



# Brown v. Board of Education:

Message for the Future

LYNN HUNTLEY

## BIOGRAPHICAL STATEMENT

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Lynn Huntley is the first Black female president of the Southern Education Foundation (SEF), a public charity based in Atlanta, Georgia, that works to advance equity and excellence in education for the students and communities that need help the most. A native of Petersburg, Virginia, Ms. Huntley attended Fisk University and graduated with honors from Barnard College with an A.B. in Sociology. She is an honors graduate of Columbia University Law School, where she was the first Black woman to earn a place as a member of the *Columbia Law Review*.

Following a clerkship with Honorable Judge Constance Baker Motley in the Southern District of New York, Ms. Huntley worked at the NAACP Legal Defense and Educational Fund, Inc., specializing in cases involving the abolition of the death penalty and prisoner rights; New York City Commission on Human Rights, where she served as general counsel; and the U. S. Department of Justice, Civil Rights Division, where she served as section chief and deputy assistant attorney general. Ms. Huntley joined the staff of the Ford Foundation in 1982 as a program officer and advanced to program director during her 13-year tenure there. She joined SEF's staff in 1995 to direct an international human rights project comparing race, poverty and inequality in Brazil, South Africa and the United States and strategies to overcome discrimination. She became SEF's executive vice president in 2001 and president in 2002.

She has authored numerous articles for publications such as *Foundation News and Reports*, *Crisis Magazine* and *Essence*, and reports including a series of *Beyond Racism* reports published by SEF. She is co-editor of *Beyond Racism, Race, Poverty and Inequality in Brazil, South African and the United States*. 2001. Boulder: Lynne Reinner Publishers, and *Tirando a Mascara (Removing the Mask)* 2000. Editora Paz E Terra S. A., a Portuguese language anthology.

Ms. Huntley has received numerous awards, including an honorary degree from Cambridge College, the Lucy Terry Prince Award of the Lawyers' Committee for Civil Rights Under Law, the Tufts' University Dr. Jean Mayer Global Citizenship Award, the Association of the Bar of the City of New York's Thurgood Marshall Award. In 2004, she was selected by the Association of Black Foundation Executives to be the James A. Joseph Lecture honoree. She currently serves on the Board of the American Constitution Society, CARE USA, Grantmakers for Education, the Interdenominational Theological Center, and Providence Missionary Baptist Church, among others.

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*I can still well remember walking past the red brick schoolhouse in my grandparents' hometown, Moundville, West Virginia. It had a paved playground and a coveted swing and slide set that I, at 6 years old, wanted to play on. But my parents had warned me that I was never to go into that schoolyard, and so, quiet as a bird, each day I walked past that schoolhouse that seemed so big to a child so small, and went instead into the little run-down wooden building that was "our" school.*

*Our school—reserved exclusively for Black people, although I did not know it at the time—was the same old, one-room building that my father and his brothers and sisters had attended generations before. It had battered wooden desks that had seated many restless young people over the years. It had a blackboard at the front, a large*

*potbellied coal stove, scarred, rough-hewn floorboards, and little else. Our books were torn and dirty. Our devoted but tired teacher, Ms. Ethel McClendon, taught children in grades 1 to 8. Though she was caring, everything else about the school shouted "second-class."*

*I did not understand why I couldn't go to that other school. In 1953, when I began first grade, I don't suppose that I understood that I was "Black" and the children who attended the other school were "White." Racial terms can be so confusing to a child whose innocence does not attribute meaning to skin color. But the society into which I was born had rules, and one of the rules was that children like "me" were not allowed to be with children like "them." In 1954, I was one of the children whose rights to equal education opportunity were adjudicated by the United States Supreme Court in *Brown v. Board of Education*.<sup>1</sup>*

The 50-year anniversary of the U.S. Supreme Court's decision in *Brown v. Board of Education*, the case that broke the legal spine of racial segregation in public education, provides a fitting occasion to cast eyes back on the past in order to understand and harvest its many lessons and gaze toward the future with those lessons in mind. Looking back is not something that many Americans like to do, particularly when the subject is race, racism, segregation, and discrimi-

nation. Many of us, especially, but not only Whites, would prefer to turn blind eyes to a national history that denied systematically equal rights to Black people longer than it has granted them access to such rights. Race is still a raw nerve in America.

At an early age, my life was marked by race. I carry around inside every day memories of the hurt, anger, frustration, and bewilderment that I felt as a child because of a social order that sought to pin a badge of inferiority on my breast and that of others like me. I do not have the luxury of forgetting. My life experiences and concerns for family and friends whom I hold dear and all others who will live after we are gone force me to look at the past with unhooded eyes.

In this short essay, I share personal thoughts about *Brown* and the lessons that the decision and its aftermath proffer for all who aspire to promote equity and excellence in education today. How are we doing in our pursuit of that aim? What does the future portend? Why is it important to reduce education inequality?

## LESSONS FROM BROWN

Let us begin by remembering what should be now familiar: In 1954, racial segregation in virtually all aspects of life in the South was the order of the day. In Southern states, there was no bar on discrimination against or exclusion of Blacks from places of public accommodation or facilities employment, housing, or voting. The idea of “equal enjoyment of rights and benefits of citizenship” for Blacks was alien to many, if not most, Whites. “Whites only” signs were ubiquitous. Violence to keep Blacks in “their place” was an expectation, a fact

of life. Force and intimidation, formal and informal, created and sustained structural and interpersonal inequality between Whites and Blacks.

Many Whites at that time believed, perhaps earnestly, that Blacks lacked the intellectual capacity to be anywhere other than at the bottom of the social, political, and economic ladder.<sup>2</sup> Such beliefs were, of course, convenient for those who benefited from the cheap, exploitable, and accessible Black labor pool created and perpetuated by lack of education and discrimination.

There must be something very appealing to some folks about being able to feel “better” than someone else. Maybe, for all of those fear- and hate-filled folks, feeling “better” than or essentially “different” from others is the only way they can feel content with their own stations in life or numb themselves to the fundamental injustice all around them. In 1954, the world was filled with many White people who did not feel diminished by the social, economic, and racial exclusion and segregation evident in our neighborhoods, workplace, church place, or schools.

Black people, by way of contrast, have always had an aspiration to be “free,” to be treated fairly, to be upwardly mobile, and to be recognized for the gifts and the contributions they have made and aspire to make to the commonweal. Whether manifest during slavery through furtive efforts to learn how to read, revolts, running away from captivity via the Underground Railroad, or the sit-ins, freedom rides, marches, appeals to conscience, or lawsuits of later years, Blacks have always sought to create better lives for themselves and their posterity. For years preceding *Brown*, Black women and men—washer women, maids, laborers, doctors,

farmers, mechanics, preachers, teachers, barbers—waged a solitary battle through fits and starts to gain fair treatment for themselves and their community. Some lost their lives through lynchings and other atrocities. Others lost their jobs or their homes, but they stood up against overwhelming force to try to change their circumstances.<sup>3</sup> They made many sacrifices. Their courage changed the actual scheme of things.

That the yearning of Blacks for freedom and equality, rooted in religion and culture, was largely invisible to those in power before, after, or at the time of *Brown*, or left out of the pages of history books, does not mean that it did not or does not now exist. The Black struggle for civil rights in the United States was and is part of a global struggle for human rights being waged by oppressed people of all stripes and phenotypes everywhere. As Archbishop Desmond Tutu of South Africa reminds us:

*No matter how long and how repressive ... unjust and undemocratic rule turns out to be, the urge for freedom remains a subversive element threatening the overthrow of rigid repression-freedom will break out. People are made for it just as plants tilt toward the light and toward the water.<sup>4</sup>*

Once, when I worked at a Wall Street law firm for a summer, one partner asked me—I believe with all good intentions—“What do Black people want?” Well, we want what all people want and should have—full respect for and enjoyment of our human rights and dignity. And we will work

as long as it takes to gain unequivocal acknowledgment of our equality to all other members of the human species.

Responding to such collective aspirations, Thurgood Marshall, Robert Carter, Jack Greenberg, and other lawyers, some White, some Black, developed a “test case” strategy designed to see whether the courts, the branch of government charged with protecting the rights of vulnerable and unpopular groups, would live up to their appointed duties. With clear eyes, big hearts, large intellects, and great determination, these lawyers and their clients led the effort in the courts to make real the lofty promise of justice inscribed in the U.S. Constitution.

This noble story—of Black people pursuing their rights and social justice; of courageous White allies willing to stand up against peers in support of fairness; of lawyers using their intellect to break down a web of racially oppressive laws, attitudes and practices; of social scientists using their skills to document the causes and consequences of education inequality; and of judges taking seriously their responsibilities to uphold the Constitution—is the backdrop for the *Brown* decision.

In that decision, written in response to Thurgood Marshall’s plaint during oral argument—“Why of all the multitudinous people of this country (do) you have to single out the Negro and afford him this separate and unequal treatment,”<sup>5</sup> the high court wrote:

*To separate them (Blacks) from others of similar age and qualifications 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.*<sup>6</sup>

The court was responding to the evidence put before it by plaintiffs to demonstrate that separate can never be equal. Plaintiffs sought to establish that segregation had negative consequences on African Americans and deprived them of benefits that they would receive in racially integrated schools.

With the benefit of historical hindsight, the language of *Brown* seems somewhat stilted and dated, and so it is. The reasoning that the court felt comfortable in adopting reflects the prevailing mores *at the time*.

I also know this: When I went to segregated schools because I had no *choice*, I felt strongly that I was being treated unfairly because I knew that I was the equal of any White student or person. I knew that the “powers that be” considered people of my hue as their “inferiors.” I knew that the schools Blacks attended were not as well appointed as those populated by Whites. I knew that most Whites saw Black people as “second-class.”

Fortunately, I had parents who helped me avoid internalizing feelings of inferiority or feeling personally devalued or unworthy. I also had proud Black teachers who impressed upon their students the message that we could do anything anyone else could do. We were encouraged to compete against the prevailing racial stereotype of who we were and what we were about.

I attended Fisk, a historically Black university, for two years. At the Southern Education Foundation where I work today, through our programs to help historically Black col-

leges “stand and prosper,”<sup>7</sup> we see clearly the tremendous contributions that these institutions make to educational excellence and access. They are part of the solution to contemporary patterns of education inequality from which Blacks continue to suffer. They promote high self-valuation and encourage their students to “shine.” They are places where self-confidence is nurtured and, indeed, enhanced.

Lack of self-esteem does not *have to attend* racially segregated education, but it may. For many Black students without the advantages that I enjoyed, I am sure that the inferior surroundings in which they are schooled *do* create feelings of inferiority and devaluation. Internalized oppression is a real illness that affects more Black people than we wish to acknowledge.

Seeing how “stony the path we have trod”<sup>8</sup> has been and looking at the unpaved roads ahead, it is tempting to some to say that Thurgood Marshall and his colleagues were misled when they sought to integrate public education. It does not matter, revisionist students of history now proclaim, whether schools are “racially identifiable” or *de facto* segregated. As one activist said recently, “Segregation isn’t the problem. The problem today is education quality. My Black child doesn’t have to sit next to a White child to learn.”

With all due respect, this heartfelt sentiment misses the point. People should give Thurgood Marshall and others of that era more credit for having common sense. Marshall and many others involved in *Brown* had attended racially segregated schools. They had developed minds, so they knew that “a Black child doesn’t have to sit next to a White child to learn.” But they also knew, given the imbalance of power between Whites and Blacks *at that time*, that the

only way to ensure that Black children would have equal or fair access to the same education as White children was if they were all in the same classroom together. The *Brown* case was an effort to ensure a fair result—better access to quality education for Black children—and the theories put forth in the case were designed to achieve that end.

Though not advanced as the centerpiece of the litigation, Thurgood Marshall and his colleagues knew that racial segregation stunts the growth and humanity of Whites living in a bubble of false superiority. While the court focused on the damage to Black children created by enforced racially segregated public education, the lawyers and litigants in *Brown* knew that there were educational and social benefits that would flow from integrated schools: enlivened and broadened inter-group understanding, erosion of stereotypes, resistance to the irrationality of racism, and new venues for Black *and* White young people to look at each other up close and with fresh eyes. The young Black people who integrated the schools in the aftermath of the decision, who walked stoically through ugly crowds, who endured isolation in the classroom and the disdain of their White peers, who kept their eyes on the prize, were goodwill ambassadors from the Black community to people of conscience everywhere. Their example over time changed lots of hearts and minds.

As a methodological matter, it is difficult to establish definitively the impact of integrated education on the levels of individual student achievement. Clearly, many factors contribute to learning—concentrated poverty or affluence, teacher quality, supportive services, and parental involvement, among them. There is a growing body of research that

finds that overall levels of Black student achievement are enhanced, at least according to standardized measures, through attendance at integrated elementary and secondary schools. Is this due to access to better teachers and facilities or throwing off the shackles of segregation itself? I suspect both and more.<sup>9</sup>

Of course, we all know that the battle to desegregate the schools of the South—and the North, for that matter—was hard fought. As we mark the 50-year anniversary of *Brown*, huge numbers of Whites have abandoned the South’s public education system. These students are now in “segregation academies” or predominantly White private schools. Class disparities, segregated housing patterns, demographics, and judicial decisions have paved the way for the “racially identifiable” public schools that continue to dot the South’s landscape, indeed dominate it.<sup>10</sup>

What would our nation’s or region’s public education system be if, rather than fleeing from it, Whites had stayed in it—with their superior economic and political power and access? What would happen today if, rather than talking about educational triage through voucher or transfer programs or charter schools, there was a genuine shared, broad-based public commitment to having the finest public elementary and secondary school system possible *for all children*?

At the time *Brown* was decided, few could have foreseen how much many Whites would resist desegregation. Indeed, the hurt and bitterness in evidence among many Blacks when conversation turns to school integration is at core deep disappointment. After all of the sacrifices, so many Whites apparently continue to harbor the same old



fears, prejudices, and predilections. Tired of efforts to effect transformation and filled with a desire to protect children from long commutes to or maltreatment in desegregated schools, many Black people are looking back to a mythical past and imagining the “good ole’ days.” Well, I understand the inclination, but to quote the vintage comedian Moms Mabley: “I was there in the good ole’ days. Where was they at?”

*Brown* ushered in an era of social transformation that emboldened Blacks and their allies to press for and achieve passage of landmark legislation—the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. It encouraged the growth of a public interest bar that even today works to address problems of poverty, race, and inequality in law and related policy. It sparked the interest of researchers and others eager to understand the “two nations” that comprise the United States. *Brown* helped to break the conspiracy of silence that surrounds matters racial. It opened up schools—elementary, secondary, and higher—to Blacks and other students who now comprise the “diversity” said by the U.S. Supreme Court, in its decision in *Grutter v. Bollinger*, to have educational value.<sup>11</sup>

*Brown* contributed to the growth of a better-educated Black middle class that, in its own way, seeks to broaden opportunity for its sons and daughters and others still stuck at the bottom of the ladder. It contributed—at least episodically, depending upon where one looks—to the use of public funds for restorative and compensatory purposes to help improve the educational, social, and political fortunes of poor people, immigrants, women, Latinos, Asians, and other “minority groups.” *Brown* fostered a new wave of activism, a

new consciousness, a new social order, a new value system, and new coalitions of shared interest that are helping the nation, in ways large and small, to live up to its egalitarian promise.

Though the current system of public education in the United States is fraught with problems, let us not forget those who over the past 50 years received a fairer, better chance to develop their talents and emancipate themselves from poverty, and who are now helping shape and lead efforts to improve and enhance education quality and access. Let us not forget the teachers, education administrators, nonprofit leaders, philanthropies, public policy-makers, business leaders, clergy, community leaders, ordinary folk, and lawyers—everyone who has since *Brown* brought us thus far along the way.

Hope is a fragile thing in this world. It is important to celebrate victories. Let us take hope for tomorrow in light of all that has been overcome in the past.<sup>12</sup>

## EDUCATION TODAY

During the *Brown* era, attention was appropriately focused on the racial composition of schools. Today, school integration cases may be found in the courts, but as borne out by the data, such cases are a dying breed. Always resisted by White-dominated school districts, irate parents—White and Black—irritated school officials, and judges reluctant to get involved, school integration cases were often winnable on straightforward evidence related to enrollment and/or employment patterns. Fashioning workable remedies, however, was problematic 50 years ago and today. What are the best ways to promote integration? Busing—voluntary or



compulsory? Magnet schools—to what end and pursuant to what criteria should students be admitted? How much integration will suffice?

After many years of litigation, the courts have effectively closed the door on many, if not most, public elementary and secondary school-focused integration cases. By holding that inter-district remedies that take housing patterns into account are impermissible<sup>13</sup> and devising criteria through which school districts that had previously been declared “dual” and race-based can now be found to be “unitary,”<sup>14</sup> the courts have seriously reduced the power and impact of such litigation.

These developments notwithstanding, the education status of Black people has improved demonstrably since *Brown*. Consider the following data published by the U.S. Census Bureau in a special edition to commemorate the *Brown* anniversary:

- Sixty-nine percent of Black children ages 5 and 6 were enrolled in school in 1954. By 2002, 96 percent of Black children were enrolled in school.
- Twenty-four percent of young Black adults ages 18 and 19 were enrolled in school in 1954. In 2002, the comparable figure was 58 percent.
- There were 926,000 Black high school students in 1955. In 2002, there were 2.6 million.
- Fifteen percent of Blacks ages 25 and older were at least high school graduates in 1952; by 2002, this figure had risen to 79 percent.
- In 1957, 1.6 million Blacks 25 years old and older had a high school diploma. This number had risen to 16 million by 2002.

- Also in 1957, 252,000 Blacks had at least a bachelor’s degree. By 2002, 3.5 million Blacks had at least such a degree.
- There were 155,000 Black college students in 1955. By 2002, this number had risen to 2.3 million.<sup>15</sup>

These figures do not reveal the degree of disparity between White and Black levels of education attainment and access. Consider the following:<sup>16</sup>

- The high school completion rate for Blacks rose between 1972 and 2000, but the gap between Whites and Blacks ceased to narrow in the early 1980s.<sup>17</sup>
- Scores of Blacks lag behind Whites on the National Assessment of Educational Progress reading tests.<sup>18</sup> The gaps in mathematics test score outcomes are even larger.
- Most African Americans enrolled in institutions of higher education are concentrated in two-year rather than four-year institutions.<sup>19</sup>
- Disparities in access to higher education between African-American women and men are pronounced. In 2000, two-thirds of all Blacks enrolled in colleges and universities were women.<sup>20</sup>

The data establishing disparities in Blacks’ access to quality education opportunity at all levels is voluminous, as are the explanations offered by diverse commentators. Suffice it to say here that African Americans are concentrated in great numbers in under-resourced public elementary and schools, taught in disproportionate numbers by inexperienced and/or out-of-field teachers, and denied access

equal to that provided to Whites to advanced placement courses. In other words, as a group, Blacks still are largely afforded unequal and inferior educational opportunity compared to Whites in public elementary and secondary schools. As a result of these and other factors, African Americans score lower on standardized tests than their White counterparts, and fewer go on to college or graduate school than their White counterparts.

The consequence of the education deficit from which Blacks suffer is that about “(o)ne out of four Black children lives in poverty. One in four Black men is in trouble with the law; one out of five is in college. Half of the Black women in America are heads of households, and half of them live with their children in poverty.”<sup>21</sup> Is the glass half full or half empty? Does this metaphor matter in light of the reality before us?

Today, efforts to improve education for the children who need help the most, the children with whose interests the *Brown* court was aligned, have many faces. Below, I highlight two of the major engines of change in use today to improve the basic education that Black and other disadvantaged students receive: the No Child Left Behind Act of 2001<sup>22</sup> and “adequacy litigation.”

## NO CHILD LEFT BEHIND ACT

In a recent speech at the American Enterprise Institute, U.S. Secretary of Education Rod Paige likened those who question the value of the No Child Left Behind Act, a signature piece of legislation passed on the watch of President George W. Bush, to those who in the *Brown* era opposed integration.<sup>23</sup> I don’t think so. Efforts to bar compliance with judicial man-

dates and flout the requirements of the U.S. Constitution are very different from earnest criticism of legislation whose stated aim is to reduce education inequality and promote improvements for the children and communities that need help the most.

The No Child Left Behind Act essentially creates a system by which states have to rate how individual public schools are doing in light of student test results; share the information with the public; develop plans to address deficiencies in instructional quality and outcomes in low-performing schools; and ensure that all students are instructed by teachers with appropriate credentials. Although benchmarks for what constitutes a “low-performing school” a reset by states in relation to state standards—hence there is variation among states in this regard—the act has the worthy aim of putting a spotlight on the schools that are doing the worst job in providing a minimally adequate education for the students they serve.

I agree with the secretary of education that many of the education inequality problems that *Brown* sought to eliminate persist today and that something should be done about them. I also agree with the secretary that a lot of the students being left behind today are the same color as the children in *Brown*.

But the No Child Left Behind Act has been heralded—prematurely, in my view—by some in the George W. Bush administration and others outside of public office as the greatest piece of civil rights legislation of our time. I think that praise is surely overblown.

The act’s requirement that schools and states collect and disseminate information about “low-performing” schools

could be a good thing, *if the act is used to actually require the development and implementation of real corrective measures designed to improve student learning outcomes* for the students ill-served by the status quo. But there is scant evidence that effective efforts have resulted from the disclosure of such information thus far. Manipulation of test score outcomes to get off of “low-performing” school lists is not the same thing as institutionalization of reforms needed for the long haul to ensure sustainable achievement gains.

Proponents of the act point to provisions that allow students in low-performing schools to transfer to other schools under certain circumstances as the reason why reduced funding for low-performing schools is not punitive. Students don’t have to be passively left behind; they can vote with their feet, or so it is said! However, since many of the low-performing schools are located in low-income communities where poor people lack resources for transportation of students to distant venues, or parents may be uninformed or disengaged, it is unlikely that these legislative provisions will have any useful impact on the mass of students being every day left behind.

To find out how the schools are performing, the act relies heavily upon student testing. This regime—testing as the primary means to hold teachers and school administrators accountable for instructional results—in fact ends up holding students accountable for the failures of those responsible for their education. It is one thing if tests are used to improve and enrich instruction and related services. It is another if test results are used to hold students back without special help, a practice that contributes to drop-outs and failure. Over-reliance on testing also can lead to test-driven cur-

riculum, a practice that constricts content and pedagogy.<sup>24</sup>

The act’s aspiration to ensure that all students have “highly qualified” teachers well prepared in the fields in which they teach, is important. But in the absence of attentiveness to factors that keep quality people from entering the teaching profession, a workable strategy to meet teacher shortages, a focus on diversity in the teacher pipeline, and resolution of the raging debates over teacher preparation and testing efforts, it is difficult to see where all of the outstanding teachers envisioned by the legislation are supposed to come from. Nor is it clear how such teachers can be distributed in ways that ensure that low-performing and low-paying districts, rural communities, and others at the bottom of the heap can secure such teachers to work in their schools.<sup>25</sup> The act’s provisions requiring “highly qualified” paraprofessionals face similar implementation obstacles.

The unfunded and underfunded nature of many of the requirements and the lack of realism that attends many of the act’s provisions in light of state budget cutting already has compromised the impact of the legislation. Its emphasis upon setting benchmarks derived from massive student testing programs has raised serious doubts about the mismatch between what is being tested and what students, especially low-income students, are being afforded the opportunity to learn.

Cynics assert that there was no real intention by the act’s authors to ensure top-quality education for the children being left behind. They view the legislation as so much window dressing. I don’t know what the authors of the legislation had in their hearts, but I do know what the legislation says. I don’t know whether they were sincere, but I do know that

the legislation has at least gotten some people focused on what needs to be done for the children most at risk. I don't know whether in the long run the legislation will improve education quality for the children who need help the most, but I do know that the legislation is a mirror into which we are all now being forced to look.

The act reflects in large measure a hodgepodge of views and diagnoses about the ills that beset the nation's elementary and secondary school systems:

- Some believe that public schools are irrevocably broken and can only be fixed through creation of a parallel or alternative education system comprised of charter schools, voucher programs, home schooling, private schools—anything and everything but public schools that are, according to this point of view, impervious to pressure for change for the better.
- Others believe that the problem of uneven educational outcomes is directly related to teacher preparation, beliefs, and behaviors. Hence, debates and experiments with alternative certification schemes, new teacher preparation efforts, teacher licensure, and other such efforts abound.
- Some believe that the problem of low levels of education attainment reflect primarily low expectations or engagement by parents and that work to improve parental involvement in education is the only and best way to address student achievement concerns.
- Others argue that educational leaders are at fault and need to be held accountable—especially principals, who are instructional leaders. Others point to governance of public schools as the primary reason why

leaders are ineffectual.

- Some believe that the problem of uneven educational outcomes is related to curriculum—students can't pass tests that ask them questions about subjects that students have had no chance to learn.

Faced with the lack of consensus about remedy and aware of political fault lines, policy-makers have only three consequential choices for improving education quality and reducing inequality: First, they can raise taxes, which they are loathe to do, especially in a weak economic climate of state budget cutting and a national administration devoted to tax cutting. Second, they can reallocate resources from more to less affluent schools, a sure way of incurring the ire of middle-class folks who dominate the electorate in most venues. And third, they can make promises without making the hard decisions necessary to keep them.

The result of any of these three options is that more often than not, much is promised to improve education, but baby steps are taken. We are reduced to incremental improvements in education quality and access for the sons and daughters of *Brown*. What ultimately will be wrought through the No Child Left Behind Act remains to be seen.

## ADEQUACY LITIGATION, PROGENY OF *BROWN*

Once, years ago, I appeared on a panel with a federal judge who, in response to audience charges about "judicial usurpation of legislative and executive functions and prerogatives" said, "I can assure you that I would rather press an asp to my breast than to have another one of these big,

contentious, civil rights cases brought before me.” In light of the inertia and political unpopularity of the options for education reform and redress of grievances highlighted above, it is no wonder that low-income school districts, parent groups, and others are once again seeking relief in judicial fora, pressing asps to the breasts of the judiciary.

One of the most important lines of legal work involves claims brought under state constitutions, many of which grant, through variously worded provisions, some type of “right to an adequate education.” Though states may vary as to what constitutes “adequate,” these cases have put a spotlight on issues such as inequitable funding of education opportunity between low-income and affluent school districts, inequitable quality teacher assignments, and disparities in course work, technology, and other services needed to provide “adequate” educational outcomes for all students.

There have been more than 40 such lawsuits brought to date,<sup>26</sup> many of them in Southern venues, to force attention on the needs of students and communities that need help the most. Results have been mixed. The bottom line is this: Where such lawsuits have successfully established violation of the right to an adequate education, fashioning remedies and securing the resources needed to correct violations is a tough and important means by which to compel resource allocation. Still, the scale of inequality and the difficulty of securing funds for remedial efforts of commensurate scope make such efforts unsatisfying.

Due to separation of power concerns, courts are hesitant to order legislatures to enact tax laws or force reallocation of existing resources. Legislatures, well aware of this

hesitancy, have responded to court orders with varying degrees of haste and sincerity.<sup>27</sup>

Most serious students of the subject of adequacy litigation believe that these cases at least put a spotlight on education inequality; may serve to educate the public about how unfairly resources are allocated; can force movement by legislative and executive bodies toward needed education improvements; and are, on balance, worth the effort, provided that outcome expectations are realistic.

## WHAT THE FUTURE PORTENDS

Dr. Martin Luther King Jr., in one of his classic speeches, noted he had no doubt that African Americans would eventually win the battle to be integrated into the mainstream of American society. But he also worried that Blacks were “integrating into a burning house.” This metaphor might describe where Black people are today on matters related to education.

African Americans are now fully included with varying degrees of efficacy into a deteriorating system of public education. Other minority group students and low-income Whites join them in this system. Many affluent students of all ethnicities fled long ago to private institutions or benefit from in-school tracking and local enclaves of affluence able to sustain high expenditures on education.

Social consciousness has not yet glimpsed fully what I believe to be the imperative to work to improve education quality for the near majority of the South’s students, who are poor and/or members of minority groups, a matter to which I now turn. Let me try to sketch out the case for compensatory public investment in the education of low-income

students and communities in the concluding sections of this paper.

For a number of years, I directed an international human rights effort to examine race, poverty, and inequality in Brazil, South Africa, and the United States in comparative perspective and explore strategies/approaches that offer the promise of reducing such inequality. The effort has given me a fascinating window through which to explore with people of African or European descent from these three countries how color/race/class intersect with the structure of opportunity allocation in education.<sup>28</sup>

Not surprisingly, Brazil and South Africa, with far fewer resources than the United States, deep poverty and inequality, and large populations of undereducated people of African descent are, like the United States, struggling to find ways to improve and broaden education opportunity.<sup>29</sup> In light of the technology revolution, marketplace globalization, and migration patterns, the study underscores the importance of improving and broadening education access, not just as a matter of fairness or social justice or constitutional mandate, but also as a matter of economic competitiveness and development.

In the global marketplace, resources, financial and human, flow across national boundaries with rapidity and ease. Capital markets, seeking optimization of profit, move to where the resources for success and high return on investment may be found. Already globalization has caused the United States to lose a tremendous number of jobs and industries to other parts of the world—especially to China—where labor costs for unskilled jobs are cheap. The United States simply cannot compete for low-skilled jobs anymore.

There are too many desperate poor people in other parts of the world who undercut efforts to keep such jobs at home.

The economic growth of the United States and its well being thus depend on maximization of high-skilled jobs/fields that generate excellent wages and constitute the wave of future economic prosperity. It has been in these fields that the greatest economic growth has been realized in recent years at the high end. Those without the requisite education/skills are consigned to service sector jobs at the low end of the economy.

Our nation is badly divided, not only on grounds of race, but also on grounds of class based on skills and education. If the nation or any discrete group within it hopes to have a bright future, education is key.<sup>30</sup>

We see the stark competition for opportunity in higher education played out every day. The emphasis upon “merit” in college admissions or finance is a shorthand way of ensuring that students who perform best on standardized admissions tests or have the highest averages in high school get first pick for college attendance. This preference for those at the top end is justified by the notion that such students are more deserving or would benefit more from access to higher education.

More often than not, as study after study reveals, this means that the sons and daughters of the working poor, including African Americans, are at a serious disadvantage in such a competition. Even institutions of higher education that focus on African Americans—historically Black colleges and universities—receive per capita less federal financial aid per student than more exclusive and expensive institutions with higher tuitions and fewer African-American and

low-income students.<sup>31</sup>

Of course, we all know that most Americans of all races and ethnicities, indeed most students, are “average.” That is why the concept of “average” has normative content. I believe the process of expanding education opportunity—providing more need-based aid, recognizing multiple measures of capacity and promise, taking into account the needs of low-income and underserved communities in particular fields—should be a national priority.

In an era of budget cutting at the state level and creation of record deficits at the federal level, it is hard to see where the impetus for an “education first” movement that is about more than rhetoric will come from. Notwithstanding, the economic imperative for such a movement is now upon us, if, over the long haul, the nation is to meet its economic goals, make the American Dream a reality for more of its people, and “ensure the blessings of liberty to ourselves and our posterity.” Isn’t having a large and growing middle class an integral part of the dream?

## WHY IT IS IMPORTANT TO REDUCE EDUCATION INEQUALITY

Clearly, the link between national economic growth prosperity and education opportunity—top-quality education opportunity—has never been stronger than in the present moment. Demographics tell us that in the not too distant future African Americans and other low-income groups will be an increasingly large part of the nation’s workforce, tax base, and polity. But there are other reasons, as well, why it is important to reduce education inequality.

*First, the modern world in which we live is, to say the least, complex. All of us need to use all of the brain cells that we have all of the time just to function effectively. This means that all of us need more education. My father had a sign on his office wall that said, “If you think education is expensive, try ignorance.”*

*Second, education is the key to preserving the great American experiment with democratic values and governance. Making informed decisions about matters of public policy and private practice is important. People who have inadequate education, who are marginalized, are not in a position to participate fully as contributing members of society. When this happens, democratic values and practices are compromised.*

*Third, too much inequality between and among discrete groups of people is bad for quality of life reasons. Some poor and/or undereducated people, when deprived of the opportunity to make positive contributions to society or sustain themselves and their families within a reasonable measure of well-being, may be inclined toward anti-social behaviors. Our nation is awash in homelessness. We incarcerate millions. We spend millions on social welfare and chari-*



table activities. Still, we seem to be losing the battle as the numbers of those in need burgeon. Lest we continue on this downwardly spiraling path, we must find ways to extend and improve education for “the least of these.” The nation will end up “paying now or paying later.”

Fourth, the nation needs a more broadly educated population to ensure national security. I am not suggesting that the United States should become a fortress that seeks to exclude the rest of the world from entering its borders or aspiring to relocate and live in this country. But I am not the first to suggest that the nation’s heavy and growing reliance on skilled labor in areas such as the sciences and technology provided by people from other parts of the world creates special stresses and a level of dependence that may not serve the national interest in the long term. Additionally, as job losses in the United States have been many and the need for job creation is serious, the nation can ill afford to warehouse its own talented people. It is also a fact that a sense of abiding injustice among discrete groups of people provides fertile ground for antisocial (or worse!) behavior.

Finally, reducing education inequality is a

matter of simple justice. I recently read a book called *Mississippi in Africa: The Saga of the Slaves of Prospect Hill Plantation and Their Legacy in Liberia Today*,<sup>32</sup> a gripping exploration of the travails of Mississippi slaves who sought to make their lives afresh by establishing the African colony of Liberia. The book brought to mind just how unjust and cruel the slavery experience was. It was not simply a matter of “happy natives” working in fields; it was a deeply humiliating, devastatingly cruel institution that robbed the enslaved and their enslavers alike of their humanity in a bitter relationship based on force, murder, and degradation.

The sons and daughters of the enslaved, once emancipated from slavery, were not “freed” from the burdens of ignorance, poverty, exclusion, or inequality. They continued for generations to suffer from denial of basic rights and racial segregation for most of the 20th century. Opportunity for better quality education is the antidote and the best way by which the shackles of the past can be removed once and for all.

## CONCLUSION

This is the 21st century. The United States is still a relatively young nation in the scheme of things. We have many problems and many cares. But the overarching lesson of *Brown*

is that the nation will be stronger when and only when *all of its people* have a fair chance through education to be all they can be and contribute to the health and well being of the nation. We are all in this together. As the old saying goes, “We can hang together or hang separately.”

The era of the one-room schoolhouse circa *Brown* is behind us. It will cost money, lots of money, to undo the legacy of under-investment in the education of the nation’s growing low-income population.<sup>33</sup> The proliferation of knowledge, rapid changes in technology, emergence of the global village, and the nation’s changing demographics all point to the need for even more attentiveness to education equity and excellence if the nation is to maintain its competitive edge in the world marketplace.

The brave lawyers and their clients who brought the *Brown* case before the U.S. Supreme Court could not have foreseen how important their work would be 50 years hence. Their work pointed the way toward the need for the nation to find effective ways to invest in quality education for *all people*, including those who are disadvantaged economically, socially, and politically. They moved the nation toward a true egalitarian and hope-filled destination.

The business of *Brown* is unfinished. Remember the words of Thurgood Marshall, who litigated *Brown* and went on to be the first African American to sit on the U.S. Supreme Court:

*(W)e (must) deal with the rights of all children, whatever their race, to an equal start in life and an equal opportunity to reach their full potential as citizens. Those children who have been denied that right in the*

*past deserve better than to see fences thrown up to deny them that right in the future.... (U)nless our children begin to learn together, there is little hope that our people will ever learn to live together.<sup>34</sup>*

## NOTES

1. 347 U.S. 483 (1954).
2. Evidence of the continuing search by some in the scientific community for a genetic basis to explain differences in levels of Black intellectual capacity and educational achievement compared to Whites is summarized in Richard Herrnstein’s and Charles Murray’s book, *The Bell Curve*, and its progeny (1994. New York: Free Press). While the overwhelming weight of scientific opinion establishes that there is only one “race,” the human race, and that the shared genetic composition of all human beings differs by subgroup only slightly and in insignificant ways, some folks still believe in a “race-based” hierarchy of human capacity. In fact, the variations in levels of ability within discrete “racial groups” are greater than the variations between and among them. Perhaps the origin of the mantra-like phrase—“all children can learn,” repeated again and again in the contemporary literature of elementary and secondary public education—is a veiled attempt to counter an unstated belief held by some educators in the intrinsic inferiority of, among others, Black people.
3. For an especially inspiring review of the events leading up to the *Brown* decision, see Kluger, Richard. 1975. *Simple Justice*. New York: Vintage Books. See also Egerton, John. 1994. *Speak Now Against the Day*. New York: Alfred A. Knopf.
4. Allen, John. 1997. *The Essential Desmond Tutu*. Mayibuye Books: University of the Western Cape, p.11.
5. Quoted in Higginbotham, Jr., A. Leon. 1978. *In the Matter of Color, Race and the American Legal Process: The Colonial Period*. New York: Oxford University Press.
6. *Brown v. Board of Education*, supra at 495.
7. See H. Drewry and H. Doermann. 2001. *Stand and Prosper*. Princeton and Oxford: Princeton University Press. This is an excellent reprise of history and data related to private historically Black colleges and universities.
8. This phrase comes from “Lift Every Voice and Sing,” by James Weldon Johnson, the song called the Black “national anthem” by many African Americans.
9. The Coleman Report, issued in 1966, found that desegregation did yield improved academic outcomes for African Americans. Coleman, James, et.al. 1966. “Equality of Educational Opportunity.” Department of Health, Education and Welfare, Washington, D.C.: Government Printing Office. Critics of desegregation would today take issue with such findings. See, e.g., Shujaal, Mwalimu. 1966. *Beyond Desegregation*:

*The Politics of Quality in African American Schooling*. Thousand Oaks, Calif.: Corwin Press. A growing body of literature contends there are positive academic impacts on African-American student performance attributable to desegregation. In an unpublished paper commissioned by the University of North Carolina at Chapel Hill for a 2002 Conference on Resegregation of Southern Schools, Professor Roslyn Mickelson sums up the evidence of academic impact thusly:

... (W)hen schools consistently employ practices to enhance equality of opportunity (including the elimination of tracking and ability grouping), desegregation has clear, albeit quite modest, academic benefits for black students and does no harm to whites. But exposure to desegregated education in a school that does little to equalize education opportunity in the classroom brings few benefits to minority students. Id. at p.7.

See also Darling-Hammond, Linda. "Unequal Opportunity: Race and Education." Brookings Review Spring, 1998, at p.30.

10. See Orfield, G. and Lee, Chungmei. 2004. *Brown at 50: King's Dream or Plessy's Nightmare?* Cambridge: The Civil Rights Project. Harvard University.
11. 539 U.S. \_\_ (2003).
12. In his book, *Restoring Hope*, author Cornel West makes the following observation:
 

(H)ope is not the same thing as optimism. Optimism adopts the role of the spectator who surveys the evidence in order to infer that things are going to get better. Yet we know that the evidence does not look good... Hope enacts the stance of the participant who actively struggles against the evidence in order to change the dealy tides of wealth inequality, group, xenophobia, and personal despair. Only a new wave of vision, courage, and hope can keep us sane and preserve the decency and dignity requisite to revitalize our organizational energy for the work to be done.
13. *Milliken v. Bradley*, 418 U.S. 717 (1974).
14. *Missouri v. Jenkins*, 515 U.S. 70 (1995).
15. U.S. Census Bureau. Facts and Features: Brown v. Board of Education: 50th Anniversary. [www.census.gov](http://www.census.gov).
16. National Center for Education Statistics. Status and Trends in the Education of Blacks (NCES 2003-034) by Kathryn Hoffman and Charmaine Llagas. Project Officer: Thomas D. Snyder. Washington, DC: 2003.
17. Id. at p.42.
18. "Despite gains among Black students at all three age groups since the 1970s, their performance in 1999 remained statistically significantly lower than that of White students. In 1999, average scores among Black 9-year-olds were 16 percent below Whites' scores (a gap of 35 pints), and among 17-year-olds they were 10 percent below Whites' scores (a gap of 31 points). Though no clear trend is apparent, these 1999 reading scale score gaps decreased from the gaps observed between Whites and Blacks in 1971 at all levels. However, for 13- and 17-year-olds, score gaps between Whites and Blacks in 1988 were smaller than those in 1999, indicating a slight widening of the gaps from the late 1980s to 1999." Id. at p.48.

19. Id. at pp.91-92.
20. Id. at p.94.
21. <http://www.pbs.org/wgbh/pages/gronline/shows/race/economics/sam.html>.
22. P.L. 107-110.
23. Said Secretary Paige:
 

...The resistance to Brown was "massive" and sustained over generations. Those who fought against Brown were on the wrong side of history, just as those who fight No Child Left Behind will one day also be labeled. We have come to expect strident resistance to any major changes in education, particularly if they change the status quo and challenge the educational establishment that seeks to protect itself.

[http://www.aei.org/doclib/20031222\\_7bgraphics.pdf](http://www.aei.org/doclib/20031222_7bgraphics.pdf)
24. "Tracking," another way in which test scores foster isolation of minority and/or other underachieving students, helps to create segregated classrooms within otherwise integrated schools.
25. See Center on Education Policy. 2003. "From the Capital to the Classroom: Year 2 of the No Child Left Behind Act." Among other findings yielded by a survey of 274 school districts, case studies, and secondary sources, the report finds that many venues lack the resources, human or financial, to comply with provisions of the act. Some of its provisions are deemed to be inappropriately punitive, and state budget cuts are adversely affecting outcomes.
26. Molly A. Hunter, Litigation Challenging Constitutionality of K-12 Funding in the 50 States (Campaign for Fiscal Equity, Inc. 2004). See [www.schoolfunding.info](http://www.schoolfunding.info) for the latest developments.
27. See note, "Unfulfilled Promises: School Finance Remedies and State Courts," 104 Harvard Law Review, p.1072 (1991).
28. See [www.beyondracism.org](http://www.beyondracism.org) for a description of publications resultant from the study. See especially, Hamilton, C.H., et.seq. 2001. *Beyond Racism: Race and Inequality in Brazil, South Africa, and the United States*. Boulder, Colo.: Lynne Rienner Publishers.
29. All three nations enslaved people of African descent, made little provision for their education and certainly not on a level commensurate with that afforded to Whites following the abolition of slavery, discriminated against the sons and daughters of the enslaved in education and other areas, and as a result now have large, poor, underdeveloped groups of persons who lack the skills and education needed to earn livable wages in the technology-driven workplace.
30. For a fuller treatment of this point, see, e.g., O'Connell, L. and Birdsall, N. "Race, Human Capital Inequality and Income Distribution, in *Beyond Racism*, supra at pp. 275-322.
31. "Rich Colleges Receiving Richest Share of U.S. Aid," by Greg Winter. *The New York Times*, November 9, 2003, p. 1.
32. Huffman, Alan. 2004. *Mississippi in Africa: The Saga of the Slaves of Prospect Hill Plantation and Their Legacy in Liberia Today*, Gotham Books.
33. In the South, the under-investment in education over time has been most pronounced, as has been the access and achievement gap between rich and poor and Black and White.
34. *Milliken v. Bradley* supra at 783 (Marshall, J., dissenting.)