\_blue.html](http://www.massinc.org/commonwealth/new_map_exclusive/beyond_red_blue.html)> (Feb. 3, 2004); and Tom Zeller, "One State, Two State, Red State, Blue State," *New York Times*, Feb. 8, 2004, p. 16.

nying the integration of Central High School in Little Rock, Arkansas, illustrate the dynamic. In 1957 there were three high schools serving Little Rock: the new all-white Hall High School, the all-black Horace Mann High School, and Central. Central had been the only white high school in Little Rock, but in summer 1957, Hall opened in the western and more affluent portion of the city. Middle- and upper-middle-class white students transferred to the new high school just before the school year began. This meant that once the senior class at Central graduated in 1958, Central would lose its "citywide character." The school board had approved a plan to integrate Central in 1955. It was scheduled to take effect in fall 1957, at the very time when affluent whites were exiting to attend the new school. Horace Mann would remain all-black; Hall would be all-white. Only Central would experience integration, albeit with nine carefully chosen black students. Despite the academic credentials and middle-class appearance of the black trailblazers, those white students who remained at Central perceived a twisted symmetry: poor blacks and rich whites would remain in the isolated, racially homogeneous environments of Horace Mann and Hall high schools, while working-class whites became the guinea pigs in the integration experiment at Central. In their minds, the "symmetry" was not coincidental; school superintendent Virgil Blossom had "sold" his desegregation plan to the leadership in Little Rock by reassuring them that their children could attend the new Hall High School, "a high school segregated by both class and race." As Elizabeth Huckaby, who was then assistant principal of Central High School, recalled, "Except for a hundred of our seniors who had elected to stay at Central for their final year, we would have no more boys and girls from [the northwest] section of Little Rock where the finest houses were being built, where the families of the most successful businessmen were moving, where the country clubs are."<sup>24</sup>

The exodus of white elites from Central High School threatened working-class dreams of upward mobility and put working-class students' virtual membership in the "dominant class" at risk. The sociologist Beth Roy subsequently interviewed some white students who were then at Central. Even thirty years later, her interviewees criticized the disruption desegregation brought into their lives: "I became very disenchanted with the whole thing. I just kept thinking, This is my senior year, and this is not what I was looking forward to. This is just unfair." Another, searching for a way to explain her hatred for one of the black students who entered Central in 1957, exclaimed, "She walked the halls as if she belonged there." To working-class whites, integration, timed to coincide with the flight of the city's elite, was a stigma-

<sup>24</sup> Daniel, *Lost Revolutions*, 251; Elizabeth Huckaby, *Crisis at Central High: Little Rock, 1957–58* (Baton Rouge, 1980), 1–13. The Central High School integration plan had originally called for the desegregation of grades ten through twelve with 300 black students. Over time, the number was scaled back to 25. See Greenberg, *Crusaders in the Courts*, 228–29. On the twisted symmetry of the integration process, see Daniel, *Lost Revolutions*, 254–55; and David R. Goldfield, *Black, White, and Southern: Race Relations and Southern Culture, 1940 to the Present* (Baton Rouge, 1990), esp. 108. Huckaby, *Crisis at Central High*, 2. In 1960, the per capita income in the geographic region associated with Central High was \$3,826; in the region associated with Hall High it was \$8,012. See Donald Bogue, "Census Tract Data, 1960: Elizabeth Mullen Bogue File" (University of Chicago, Community and Family Study Center, 1975), computer file, Inter-University Consortium of Political and Social Research (ICPSR) version <<http://www.icpsr.umich.edu:8080/ICPSR-STUDY/02932.xml>> (Feb. 3, 2004).

tizing force that interfered with their ability to pursue the American dream. Thus they resisted it.<sup>25</sup>

Goaded on by the racial demagoguery of local politicians, such whites came to view the potential economic consequences of desegregation in psychological terms. Politicians preyed on their sense of betrayal and unfair sacrifice, deliberately organizing the conversation about desegregation around a white racial consciousness. Although working-class whites initially saw this “experiment in interracial education” in class terms, a racially polarized contest was easily manufactured using antebellum conceptions of race and class that had crystallized under segregation. Lacking a vocabulary of either class or structure, Roy’s working-class white informants were still fluent in the language of racial scapegoating some thirty years later. Disappointed with their own economic and social status, they blamed blacks. Cause and effect were reduced to race.<sup>26</sup>

Although poor and working-class whites were among the most visible protesters, they acted with the tacit approval of the more affluent whites in their communities. According to some accounts, southern elites, with the exception of a few moderates, remained defiant post-*Brown*, often encouraging massive resistance in the South. For example, during the 1940s white elites in Birmingham, Alabama, had played the race card to defuse opposition to the poll tax, which disenfranchised poor whites as well as blacks. Poor whites, more than half of whom did not vote, acquiesced in the downplaying of their economic and political interests in favor of a vigorous defense of white supremacy. Post-*Brown* the Birmingham elites ensured their continued dominance by undermining any class identity among poor and working-class whites. Aided by the same fear of Communism that may have led the Court to rule unanimously in *Brown*, ambitious southern politicians quickly perceived the benefits to be derived from racial demagoguery. It had long been in the interests of the white upper class, whether planters or industrialists, to “make all whites think in racial or sectional ways—indeed, in any terms *except* class.” As “the only class fully conscious of its power and purpose,” the Birmingham “industrialists, and the lawyers and politicians who served them,” continued, after *Brown* as before, to deploy a white racial consciousness as an instrument of social control.<sup>27</sup>

Upper-class whites in the South, however, were not monolithic; some scholars have argued that the *Brown* decision radically altered elite treatment of race issues as the focus of white moderates shifted from labor reforms to eliminating de jure segregation. Resistance within the South was more muted in those metropolitan areas where local leadership had fewer incentives to mine a white racial consciousness in order to maintain political power. Michael J. Klarman, for example, argues that afflu-

<sup>25</sup> Daniel, *Lost Revolutions*, 257; Roy, *Bitters in the Honey*, 179, 206, 338, 343–44.

<sup>26</sup> On the role of Gov. Orval Faubus and others in manufacturing the conflagration and violence that attended the desegregation of Central High in Little Rock, see Greenberg, *Crusaders in the Courts*, 228–43. Goldfield, *Black, White, and Southern*, 108.

<sup>27</sup> Robert J. Norrell, “Labor at the Ballot Box: Alabama Politics from the New Deal to the Dixiecrat Movement,” *Journal of Southern History*, 57 (May 1991), 201, 234, 227, 233. On antebellum conceptions of race and class and political use of white supremacy, see W. J. Cash, *The Mind of the South* (1941; New York, 1991), 38–39, 109–10. See also Norrell, *Reaping the Whirlwind*, 92–102.

ent city residents who were cocooned within racially and economically segregated housing patterns were less likely to lead resistance. Wealthier whites "retained the option of exiting the public school system altogether either by educating their children privately or by fleeing to the (generally white) suburbs."<sup>28</sup>

Politicization of the experience of desegregation as loss existed in the North, not just the South, and affected blue-collar workers, not just poor whites. In a study of white neighborhood associations in Detroit in the 1950s, Thomas J. Sugrue found that government programs that subsidized white home ownership or defined political boundaries to determine access to education were taken for granted and remained largely invisible. Government programs designed to give blacks a hand up were highly visible and resented. Blue-collar whites in Detroit measured their success by their ability to control their distance from blacks as a group. Failure meant being forced to share community, schools, or economic status with blacks.<sup>29</sup>

Arnold Hirsch's study of public housing in Chicago and Sugrue's account of homeowner associations in Detroit suggest that maintaining racially homogeneous neighborhood enclaves was central to white working-class identity in the North. Aspirations to upward mobility, bonds of family and community, and the "white racial identity premised on American individualism" depended on maintaining residential distance from blacks. Although it was often the more affluent and educated blacks who sought to move into white neighborhoods, all their prospective white neighbors could see was a deluge of poor black people crowded together in crime-ridden neighborhoods. Working-class whites interpreted the poverty they associated with blacks in two ways. First, the "wretched conditions" in predominantly black communities "were the fault of irresponsible blacks." Second, those neighborhoods served as a "grim prophesy" of what theirs would become if they welcomed upwardly mobile black pioneers. They equated racial integration with crime and violence.<sup>30</sup>

Many white working-class people perceived the American dream as assuring them a right to a racially homogeneous community. While it appeared that race trumped class, it was equally true that class was defined by race and urban-suburban geography. Sugrue's study demonstrates the post-New Deal political realignment of blue-collar workers in Detroit with their corporate bosses living in Grosse Pointe, an exclusive suburb. No longer did they direct their rage at the economic or social conditions that kept them off balance. Politicians and real estate brokers were able to

<sup>28</sup> Norrell, "Labor at the Ballot Box," 227. Some scholars argue that in several southern states, the postwar political elite was dominated by progressives who campaigned successfully for the interests of poor blacks and whites. After *Brown*, southern elites who were not threatened economically seemed to acquiesce in racial progress, as in Little Rock. See Goldfield, *Black, White, and Southern*, 48, 108; and Klarman, "Brown, Racial Change, and the Civil Rights Movement," 85–90, 102–3. On urbanization in the South, the way an influx of northern whites affected southern racial reform efforts, and the gradual weakening of Jim Crow's hold on the region, see *ibid.*, 52–65, 67–71; and Daniel, *Lost Revolutions*, 282. Klarman, "Brown, Racial Change, and the Civil Rights Movement," 64–65.

<sup>29</sup> On how northern white working-class residents came to expect racially segregated neighborhoods, largely because of New Deal policies, and how the stage was set for the "backlash" long before the racial liberalism of the 1950s and 1960s, see Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, 1996); and Hirsch, "Massive Resistance in the Urban North," 522–50. See also Charles R. Lawrence III, "The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism," *Stanford Law Review*, 39 (Jan. 1987), 342. Lipsitz, *Possessive Investment in Whiteness*, 18.

<sup>30</sup> Hirsch, "Massive Resistance in the Urban North"; Sugrue, "Crabgrass-Roots Politics," esp. 561, 560.

reorient populist rage to target civil rights organizations and their upper-class white allies. It was those groups who threatened to destroy racial homogeneity within the blue-collar homeowners' community and thus to undermine a precondition for achieving the American dream, especially in uncertain economic times.<sup>31</sup>

The stories told by Hirsch about housing desegregation in Chicago and Sugrue about working-class white resistance, abetted by government policies and private real estate brokers, to social or residential intermingling with blacks in Detroit suggest the key role played by politicians and self-interested business people who resorted to a racially coded rhetoric to manipulate or divert attention from economic conditions. On the one hand, the approaches to desegregation instituted by political and judicial actors represented burden shifting. Although a few middle- and upper-class whites exercised constraint and exhorted moderation, many took advantage of their power artificially to shift the burden from themselves. The method used in Little Rock was also employed in other cities: the establishment in upper-class neighborhoods of new schools that would remain segregated. The formation of new towns and cities based on racial geography had the same effect. Because *Brown* did not change the funding structure of public education and did not reduce geographic segregation by class (and consequently race), it left the costs of integration to already underfunded schools in poor white areas. Those schools were often geographically closest to the poor black areas, and their students often experienced great anxiety about their own educational abilities and future opportunities. In addition, because small and medium-sized cities and therefore school districts were often dominated by a single racial group, preexisting race-based borders hindered *Brown's* capacity to provide meaningful integration.<sup>32</sup>

On the other hand, some costs of integration under the *Brown* framework fell "naturally" on poor and working-class whites. Explicit burden shifting was often unnecessary. Class geography, untouched by *Brown*, would have sheltered upper-class whites from the "burden" of integration even without subsequent selfish or racist manipulations, as Richard Thompson Ford, for example, has argued.<sup>33</sup>

Whether the geographic boundaries were natural or political, poor whites felt stigmatized by black demands for first-class citizenship. Watching the dismantling of their psychological position of relative privilege, they were left without an alternative understanding of their actual condition relative to more affluent members of the society. According to Sugrue, racial liberalism succumbed to "simmering white dis-

<sup>31</sup> On the alignment of working-class whites with upper-class whites to resist civil rights, see Roy, *Bitters in the Honey*, 46–48, 132–33, 148–66, 179–84; and Sugrue, "Crabgrass-Roots Politics." See also Hirsch, "Massive Resistance in the Urban North."

<sup>32</sup> Hirsch, "Massive Resistance in the Urban North"; Sugrue, "Crabgrass-Roots Politics." A comparison of the desegregation methods in Wilmington, Delaware, and the more evasive ones used in Dallas, Texas, illustrates how upper-class whites used political and social power to tailor the implementation of desegregation to limit their burden. Compare Raffel, *Politics of School Desegregation*, 13, 20, 110–11, 210; and Glenn M. Linden, *Desegregating Schools in Dallas: Four Decades in the Federal Courts* (Dallas, 1995), 24. On racial segregation in the formation of new towns, see Nancy Burns, *The Formation of American Local Governments: Private Values in Public Institutions* (New York, 1994), 35–36.

<sup>33</sup> Burns, *Formation of American Local Governments*, 112; Richard Thompson Ford, "The Boundaries of Race: Political Geography in Legal Analysis," *Harvard Law Review*, 107 (June 1994), 1847–57.



content,” constrained by “the politics of race and neighborhood.” For many white workers from Little Rock to Detroit, the explanation has been simple. With the aid of the federal government, blacks absconded with the American dream.<sup>34</sup>

Witness Beth Roy’s working-class white informants in Little Rock, who collectively assigned their own failures to blacks. Whites who succeeded believed they did so because of individual merit; they earned their success. By contrast, in the stories reported to Roy, if they failed, it was because black people “stole” the American dream. Working-class whites did not get into the colleges of their choice, did not get the jobs they needed, or were the victims of crime because blacks benefited from affirmative action, lived on welfare, or chose to hustle rather than perform honorable work. The stories of Little Rock, Detroit, and Chicago suggest that it was middle-class and often suburban whites who were subsidized in large measure by government programs for homeownership and highways and who tended to monopolize access to the best educational resources, the good jobs, and the safe streets. Yet poor and working-class whites accepted the terms of racial solidarity rather than confront the fundamental need to organize collectively and across racial lines to obtain similar benefits.<sup>35</sup>

Their fears inflamed by economic insecurity as constructed by the individualism of the American dream, many whites turned to race as an explanation and an identity. According to Jennifer L. Hochschild, the American dream is an inclusive, optimistic, and high-minded myth that “evokes” “unsullied newness, infinite possibility, [and] limitless resources.” The dream has universal elements of sharing opportunity broadly: Everybody should have the chance to succeed as measured by income, a good job, and economic security. The opportunity for everyone to succeed is an inclusive fantasy, but that opportunity is presumptively obtained through one’s individual effort. Those who succeed are those who exert strenuous effort so that their talents prevail; they work hard, take risks, and imagine a better future for themselves and their children. Virtue leads to success; success is evidence of virtue. Therefore, those who fail to climb up the ladder of success must be without talent or without discipline. The losers are not only miserable failures; they also lack character unless they assume personal responsibility for their flaws.<sup>36</sup>

While it is easy to see success as a sign of merit rather than luck, few people willingly accept an equally self-referential explanation of failure. Race arguably fills the gap, providing a believable account of all that went wrong. Race functions as a pragmatic explanation for the fact that few working-class and poor whites achieve their version of the American dream. The choice of race as the explanatory covariant is neither irrational nor aberrant, given the otherwise highly individualized structure of this metanarrative. In the words of Du Bois, the psychological wage of whiteness put “an indelible black face to failure.” Once blackness becomes the face of failure, race

<sup>34</sup> Sugrue, “Crabgrass-Roots Politics,” 570, 578; Roy, *Bitters in the Honey*, 326, 338.

<sup>35</sup> On working-class whites’ racializing of failure, see Roy, *Bitters in the Honey*, 324–25, 338–44; Sugrue, “Crabgrass-Roots Politics,” 551–78; and Sugrue, *Origins of the Urban Crisis*, 213–14.

<sup>36</sup> Jennifer L. Hochschild, *Facing Up to the American Dream: Race, Class, and the Soul of the Nation* (Princeton, 1995), 15.

then influences and constrains social, economic, and political opportunities among and between blacks and whites and among and between blacks and other people of color.<sup>37</sup>

In a somewhat incongruous fashion, race is the variable explaining failure for both whites and blacks. Blacks think racial discrimination inhibits their chances to participate in the American dream; whites think reverse discrimination is the culpable party. For many blacks, success and failure are both understood in more collective terms. Indeed, contemporary sociological and psychological research suggests that an understanding of failure as a product of systemic rather than personal deficiencies is a healthy psychological response, at least insofar as it may lead to collective action to change one's circumstances.<sup>38</sup>

### *Interest Divergence: Stigmatizing Race*

*Brown* helped change the quality of life for many blacks. It educated the country about the changing meaning of the United States Constitution and allowed blacks to claim the Constitution as theirs despite the tragic role race had played in its earliest formulation. It overruled *Plessy v. Ferguson*, the constitutional straitjacket in which the Court had put itself in 1896. It represented the triumph of racial liberalism over scientific racism and other theories of inherent black inferiority. It also served for most of the second half of the twentieth century as the "principal ideological inspiration" to those who sought racial justice through the courts, according to Jack Greenberg, Thurgood Marshall's successor as head of the NAACP LDEF and one of the lawyers who argued a companion case to *Brown*.<sup>39</sup>

Yet as Marshall's colleague Robert Carter concluded, *Brown* promised more than it could give. *Brown's* analysis was limited by its singular focus on the harm segregation caused the personality development of black children. Predicated on experiments purportedly showcasing blacks' lack of self-esteem, the opinion reinforced the stigma long associated with blacks, even as it attributed the stigma to segregation rather than biology. Subsequent cases added insult to injury as the Court began to label the legal claim as arising from differential treatment rather than demeaning treatment within a racialized hierarchy.<sup>40</sup>

Significantly, the Court's analysis was framed as requiring racial desegregation to end damage to black psyches. The district court judge and later the Supreme Court adopted almost verbatim testimony by the psychologist Louisa Holt in the Kansas case that segregation, especially when sanctioned by law, had a detrimental effect on

<sup>37</sup> See Guinier and Torres, *Miner's Canary*, 102–4, 224–29. David Levering Lewis, "'The Souls of Black Folk,' a Century Hence," *Crisis* (March–April 2003), 18.

<sup>38</sup> See Guinier and Torres, *Miner's Canary*, 74–86.

<sup>39</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896). Jack Greenberg made the statement in a 1974 speech delivered to the New York City Bar Association. See Gerald N. Rosenberg, "*Brown* Is Dead! Long Live *Brown*!: The Endless Attempt to Canonize a Case," *Virginia Law Review*, 80 (Feb. 1994), 171n32.

<sup>40</sup> Robert Carter quoted in Kamisar, "School Desegregation Cases in Retrospect," xxv. In recent cases challenging affirmative action, the Court's analysis often sees race merely as phenotypic difference, fails to recognize the asymmetrical ways in which race functions in American society, and allows whites to claim reverse discrimination. See Guinier and Torres, *Miner's Canary*, 32–66.

"the personality development of the Negro child." One of the lawyers in *Brown* found in her testimony, which he attributed to a "God-given eloquence," "the seeds of ultimate victory." Linking responsibility for educational disadvantage to black self-loathing and connecting that to a psychological abstraction did little, however, to disrupt the powerfully negative views of blacks in the popular imagination. As Charles R. Lawrence III has written, many whites do not believe that racial discrimination is the principal cause of black inequality. The explanation lies instead in some version of black inferiority. "Few will express this belief openly. It is no longer consistent with American ideology to speak in terms of inherent racial traits. But the myth of racial inferiority remains embedded in the fabric of our culture."<sup>41</sup>

Basing its opinion on the psychological research of the time, the Court misunderstood the source of self-esteem for many blacks and unwittingly contributed to the divergence of interests along class and geographic lines within and without the black community. These outcomes can be traced, in part, to the flawed studies on which plaintiffs relied to prove that physically equal but segregated facilities had a negative psychological impact on all black children. The most famous of the psychological studies cited by the Court was the doll experiment of Kenneth Clark and Mamie Clark. The Clark study aggregated findings of northern and southern black children, light-skinned and dark-skinned black children, and middle-class and poor black children to conclude that segregation caused feelings of inferiority among all blacks. Black children in the more integrated North had more frequently preferred the white dolls than black children in the South. Many northern black children also verbalized unease when prompted to consider their physical similarity to the brown dolls, yet Kenneth Clark concluded that northern black children were actually psychologically healthier. A historian has summarized Clark's argument: The reaction of the northern children showed their "discomfort with the complicated and harsh reality of racial mores rather than resignation," whereas racial segregation and isolation had caused southern black children to accept their inferior social status as normal. "Such an acceptance," Clark reported, "is not symptomatic of a healthy personality." Clark argued that the racial identification of the southern children, almost 80 percent of whom identified themselves in some way with the brown dolls, was tainted because of the terms they used to verbalize their choices. The southern black children described the black dolls as "pretty," "nice," or "good" but accompanied their choices with statements such as, "This one. It's a nigger. I'm a nigger."<sup>42</sup>

<sup>41</sup> Greenberg, *Crusaders in the Courts*, 130–32. Cf. Brief for the United States as Amicus Curiae at 3, *Brown v. Board of Education* (No. 1). Lawrence, "Id, the Ego, and Equal Protection," 322, 374–75, esp. 375. Scott, *Contempt and Pity*, 71–91; Charles R. Lawrence III, "If He Hollers Let Him Go: Regulating Racist Speech on Campus," *Duke Law Journal* (June 1990), 439–40, 466.

<sup>42</sup> Initially hailed for bringing a measure of reality into the legal proceedings, the evidence cited in *Brown's* famous footnote 11 was primarily (though not exclusively) from one social science—psychology. In the years after *Brown*, it was the doll studies that gained cultural salience. The Court also cited a sociologist and an economist: E. Franklin Frazier, *The Negro in the United States* (New York, 1949); Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (2 vols., New York, 1944). The other citations in footnote 11 of *Brown*, which described the psychological effects of segregation, included Max Deutscher and Isidor Chein, "The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion," *Journal of Psychology*, 26 (1948), 259–87; and Isidor Chein, "What Are the Psychological Effects of Segregation under Conditions of Equal Facilities?" *International Journal of Opinion and Attitude Research*, 3 (Summer 1949), 229–34. For the doll studies, see,

Clark's message was that group self-hatred among blacks begins at an early age, involves the rejection of brown skin color by black children, and becomes embedded in the personality of blacks as a result of the "damage inherent in racial segregation." These conclusions may have had some merit, but none was entirely consistent with his research. According to Daryl Scott, Clark's conclusions (unlike his data) also contradicted other contemporary studies that suggested that black children with *greater contact with whites* experienced the most psychological distress. While many blacks hailed the Court decision, especially for its vast symbolic value, the opinion's emphasis on the psychological damage segregation does to blacks camouflaged the ways *desegregation* "hurt" some blacks, while segregation motivated others to excel, a possibility Holt had conceded. For some black children, segregated schools provided a sanctuary from psychological conflict. More recently, psychological literature has also suggested that those blacks who are the most invested in achieving academically within the larger society are often more vulnerable to what Claude Steele and others term stereotype threat, the situational threat of being negatively stereotyped. Unlike Clark's "self-fulfilling prophecy" that black students internalize and then fulfill negative stereotypes and low expectations for achievement, stereotype threat is context-dependent rather than intrinsic. Moreover, social psychologists have found that in some circumstances the ability to maintain a sense of self-worth in a hostile environment may actually enhance self-esteem. The key point is that data on self-esteem differences between black kids and white kids were not well developed then; even today "there's not much evidence of chronic psychological damage done to blacks' self-esteem as a result of segregation" *per se*.<sup>43</sup>

A desegregation solution based on concerns about psychological stigma did not necessarily have the desired effect of providing meaningful educational and economic opportunity even for those middle-class blacks whom compulsory segregation had denied a first-class education. For example, desegregation meant that some black teachers, the backbone of the black middle class at the time, lost their jobs. And the mentoring provided to high-achieving middle-class black students at some all-black elite public high schools, such as Dunbar High School in Washington, D.C., was

---

for example, Midcentury White House Conference on Children and Youth, "The Effects of Prejudice and Discrimination," in *Personality in the Making: The Fact-Finding Report of the Midcentury White House Conference on Children and Youth*, ed. Helen Lelan Witmer and Ruth Kotinsky (New York, 1952), 135–58, esp. 142; and Clark, *Prejudice and Your Child*, 19–20, 22–24. On the methodological problems of these studies, see Scott, *Contempt and Pity*, 93–136. On the children examined in the doll studies and Kenneth Clark's conclusions about them, see a historian's account: Ben Keppel, "Kenneth B. Clark in the Patterns of American Culture," *American Psychologist*, 57 (Jan. 2002), 29–37, esp. 32.

<sup>43</sup> Clark, *Prejudice and Your Child*, 50. Scott, *Contempt and Pity*, 124. On contemporary testing situations that trigger vulnerability to negative stereotypes, see Claude M. Steele, "Thin Ice: 'Stereotype Threat' and Black College Students," *Atlantic Monthly*, 284 (Aug. 1999) <<http://www.theatlantic.com/issues/99aug/9908stereotype2.htm>>, part 2, para. 2 (April 2, 2004). On how stigmatization may strengthen self-esteem, see Jennifer Crocker and Brenda Major, "Social Stigma and Self-Esteem: The Self-Protective Properties of Stigma," *Psychological Review*, 96 (Oct. 1989), 608–30. On the lack of evidence that segregation by itself damaged self-esteem, see Geoffrey Cohen to Lani Guinier, e-mail, Dec. 4, 2003 (in Lani Guinier's possession). See also David Glenn, "Minority Students with Complex Beliefs about Ethnic Identity Are Found to Do Better in School," *Chronicle of Higher Education*, [online version], June 2, 2003, now available at <[http://sitemaker.umich.edu/daphna.oyserman/files/chronicle\\_of\\_higher\\_education.htm](http://sitemaker.umich.edu/daphna.oyserman/files/chronicle_of_higher_education.htm)> (March 2, 2004); and D. Oyserman, M. Kemmelmeier, S. Fryberg, H. Brosh, and T. Hart-Johnson, "Racial-Ethnic Self-Schemas," *Social Psychology Quarterly*, 66 (Dec. 2003), 333–47.

neither replaced nor reproduced in more integrated environments. Within integrated schools, the interaction with white students was often limited literally and figuratively by tracking, skepticism about blacks' intellectual ability by their teachers and white classmates, and the loss not only of black mentors but also of a sense of community in which the adults were invested in the students' achievement.<sup>44</sup>

In addition, the prejudice-centered approach set in motion forces that have cemented the connection between public education and damaged goods in a way that disadvantaged poor blacks in particular. Much of Derrick Bell's scholarship and that of others presents evidence that poor blacks were abandoned by middle-class blacks who now had the opportunity to choose educational situations consistent with their class interests. Similarly, Carter, an NAACP LDEF lawyer in *Brown*, later concluded that "to focus on integration alone is a luxury only the black middle-class can afford. They have the means to desert the public schools if dissatisfied." Poor blacks suffered as urban public schools became the primary locus of integration; the change fomented an unhealthy battleground of racial tensions. Race became synonymous with poor blacks, and public education itself became stigmatized as it became more and more closely associated with racialized poverty.<sup>45</sup>

The focus on educational quality soon abated, as administrators, teachers, and students became political figures or political pawns rather than learners; educational funds were diverted to conflict avoidance and resolution and education budgets manipulated to promote political goals about race policy. Although *Brown* heralded the crucial role that public education plays in a democracy and gave eloquent voice to the importance of an educated citizenry to society as a whole, its legal analysis forestalled political interest convergences to the detriment of poor people of all colors: black, brown, and white, urban and rural. The Court's analysis became the basis for a doctrinal distinction between race and class that lifted unequal resource distribution out of the constitutional canon.<sup>46</sup> What appeared to be "eloquence from God" in the testimony of a witness at the trial court in Kansas that compulsory segregation damages children's ability to learn soon became manifest in a different prophecy: that

<sup>44</sup> On black teachers' losing their jobs due to integration, see Cecelski, *Along Freedom Road*, 8. On the loss of outstanding black high schools, see Derrick Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (New York, 2004), 124–25.

<sup>45</sup> Bell, "Serving Two Masters," 470–516; Brown-Nagin, "Race as Identity Caricature," 1913–76. See also Coleman, Kelly, and Moore, *Trends in School Segregation*, 53–80; Armor, *Forced Justice*, 174–93; Lewis, *In Their Own Interests*, 199–202; and Sugrue, *Origins of the Urban Crisis*, 268. On efforts by middle-class blacks to separate themselves from poorer blacks, see Grace Carroll, *Environmental Stress and African Americans: The Other Side of the Moon* (Westport, 1998), 9; Orfield and Thronson, "Dismantling Desegregation," 774; Lisa W. Foderaro, "A Suburb That's Segregated by Money More than Race," *New York Times*, Nov. 24, 2003, p. A22. Class differences within the black community also influenced who led in challenging segregation. See Goldfield, *Black, White, and Southern*, 90–91. But cf. Klarman, "*Brown*, Racial Change, and the Civil Rights Movement," 56–62. On "racial outsiders" who have sought the privileges of whiteness, see Lipsitz, *Possessive Investment in Whiteness*, 3. See also Patterson, *Brown v. Board of Education*, 42–44, 200–201; and Cecelski, *Along Freedom Road*, 34. Carter, "Reassessment of *Brown v. Board*," 28.

<sup>46</sup> The Court rejected the possibility that the Fourteenth Amendment implicated distributional considerations, striking down a judicial attempt to mandate equalization of resources, stating that "at least where wealth is involved, the equal protection clause of the Fourteenth Amendment does not require absolute equality or precisely equal advantages." See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 24 (1973). Dissenting, Justice Thurgood Marshall lamented the Court's refusal to consider how much governmental action itself had caused the wealth classifications. *Ibid.*, 123–24.

black children simply cannot or do not wish to learn. Legally compelled segregation became socially acceptable separation; separation became stigma; stigma became association with blacks who still occupied and defined separate, albeit public, education. Integration was reduced to diversity, a benefit to be enjoyed by a critical mass, but not by the masses.

Sadly, it was the appellees in *Brown* whose prognostications came closest to describing current realities. In his oral argument before the Supreme Court in the companion case of *Davis v. County School Board*, Attorney General Lindsay Almond of Virginia argued that integration would “destroy the public school system as we know it today” because the “people would not vote bond issues through their resentment to it.” Colgate Darden, then president of the University of Virginia and a former governor of Virginia, testified that desegregation would “impair the opportunities for both races” because goodwill toward the public school system would be “badly impaired,” which would lead to a “sizable falling off of the funds required for public education.” Indeed, urban and rural public schools became stigmatized as the dumping ground for those with nowhere else to go.<sup>47</sup>

The ambiguity of *Brown*’s legacy is as much a consequence of interest divergence as of the temporary alliance between northern elites and civil rights advocates to promote social reform through biracial top-down cooperation grounded in the values of racial liberalism. The Court relied on incomplete data regarding the damage segregation did to the self-esteem of blacks while it underestimated the potentially negative impact of desegregation on the self-esteem of some blacks and perhaps inadvertently reinforced the identification of blackness with inferiority and stigma in the minds of whites. There was also a divergence of interests inside the black community between poor and middle-class blacks arising from the practical consequences of *Brown* (including the loss of community and the exodus of middle-class blacks from urban public schools). That the divergences were relegated to the background was partly a result of the prejudice-centered orthodoxy of racial liberalism. That the divergences remain mostly intact may also have been a function of the elevated and preeminent role of legal analysis in fashioning a social change strategy. The Court, acting alone, was not in a position to explore the triangulation of interests along race, class, and geographic lines.

### Racial Literacy and the Interest-Divergence Dilemma

The apparent interest convergence between northern liberals and southern blacks ultimately perpetuated a more durable divergence of interests within and between the black and white communities. The ideals of racial liberalism produced a legal icon but did little to disrupt the historic pattern in which race was used to manufacture dissensus, complicating relationships within and outside communities of color. That dissensus was not produced by race, but by social and economic conflict that was simultaneously revealed and concealed by race. Post-*Brown*, the ability to use race to

<sup>47</sup> *Davis v. County School Board*, 103 F. Supp. 337 (E.D. Va. 1952). For Lindsay Almond’s statements, see “Oral Argument,” in *Removing a Badge of Slavery: The Record of Brown v. Board of Education*, ed. Mark Whitman (Princeton, 1993), 157. For Colgate Darden’s testimony, see “Colgate Darden,” *ibid.*, 83, 84.

code and cloak diverging interests sustained racial hierarchies—a phenomenon that tainted our founding arrangements and remains at our ideological core.

Through the creation and maintenance of racialized hierarchies, the plight of poor blacks and poor whites was mostly ignored; similarly, under the shibboleth of equal opportunity, urban and rural communities were abandoned as the maldistribution of material resources persisted undisturbed. Just as significant, the psychological bribe that segregation offered working-class and poor whites was not examined or countered even as white racial solidarity assumed crucial importance in the decision's aftermath. Indeed, the focus on race as a source of one-way psychological stigma had deleterious consequences for the public school system. Public education became a battlefield rather than a constructive gravitational force within many communities. Race was used to pathologize blacks rather than to reveal how economic and social privilege hid behind racial fault lines. Ultimately, the class interests of those who could afford to invest personally in their children's education triumphed.

The first step in understanding these diverging interests is to make them legible. A racially literate analysis seeks to do just that by deciphering the dynamic interplay among race, class, and geography. In contrast to racial liberalism, racial literacy reads race as epiphenomenal. Those most advantaged by the status quo have historically manipulated race to order social, economic, and political relations to their benefit. Then and now, race is used to manufacture both convergences and divergences of interest that track class and geographic divisions. The racialized hierarchies that result reinforce divergences of interest among and between groups with varying social status and privilege, which the ideology of white supremacy converts into rationales for the status quo. Racism normalizes these racialized hierarchies; it diverts attention from the unequal distribution of resources and power they perpetuate. Using race as a decoy offers short-term psychological advantages to poor and working-class whites, but it also masks how much poor whites have in common with poor blacks and other people of color.<sup>48</sup>

Racial liberalism triumphed in *Brown* by presenting racism as a departure from the fundamentally sound liberal project of American individualism, equality of opportunity, and upward mobility. But racial liberalism's individualistic and prejudice-centered view of formal equality failed to anticipate multiple interest divergences, helped fuel a white backlash, and doomed both integration and the redistribution of resources. Racial literacy, in contrast, requires us to rethink race as an instrument of social, geographic, and economic control of both whites and blacks. Racial literacy offers a more dynamic framework for understanding American racism.

There are many differences between what I call racial literacy and racial liberalism, but for the purposes of this essay three stand out. First, racial literacy is contextual rather than universal. It does not assume that either the problem or the solution is one-size-fits-all. Nor does it assume that the answer is made evident by thoughtful consideration or expert judgment alone. Racial literacy depends upon the engage-

<sup>48</sup> I define racial literacy at greater length in Guinier, "Admissions Rituals as Political Acts," 201–12. See also Guinier and Torres, *Miner's Canary*, 29–31.

ment between action and thought, between experimentation and feedback, between bottom-up and top-down initiatives. It is about learning rather than knowing. Racial literacy is an interactive process in which race functions as a tool of diagnosis, feedback, and assessment. Second, racial literacy emphasizes the relationship between race and power. Racial literacy reads race in its psychological, interpersonal, and structural dimensions. It acknowledges the importance of individual agency but refuses to lose sight of institutional and environmental forces that both shape and reflect that agency. It sees little to celebrate when formal equality is claimed within a racialized hierarchy. Although legally enforced separation was identified as a dignitary harm and the issue being litigated ridiculed as a matter of “racial prestige” by John W. Davis, attorney for South Carolina in the *Brown* case, it soon became distorted into an issue of mere separation rather than subjugation. Indeed, it is precisely as a legal abstraction that we are now being asked to honor equality. But things seldom are equal, as W. E. B. Du Bois pointed out in 1935 as he weighed the benefits of segregated and integrated education for blacks. He concluded that blacks needed education for their minds, not just integration of their bodies: “Other things being equal, the mixed school is the broader, more natural basis for the education of all youth. It gives wider contacts; it inspires greater self-confidence; and suppresses the inferiority complex. But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed school can offer.”<sup>49</sup>

Third, while racial literacy never loses sight of race, it does not focus exclusively on race. It constantly interrogates the dynamic relationship among race, class, geography, gender, and other explanatory variables. It sees the danger of basing a strategy for monumental social change on assumptions about individual prejudice and individual victims. It considers the way psychological interests can mask political and economic interests for poor and working-class whites. It analyzes the psychological economy of white racial solidarity for poor and working-class whites and blacks, independent of manipulations by “the industrialists and the lawyers and politicians who served them.” Racial literacy suggests that racialized hierarchies mirror the distribution of power and resources in the society more generally. In other words, problems that converge around blacks are often visible signs of broader societal dysfunction. Real interest convergences among poor and working-class blacks and whites are possible, but only when complex issues are analyzed and acted upon with their structural, not just their legal or their asymmetric psychological, underpinnings in mind. This means moving beyond a simple justice paradigm that is based on formal equality, while contemplating what it will take to create a moral consensus about the role of government and the place of the public itself.<sup>50</sup>

One of the original architects of the *Brown* strategy apparently understood the importance of further interrogating the interest divergences that promote a purely formal, legal equality within a system where social and economic inequalities persist. Charles Hamilton Houston, the former vice-dean at Howard Law School, director-

<sup>49</sup> John W. Davis quoted in “1953 Argument,” in *Argument*, ed. Friedman, 216. W. E. B. Du Bois, “Does the Negro Need Separate Schools?,” *Journal of Negro Education*, 4 (July 1935), 335.

<sup>50</sup> Norrell, *Reaping the Whirlwind*, esp. 57.



counsel of the NAACP LDEF and the consummate social engineer, declared six years before the case was decided:

There come times when it is possible to forecast the results of a contest, of a battle, of a lawsuit all before the final event has taken place. So far as our struggle for civil rights is concerned, the struggle for civil rights is won. What I am more concerned about is that the Negro shall not be content simply with demanding an equal share in the existing system. It seems to me that his historical challenge is to make sure that the system which shall survive in the United States of America shall be a system which guarantees justice and freedom for everyone.<sup>51</sup>

## Conclusion

Race is a powerful explanatory variable in the story of our country, which has been used to explain failure in part by associating failure with black people. Racial literacy suggests that legal equality granted through the courts will not extirpate the distinctive, racialized asymmetries from the DNA of the American dream. The courts can be and often have been a critically important ally, but neither the judiciary nor lawyers acting alone possess the surgical skill required to alter the genetic material of our organizing narrative. Nor is the attainment of civil rights by itself an adequate measure of success, in part because the problem is not just race but race as conjugated by class, geography, and the organizing narrative of upward mobility.

Through its invocation of the language of prejudice, the Court in *Brown* converted the structural phenomenon of racism into a problem of individual psychological dysfunction that whites and blacks are equally capable of exhibiting. In the 1950s prejudice was understood as an aberration in individuals who disregard relevant information, rely on stereotypes, and act thoughtlessly. Prejudice was a function of ignorance. Educated people, it was assumed, are not prejudiced. Yet many who acquiesce in racialized hierarchy derive tangible benefits from such a hierarchy. They are acting rationally, not irrationally, when they ignore the ways hierarchy systematically disadvantages groups of individuals and privileges others consistent with socially and culturally constructed definitions of race that predictably order and rank.

In legal terms, *Brown's* rule of "equality by proclamation" linked segregation to prejudice and reinforced the individuating of both the cause of action and the remedy. By defining racism as prejudice and prejudice as creating individual psychological damage, the Court's opinion paved the way for others to reinterpret *Brown* as a case mandating formal equality and nothing more. Subsequent courts have tended to limit the equal protection clause of the Fourteenth Amendment by a symmetrical, perpetrator-oriented focus on color blindness. If the problem is that separate is inherently unequal, then equality is simply presumed when the separation is eliminated. Any remaining inequality is the fault of black people themselves.<sup>52</sup>

<sup>51</sup> Charles Hamilton Houston (1949) quoted in *The Road to Brown*, dir. Mykola Kulish (California Newsreel, 1990).

<sup>52</sup> Emphasis on formal equality gave birth to the (Warren E.) Burger and (William H.) Rehnquist courts' legal doctrine interpreting the Constitution narrowly, limiting relief to proven acts of intentional discrimination. See, for example, *Washington v. Davis*, 426 U.S. 229 (1976); and *City of Mobile v. Bolden*, 446 U.S. 55 (1980). Even

In the end, *Brown's* racial liberalism had little to offer poor and working-class whites to counter the psychological benefits of white racial solidarity. Jim Crow was a caste system that oppressed all blacks, regardless of class and geographic lines, but the psychology of Jim Crow allowed white elites to limit the educational and economic opportunities of poor and working-class whites. Working-class whites were also complicit, as they perceived their own advancement as dependent on their ability to separate and distinguish themselves from blacks as a group. It is the conflation of psychological benefits with economic and political self-interest that crafts the popularly accepted fiction that failure is not only measured by race but also *explained* by it.

*Brown's* effect on public education, for example, showed why it is critical to link race and class without losing sight of race and in ways that invite the people most directly affected to speak for themselves. *Brown* relied on the lawyers' and the justices' understanding of the key role played by public education in a democracy. Yet it unwittingly nationalized the southern white racial consciousness, which downplayed the collective interest in a vigorous public in favor of the social interest of one class in private, individual choice. Nevertheless, it is important to remember that, although the trisection of interests along race, class, and regional lines haunted *Brown* from the beginning, the stark lines of divergence emerge more clearly in retrospect, viewed from the perspective of significant social progress that was inconceivable in 1954.

To be sure, the NAACP lawyers were audacious social engineers. Their ingenious litigation strategy bolstered insurgent efforts to dismantle de jure segregation. But for all their brilliance, the lawyers in *Brown* were unable to kindle a populist revolution in which the people, not just the lawyers, come to understand the crippling effects of race and racism on our entire social, economic, and political order. Race matters not just for blacks, in other words, but for every citizen of the United States. Because of its foundational role in the making of this country's history and myths, race, in conjunction with class and geography, invariably shapes educational, economic, and political opportunities for all of us.

My proposed paradigm shift to racial literacy is more a thought experiment than a judicial brief. We need to learn to use the courts as a tool rather than a panacea to overcome the structured dissension race has cemented in our popular consciousness as well as in our lived experience. If we can become more literate about the role racism continues to play in structuring and narrating economic and political opportunity, we may be better able to combine legal and legislative advocacy that enlists support among people of all colors, whites as well as blacks. It may be that the time has come for "a new policy compass," as Derrick Bell recently wrote, "to assert petitions for racial justice in forms that whites will realize serve their interests as well as those of blacks." But however petitions for racial justice are framed, they need to avoid confusing tactics with goals, forever freezing a formalistic theory of racial

---

when the Court finds diversity to be a compelling governmental interest, it diverts concern and resources away from the real barriers to educational opportunity, according to Derrick Bell, "Diversity's Distractions," *Columbia Law Review*, 103 (Oct. 2003), 1622–33.

equality into the Constitution, which can then be used to undermine opportunities for progressive innovation in the future.<sup>53</sup>

If there is only one lesson to be learned from *Brown*, it is that all Americans need to go back to school. The courts acting alone cannot move us to overcome, and the federal government has not assumed leadership in this arena since the 1960s. At the beginning of the twenty-first century, a racially literate mobilization of people within and across lines of race, class, and geography might finally be what it takes to redeem the optimistic assessment of those early academic commentators. Of course, a racially literate analysis, meaning the ability to read race in conjunction with both contemporary institutional and democratic hierarchies and their historical antecedents, may not resolve the interest-divergence dilemma. Nor should it. But at least it may help us understand why *Brown* feels less satisfying fifty years later.

<sup>53</sup> Derrick A. Bell, "Comments from the Contributors," in *What Brown v. Board of Education Should Have Said*, ed. Balkin, 206. Bell, *Silent Covenants*, 119–20; W. E. B. Du Bois, *Dusk of Dawn: An Essay toward an Autobiography of a Race Concept* (New York, 1940), 303.