

## BACK TO BASICS: RETURNING TO THE MATTER OF BLACK INFERIORITY AND WHITE SUPREMACY IN THE POST-BROWN ERA

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Except among recent law students, *Brown v. Board of Education*<sup>1</sup> is better remembered for what it did (namely reject *Plessy v. Ferguson*'s<sup>2</sup> doctrine of "separate but equal") than the grounds on which it did it. The Court in *Brown* considered whether racial segregation deprived minority children of "equal educational opportunities"<sup>3</sup> even if it were assumed that school facilities and "other tangible factors" were substantially the same for blacks and whites.<sup>4</sup> The Court concluded that there were "intangible considerations" that made "separate but equal" inherently invidious. Said the Court, "To separate [black children in grade and high schools] 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 to be undone."<sup>5</sup> The Court went on to quote with approval a finding of the district court in *Brown* which had ruled against the plaintiffs:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of

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

2. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

3. *Brown*, 347 U.S. at 493.

4. *Id.*

5. *Id.* at 494.

inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.<sup>6</sup>

“Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson* (regarding whether segregation invariably stamped blacks with ‘a badge of inferiority’),” the Court in *Brown* reasoned that there was ample “modern [social science] authority,” which it cited in footnote 11 of the opinion, to support its conclusion that segregation imposed grave social psychological harm on black children.<sup>7</sup>

Commentators at the time did not completely accept the Court’s reasoning that school segregation was unconstitutional because it caused black children to suffer the pangs of inferiority. General social psychological studies such as that of Kenneth Clark involving the reactions of black children to white dolls were slender reeds on which to justify the dismantling of dual school systems.<sup>8</sup> Moreover, the invocation of social science research suggested that the decision might be vulnerable to reversal because it rested on facts that might later be revised.<sup>9</sup> Instead, it was argued that the ruling was based on common knowledge that segregation had an adverse emotional and material impact on the well-being of black children.<sup>10</sup> Black inferiority and its complementary ideology, white supremacy, were very much at the heart of the matter of black *political, social, and economic* inequality as it existed in 1954. They

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6. *Id.*

7. *Id.* at 494-95 & n. 11.

8. See Edmund Cahn, *Jurisprudence*, 30 N.Y.U. L. Rev. 150, 161-65 (1955) (criticizing the doll experiment conducted by Dr. Clark as described in his testimony in the South Carolina case, *Briggs v. Elliott*, 347 U.S. 483 (1954), which was decided with *Brown*).

9. Cahn, *supra* n. 8, at 167.

10. See *id.* at 159; Charles L. Black, *The Lawfulness of the Segregation Decision*, 69 Yale L.J. 421, 427, 428, 430 (1960) (citing “massive historical evidence” and “common sense” or “common knowledge” regarding the intent of segregation and harmful impact in fact); see also Jack Greenberg, *Social Scientists Take the Stand: A Review and Appraisal of Their Testimony in Litigation*, 54 Mich. L. Rev. 953, 969 (1956) (attributing much of the credit for the general knowledge that “segregation is cruel to Negro children” to the efforts of social scientists).

supported not only segregated public schools, but also the entire system of Jim Crow laws which stigmatized and subordinated the entire black population. If black children did not feel branded and insulted because the law said that they could not go to school with white children, they were certainly supposed to. If black children did not feel branded and insulted by segregation, it was either because they stubbornly resisted internalizing the message white supremacy intended them to get (for which they should not be penalized) or they had so thoroughly absorbed its portent that they were incapable of recognizing the affront.

Given the reasoning of the *Brown* decision, the anniversary of the case should be the occasion for an examination into whether notions of black inferiority and white supremacy continue to be embodied in the structures and practices of the contemporary public educational system in ways that have an adverse impact on the psychological and material well-being of black children today. Furthermore, the anniversary of *Brown* should be commemorated by a consideration of the extent to which the federal courts have been vigilant in protecting black children from the adverse consequences of the ideologies of black inferiority and white supremacy.

Despite *Brown*, there is much evidence that public schools continue to fail black youngsters by leaving them ill-equipped to overcome disparities in social status, economic welfare, and political power and influence. That is the bottom line. Segregation and discrimination are simply causes of those inequalities, while integration and the pursuit of diversity are merely means to the opposite end. At the root of it all lies the pervasive ideological insistence on the inevitability of black inferiority and white supremacy and the naturalness of the unequal distribution of resources and opportunities that they justify. As long as black inferiority and white supremacy leave their mark on educational practices and policies, the promise of *Brown* remains unfulfilled.

When *Brown* was decided, it was a core belief of American society that blacks were by nature intellectually, morally, and culturally inferior to whites. There were a host of assumptions or bromides pertaining to blacks that were widely accepted as innocuous: Blacks are lazy and not smart. Blacks are prone to lawbreaking and violence. Blacks are rebellious, emotional, and

disrespectful of authority. Blacks are loud and rude. Blacks in general and black women in particular are not morally respectable, which is to say they are prone to sexual deviance. Blacks are irresponsible in their treatment of their children and incapable of forming and maintaining wholesome family relations. Finally, the inferiority of blacks as individuals and as a group earmarks their institutions. Such core beliefs die hard.<sup>11</sup>

In the fifty years since *Brown* was decided, blacks have devoted substantial energy and resources in the attempt to establish their worth or merit by proving that these assumptions are wrong. Indeed, since *Brown*, black litigants have gone to federal court to dismantle elements of the educational apparatus that seemingly reflect the impact of notions of black inferiority and white supremacy. In addition to fighting both for the achievement of unitary school systems as well as for equality in school funding (i.e., the ultimate realization of “separate but equal”), blacks have attacked, with mixed results, a panoply of practices that stifle the academic attainment of black students in integrated settings and thereby seemingly confirm the notion that black students are intellectually and culturally inferior. For example, ability grouping or tracking,<sup>12</sup> high-stakes standardized testing,<sup>13</sup> the disproportionate placement of blacks in special education or remedial classes,<sup>14</sup> and the exclusion of blacks from honors programs and courses for the gifted, all of which tend to either reflect or substantiate beliefs regarding the lower intelligence of black children, have been the subject of civil rights lawsuits. Racial disparities in rates and the severity of suspensions and discipline have also been challenged as evidence of the continued stereotyping of young blacks as rebellious and disorderly.<sup>15</sup> In response to the claimed inferiority

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11. See Theresa Perry, *Up from the Parched Earth: Toward a Theory of African-American Achievement in Young, Gifted, and Black: Promoting High Achievement Among African-American Students* 75 (Theresa Perry, Claude Steele & Asa G. Hillard, III, eds., Beacon Press 2003).

12. See e.g. *Simmons v. Hooks*, 843 F. Supp. 1296 (E.D. Ark. 1994).

13. See e.g. *GI Forum v. Tex. Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. 2000); see also *Erik V. v. Causby*, 977 F. Supp. 384 (E.D.N.C. 1997) (retention in grade).

14. *People Who Care v. Rockford Bd. of Educ.*, 111 F.2d 528, 538 (7th Cir. 1997).

15. *Fuller v. Decatur Pub. Sch. Bd. of Educ.*, 78 F. Supp. 2d 812 (C.D. Ill. 2000), *aff'd*, 251 F.3d 662 (7th Cir. 2001); *Parker v. Trinity High Sch.*, 823 F. Supp. 511 (N.D. Ill. 1993).

of black culture, blacks have sued to require that the black experience be included in public school curricula<sup>16</sup> or that it be taken into account in dealing with black children's special educational needs.<sup>17</sup> Finally, blacks have defended black institutions of higher education against intimations that preservation of their racial identities is contestable.<sup>18</sup>

The legal analysis employed in these cases allows for little consideration of the role that black inferiority and white supremacy may play in the conduct of school authorities. Consider two cases challenging as asserted racial discrimination the expulsion of black children from high school. In *Parker*,<sup>19</sup> two sisters challenged their expulsions from a Catholic high school. The students claimed that the discipline they received for fighting was motivated by the "stereotype of black students as more dangerous than white students."<sup>20</sup> The school retorted that the harshness of the penalty was predicated on the fact that teachers were injured in attempting to break up the fight, which the sisters resumed after the teachers intervened.<sup>21</sup> The court concluded that, though the discipline departed from school

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16. *Grimes v. Sobol*, 832 F. Supp. 704 (S.D.N.Y. 1993) (plaintiffs asserted that the public schools of New York City taught a curriculum that ignored or demeaned blacks but they were unable to prove that the Board of Education acted with a purpose to discriminate under § 1983 or that Title VI of the Civil Rights Act of 1964 extended to matters of curriculum); *Shorter v. St. Cloud St. Univ.*, 2001 WL 912367 (D. Minn. Aug. 14, 2001) (a generally disgruntled black student argued that the curriculum of defendant's graduate psychology program failed to meet the needs of students of color and therefore created a hostile educational environment; court rejects Title VI claims so as not to interfere with the First Amendment rights of educational institutions).

17. *Martin Luther King Jr. Elementary Sch. Children v. Ann Arbor Sch. Dist.*, 473 F. Supp. 1371 (E.D. Mich. 1979) (ordering that teachers at an integrated school be instructed to recognize and identify the linguistic characteristics of the Black Vernacular English that students from a public housing development spoke at home in order to aid the students in learning to read Standard English).

18. Dissatisfied black plaintiffs have, for example, disputed a court-sanctioned settlement that conditions the access to endowment funds by Mississippi's historically black universities on increases (to the extent of ten percent) in the enrollment of whites. See *Ayers v. Thompson*, 358 F.3d 356 (5th Cir. 2004). The Fifth Circuit, quoting a passage from a prior Supreme Court appeal in the case, said that "the ten-percent threshold seeks to ensure that the historically black universities devote the endowment funds to promoting the desegregation of their schools, not to upgrading them 'so that they may be publicly financed, exclusively black enclaves by private choice.'" *Id.* at 360 (quoting *U.S. v. Fordice*, 505 U.S. 717, 743 (1992)).

19. *Parker v. Trinity High Sch.*, 823 F. Supp. 511 (N.D. Ill. 1993).

20. *Id.* at 520.

21. *Id.* at 519-20.

guidelines, the school was entitled to avoid the problems incurred by “most public schools of violence and threatened safety from students, undaunted by teachers’ authority.”<sup>22</sup>

Much the same reasoning was employed in *Fuller*,<sup>23</sup> a case that attracted the attention of the national media. Though expulsions of blacks by the school district exceeded their representation in the student body by thirty-six percent,<sup>24</sup> there was an absence of evidence that race motivated the discipline of the particular plaintiffs, who were involved in a fight in the stands during a football game. Several spectators were hurt during the melee, which was partially captured on video.<sup>25</sup> The court likened the case to one involving selective prosecution for drug trafficking. Mere proof of statistical disparities was accordingly not sufficient to make out an equal protection violation.<sup>26</sup> Plaintiffs’ claim of racially biased discipline failed because they did not establish that similarly situated whites were treated less harshly.

The mode of analysis used in these cases is problematic because it fails to acknowledge that stereotypes are self-fulfilling prophecies.<sup>27</sup> Behavior that is in accord with stereotypes can be encouraged by the way in which teachers and administrators treat students. Moreover, the harder the adults look for the expected behavior among a stigmatized group of students, the more likely they are to find it. Black/white comparisons become difficult to draw given the focus on policing or scrutinizing the behavior of the blacks.

Race remains an issue in public education because school authorities and the courts lack a real understanding of, or appreciation for, the power of the ideologies of black inferiority

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22. *Id.* at 520.

23. *Fuller v. Decatur Pub. Sch. Bd. of Educ.*, 78 F. Supp. 2d 812, 823-25 (C.D. Ill. 2000), *aff’d*, 251 F.3d 662 (7th Cir. 2001).

24. *Id.* at 824 (indicating that although the district’s enrollment was forty-six to forty-eight percent African American, eighty-two percent of students expelled were African American).

25. *Id.* at 816.

26. *Id.* at 825.

27. See generally John U. Ogbu, *Black American Students in an Affluent Suburb: A Study of Academic Disengagement* 136-141 (Lawrence Erlbaum Assocs. 2003) (exploring the impact of stereotypes and cross-cultural misunderstandings on the discipline of black students).

and white supremacy, the unequal distribution of capital they justify, and the cultural responses blacks have adopted in response thereto. For example, education researchers considering the disproportionate placement of black students in special education have argued that labeling black students, particularly black males, retarded or emotionally disturbed is highly subjective and may be based on white female teachers' misinterpretation of or lack of tolerance for the students' verbal, behavioral, or cognitive styles.<sup>28</sup> Black boys have a propensity to engage in high levels of physical movement and are verbally aggressive and competitive. These traits put them at risk of being disciplined and negatively evaluated in the school environment where it is the teacher's job to maintain order and decorum. Indeed, it appears that the black students who achieve the best in integrated school settings have "the ability to be reserved, to subordinate emotions and affections to reason, to constrain physical activity, and to present a disciplined exterior."<sup>29</sup>

If the logic of *Brown* is followed, there are three propositions that ought to govern the analysis of practices and procedures that interfere with the educational advancement of minority children.

1) It ought to be accepted as a matter of common knowledge that notions of black inferiority and white supremacy still taint educational policies and practices in this country. Similarly, it ought to be taken as a given that policies and practices that disproportionately and negatively impact black and brown students may not be justified by reference either to characteristics or modes of behavior that are natural, inherent, or innate to minority children or to the rational or unbiased discretionary judgment of school officials.

2) Educators, courts, commentators, parents, and concerned citizens should therefore investigate in depth the specifics of the contexts in which the disputed practices and procedures are formulated or implemented to determine whether the ideologies of black inferiority and white supremacy are working to reduce

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28. Beth Harry & Mary G. Anderson, *The Disproportionate Placement of African American Males in Special Education Programs: A Critique of the Process*, 63 J. Negro Educ. 602, 608 (1994).

29. Perry, *supra* n. 11, at 75.

the educational opportunities, academic achievement, and ultimately the life chances of minority children today.

3) *De jure* segregated schools are not the only mechanisms by which white supremacy restrains the educational accomplishments of black school children. The dominance or hegemony of the notion of white supremacy is often achieved by mechanisms that produce a semblance of consent from nonwhites. Subtle practices will produce essentially the same mastery as overt malevolence and direct exertions of control when submission is the product of the cultural modes and mores of the oppressed who rationalize their behavior as a form of resistance to the very ideologies that belittle them.<sup>30</sup> Consent arises in a context. When black youngsters engage in conduct that ultimately seems to be working to their disadvantage, the impact of notions of black inferiority and white supremacy likely share part of the blame.

Let us apply these principles to a subject that is receiving a great deal of attention in the wake of the fiftieth anniversary of *Brown*: so-called "high-stakes testing" and "the achievement gap." Testing is "high-stakes" when a child's ability to advance a grade or receive a high school diploma depends on her or his performance on a standardized test. "The achievement gap" refers to disparities in the grades and test scores of black and white students. Educators and legislators would have us believe that high-stakes testing is a painful but necessary response to historic assumptions of black intellectual inferiority that may have produced disparities in teaching and learning in the past. In *GI Forum*, for example, the court concluded that the Texas program which required passage of an examination as a prerequisite for graduation from high school was not designed to, nor did it impermissibly, disadvantage minority students.<sup>31</sup> Rather, one of its goals was "to identify and eradicate educational disparities. The receipt of an education that does not meet some minimal standards is an adverse impact just as surely as failure to receive a diploma."<sup>32</sup> The goal of the test was "to hold schools, students, and teachers accountable for education

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30. See generally Paul E. Willis, *Learning to Labor: How Working Class Kids Get Working Class Jobs* (Gower Publ. Co., Ltd. 1977).

31. *GI Forum*, 87 F. Supp. 2d at 684.

32. *Id.* at 674.



and to ensure that all Texas students receive the same, adequate learning opportunities.”<sup>33</sup> Making the test a prerequisite to receipt of a high school diploma guaranteed that the students would be motivated to learn.<sup>34</sup> The court acknowledged that educational inequality might affect the ability of minority students to pass the test; indeed, a host of factors might have an impact on their performance, including “[s]ocio-economics, family support, unequal funding, quality of teaching and educational materials, individual effort, and the residual effects of prior discriminatory practices.”<sup>35</sup> The court nonetheless concluded that minority students had a fair opportunity to learn the material on which they would be tested. That and the chance to receive remedial assistance upon failing the test made up for the impact of any inequalities produced by the educational system.

It is hard to believe such assertions coming as they do from two institutions (the public schools and the courts) that have no history of devotion to the mission of affirming the intellectual, moral, or cultural equality of black children. High-stakes testing assumes that a standardized test is a valid measure of academic learning, a proposition that is questioned in many quarters. Black inferiority and white supremacy have not yet been relegated to the dustbin of history. Thus, the argument that such tests are a device for improving the educational achievement of minority children must compete with the widespread assumption that minority children will never perform as well on such tests as white children. (Of course, if the proposition were proven true, that would tend to confirm the existence of black inferiority and white supremacy.) Although the court gave lip service to the fact that blacks’ disparate performance on standardized tests is attributable to a wide range of failures by numerous actors and institutions, if the children fail to reach the tests’ targeted goals and are retained in grade or denied a diploma, it is they who will bear the greatest stigma and suffer the most immediate consequences. Responsibility for increasing what black children get out of their educations appears to fall squarely on them and their families. However, the key to “denaturaliz[ing] racial

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33. *Id.* at 679.

34. *Id.* at 681.

35. *Id.*

achievement patterns,” i.e., to overcoming the black inferiority/white supremacy juggernaut, is to “claim them as [phenomena] that we, together, have both produced and allowed. . . . [I]n failing to frame achievement patterns as communal productions, we fail to understand the dismantling of such patterns as a mutual responsibility.”<sup>36</sup>

The recent emphasis on higher educational standards for black children has been accompanied by much effort to ferret out the sources of the gap that exists between the GPAs and standardized test scores of black and white children. The children and their families have been subjected to a great deal of scrutiny by critical commentators. Black students do not work hard enough. They are disengaged from school. They spend too much time watching television and are much too absorbed with their peer groups and popular culture. Their parents have also been blamed. Their parents are said to be uninterested in their children’s school performance; rather they believe that it is the teachers’ responsibility to assure that their children are properly educated. The parents do not demand that their children perform in school. They allow them to watch too much television and get away with doing no homework. They do not provide their children with the benefits of fixed mealtimes, nor do they take their children on educational outings.<sup>37</sup>

The amount of television viewing black youngsters do is the subject of a particularly pointed attack by Abigail and Stephan Thernstrom, authors of *No Excuses: Closing the Racial Gap in Learning*.<sup>38</sup> Television viewing, which has been referred to as black students’ “social homework,” is “a crucial unifying element in the culture of African-American students, a key source of group cohesion.”<sup>39</sup> White students, by comparison, watch less television and are not struggling as much as black students to understand their schoolwork.<sup>40</sup> The Thernstroms conclude that “[t]he special role of television in the life of black

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36. Mica Pollock, *Colormute: Race Talk Dilemmas in an American School* 171 (Princeton U. Press 2004).

37. See James J. Heckman & Amy L. Wax, *Home Alone*, Wall St. J. A14 (Jan. 23, 2004).

38. Abigail Thernstrom & Stephan Thernstrom, *No Excuses: Closing the Racial Gap in Learning* (Simon & Schuster 2003).

39. *Id.* at 144.

40. *Id.*

teen culture and the low expectations of their parents may also explain why they [the teens] are willing to settle for low grades."<sup>41</sup> Thus, group cohesion and peer pressure are said to stand in the way of individual black academic achievement.

There are any number of responses that blacks might offer to such criticisms. Black parents are more likely than whites to work long hours and to have several jobs—the working-class ones to keep their heads above water, the middle-class ones to hold on to their middle-class status. As a result, black parents will have less time to interact with their children than white parents. Furthermore, black parents who did not themselves flourish in school may have doubts about either their ability to specify the measures that will enhance their children's academic achievement or their power to influence what occurs in the schools.<sup>42</sup> Historically, teachers, as members of the black community's elite, have taken on the responsibility of overseeing the education of the children of parents who have little familiarity with the workings of the schools. Educational outings for black children are impacted by the discrimination blacks generally experience in leisure venues.<sup>43</sup> For example, even middle-class blacks find museums inhospitable leisure venues because of their cultural bias and cost.<sup>44</sup>

Finally, the criticisms discount the impact of black inferiority and white supremacy. At the behest of a group of black parents, West-African born, UC-Berkeley sociologist John Ogbu conducted a qualitative study of low black student achievement and disengagement in the schools of Shaker Heights, Ohio.<sup>45</sup> The Shaker Heights system, which is thought to be among America's best, is integrated. The black/white achievement gap was reflected in nearly every statistical indicator.<sup>46</sup> For example, there was roughly a 240-point differential between the mean combined SAT scores of blacks

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41. *Id.* at 147.

42. Ogbu, *supra* n. 27, at 245-46, 235.

43. See generally Regina Austin, "Not Just for the Fun of It!": *Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space*, 71 S. Cal. L. Rev. 667 (1998).

44. *Id.* at 697, 697 n. 107.

45. Ogbu, *supra* n. 27, at xi, xiii-xix.

46. *Id.* at 4-7.

and whites.<sup>47</sup> For the classes graduating between 1992 and 1996, the average GPA of blacks was 2.20, while the average GPA of whites was 3.34.<sup>48</sup>

Professor Ogbu found that “[i]nternalization of the belief that Blacks are not as intelligent as Whites gave rise to self-doubt and resignation in regard to [Blacks’] intellectual performance.”<sup>49</sup> The black students’ teachers held similar beliefs which affected the teachers’ treatment of the students. Expectations impacted performance.

Black students admitted that they did not work as hard as their white counterparts and that if they had worked harder they could and should have gotten better grades.<sup>50</sup> Their “low effort syndrome” reflected their failure to develop “effort optimism” or “the norm of maximum individual effort.”<sup>51</sup> Not only did the self-doubt make the students avoid the more challenging honors or advanced placement classes, but it also made them direct their energies into nonacademic pursuits.<sup>52</sup> The students’ views reflected the impact of their parents’ socialization which was affected by their parents’ own negative school experiences. The students were skeptical “about the real value of schooling” since schooling had not translated into success for generations of blacks who came before them.<sup>53</sup> The students interviewed and observed by Ogbu did not believe that they had the same opportunities as their white peers.<sup>54</sup> As a result, they focused on “alternative strategies that do not require school credentials.”<sup>55</sup> They did not see a link between school and their career aspirations; they “did not view their present schooling as a preparation for their future participation in the adult opportunity

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47. *Id.* at 6.

48. *Id.*

49. *Id.* at 86; *see also id.* at 259.

50. *Id.* at 15, 18, 260.

51. *Id.* at 280.

52. *Id.* at 90. Black students effectively eliminated themselves from the more rigorous courses because the pupils in such courses were predominantly white, the black students did not qualify for them on account of their lack of effort, or they chose not to enroll in them even if they were eligible because they feared that they could not do the work. *Id.* at 264.

53. *Id.* at 147.

54. *Id.* at 155.

55. *Id.* at 147.

structure.”<sup>56</sup> Moreover, they chose role models “not because of their educational success, their professional success based on education and hard work, or because they possessed attributes conducive to school or professional success.”<sup>57</sup> Rather, their role models tended to exhibit “leadership in the ‘collective struggle’ against White oppression.”<sup>58</sup> In such an environment, peer groups took on increased importance. Black students were admonished not “to act white,” which is to say not to have too many white friends or to engage in too many white-identified extracurricular activities or to speak Standard English. The admonition was troubling because “acting white” correlated with some behavior that is conducive to high academic performance.

Clearly notions of black inferiority and white supremacy impacted both directly and indirectly the academic performance of the children Ogbu studied. Though relatively few of the black students in Shaker Heights thrived to the same extent as whites and most seemed resigned to a subordinate status, it would be incorrect to say that the black students there and elsewhere are engaged in simple capitulation to the power of white dominance. Researchers (other than Ogbu) have analyzed their disengagement from school and their immersion in black youth popular culture as a form of resistance.

The theory is that the students resort to black popular culture, whether it be television, rap music, or Black Vernacular English, in defiance of an educational system which is steeped in the ideologies of black inferiority and white supremacy. Black students create an alternative, resistant culture, which occupies a space in the school alongside the white, elitist culture in which the teachers and administrators are grounded, in order to endure and even enjoy their school experience. For example, educational ethnographer Signithia Fordham reports that the high-school students who were her subjects treated Standard English like a separate, “socially stigmatized dialect” reserved for a particular time and place, i.e., while they were in school and while they were engaged in communication with teachers

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56. *Id.* at 167.

57. *Id.* at 161.

58. *Id.* at 255.

and administrators.<sup>59</sup> The black students refused to “own” a language “they collectively identify as having been a historical instrument of Black enslavement, oppression, and dehumanization.”<sup>60</sup>

Furthermore, black students may be seen as rejecting the competitive individualism that the traditional academic enterprise rewards on the ground that it is inconsistent with the solidarity blacks need to survive in a racist society. This is the perspective offered by Harvard researcher Ronald Ferguson, who has attempted to account for the disparities between the GPAs of white and black students in Shaker Heights by using student cultural survey data.<sup>61</sup> Says Ferguson, “[T]he idea that black students in the United States are part of an oppositional culture . . . [resistant] to achievement” is apparently “wrong.”<sup>62</sup> Rather, the students seem motivated by

the drive to maintain a shared sense of African American identity that is distinct from . . . the cultural system of white superiority within which negative racial stigma is kept alive and out of which insinuations of black inferiority and marginality emanate.<sup>63</sup>

Thus, “black racial solidarity serves as a mechanism of mutual validation and a shield against ‘rumors of inferiority.’”<sup>64</sup>

Ogbu would disagree with Fordham and Ferguson to some extent. He argues that the black students’ responses to school are misguided. He suggests that they ought to act more like voluntary immigrants who pragmatically separate the pure skills training and essential knowledge public schools offer from the indoctrination in mainstream American ideology which is a part of the lessons.<sup>65</sup> Moreover, black students should be less

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59. Signithia Fordham, *Dissin’ “the Standard”: Ebonics as Guerrilla Warfare at Capital High*, 30 *Anthropology & Educ. Q.* 272, 276-77 (1999).

60. *Id.* at 277 (citation omitted).

61. Ronald F. Ferguson, *A Diagnostic Analysis of Black-White GPA Disparities in Shaker Heights, Ohio* (College Entrance Examination Bd. 2001) (available at <http://www.collegeboard.com/about/association/academic/pdf/ronaldferguson.pdf>) (accessed June 16, 2004; copy on file with Journal of Appellate Practice and Process).

62. *Id.* at 27.

63. *Id.* (citation omitted).

64. *Id.* (citation omitted).

65. Ogbu, *supra* n. 27, at 278-79.

concerned with how “caring” teachers are and more concerned with how much expertise they possess.<sup>66</sup>

It is not particularly fruitful to compare black American children with immigrant children who come from families with very different economic, social, and political histories. The material and social conditions endured by black America, particularly slavery and its successor, Jim Crow, have an enormous impact on the behavior of black youngsters today. The context also suggests that the sort of instrumentalism that Ogbu proposes will be difficult for black youngsters to pursue. Black advancement is tied to the conflict over the amount of cultural capital schooling controlled by whites imparts to children in a multiracial, multicultural world. As education professor Theresa Perry argues,

[S]chooling for work is probably not transcendent enough, powerful enough, sufficient to sustain, in African Americans as a historically oppressed group, the desire to achieve in school in our present society, where the ideology of Black intellectual inferiority still reigns.<sup>67</sup>

Nonetheless, it is ironic that the black students’ resistant refusal to assimilate the dominant culture and its norm of competitive individualism reproduces the status quo. “Being black” and not “acting white” may not be antithetical to doing intellectual work and earning academic rewards in school, but they might as well be. The students should not be entirely blamed for that, however. White supremacy or white intellectual, cultural, and moral superiority is still the dominant ideological underpinning of education in America, although that point of view is no longer coercively imposed on black students as it was before *Brown*. Instead, today, the schools are simply not structured to produce successful, competent, and confident black students, and black students in turn have responded with an informal, culturally based form of resistance or adaptation that makes their retreat from engagement with the intellectual enterprise of the public schools seem a matter of choice. The youngsters focus on their identities as blacks and their social interaction with each other because culture appears to be the one

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66. *Id.* at 257, 279.

67. Perry, *supra* n. 11, at 78.

area pertinent to the fulfillment of their material goals that remains within their control.<sup>68</sup>

All is not hopeless. There are high achieving students who have mastered the art of biculturalism and bilingualism; they conform “to school rules and practices in order to both achieve academic success and to negate state-supported claims of Black intellectual inferiority.”<sup>69</sup> These students dare to compete with whites; yet they also strive to maintain solidarity with blacks.

Proposals abound. Education scholar Fordham argues that black student achievement would be fostered if the warfare between the vernacular and the standard in language and between the popular and the elite in culture were minimized and the stigmatization of the black self in the school environment were reduced.<sup>70</sup> Ferguson suggests that black students would better achieve if they were not so isolated in honors and advanced placement courses. Expanded enrollments through better preparation of all students for challenging work would eliminate the choice black students feel between achievement and solidarity.<sup>71</sup> Perry’s solutions seem especially sensible, focused as they are on overcoming the deficits attributable to notions of black inferiority and white supremacy. She argues that “there is an absence of spaces or programs in predominantly white or multiracial institutions that are organized to forge the identities of African-American students as achievers, literate, and a people with a rich intellectual tradition.”<sup>72</sup> As a corrective,

[s]chools, community-based organizations, churches, and groups of families need to create multiple social contexts for African-American youth where being African American

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68. See generally Phil Francis Carspecken, *The Hidden History of Praxis Theory Within Critical Ethnography and the Criticalism/Postmodern Problematic in Ethnography and Schools: Qualitative Approaches to the Study of Education* 55, 65-67 (Yali Zou & Enrique (Henry) T. Trueba eds., Rowman & Littlefield 2002).

69. Fordham, *supra* n. 59, at 281.

70. *Id.* at 288.

71. Ferguson, *supra* n. 61, at 33 (noting that although “the number [of African American students] currently prepared for such courses appears to be small,” improving supports and instruction for all students would be likely to raise achievement levels in general, and that more African American students would in consequence qualify for higher-level classes).

72. Perry, *supra* n. 11, at 99.



is coincident with doing intellectual work and being an achiever.”<sup>73</sup>

In sum, then, the anniversary of the *Brown* decision should prompt us to consider what black students might achieve academically if the schools were truly dedicated to the task of affirming black students’ humanity and intelligence, and promoting their achievement. Furthermore, the courts should accept their responsibility under the rationale of *Brown* to scrutinize the contexts surrounding educational inequities for stigmatizing effects and endorsements of the naturalness of black inferiority and white supremacy.

#### A PERSONAL POSTSCRIPT

The story of *Brown* is in some ways the story of my life. I was born in 1948. I’ll let you do the math and figure out how old I am. I grew up in northwest Washington, D.C. When I was four years old, my parents separated and my mother, sister, brother, and I moved “uptown” to a room in the house that my aunt purchased after her husband died. My mother did not know much about the area; so when it came time to register me for kindergarten, she went to Petworth Elementary School, the closest public school, a mere three blocks from my aunt’s home. There we encountered a white woman who, according to my mother, informed us that we “must be in the wrong place.” All I remember is that we were told that I could not go to school there. And believe me, I do remember that. Consequently, in September of 1953, I embarked on my public school career at Parkview Elementary School, which was a good fifteen blocks or a fifteen-to-twenty-minute walk from home. Of course, my mother was relegated to making this trip twice each morning, once to drop me off and again to pick me up.

Then came *Brown* and *Bolling v. Sharpe*,<sup>74</sup> the case that expressly addressed the D.C. school system, and I was at last able to go to Petworth, for first grade. By the time I got there, however, all but one of the white kids had disappeared; I remember that the sole survivor was named Timothy Bissell. So

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73. *Id.* at 101.

74. 347 U.S. 497 (1954).

much for integration. I attended Petworth, McFarland Junior High School, and Theodore Roosevelt High School, which were nearly 100 percent black. I do not remember thinking much about the integration of the D.C. public schools in those years. We had our eyes and hearts set on going to integrated colleges. Students were tracked back then, and by eighth grade I had worked my way into the honors program. Many of the honors kids were solidly middle class. The rest of us paid attention to our teachers who were socializing us in the academic values of the black bourgeoisie. I suppose we thought of ourselves as young, gifted, and black, and in a way we were. Mostly I was doggedly competitive and determined to go away to college. I became the class valedictorian.

It was twelve years after *Brown* was handed down that the case had its biggest impact on my life, albeit indirectly. It enabled me to leave home with scholarship money to attend the University of Rochester in upstate New York. Unfortunately, I was one of six black students in a class of more than 600; the six consisted of three men and three women. One year later, only the three women remained. Somehow we all graduated. With my segregated public-school education, I was dreadfully lonely in the cold, nearly all-white environment of the University of Rochester and woefully under-prepared to deal with college-level math and science. Soon there were others in the same position. I and the handful of black students who came to the U of R during my sophomore and junior years decided that we had to do something. This became imperative after the assassination of Dr. Martin Luther King, Jr. Consequently, we seized the faculty club; we hit them where they ate!

As a result of our efforts, the university increased its enrollment of black students via an affirmative action admissions initiative and established a black studies program. Black students took similar action on white campus after white campus back in the late 1960s. Not only did black students want these white institutions of higher education to tackle seriously the problem of producing an educated black middle class, we also wanted them to incorporate our history, our literary output, our many contributions to the arts and sciences into their curricula and intellectual debates. The most revolutionary protestors demanded that the course of study extend to Africa,

not just African America. Ironically, all of this was demanded in the name of a seemingly radical black nationalism which set itself apart from and in opposition to the liberal progressivism of the civil rights movement with its emphasis on integration.

I was planning on returning to D.C. after I graduated to become a junior-high-school history teacher when I came to my senses and decided to go to the University of Pennsylvania Law School instead. I studied hard, just like in high school, and graduated with honors in the top ten percent of my class. I went on to clerk for a state court judge and to work for a large prestigious Philadelphia law firm. In 1977, I joined the Penn Law faculty. Now, I watch anxiously as the Law School sometimes struggles to maintain the enrollment levels of black and brown students whose qualifications (meaning GPAs and standardized test scores) are "not what they should be." I protest vociferously when the appointments committee forgets that, insofar as women and/or minorities are concerned, desegregation, not the pursuit of diversity, better defines the goal we should be pursuing at this point in the Law School's history. After traveling to Sénégal, Côte d'Ivoire, Mali, Ghana, and Uganda, I no longer think solely about the problems of blacks in America, but have expanded the scope of my concern to include the many peoples of the African Diaspora who are enduring the effects of neocolonialism and underdevelopment. Beyond that, I have a better understanding of the role that American imperialism has played in the Middle East, in Asia, and in Central and South America. I recognize the need for black leadership with regard to making America accountable for its moral failings around the globe.

So, on the fiftieth Anniversary of *Brown*, as a child of *Brown* looking back on her life, I realize that *Brown's* mark on American public education is less substantial than the lawyers who litigated the cases likely imagined it would be. Despite *Brown*, racism and the ideology of white supremacy remain enormous obstacles in the area of public education. The rhetoric of segregation and desegregation has given way to that of diversity and affirmative action and the need for reforms is fuzzier as a result. Though some admission programs have

survived an assault in the courts,<sup>75</sup> minority scholarships and summer enrichment programs are next in line for attack.<sup>76</sup>

“Separate but equal” was never achieved; indeed it was abandoned as a litigation strategy by the NAACP lawyers in their pursuit of the *Brown* decision. Yet, many a segregated public school today likely wishes that “separate but equal” had been pursued in light of the continuing debate about whether inequalities in state funding between rich, predominantly white suburban schools and poor, predominantly minority urban schools actually make a difference in educational outcomes. Accounting for racial disparities in suspensions and discipline, as well as in enrollment in special-education classes, specialized programs like honors and advanced-placement courses, and performance on standardized tests, has opened up a whole new chapter in the continuing attempt to indict minorities for their plight. The inability of the public schools to produce competent, intellectually curious, emotionally whole minority graduates has prompted proposals for such curricular reforms as Afrocentric teaching or structural reforms such as all-male academies. Finally, some of the continuing attempts to desegregate historically black colleges and universities seem more hostile than helpful in enabling them to fulfill their mission as spawning grounds for black professionals.

The effectiveness of *Brown* was undercut by the underlying social, political, and material inequalities that it did not and perhaps could not tackle head on. Segregated schools were not just determiners of those inequalities; they were a reflection of them. *Brown* did not thoroughly challenge, and perhaps could not have thoroughly challenged, the intellectual and social inferiority white society still ascribes to blacks after all these years. It did not address white society’s objections to black performative and discursive styles. It did not tackle head on the stereotype of blacks as prone to disrespect for authority and lawbreaking. It did not address the importance of the family to minority children’s advancement and of schools as institutions

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75. *Grutter v. Bollinger*, 539 U.S. 306 (2003) (upholding an admissions initiative based on comprehensive review of every application); *but see Gratz v. Bollinger*, 539 U.S. 244 (2003) (striking down a formula-based admissions initiative).

76. See Peter Schmidt, *Not Just for Minority Students Anymore*, Chron. Higher Educ. 17 (Mar. 19, 2004).

for socializing the entire family in the values and practices that are required to guarantee a good life for all of its members. It did not address the relationship between schools and labor markets hostile to integration and black economic advancement. Finally, it left in doubt the significance of black educational institutions and instead created the impression that only white educational institutions were worth preserving.

There is much work left to be done if minority children are to be relieved of the burden black inferiority and white supremacy impose on their ability to achieve in school. Sorry to say, those now in school, on the front line as it were, will have much work to do by themselves. However, the great effort required to overcome the debilitating impact of the black inferiority/white supremacy juggernaut on our young must be undertaken by us all. Our obligation to engage in that struggle is the true promise of *Brown*.

