

SUCCESS AND FAILURE: HOW SYSTEMIC RACISM TRUMPED THE *BROWN V. BOARD OF EDUCATION* DECISION[†]

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Despite the enactment of the Fourteenth Amendment in 1868, legal segregation nevertheless remained pervasive throughout the United States in the following nine decades due to various state statutes and federal and state court decisions. Nowhere was the existence of legal segregation more prevalent than in school systems throughout the United States. Segregated schools were common because of the U.S. Supreme Court's "separate but equal" doctrine set forth in Plessy v. Ferguson. Finally, in 1954, the U.S. Supreme Court, in its landmark Brown v. Board of Education decision, concluded that "in the field of public education the doctrine of 'separate but equal' has no place" because "separate educational facilities are inherently unequal." With that language, the Supreme Court effectively rejected the legality of school segregation.

The implications of the Court's Brown decision extended beyond the educational system. Professors Feagin and Barnett note that the Court's Brown decision marked the first time it recognized African Americans as first-class citizens. Additionally, they state that the decision had an important psychological impact on African Americans and provided moral encouragement to people active in the civil rights movement. Further, Brown supplied the legal precedent necessary to dismantle state-created segregation in other areas. Finally, Professors Feagin and Barnett remark that Brown remains a "beacon of liberty" for people throughout the United States and the world seeking to end discrimination in myriad other areas.

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Professors Feagin and Barnett argue, however, that despite the positive effects in education and other areas resulting from the Court's Brown decision, the decision has by no means been successful in dismantling institutionalized racism in American education. They note that although schools may be officially desegregated, they nevertheless remain effectively segregated due to the following: discrimination in schools by administrators, teachers, and students; racial bias in school curriculum; the separation of students into different ability tracks reflecting racial, class, and gender stratification; and the use of standardized testing that contains significant racial and class bias.

While emphasizing linkages to class stratification and income-based housing segregation, Professors Feagin and Barnett argue that the failures in desegregation since Brown are primarily the result of systemic racism, which they define as the "racialized exploitation and subordination of Americans of color by white Americans" that "encompasses the racial stereotyping, prejudices, and emotions of whites, as well as the discriminatory practices and racialized institutions generated for the long-term domination of African Americans and other people of color." They note that a clear indication of systemic racism has been the unwillingness by both federal courts and presidential administrations to ensure that Brown's ideals are fully implemented. The authors also argue that recent presidential administrations have failed to develop educational policies that remove the burdens placed on many children by an ineffective, and still segregated, educational system.

I. INTRODUCTION

U.S. school children have long pledged allegiance to a "nation . . . with liberty and justice for all," yet from the beginning this has been hypocritical rhetoric. When it comes to schools, African American children and many other children of color historically have rarely gotten justice. Never in U.S. history has there been a year when even half the country's black children attended schools where a majority of children were white.¹ Today, even officially "desegregated" schools—which are decreasing in number—are intentionally divided internally into ability tracks that reflect racial, class, and gender stratification. Typically, a desegregated school facility is internally segregated with different educational experiences for most white and black children—"second-generation segregation." Despite supporting the ideal of a desegregated society in surveys, white leaders and citizens have been unwilling to implement the thorough-going desegregation of any major institution.²

1. PETER IRONS, *JIM CROW'S CHILDREN* 338 (2002).

2. Lawrence Bobo et al., *Laissez-Faire Racism: The Crystallization of a Kinder, Gentler, Anti-black Ideology*, in *RACIAL ATTITUDES IN THE 1990S: CONTINUITY AND CHANGE* 15, 15 (Steven A. Tuch & Jack K. Martin eds., 1997).

Today, in many larger cities there are relatively few white children left in public schools.³ Various factors, such as the rise of private academies, the increase in populations of color in cities, the flight of middle-class whites to predominately white school districts, the movement of middle-class blacks into predominately white neighborhoods, and the acceptance of resegregation in neighborhood schools by federal courts, have greatly limited the possibilities for present and future school desegregation. As a result, the separation of white children from children of color is increasing. Indeed, recent government data indicate that segregation of black from white children in urban schools is high and has increased a little over the last decade.⁴ Increased school segregation is particularly significant because residential segregation has decreased slightly during this same period.⁵

Here we discuss numerous reasons why desegregated schooling is important for all children, including the provision of improved social and learning environments for all. Indeed, school desegregation is important for segregated children of color because, as is often said, “green follows white”—that is, schools with white student majorities typically get better educational resources from those (usually white) officials who have the power to provide such socioeconomic resources.

In Part II we briefly examine the development of the racist foundation of the United States and define the concept of *systemic racism*. We argue here that racial segregation in schools has long been a central part of systemic racism in the United States and that attempts at serious desegregation of schools were limited mostly to the decades from the 1950s to the 1970s. These efforts at significant school desegregation were soon followed by backtracking by most white authorities on earlier commitments to desegregation such as those announced in the celebrated 1954 *Brown I* decision. Parts III and IV review the successful strategies of the NAACP in persuading U.S. courts to knock down the wall of legal segregation, including a discussion of the *Brown I* decision and its mixed impact on U.S. schools and society. Part V examines the slow implementation of *Brown I* until the mid-1960s and the backing off on significant implementation that began by the mid-1970s. We also briefly assess the recent reassertion by the federal courts of the previously discredited *Plessy* doctrine that school segregation is natural and cannot be eradicated successfully by government intervention. In Part VI we examine some of the successes of school desegregation, including the greater access of children of color to the educational, networking, and job access resources and opportunities generally available to white students. We also discuss the importance of school desegregation for all students, in-

3. IRONS, *supra* note 1, at 289.

4. *Id.* at 291–92.

5. John R. Logan, Choosing Segregation: Racial Imbalance in American Public Schools 1999–2000 (Mar. 29, 2002) (unpublished research report, on file with authors).

cluding white children, and for the future of a country that will, in coming decades, have a majority of people whose origins lie in areas of the world other than Europe. In Part VII we evaluate the impact of early desegregation on the children pioneers and the continuing segregation that exists within ostensibly desegregated schools, largely because of discrimination within schools by white students, faculty, and administrators. We also delineate the continuing institutionalized discrimination in school curricula, tracking, and testing programs and the linkages of racial stratification to class stratification. Part VIII examines the role of leading white policymakers and politicians in failing to provide the support, resources, and services needed to enable teachers and students of all racial, gender, and class backgrounds to achieve society's often expressed goal of educational excellence. In the concluding Part IX we summarize the successes and failures of school desegregation and accent the strengths of black children, parents, and communities in working for racial desegregation against great odds and in successfully pressing the United States closer to its long expressed ideas of "liberty and justice for all."

II. THE RACIST FOUNDATION OF U.S. SOCIETY

This great and growing segregation of school children along racial lines is unsurprising for those familiar with U.S. history. Over centuries of colonial and U.S. development, whites created a system of systemic racism—initially in the enslavement of African Americans and genocidal land taking that targeted Native Americans. The fifty-five white men who drafted the U.S. Constitution, and then implemented it, built into the country's foundation certain mechanisms designed to maintain the enslavement of African Americans for the purpose of unjustly enriching many white Americans.⁶ These enslavement mechanisms were only removed eight decades later, and racial segregation was soon put in place.⁷ Legal segregation was a system of near-slavery for most African Americans; it was enshrined in state statutes and federal and state court decisions for nine decades.⁸ Whites have enforced various types of racial separation *since the mid-seventeenth century*, when the status of African Americans became that of enslavement for life.⁹ Today, school segregation is but part of a centuries-old system of racism.

Systemic racism involves the racialized exploitation and subordination of Americans of color by white Americans. It encompasses the racial stereotyping, prejudices, and emotions of whites, as well as the discriminatory practices and racialized institutions engineered to produce

6. JOE R. FEAGIN, *RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS* 9–10 (2000).

7. *See, e.g., id.* at 21–25.

8. *Id.*

9. *Id.*

the long-term domination of African Americans and other people of color. At the heart of systemic racism are discriminatory practices that generally deny Americans of color the dignity, opportunities, and privileges available to whites individually and collectively.

Some recognition of racism's systemic character is occasionally seen at the highest levels of national leadership. For example, Justice John Marshall Harlan, dissenting in the 1883 *Civil Rights Cases*, explained why anti-Black oppression persisted after slavery:

That there are burdens and disabilities [that] constitute badges of slavery and servitude, and that the power to enforce by appropriate legislation the Thirteenth Amendment may be exerted by legislation of a direct and primary character, for the eradication, not simply of the institution, but of its badges and incidents, are propositions which ought to be deemed indisputable.¹⁰

In his minority view, the government had the right to eradicate racial badges, burdens, and the disability of slavery in the form of persisting discrimination.¹¹ More recently, in the 1968 case of *Jones v. Alfred H. Mayer Co.*, the Supreme Court condemned housing discrimination, ruling that “[w]hen racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.”¹² In his concurring opinion, Justice William O. Douglas added:

Some badges of slavery remain today. While the institution has been outlawed, it has remained in the minds and hearts of many white men. Cases which have come to this Court depict a spectacle of slavery unwilling to die. . . . Negroes have been excluded over and over again from juries They have been made to attend segregated and inferior schools They have been forced to live in segregated residential districts¹³

Moreover, since the end of legal segregation, many whites have continued imposing the burdens of a “slavery unwilling to die” in a wide range of discriminatory practices.

The imposed segregation of racial groups, and the larger reality of systemic racism, are the normal condition of U.S. society. School segregation separates, on the basis of race, those defined by whites as different, and segregation is buttressed by an ideology that asserts that whites are superior. As one commentator noted:

Black school children are not injured as much by a school board's placement of them in a school different from that in which it has placed white school children, so much as by the reality that the

10. *The Civil Rights Cases*, 109 U.S. 3, 35 (1883) (Harlan, J., dissenting).

11. *Id.* at 35–36 (Harlan, J., dissenting).

12. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 442–43 (1968).

13. *Id.* at 445 (Douglas, J., concurring) (internal citations omitted).

school exists within a larger system that defines it as the inferior school and its pupils as inferior persons.¹⁴

Attempts at desegregation in the 1950s to 1970s were part of a brief period of progressive impulse. Such efforts need constant renewal, for established arrangements of centuries have a strong social inertia. Systemic racism stays in place so long as there is no counter pressure forcing change. Briefly, the civil rights movement—together with increased black political participation and international competition with the former Soviet Union for the allegiance of non-European peoples¹⁵—pressed some white leaders to take notice of racial discrimination and move toward increased justice.

During the 1950s and 1960s, under pressure from black leaders, churches, and civil rights organizations, white liberals pressed for desegregation, especially in the South. By the 1970s, however, most white liberals were backtracking on commitments to substantial desegregation. Backtracking has been widespread since the 1980s due to the rise of presidential administrations and courts controlled by conservatives. White conservatives have been joined by a few conservatives of color, such as Justice Clarence Thomas and Ward Connerly, in blocking further progress in societal desegregation. The failure of school desegregation lies primarily in the hands of those with the greatest political, economic, and civic power, who have long been mostly white. White elites—including school board members, leaders of civic and business organizations, state and local legislators, and judges in state and federal courts—have made decisions that have reversed progress toward substantial school desegregation since the 1970s.

III. BEFORE *BROWN*: SUCCESSFUL STRATEGIES OF THE NAACP

During the early 1950s, on the eve of *Brown*, the United States, and especially the South, had in place extremely oppressive conditions for African Americans and many other people of color. U.S. apartheid was extensive, and the civil rights movement was accelerating. One gets some feeling for the continuing burdens of “slavery unwilling to die” in this comment from a black teacher who long lived under legal segregation:

In those days, black people in their community had all the things that they had, because they were set aside from the white community, and we had all the things we needed to sustain us. . . . We had no affiliation with the whites [in school] whatsoever. Everything was separate and unequal. . . . We had aspirations but we

14. Charles Lawrence, “*One More River to Cross*”—*Recognizing the Real Injury in Brown: A Prerequisite to Shaping New Remedies*, in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* 49, 53 (Derrick Bell ed., 1980).

15. See PHILIP A. KLINKNER & ROGERS M. SMITH, *THE UNSTEADY MARCH: THE RISE AND DECLINE OF RACIAL EQUALITY IN AMERICA* 3–4 (1999).

were limited since we were in the black world, that's where we lived. . . . You thought . . . that everything was alright, and we were not looking out onto the white world because if you ventured out, you were stopped before you could even get started. And in those days there was just a definite dividing line of black or white. White over here; black over here. . . . It was a black and white world. No coming together on anything.¹⁶

In most U.S. areas, African Americans were forced by law or by informal discrimination to live in very segregated conditions, attend very segregated schools, suffer discrimination in public facilities, take less desirable jobs, face higher unemployment, and live on family incomes less than half those of whites.¹⁷ In the South, African Americans faced an extreme racial etiquette requiring constant deference to whites of all ages. Resistance often brought severe punishment—loss of jobs, burned houses, home evictions, mortgage foreclosures, loss of credit, beatings, and lynchings.

In the face of real or threatened violence, it took great courage for African Americans, including NAACP members and lawyers, to mount large-scale legal efforts to bring down the walls of segregation, first in colleges and universities in the period from 1930 to 1950,¹⁸ and then in public schools.¹⁹ This effort eventually culminated in the path breaking *Brown v. Board of Education*,²⁰ which broke dramatically with legally coerced segregation. Mounting legal attacks in several states, courageous NAACP lawyers sought school desegregation as a strategy to secure equal educational opportunity.²¹ The intent was to dethrone the *Plessy v. Ferguson*²² doctrine of “separate but equal” as the defining law. Robert Carter, an NAACP lawyer and later a federal judge, concluded these efforts were necessary to move to broader goals: “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.”²³

16. Interview by Joel L. Buchanan with Wilhemina Johnson, Samuel Proctor Oral History Program, University of Florida, Gainesville, Fla. (May 27, 1981).

17. FEAGIN, *supra* note 6, at 57–66.

18. *See, e.g.*, Sipuel v. Bd. of Regents of the Univ. of Okla., 332 U.S. 631 (1948); Sweatt v. Painter, 339 U.S. 629 (1950).

19. *See, e.g.*, Webb v. Sch. Dist. No. 90, Johnson County, 206 P.2d 1066, 1073 (Kan. 1949) (stating that if a school district wants to maintain two buildings in its district, the allocation of students must be made “upon a reasonable basis without any regard at all as to color or race of the pupils within any particular territory”); Mendez v. Westminster Sch. Dist., 64 F. Supp. 544, 549 (S.D. Cal. 1946) (concluding that segregation practices “clearly and unmistakably disregard rights secured by the supreme law of the land”).

20. 347 U.S. 483 (1954).

21. Robert L. Carter, *A Reassessment of Brown v. Board*, in SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION, *supra* note 14, at 20, 21, 27.

22. 163 U.S. 537 (1896).

23. Carter, *supra* note 21, at 23.

IV. THE *BROWN* DECISION: CONSTITUTIONAL, MORAL, AND POLITICAL SUCCESSES

Successful efforts by African Americans to end legal segregation showed how pervasive racism was in American society. The organized efforts of African Americans and their non-Black allies motivated elite whites to end apartheid, and thus enter the modern sociopolitical world. The *Brown* decision did not transpire because of the goodness of white hearts, but rather as the culmination of a long struggle by black children, men, and women.²⁴ Without this enormous effort, the United States today might still be a backwater among the world's industrialized countries, indeed as a country trying to come to terms with apartheid institutions.

Finally, in 1954, nine white men were pressed by these efforts to see how unjust racial segregation was. At the heart of *Brown* was this broadly framed declaration:

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.²⁵

With this statement, and with the rejection of previous court decisions upholding segregation, the Court rejected legal school segregation in the numerous states that still required or allowed it. With this broad framing, the Court asserted that the federal government has an obligation to extend full rights to African Americans, who were finally recognized by the Court as first-class citizens—a category to which they had been denied membership for centuries: "Segregation in the public schools is condemned for producing second-class citizenship for African Americans both because it imposed a stigma on them (as persons not fit to go to school with whites) and because it did not adequately prepare them to be effective citizens."²⁶

Brown had an important psychological impact on black Americans and others committed to desegregating U.S. society for it indicated that desegregation struggles were sanctioned by whites on the country's highest court. *Brown* provided moral encouragement for those active in accelerating the civil rights movement. As one commentator noted, "Civil rights leaders repeatedly invoked *Brown* in their political and moral ar-

24. See Bernice McNair Barnett, *Invisible Southern Black Women Leaders in the Civil Rights Movement: The Triple Constraints of Gender, Race, and Class*, 7 GENDER & SOC'Y 162, 168–69 (1993).

25. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

26. T. ALEXANDER ALEINIKOFF, *SEMBLANCES OF SOVEREIGNTY: THE CONSTITUTION, THE STATE, AND AMERICAN CITIZENSHIP* 40 (2002).

guments against segregation.”²⁷ They also cited the decision as moral authority for demonstrations. At the beginning of the 1955 Montgomery bus boycott, Dr. Martin Luther King, Jr., alluded to *Brown* in a speech: “If we are wrong, the Constitution of the United States is wrong.”²⁸ The success of that boycott was in turn facilitated by lawyers who filed suits against bus segregation.

Brown provided the moral and legal authority for ending segregation. The decision was interpreted by numerous judges as a mandate to dismantle state-created segregation.²⁹ New discrimination cases came to courts in such areas as public accommodations and voting, and an end to discrimination was mandated in most cases, including interracial marriages.³⁰ Official segregation in public facilities began to end, first in border states, then in most southern areas.³¹ *Brown* remains a *beacon of liberty* for many people in the United States and globally, including those seeking voting rights, gender equity in sports, freedom from harassment based on gender and sexual orientation, multicultural education, bilingual education, special education, and international human rights.³² As one commentator has noted:

Many people take the Constitution to express the nation’s deepest moral commitments. When the Supreme Court said that segregation could not be reconciled with the Constitution, it told the nation that segregation was wrong. . . . Even today *Brown* stands as the Court’s deepest statement on the central issue in American history—how Americans of all races should treat one another.³³

V. PROBLEMS AND FAILURES SINCE *BROWN*: THE TIMIDITY OF FEDERAL COURTS

We now turn to the reasons why the *Brown* decision has not brought the extent or quality of school desegregation originally envisioned by the NAACP and other groups that sought major changes in U.S. racism. *Brown* and its implementation signaled that ending racial apartheid would come only at the pace that whites in the governing elite would allow. In this sense, the modest character of the decision reflected many elements of systemic racism, for few white leaders, including federal judges, envisioned fully dismantling that racism. Neither the 1954 *Brown* decision (*Brown I*)³⁴ nor the 1955 implementation decision

27. MARK V. TUSHNET, *BROWN V. BOARD OF EDUCATION: THE BATTLE FOR INTEGRATION* 130 (1995).

28. *Id.* at 131.

29. RICHARD KLUGER, *2 SIMPLE JUSTICE* 750–51 (1976).

30. *Id.*

31. *See id.* at 751.

32. *See, e.g.*, A. Reynaldo Contreras & Leonard A. Valverde, *The Impact of Brown on the Education of Latinos*, 63 J. NEGRO EDUC. 470, 478 (1994).

33. TUSHNET, *supra* note 27, at 132, 136.

34. *Brown v. Bd. of Educ.*, 347 U.S. 483, (1954).

(*Brown II*)³⁵ clearly spelled out what constituted “desegregation,” nor what the steps were to end segregation described and mandated. One reason for the failure of *Brown I* to significantly desegregate the schools in the first decade after 1954 was the weakness of the 1955 *Brown II* decision, which articulated the “with all deliberate speed”³⁶ formula for implementing desegregation. This failure was amplified by the unwillingness of President Dwight Eisenhower to back the Court’s decrees with full federal authority in the face of intense opposition by millions of white parents, school officials, civic leaders, legislators, and governors, as well as by local supremacist groups. Given the racist views of most white leaders, including a President who revealed his racist stereotypes to Chief Justice Warren,³⁷ the vacillating action against racial discrimination was unsurprising. Systemic racism was too fundamental for them to accede to a head-on attack on its many oppressive realities. For that reason, school desegregation would come only slowly in the South and would never be fully realized in most northern and western cities.

Not until the late 1960s and early 1970s did the Supreme Court and other federal courts begin to force meaningful school desegregation in the South. A series of important cases finally expanded the requirements for desegregation. In a 1968 case, *Green v. County School Board of New Kent County*, the Court held that “freedom of choice” plans were insufficient, and belatedly put pressure on segregated school systems to make greater progress by requiring that segregation be eliminated “root and branch”—that students, teachers, staff, transportation, and extracurricular facilities be desegregated.³⁸ In a 1971 case, *Swann v. Charlotte-Mecklenberg Board of Education*, the Court ruled that desegregation plans grounded in residential patterns for student assignments were inadequate and aggressive action had to be taken to desegregate, including busing if necessary.³⁹ Gradually, as evidenced by the “root and branch” language, Justices of the Supreme Court began to realize the extent of the systemic racism underlying school segregation.

Then, by the mid-1970s, new conservative appointments to the Court presaged a long-term movement—lasting to the present day—away from eradicating the burdens of “slavery still unwilling to die” in public schools, as well as other institutions.⁴⁰ For example, in *Milliken v. Bradley*, a conservative Supreme Court blocked local officials’ attempts at a metropolitan-wide school desegregation plan combining the city of Detroit and its suburbs.⁴¹ Dissenting in this case, Justice Marshall (joined

35. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

36. *Id.* at 301.

37. FEAGIN, *supra* note 6, at 113.

38. 391 U.S. 430, 437–38 (1968).

39. 402 U.S. 1, 22–31 (1971).

40. Justices Blackman, Powell, and Rehnquist were all appointed by President Nixon between 1970 and 1971. See RONALD D. ROTUNDA, MODERN CONSTITUTIONAL LAW lix (6th ed. 2000).

41. *Milliken v. Bradley*, 418 U.S. 717, 745 (1974).

by three other Justices) noted that after decades of steps toward desegregation, the Court was seriously backtracking:

Notwithstanding a record showing widespread and pervasive racial segregation in the educational system provided by the State of Michigan for children in Detroit, this Court holds that the District Court was powerless to require the State to remedy its constitutional violation Our precedents . . . firmly establish that where, as here, state-imposed segregation has been demonstrated, it becomes the duty of the State to eliminate root and branch all vestiges of racial discrimination and to achieve the greatest possible degree of actual desegregation.⁴²

Since this decision, the Supreme Court and courts of appeals decisions have generally retreated on the commitment to desegregate. In a 1986 case, *Riddick v. Norfolk*, the Fourth Circuit was the first to allow a southern school district that declared itself “unitary”—i.e., not officially segregated—to abandon its desegregation plan and escape federal supervision.⁴³ By the 1990s, courts allowed many school systems to abandon desegregation. The *Board of Education of Oklahoma v. Dowell*⁴⁴ and *Freeman v. Pitts*⁴⁵ decisions indicated that the Supreme Court would permit large-scale resegregation of schools. The *Freeman* decision gave lower court judges much discretion to abandon supervision of desegregation before a school district was in full compliance.⁴⁶ Today, as Orfield and Eaton note, “[d]esegregation remedies can even be removed when achievement gaps between the races have widened, or even if a district has never fully implemented an effective desegregation plan.”⁴⁷ The current Supreme Court view seems similar to assumptions discredited by *Brown* that segregation in schools is “natural,” cannot be eradicated by government, and that authorities can be trusted to act in a nondiscriminatory way in decisions about educating black children.⁴⁸ For the current Court, “separate but equal” is constitutional if racial segregation is not openly directed by government officials.

VI. ADVANTAGES TO DESEGREGATION: ACCESS TO RESOURCES AND OPPORTUNITIES

When and where government officials have implemented substantial school desegregation with commitment, resources, and significant public support, it has generally worked to the benefit of all. Even where

42. *Id.* at 782 (Marshall, J., dissenting).

43. *Riddick v. Sch. Bd. of Norfolk*, 784 F.2d 521, 535–36 (4th Cir. 1986).

44. 498 U.S. 237 (1991).

45. 503 U.S. 467 (1992).

46. *Id.* at 492–99.

47. GARY ORFIELD & SUSAN E. EATON, *DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION* 4 (1996).

48. *See id.* at 26–27.

officials have only partially desegregated schools, we see substantial gains. In numerous ways, school desegregation has been successful, despite its limitations.

A. Providing Greater Access to Educational Resources

From the beginning, black parents and community leaders sought desegregation primarily to secure greater access to educational and related socioeconomic resources. They did *not* seek desegregation because they felt that black children needed to sit with whites to be educated. The assumption has always been that *better school resources* come in racially desegregated schools, and this in turn usually means better learning environments and greater achievements for children of color.

In general, these assumptions have been correct. Research shows that attending desegregated schools usually facilitates achievement for black students. One major study found that “black third-graders in predominantly white schools read better than initially similar blacks who have attended predominantly black schools.”⁴⁹ Another extensive review found that most research studies of desegregation showed some positive effects on academic performance: “African American and Hispanic students learn somewhat more in schools that are majority White as compared to their academic performance in schools that are predominantly non-White.”⁵⁰ In addition, research on more than 1800 students in Charlotte-Mecklenburg schools found that black *and* white children did better in substantially desegregated schools than in segregated schools. Mickelson concludes from extensive data that “the more time both black and white students spend in desegregated elementary schools, the higher their standardized test scores in middle and high school, and the higher their track placements in secondary school.”⁵¹ One major reason that desegregation in schools facilitates achievement for black students is that the most segregated schools (with children of color as the majority) get less in the way of socioeconomic and human resources.

B. Providing Greater Access to Networking Resources

School desegregation has brought African American, Latino, Native American, Asian American, and other students of color improved access

49. Christopher Jencks & Meredith Phillips, *Introduction*, in *THE BLACK-WHITE TEST SCORE GAP* 1, 9 (Christopher Jencks & Meredith Phillips eds., 1998). There was less effect on reading at higher grade levels and no consistent effect on math scores. *Id.* at 31.

50. Jomills Henry Braddock & Tamela McNulty Eitle, *The Effects of School Desegregation* 5 (unpublished research paper, on file with authors).

51. Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. REV. 1513, 1546 (2003) (“[T]he more time both black and white students spend in desegregated elementary schools, the higher their standardized test scores in middle and high school, and the higher their track placements in secondary school.”).

to important job networks, most of which are controlled by white employers. Often greater in desegregated schools, networking resources help students later on in securing good jobs and advanced education. Black students from desegregated, substantially white schools typically are more successful in entering into the high-paying job and college networks than those students from traditionally segregated schools. Going to a substantially desegregated high school significantly increases the chance that a black or Latino student will attend college.⁵² Black students in desegregated schools are more likely to attend historically white colleges, work and live in desegregated environments, and have friends from other racial groups.⁵³ Going to desegregated schools increases the “pool of contacts and informants from whom African Americans can obtain information about available jobs,” thereby increasing opportunities.⁵⁴ For children of color without much previous contact with whites, school desegregation may also help them develop coping strategies for dealing with racist whites in other settings.⁵⁵

Desegregation has often forced white officials to deal with insufficient resources in historically black schools.⁵⁶ When schools are substantially desegregated, white officials typically spend *more money* on schools. When school systems resegregate with court approval, as many are now doing, per-student expenditure differentials again increase sharply. This is the lesson of big cities such as Milwaukee, where a recent report shows that the “separate but equal” notion increasingly accepted by courts fails. Per capita school expenditures for Milwaukee’s children, mostly children of color, are now far lower than per capita expenditures for suburban children, who are mostly white. The differential is considerably more than one thousand dollars per child.⁵⁷

Half a century after the U.S. Supreme Court outlawed separate and unequal schools based on race, the Milwaukee area has firmly returned to both separate and unequal education. . . . [A]s the percentage of African-American students and students of color has risen in the Milwaukee Public Schools (MPS), funding per pupil has plummeted compared to funding in overwhelmingly white suburban districts.⁵⁸

The report also notes the role of state government: “The state of Wisconsin is constitutionally responsible for providing public education. Yet the state not only tolerates the funding gulf between Milwaukee and its suburban counterparts, it has instituted policies that allow the gap to

52. ORFIELD & EATON, *supra* note 47, at 53–54.

53. Braddock & Eitle, *supra* note 50, at 8–9.

54. *Id.* at 9.

55. DEBRA VAN AUSDALE & JOE R. FEAGIN, *THE FIRST R: HOW CHILDREN LEARN RACE AND RACISM* 191–92 (2001).

56. ORFIELD & EATON, *supra* note 47, at 64–71.

57. RETHINKING SCHOOLS, *THE RETURN TO SEPARATE AND UNEQUAL: METROPOLITAN MILWAUKEE SCHOOL FUNDING THROUGH A RACIAL LENS* i–ii (2001).

58. *Id.* at i.

widen . . . ”⁵⁹ This increasing gap is one consequence of state-sanctioned resegregation now spreading across the United States. Such resegregation will, doubtlessly, result in sharply reduced access for many students of color to those critical college and job networks that desegregation provides.

While the school desegregation process stemming from the *Brown* decisions brought new opportunities and better access to resources for many children of color and their parents, at no point has a desegregated system equalized the array of educational resources. White officials and citizens are still unwilling to spend the money necessary to eradicate the long-term impact of racism in education. Interestingly, several studies of desegregation, including the famous Coleman report, downplayed school resources in explaining racial differentials. The Coleman report, for example, concluded that resources, such as per-pupil expenditures, were not greatly different between predominantly black and predominantly white schools and had no significant correlations with achievement; the important correlations of achievement were with socioeconomic status and family characteristics.⁶⁰ Many analysts have interpreted those studies as meaning that significant differentials in school resources no longer exist—or that what differences remain are not critical for achievement. However, even the Coleman report acknowledged that, while the differences in resources available to predominately white schools as compared to predominantly black schools are relatively small, those differences can *accumulate* to a major difference in quality:

[T]he child experiences his environment as a whole, while the statistical measures necessarily fragment it. . . . [T]he statistical examination of difference in school environments for minority and majority children will give an impression of lesser differences than actually exist . . . so that the subsequent sections will probably tend to understate the actual disadvantage in school environment experienced by the average minority child compared to that experienced by the average majority child.⁶¹

To assess whether critical resources are different in predominantly white and predominantly black schools, one must consider the accumulation of small differences and an array of resources often neglected in comparative assessments of schools. Even the best desegregation plans are unable to equalize historically black and historically white schools in fundamental ways. Researchers examining desegregated Charlotte-Mecklenburg schools have found many differences in the level of resources available to predominantly black schools as compared to predominantly white schools. Schools with more white children are more

59. *Id.*

60. JAMES S. COLEMAN ET AL., U.S. DEP'T OF HEALTH, EDUC. & WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 3-34 (1966).

61. *Id.* at 37.

likely to have adequate media centers, computers, and other technology, as well as newer buildings and more classes for advanced students. On the average, such schools have more teachers (regardless of race) with substantial teaching experience.⁶² Research indicates that other critical resources, such as the availability of small classes and college placement courses, are not equitably distributed.⁶³ Today, de facto segregated schools are segregated not only by racial group, but also by income. Most black and Latino children remain in schools where low-income children are the majority, yet most white children attend schools where the majority of students are middle-class.⁶⁴ Schools where the children's parents have higher incomes usually have an array of resource advantages, while those in low-income communities are likely to have fewer teachers, less adequate libraries, and fewer advanced courses.⁶⁵ Again, the problem of racial segregation is inextricably linked to class stratification in U.S. society.

C. *Providing Greater Opportunities to Experience Diversity*

School desegregation has generated not only increased opportunities for black, Latino, and other children of color and their parents, but also new experiences for white children, parents, and teachers. Although since *Brown* many whites, in all regions, have chosen private schools and moved into higher-income communities where most children of color do not reside, the challenges of cooperatively living, learning, working, and participating democratically in a multiracial society and within a global economy are greater than ever before for all Americans. In the future, the U.S. public and policymakers will need to utilize the diverse ideas, knowledge, and talents of everyone even more than now.

Racial segregation exacts costs for whites in terms of fear, ignorance, conflict, and inhumanity.⁶⁶ Population trends indicate that by 2050 the United States will likely have a population in which people of color will compose a majority. Increasingly, whites are pressed to understand the significance of racial-ethnic diversity in living, learning, and working cooperatively in communities, schools, government, businesses, and other arenas of society. Moral and practical reasons dictate building a country that expands socioeconomic and political participation in a multiracial-democracy framework.⁶⁷ School desegregation provides opportunities for all, including whites, to dismantle historical barriers because students in truly desegregated schools gain opportunities to learn about, and associate with, those with whom they might not otherwise interact.

62. Mickelson, *supra* note 51, at 1547.

63. Jencks & Phillips, *supra* note 49, at 12.

64. ORFIELD & EATON, *supra* note 47, at 53.

65. *Id.* at 69.

66. FEAGIN, *supra* note 6, at 197–202.

67. *Id.* at 237–38.

For example, in a study of young children in a multiracial preschool, researchers Van Ausdale and Feagin found that white children learn racial differences and how to discriminate at an early age, and that it is by experience, interaction, and education with children of color that they are able to reduce stereotypes and gain a significant opportunity to establish friendships and understanding of others.⁶⁸

VII. NEGATIVE IMPACTS: CHILDREN IN DESEGREGATED SCHOOLS

A. *The Severe Impact on Pioneering Black Children*

In the first era of school desegregation, which took place in the late 1950s and early 1960s, Supreme Court Justices, congressional leaders, and presidents failed dismally to provide strong supervision of court-ordered school desegregation. This lack of supervision signaled weak commitment to change and, quite foreseeably, encouraged white resistance. Federal officials left much actual desegregation up to courageous black children, parents, and community leaders. Children were lonely pioneers thrown into extremely hostile, formerly all-white environments. Desegregation's costs were very heavy for these children pioneers—costs that few whites, including white policymakers, have yet to acknowledge.

The social scientists testifying in the *Brown I* case presented data that segregation had a harmful impact on children by damaging self-esteem.⁶⁹ Ironically, because of feeble enforcement, desegregation also had a damaging psychological, and often physical, impact on numerous children of color. While there have been a few autobiographies, such as that written by Melba Pattillo Beals vividly recounting the traumatic experiences of nine Little Rock students,⁷⁰ few studies have systematically examined the impact of desegregation on child pioneers. One attempt to examine such impact was a study conducted by sociologist Leslie Inniss in the 1990s of twenty-five black adults who had desegregated high schools in the South decades earlier.⁷¹ On the positive side, several reported making white friends, and most felt they received a better education under desegregation.⁷²

Even though newly desegregated schools had some positive effects on black children, they limited other opportunities. For example, in predominantly black schools, a black child could try out for the cheerleading squad or run for class president, but this was not possible in newly deseg-

68. VAN AUSDALE & FEAGIN, *supra* note 55, at 126–27.

69. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

70. MELBA PATTILLO BEALS, *WARRIORS DON'T CRY: A SEARING MEMOIR OF THE BATTLE TO INTEGRATE LITTLE ROCK'S CENTRAL HIGH* (1994).

71. Leslie Baham Inniss, *Historical Footprints: The Legacy of the School Desegregation Process*, in *THE BUBBLING CAULDRON: RACE, ETHNICITY, AND THE URBAN CRISIS* 142, 155 (Michael P. Smith & Joe R. Feagin eds., 1995) [hereinafter Inniss, *Historical Footprints*].

72. *Id.*

regated schools.⁷³ In addition, all these pioneers paid a high psychological and emotional price.⁷⁴ Two were so hurt by the process that they had nervous breakdowns.⁷⁵ Interviewed as adults, numerous respondents were still in pain as they recalled negative desegregation experiences. Most reported being tormented constantly by white students, and sometimes even by teachers. One reported that “after a while all hell broke loose and they really started harassing us,” while another noted that “we had a little group [of whites] that would meet us every morning, I mean they would say little ditties to us, it was sort of like entertainment.”⁷⁶

Inniss was a black student pioneer at a formerly white high school in the 1960s. She later recounted her emotionally battering experience:

During the first year, parents spit on me, called me a monkey, and used other intimidating behaviors while lining up on both sides of my morning pathway to the school, forming what I called a “tunnel of terror.” The students defaced my locker, stole my books, and tore my clothing.⁷⁷

She continued with an account of what happened the next year when President John F. Kennedy was shot:

Through my tears and sobs I heard one white student shout that was good for him because he was “only for niggers anyway.” The third year brought more threats and indignities, ranging from warnings not to participate in certain extracurricular activities to a white boycott of a traditional school slumber party.⁷⁸

As a result of extreme harassment, most students had a sense of decreased self-esteem or self-confidence.⁷⁹ One former student noted that “desegregation left me with feelings of alienation and incompetence.”⁸⁰ Another explained:

We had to learn their way of doing things—acting, talking, dressing their way of being, but nobody was interested in our way. We wanted so badly to be accepted, we tried to do and be all they wanted and we were still rejected. Even today, I have a really big problem with rejection of any kind.⁸¹

Yet another described the severe physical effects:

To this day . . . I never eat breakfast . . . I know it’s because for those four years my stomach was so much in knots I couldn’t eat before I went to school and then I couldn’t eat lunch. I wouldn’t sit in

73. *Id.* at 151–53.

74. *Id.* at 148.

75. *Id.* at 149–50.

76. Leslie Baham Inniss, *Desegregation Pioneers: Casualties of a Peaceful Process*, 31 INT’L J. CONTEMP. SOC. 253, 259 (1994) [hereinafter Inniss, *Desegregation Pioneers*].

77. Leslie Baham Inniss, *School Desegregation: Too High a Price?*, 6 SOC. POL’Y 6, 7 (1993) [hereinafter Inniss, *School Desegregation*].

78. *Id.* at 7.

79. Inniss, *Historical Footprints*, *supra* note 71, at 157.

80. *Id.* at 154.

81. *Id.*

the lunchroom because of the things they would do. . . . [D]EEP down you know that it's stuff that still affects you.⁸²

How did they manage to survive the trauma perpetrated or allowed by white judges, politicians, teachers, principals, superintendents, school boards, parents, and bus drivers? Those who survived the experience reported on the importance of staying focused.⁸³ One child pioneer, now a successful lawyer, explained: "You just maintain and say, look my goal is to get out of here and make my grades and to get out of here and you just stay focused on that and you know it's a transition . . ." ⁸⁴ Recalling her experiences, Inniss explains how she focused "on the belief that my endurance would make things better for my own children and others who would follow me."⁸⁵ Another pioneer noted that "forced integration was the worst thing that happened to our race," and added:

[W]e were forced to play their game by their rules but now my goal is to extract all their knowledge and use it to beat them at their own game. My job is not to help white folks but to educate my son so that he is prepared and he is able to compete with those people at a very early age and that's what I'm trying to teach him.⁸⁶

What is most striking is that not one of these pioneers would do it over if they faced the situation again, and several shared the opinion that "they would never even consider sending [their] children to an integrated school."⁸⁷ In a recent interview, another pioneer in southern school desegregation, now a successful administrator in higher education, recounted with great pain: "They beat me. They beat me every day that I went into that white school . . . I can't forget . . . I can't love them now."⁸⁸

Reflecting on survival and resistance strategies that she used during the voluntary school choice period of desegregation in her southern town, sociologist Bernice McNair Barnett has explained that she protected herself from the everyday "grind of racially motivated negative incidents" by withdrawing inwardly and using "tactics similar to those of POWs who successfully survive systematic personal attack and isolation . . . I swore never to let 'them' see me cry. I was silent and found inner strength in the knowledge that I had done nothing to engender such race-based animosity."⁸⁹ The costs were high, as Barnett describes:

The years of spatial and social distancing, ostracizing, name-calling, pushing, shoving, jeering, and threatening were all a part of

82. *Id.* at 154-55.

83. *Id.* at 148.

84. Inniss, *Desegregation Pioneers*, *supra* note 76, at 259.

85. Inniss, *School Desegregation*, *supra* note 77, at 7.

86. Inniss, *Historical Footprints*, *supra* note 71, at 152.

87. Inniss, *Desegregation Pioneers*, *supra* note 76, at 268.

88. Bernice McNoir Barnett & Joe Feagin, *Schooling Experiences: Voices of Many Colors* (unpublished research paper, on file with authors).

89. Bernice McNair Barnett, *Race, Gender, & Class in the Personal-Political Struggles of African Americans: Reclaiming Voice*, in *RACE, GENDER, AND CLASS IN SOCIOLOGY: TOWARD AN INCLUSIVE CURRICULUM* 34, 35-36 (Jean Ait Amber Belkhir & Bernice McNair Barnett eds., 1999).

my daily . . . battles that gradually promoted my aloofness and silence. I was isolated and cut off from the world of my former Black peers (who saw my school desegregation choice as “trying to be White”) as well as my new White peers (who were both hate filled bullies and otherwise good hearted but silent bystanders). Mine was a battle that was fought not in the newspapers or in front of the television cameras, but alone and with the everyday survival-resistance strategies I used in a small southern school. Thus, divorced from and unaccepted in both worlds, I lost my “voice.”⁹⁰

Significantly, in her analysis Inniss ponders another question: “I wonder what, if anything, did my experiences accomplish? The cumulative, multigenerational experience of entrenched racism has never been adequately presented, examined, or analyzed from a black point of view.”⁹¹ A key problem throughout the societal desegregation process, including that of schools, is that relatively few whites have ever cared about black experiences—what Lisa Delpit categorizes as the experiences of “other people’s children.”⁹²

B. *Continuing Discrimination in Schools: Teachers and Students*

Since the days of child pioneers in desegregated schools, many white students, teachers, counselors, administrators, and parents have moderated their behavior, yet much racial hostility and discrimination remain in ostensibly desegregated schools. In the literature, we have not seen a study indicating that *any* historically white school has eliminated “root and branch” all major “burdens and disabilities” of racism. Most school desegregation has done little more than change the demographic mix of students and, less often, of faculty and administrators. Often, the senior administrative staff at schools has remained overwhelmingly, if not entirely, white. In most desegregated schools, teachers are disproportionately, if not predominantly, white and many other features of school settings remain white-normed. Given the realities of institutionalized racism, black children in desegregated schools with white majorities have continued to face racial harassment and other discrimination.⁹³

Significantly, hostile racial climates in desegregated schools seldom have been researched systematically. Reviewing the literature, we have found relatively little discussion of racial attitudes of, or discrimination

90. *Id.* at 36.

91. Inniss, *School Desegregation*, *supra* note 77, at 7.

92. See LISA DELPIT, *OTHER PEOPLE’S CHILDREN: CULTURAL CONFLICT IN THE CLASSROOM* xiii–xv (1995).

93. Desegregation has also had a negative impact on black teachers, principals, and communities. In our research, we have accounts from black teachers that they have been forced out of classrooms, been demoted, or treated as assistants for white teachers. We also have accounts of desegregation’s negative impact on the role of the black community’s schools as community centers.

by, white teachers, principals, staff, and students.⁹⁴ We see little analysis of how discrimination affects everyday school performance. Some analysts even argue that significant racial bias on the part of white (and other) teachers exhibited in learning settings is unlikely or unimportant. Thus, Jere Brophy has argued that “[f]ew teachers can sustain grossly inaccurate expectations for many of their students in the face of daily feedback that contradicts those expectations.”⁹⁵ Emil Haller has argued that, while there are likely prejudiced teachers, “the problem [of student achievement] does not seem to be of that nature. Conceiving it so is to confuse the issue, to do a serious injustice to the vast majority of teachers”⁹⁶ Whites tend to downplay the importance of the racial thinking or discrimination exhibited by whites in desegregated schools. One study of a desegregated New England middle school found that most teachers said they tried to ignore racial issues; they “denied that they noticed children’s race not only when the researchers were present but also among themselves.”⁹⁷

We have found no specific surveys of white teachers and students in desegregated schools, yet it seems probable that many of these whites hold views similar to the majority of whites questioned in recent national surveys. In these studies, a majority admit to holding negative stereotypes of African Americans.⁹⁸ Given the likelihood that many white teachers, principals, parents, and students hold similar stereotypes, future research studies of children of color will probably find substantial discrimination in school settings that is linked to stereotypes. Researchers have found that racial bias in white (and other) teachers’ expectations affects student performance; this discrimination takes the form of teachers not expecting the same performance from black and white children, or from black and white children with comparable test scores.⁹⁹ Four experimental studies show that teachers are less supportive of black students than white students in situations where they are matched for ability or randomly assigned.¹⁰⁰ In one study, black students got less feedback after mistakes and fewer hints than comparable whites.¹⁰¹ Similarly, ob-

94. For some discussion, see AMANDA LEWIS, RACE IN THE SCHOOL YARD 12 (2003); PAMELA PERRY, SHADES OF WHITE: WHITE KIDS AND RACIAL IDENTITIES IN HIGH SCHOOL 5–8, 199–202 (2002).

95. Jere E. Brophy, *Teacher-Student Interaction*, in TEACHER EXPECTANCIES 304 (Jerome Dusek ed., 1985).

96. Emil J. Haller, *Pupil Race and Elementary School Ability Grouping: Are Teachers Biased Against Black Children?*, 22 AM. EDUC. RES. J. 465, 481 (1985). We draw here on the summary in Ronald F. Ferguson, *Teachers’ Perceptions and Expectations and the Black-White Test Score Gap*, in THE BLACK-WHITE TEST SCORE GAP, *supra* note 49, at 273, 275–94.

97. JANET WARD SCHOFIELD, BLACK AND WHITE IN SCHOOL 51 (Ray C. Rist ed., 1982).

98. Lawrence Bobo, *Inequalities That Endure?: Racial Ideology, American Politics, and the Peculiar Role of the Social Sciences* (Oct. 26, 2001) (unpublished research paper, on file with authors); see also FEAGIN, *supra* note 6, at 108–15.

99. See Ferguson, *supra* note 96, at 300.

100. *Id.* at 294.

101. See *id.* at 294–95.

ervation studies in desegregated classrooms have found that teachers are more likely to encourage white students than black students to participate actively in class.¹⁰² This discriminatory behavior on the part of teachers likely affects student achievement.¹⁰³ Reviewing the literature, Ferguson concludes that “teachers’ perceptions, expectations, and behaviors probably do help to sustain, and perhaps even to expand, the black-white test score gap.”¹⁰⁴

One famous study of white children showed that those who feel stereotyped often do not perform as well as they would without the stereotyping.¹⁰⁵ Teacher Jane Elliott divided her all-white, third-grade class into privileged and unprivileged children based on eye color. Those with the favored color got better treatment from the teacher. The experiment showed the strong impact of negative and positive teacher expectations on students.¹⁰⁶ From their earliest years, black children carry the burden of disapproval by whites, including those in schools. Whatever their socioeconomic backgrounds, black children must regularly confront this negativity—a symbolic reality that affects everyday interactions and achievements. Research by Claude Steele indicates that academically successful black students are often concerned that scoring low on a test will feed stereotypes that blacks are less intelligent. In research where racial characteristics of successful black students are highlighted for them prior to an academic test, such as by having them indicate on a form their “race,” they do not do as well as when nothing is said about racial characteristics.¹⁰⁷ Accenting the “stereotype threat” can have negative effects on how well black students, regardless of class backgrounds, do on tests and other performance situations.¹⁰⁸

Still, even these important studies do not research the array of other discriminatory actions targeting children of color in desegregated schools. White teachers, principals, counselors, and students—as well as office, cafeteria, janitorial, transportation, and security personnel—act in ways that undermine the self-confidence of students of color and make learning difficult. In a biographical account, white professor Sharon Rush, who is raising a biracial adopted daughter, gives numerous examples of how whites regularly sabotage the educational growth of her talented daughter.¹⁰⁹ White teachers have discriminated against her daughter over many years in public and private schools. This discrimination involves differential expectations and discrimination in class assignments,

102. *Id.* at 300.

103. *Id.*

104. *Id.* at 313.

105. WILLIAM PETERS, *A CLASS DIVIDED—THEN AND NOW* (1987).

106. *See id.* at 163–70.

107. Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Test Performance of Academically Successful African Americans*, in *THE BLACK-WHITE TEST SCORE GAP*, *supra* note 49, at 401, 422–26.

108. *Id.* at 401–27.

109. *See generally*, SHARON E. RUSH, *LOVING ACROSS THE COLOR LINE* (2000).

curriculum, placement of desks, and sports.¹¹⁰ White students can be a problem as well. In their study of a multiracial daycare center, Van Ausdale and Feagin found that white children caused substantial psychological harm to children of color.¹¹¹ They also found that white students often do discriminatory things that interfere with school performance of children of color.¹¹²

C. *Continuing Racial Bias in the School Curriculum*

In almost all desegregated school systems, the curriculum has stayed mostly the same as it was before desegregation—with, for the most part, token gestures to the history of formerly excluded students. The orientation of many white teachers and administrators in desegregated schools seems to be one-way acculturation of children of color into a white worldview. In a 1978 study of desegregated classrooms, Ray Rist found a widespread orientation among teachers to having black students acculturate to white ways.¹¹³ Since the 1970s, multicultural education has been added to schools—and accented in teacher education—yet most schools have not successfully integrated people of color, and their histories and experiences, throughout the kindergarten through twelfth-grade curriculum and over the school year. Although some teachers add references to the accomplishments of people of color during special ethnic history weeks, the general focus of most history lessons is on white understandings of U.S. history and group experiences.

Textbooks provide one example of the whitewashed curriculum, as they often communicate much inaccurate or elliptical historical information, especially in regard to racial discrimination, stereotyping, and conflict.¹¹⁴ Assessing high school history books, Loewen found that the books ignored or downplayed the harsh realities of racial oppression, past and present.¹¹⁵ For example, New York City's Wall Street is celebrated in textbooks for its economic role, yet none note that it began as a large colonial market where whites bought enslaved African Americans in a bloody business.¹¹⁶ Not one major textbook made significant use of African American sources in regard to racial issues, and not one "lets African Americans speak for themselves."¹¹⁷

110. *Id.* at 1–8, 36–42, 51–71.

111. VAN AUSDALE & FEAGIN, *supra* note 55, at 175–96.

112. *Id.*

113. RAY C. RIST, *THE INVISIBLE CHILDREN: SCHOOL INTEGRATION IN AMERICAN SOCIETY* (1978).

114. JAMES W. LOEWEN, *LIES MY TEACHER TOLD ME: EVERYTHING YOUR AMERICAN HISTORY TEXTBOOK GOT WRONG* 137–99 (1995).

115. *Id.*

116. *See id.* at 142 (“In 1720, of New York City’s population of seven thousand, 1,600 were African Americans, most of them slaves. Wall Street was the marketplace where owners could hire out their slaves by the day or week.”).

117. *Id.* at 168.

Another curriculum bias lies in the uncritical use of literary “classics” that are often part of required reading. Analyzing schools’ use of Mark Twain’s *Huckleberry Finn*, Sharon Rush shows how widespread the requirement of reading this racist novel is in schools and what the consequences are for children.¹¹⁸ Not only does the novel bombard readers, including black children, with *more than two hundred* “nigger” epithets, but it is also riddled with racist stereotypes of African Americans, such as the explicit portrayal of heroic action by the enslaved protagonist “Jim” as indicative of his soul really being “white.” While many teachers may use the novel to problematize slavery, typically the novel is not taught as a book that is pervaded with racist assumptions and stereotyping by its prominent author.¹¹⁹

D. *More Second-Generation Segregation: Ability Tracking*

One sees systemic discrimination in ostensibly desegregated schools in the widespread use by authorities of ability tracking that creates “second-generation” segregation. In desegregated schools, most children of color learn in segregated classroom tracks with fewer resources and less rigorous teaching than tracks for allegedly “more talented” students, most of whom are white because of bias in the selection process.¹²⁰ Derrick Bell underscored this problem over two decades ago: “Extra money for special programs with better, higher-paid teachers follows white students into special, upper-track classes even within integrated schools, where most blacks are trapped in lower-track, generally ineffective and less expensive course offerings.”¹²¹

Tracking is well-remembered by students. In our interviews with people who attended desegregated schools, one white college student recounted his experience:

I found out that even though we were always in mixed classes in elementary school, they were tracking us, like they had us divided into groups and were kind of watching us as we developed If you look at the racial mix of the classes, [the] honors track seemed to be predominately white and the lower, like regular classes, would be predominately African American. . . . They’d be placed in the lower track so early on, that it was just impossible to break out of even if they had the ability level.¹²²

Much research now shows that tracking assigns students of color “unjustifiably and disproportionately to lower tracks and almost excludes them

118. Sharon E. Rush, *Emotional Segregation: Huckleberry Finn in the Modern Classroom*, 36 U. MICH. J.L. REFORM 305, 308 (2003).

119. *Id.* at 306.

120. See generally KENNETH J. MEIER ET AL., *RACE, CLASS AND EDUCATION: THE POLITICS OF SECOND GENERATION DISCRIMINATION* (1994).

121. Derrick Bell, *A Model Alternative Desegregation Plan*, in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION*, *supra* note 14, at 124, 136.

122. Barnett & Feagin, *supra* note 88.

from the accelerated tracks; it offers them inferior opportunities to learn and is responsible, in part, for their lower achievement."¹²³ Recalling this pattern, a middle-aged white teacher in our interview study recently commented:

I remember in the fourth grade when the first time I actually had a black classmate. I specifically remember [him] reading along in class, and I think it was the word Nazi that came up. And I didn't know what the word was, but he knew; and I was kind of impressed by that. By the time I got to high school, or even junior high, when I started getting separated from other students . . . the number of minorities dropped precipitously. So by the time I was in high school, in honors classes, there were perhaps you know some Arab or Indian students in those classes with me . . . African American and Latinos weren't in those classes.¹²⁴

Significantly, African American students often get placed in tracks lower than their measured abilities indicate, even as measured by the racially biased conventional tests. Students in higher tracks typically get more attention and better resources, often including more experienced teachers and more rigorous instruction. Students in privileged tracks in early grades tend to perform better in later schooling, and thus over time "racially stratified tracks create a discriminatory cycle of restricted educational opportunities for minorities who are disproportionately assigned to lower tracks irrespective of their academic abilities."¹²⁵

Several early studies showed that desegregated school systems that eliminated or significantly reduced ability tracking had better achievement results than those that maintained or increased tracking.¹²⁶ More recently, Roslyn Mickelson has summarized much school research: "[W]hen schools consistently employ practices to enhance equality of opportunity (including the elimination of tracking and ability grouping), desegregation brings clear, though modest academic benefits to black students and does no harm to whites."¹²⁷

Interestingly, in her own Charlotte-Mecklenburg study, Mickelson found that breaking down tracking benefits whites, as well.¹²⁸ Thus, tracking has negative effects on all children, for they are much less likely to learn effective ways of interacting with people of different backgrounds.¹²⁹ Homogeneous socializing limits the breakdown of racial-

123. Mickelson, *supra* note 51, at 1513, 1529–33.

124. Barnett & Feagin, *supra* note 88.

125. Mickelson, *supra* note 51, at 1532.

126. Thomas F. Pettigrew, *A Sociological View of the Post-Milliken Era*, in *MILLIKEN V. BRADLEY: THE IMPLICATIONS OF METROPOLITAN DESEGREGATION* 53, 58 (U.S. Commission on Civil Rights ed., 1974).

127. Mickelson, *supra* note 51, at 1528–29.

128. *Id.*; Telephone Interview with Roslyn A. Mickelson, Professor of Sociology, University of North Carolina at Charlotte (Jan. 19, 2004).

129. Mickelson, *supra* note 51, at 1533.

ethnic stereotyping.¹³⁰ Significant amounts of literature now indicate that the more diverse the learning milieu, the more likely people are to progress beyond rigid and stereotyped ways of thinking.¹³¹

E. Problems of Testing: Racial and Class Bias

Substantial racial and class biases exist in testing procedures used for placing children in educational programs. Most standardized tests, including so-called intelligence tests, measure learned skills, not some broad “intelligence.”¹³² Skills learned depend on resources in home and school environments, which often disadvantage the learning process for lower-income children.¹³³ Black and Latino children often do less well than whites on paper-and-pencil tests standardized on whites and created by educators who are overwhelmingly white. Such tests are typically skewed toward the knowledge—including subtle understandings—of the white middle-class minds that generate test items from within a limited racial-class experience. Traditional tests measure only certain skills and acquired knowledge—skills and knowledge not equally available to all racial groups because of centuries of discrimination. Successful achievement test taking is a skill that white middle-class children are more likely to possess than working-class children, including most children of color. Aptitude tests, research indicates, have “on the whole favored prosperous youths and penalized poor ones.”¹³⁴ Such testing clearly reflects the racial-class system. In addition, the testing situation can create the problem of test anxiety noted previously. At best, a small portion of human abilities are revealed on any achievement test.¹³⁵

F. “Acting White”: A Secondary Factor

Some researchers, such as John Ogbu, view achievement differences between black and white children as more likely the result of negative black school cultures than of problems with institutionalized racism in schools. That is, academically successful black students are put down so much by their black peers that they cannot achieve as well as whites. Ogbu gathered ethnographic data supposedly showing the severe effects of being put down for “acting white,” as well as showing that black stu-

130. *Id.* at 1532.

131. Patricia Gurin et al., *Diversity in Higher Education: Theory and Impact on Educational Outcomes*, 72 HARV. EDUC. REV. 330, 330–66 (2002).

132. N.J. Block & Gerald Dworkin, *IQ, Heritability, and Inequality*, in *THE IQ CONTROVERSY* 410, 411 (N.J. Block & Gerald Dworkin eds., 1976).

133. JOE R. FEAGIN & CLAIRECE Y. FEAGIN, *RACIAL AND ETHNIC RELATIONS* 164–65 (7th ed. 2003).

134. NICHOLAS LEMANN, *THE BIG TEST* 271 (2000).

135. Block & Dworkin, *supra* note 132, at 411.

dents and parents do not put as much emphasis on education as whites.¹³⁶ We will examine later the fallacious notion that African Americans do not value education as much as whites, but should note here that much research contradicts the notion that pressure from other students has severe and lasting effects on achievement of talented students. For example, Cook and Ludwig summarize that research as follows:

Black high school students are not particularly alienated from school. They are as likely as whites to expect to enter and complete college, and their actual rate of high school completion is as high as that among whites from the same socioeconomic background. Also, black and white students report that they spend about the same amount of time on homework and have similar rates of absenteeism.¹³⁷

Despite the widespread belief that typical black students do not work as hard in school as white students, no research evidence exists for this stereotyped notion. Black and white high school students who do well in school are no more likely to be socially unpopular than other students. While successful students—black, white, Latino, Asian, Indian, and others—do periodically get taunts from less successful students, such comments usually “do not inflict especially grievous social damage.”¹³⁸

VIII. CHILDREN’S CONTINUING BURDENS: GREAT EXPECTATIONS, LITTLE SUPPORT

Over the history of school desegregation, educators and politicians have often forgotten about the everyday lives and well-being of children. Repeatedly, children are treated like blank slates, robotic machines with protective armor, or trained soldiers going to battle. They are told to fight with bravery to achieve society’s goals, regardless of casualties. But these are America’s children. Many have performed key roles in the implementation of school desegregation, thereby reflecting the better ideals of the larger society. The enormity of the children’s burden is seen in the unforgettable images of six-year-old Ruby Bridges bravely walking up steps escorted by federal marshals to a previously segregated school in New Orleans; of Elizabeth Eckfort walking resolutely with her head held high while flanked by whites yelling venomous epithets in Little Rock; of Vivian Malone and James Hood attempting to enter the University of Alabama as Governor George Wallace stands in the door; of James Meredith trying to enter “Ole Miss” as Governor Ross Barnett fuels rioters by declaring “segregation today, segregation forever;” or of Charlayne Hunter and Hamilton Holmes escorted by police at the University

136. JOHN U. OGBU, *BLACK AMERICAN STUDENTS IN AN AFFLUENT SUBURB: A STUDY OF ACADEMIC DISENGAGEMENT* 198–203, 219–21 (2003).

137. Philip J. Cook & Jens Ludwig, *The Burden of “Acting White”: Do Black Adolescents Disparage Academic Achievement?*, in *THE BLACK-WHITE TEST SCORE GAP*, *supra* note 49, at 375, 390.

138. *Id.* at 391.

of Georgia after rioting whites burned crosses and Governor Ernest Vandiver vowed to let “not one, no, not one” black student enter. Such searing images emphasize the significance of black children’s burden in achieving what adults had not achieved over centuries of oppression.

In a 2003 Supreme Court opinion regarding a University of Michigan affirmative action program, Justice Sandra Day O’Connor expressed the view that in twenty-five years the United States may not need to consider racial characteristics to achieve educational diversity.¹³⁹ Reflection on the 170-year history of racism in education casts doubt on that expectation. Over the last four presidential administrations, national school reform plans for enhancing the achievement of “all children” prompt both hope and caution for the next twenty-five years. It will likely take much more time for children of color to achieve parity with white children.

The four most widely publicized educational plans over the past twenty years have been controversial. *A Nation at Risk*,¹⁴⁰ *America 2000: An Educational Strategy*,¹⁴¹ *Goals 2000: Educate America Act*,¹⁴² and *No Child Left Behind*¹⁴³ are problematic in terms of expectations and results for children. Some have fundamental flaws in design that are insensitive to the realities of many working-class children, a disproportionately large number of whom are African American, Latino, or Native American.

A Nation at Risk, a 1983 report of President Ronald Reagan’s National Commission on Excellence in Education, had well-publicized expectations and strategies. It evaluated public school children unsympathetically:

Our nation is at risk. . . . [The] educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. . . . If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war.¹⁴⁴

A Nation at Risk advocated education to support U.S. economic competition for “international standing and markets.”¹⁴⁵ Excellence meant accountability for scores on standardized tests in English, mathematics, science, social studies, and computer science. Recommending a market-oriented educational system, higher standards and expectations, more learning time, school choice, teacher training, school-business alliances,

139. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) (“We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”).

140. NAT’L COMM’N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983) [hereinafter *A NATION AT RISK*].

141. U.S. DEP’T OF EDUC., *AMERICA 2000: AN EDUCATIONAL STRATEGY* (1991) [hereinafter *AMERICA 2000*].

142. *Goals 2000: Educate America Act*, Pub. L. No. 103-227, 108 Stat. 125 (1994).

143. *No Child Left Behind Act of 2001*, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

144. *A NATION AT RISK*, *supra* note 140, at 5–6.

145. *Id.* at 6.

and more citizen support, the report's goals were supposed to bring "all children" to a level of excellence.¹⁴⁶ *A Nation at Risk*, however, ignored the structural inequality in education demonstrated above—inequalities in resources from racism and classism—and placed an unfair burden on working-class children and parents from all backgrounds to meet its goals.

In the early 1990s, President George H. W. Bush proclaimed *America 2000: An Educational Strategy* as his plan for attaining excellence in public schools. *America 2000* again emphasized excellence in English, math, science, history, and geography, as well as common values, technical training, and business participation in a market-type system with school choice and vouchers.¹⁴⁷ Like *A Nation at Risk*, it did not achieve its goals, in large part because it failed to deal honestly with extreme inequalities generated by racism and classism in schools.

President Bill Clinton accented similar themes in his *Goals 2000: Educate America Act*. The Clinton plan called for "all children" to achieve excellence by 2000. Incorporating *America 2000* goals, it heralded great expectations: all children will enter school with a readiness to learn; the country will achieve a ninety percent high school graduation rate; children will demonstrate competency in challenging subjects; the United States will become first in the world in science and mathematics achievement; teachers will have new resources; schools will increase parental participation; all adults will be literate; schools will be free of drugs.¹⁴⁸ Again, *Goals 2000* did not adequately address the racial and class inequalities governing many children's lives. Indeed, while poor children are at much greater risk of academic failure than advantaged children, their families were attacked by the era's so-called welfare reforms,¹⁴⁹ which reduced the resources available for poor families to achieve educational goals.

More recently, President George W. Bush decreed his *No Child Left Behind* plan. Building on previous plans and emphasizing the pieties that "no child should be left behind" and that "every child should be educated to his or her full potential," Bush proposed closing the achievement gap through increased accountability in the form of extensive testing of children, annual assessments, and school transfers for students who "fail to make progress."¹⁵⁰ Such national testing strategies, however, have been tried before and have not achieved the expectations for "all children," particularly working-class children of color.

146. WILLIAM A. FIRESTONE ET AL., *THE PROGRESS OF REFORM: AN APPRAISAL OF STATE EDUCATION INITIATIVES 8-9* (1989).

147. U.S. DEP'T OF EDUC., *AMERICA 2000: AN EDUCATION STRATEGY* (1991).

148. *Goals 2000: Educate America Act*, Pub. L. No. 103-227, 108 Stat. 125 (1994).

149. *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

150. *No Child Left Behind Act of 2001*, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

During school desegregation efforts following *Brown*, and under the aforementioned national reform plans, children (especially children of color) have borne the actual burden of school change and policy regression. National plans, like earlier court orders, have generated programs to improve educational performance, such as magnet schools. Yet, the majority of children in public schools have been unable to achieve the plans' grand goals. In formulating national education plans, adults have not sufficiently considered the heavy burden placed on children and have neglected the great expenses in monetary and human capital necessary for children to reach parity in an educational foot race with a legacy of ball-and-chain impediments placed around the feet of children of color and/or working-class children.

IX. CONCLUSION: STRENGTHS OF BLACK CHILDREN, PARENTS, AND COMMUNITIES

We see *significant successes* and *major failures* following in the wake of *Brown*. Racial desegregation is a major break with apartheid, and desegregation works best when resources—economic, educational, legal, and political—are put into it wisely. The racial world of the United States is much different now than it was in the decade before *Brown*. We have documented important successes in desegregating educational institutions as well as in the larger society. Research shows that desegregated schooling has a positive impact on academic achievement for most students, typically with substantial gains for students of color. Research demonstrates, too, that black students attending desegregated schools tend to do better in job and educational attainments later in life. Those students who have attended desegregated schools are more likely to attend college, work in desegregated environments, and have diverse friends. Researchers have shown that many students in desegregated schools become less stereotypical in their thinking about other groups—which equips them better for life in this increasingly multiracial society. Clearly, *Brown's* impact is not limited to education, for, as Judge Robert Carter has underscored, *Brown* brought about “a radical social transformation in this country and whatever its limited impact on the educational community, its indirect consequences of altering the style, spirit, and stance of race relations will maintain its prominence for many years to come.”¹⁵¹ *Brown*, together with other contemporaneous desegregation efforts, dismantled much of the legal architecture of antiblack oppression in the United States.

In spite of the substantial hostility African American students and other students of color face in desegregated schools, they have managed to achieve much. While historically and predominantly white school set-

151. Carter, *supra* note 21, at 21.

tings are social comfort zones for most whites, most black students integrated into these settings find themselves in difficult environments well outside their social comfort zones.¹⁵² There, as well as in the larger society, they face significant discrimination—for many, hundreds of discriminatory incidents each year. When black children face racism routinely, it is extraordinary that most do as well as they do in desegregated settings. The energy loss alone that results from dealing with hostility and discrimination may be enough to account for the remaining differences in school performance of white and black children. The *extraordinary strength* shown by black children in getting through a racialized day, as well as the academic achievements under these conditions, gets little discussion in most analyses of desegregation.¹⁵³ These strengths deserve extensive research, as they are likely based in the collective values and knowledge that African Americans have accumulated over centuries of struggles against racism.¹⁵⁴

Indeed, we see evidence of the impact of successes in the civil rights struggle against racism and in the educational achievements of African Americans. Over the course of the 1950s and 1960s, black students made dramatic educational gains. By the mid-1960s, large numbers of black students were graduating from high school.¹⁵⁵ The percentage graduating in the South increased from thirty-five percent in 1960, to seventy-one percent less than two decades later.¹⁵⁶ Historically black colleges saw dramatic increases in black college graduates, as did formerly segregated white colleges.

Nonetheless, research documents the continuing significance of discrimination in majority white colleges,¹⁵⁷ as well as the increasing disparity in the gender ratio among black students, especially because black males are more likely to drop out of college.¹⁵⁸ Thus, current problems in education reveal the interrelatedness of *racial, gender, and class* factors in the pipeline to achievement—with some parents and educators of black children now supporting the idea of Africentric (often all-male) academies.¹⁵⁹

152. JOE R. FEAGIN ET AL., *THE AGONY OF EDUCATION: BLACK STUDENTS AT WHITE COLLEGES AND UNIVERSITIES* 7–9 (1996).

153. See generally *THE BLACK-WHITE TEST SCORE GAP*, *supra* note 49.

154. See, e.g., YANICK ST. JEAN & JOE R. FEAGIN, *DOUBLE BURDEN: BLACK WOMEN AND EVERYDAY RACISM* 192–208 (1998) (discussing history and its effects on African American women).

155. Gavin Wright, *The Economics of Civil Rights* 12 (Mar. 5–8, 2003) (unpublished paper prepared for the Citadel Conference on the Civil Rights Movement in South Carolina, on file with authors).

156. *Id.*

157. JOE R. FEAGIN, *THE CONTINUING SIGNIFICANCE OF RACISM: U.S. COLLEGES AND UNIVERSITIES* (2002).

158. Karen W. Arenson, *Colleges Struggle to Help Black Men Stay Enrolled*, N.Y. TIMES, Dec. 30, 2003, at A1, available at <http://209.157.69.200/focus/f-news/1048829/posts>.

159. RONNIE HOPKINS, *EDUCATING BLACK MALES: CRITICAL LESSONS IN SCHOOLING, COMMUNITY, AND POWER* 94 (1997).

Today, African Americans, including students, place great emphasis on the importance of education in the larger society, despite historical relations of racial privilege that structure experiences of black students inside and outside of school classrooms. One recent analysis found that black students “have high educational aspirations, and they are more likely than whites to continue with their schooling at given test score levels.”¹⁶⁰ Black Americans with jobs are more likely to pursue education into adulthood than comparable whites.¹⁶¹ In surveys, African Americans show as much, or more, desire for education as whites, yet they are more likely than whites to understand the structural barriers African Americans face in attaining more education.¹⁶² Whites are more likely than blacks to view low socioeconomic status and lesser performance in school as indicators of personal failure, while blacks are more likely than whites to accent structural factors as barriers.¹⁶³

We should situate the great difficulties in desegregating schools in the context of structural barriers created in this racist and classist society. In our interviews, a middle-aged white teacher recently commented:

I think what needs to be done nobody wants to do it. Like they talk about building one big giant school around here and everybody would go to it. . . . You can't have [names affluent school]—that's where all the money is at. . . . [B]ut [names poor school], they don't have a chance, and that's 80 percent, probably, minorities there.¹⁶⁴

We cannot bring profound change in one area of this racist society by dismantling discrimination in schooling alone, no matter how well done. Racism is systemic and reflected in all major U.S. institutions. Those Americans who are not white are generally at a huge disadvantage relative to whites. Because the privileged are resistant to significant change, successful progress against racial discrimination constantly faces the threat of backtracking. In American society constant organization for change is necessary.

The *Declaration of Independence* articulated the great American ideal that “all men are created equal,” a doctrine the Founders meant to apply to white men with property. However, once this grand doctrine was articulated, subsequent generations have pressed for its application to ever-expanding groups of Americans. Thus, the Fourteenth Amendment was enacted to make newly freed African Americans into the full U.S. citizens they had not been before the Civil War:

All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or

160. JUDITH R. BLAU, RACE IN THE SCHOOLS: PERPETUATING WHITE DOMINANCE? 209 (2003).

161. *Id.*

162. *Id.* at 208.

163. *Id.*

164. Barnett & Feagin, *supra* note 88.

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹⁶⁵

All government actions that overtly or covertly create or sustain racial segregation in any area of society operate to subordinate and stigmatize African Americans and thereby blatantly violate the Fourteenth Amendment's promise of full citizenship "privileges and immunities" and the "equal protection" of the laws for African Americans. The authors of the *Brown* decision glimpsed the great promise of equality for all that is embedded in the *Declaration of Independence* and in the Fourteenth Amendment, yet neither they nor their official governmental descendants have been willing to turn this rhetorical promise into a social and political reality. *That is now our task.*

165. U.S. CONST. amend. XIV, § 1.