Reflections on Brown:

Growing Up Liberal and Segregated

IRA GLASSER

BIOGRAPHICAL STATEMENT

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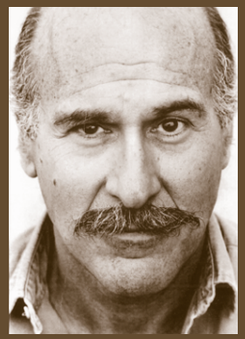

Ira Glasser was born in Brooklyn in 1938 and has lived most of his life in New York City. He is married, the father of four adult children and the grandfather of five. Formally trained in mathematics, he taught that subject during the early sixties at Queens College (CUNY) and Sarah Lawrence College, and helped develop new teaching methods in mathematics for elementary school children at the University of Illinois. He was Associate Editor and, from 1964-67, Editor of *Current* magazine, a reprint monthly of public affairs published in New York. In 1967 he joined the New York Civil Liberties Union (NYCLU) as Associate Director, and was appointed NYCLU Executive Director in 1970, a post he held until 1978, when he was selected as national Executive Director of the NYCLU's parent group, the American Civil Liberties Union. He served in that capacity for 23 years until his retirement in mid-2001. He has appeared on numerous television and radio shows, spoken extensively in a wide range of public forums and his commentary, analysis and advocacy have been published in a wide variety of popular and professional journals. He is the co-author of *Doing Good: The Limits of Benevolence* (1978) and the author of *Visions of Liberty: The Bill of Rights For All Americans* (1991). He is the recipient of a number of awards, including the Martin Luther King, Jr. Award (New York Association of Black School Supervisors, 1971); the Silver Gavel Award (American Bar Association, 1972); the Allard K. Lowenstein Award (Park River Independent Democrats, 1981); the Malcolm, Martin, Mandela Award (Greater Baptist Trinity Church, 1993); the Justice in Action Award (Asian-American Legal Defense and Education Fund, 1999); and a variety of civil liberties awards, most recently the Lifetime Achievement Award (Massachusetts Civil Liberties Union, 2003). A new Racial Justice Fellows Program has been established by the American Civil Liberties Union in his name. He is a founding member of the Board of Directors of the Asian-American Legal Defense and Education Fund and currently also serves as President of the Board of Directors of the Drug Policy Alliance.

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I. THE EARLY YEARS: HOPE, VIOLENCE, AND REDEMPTION

Speaking to young people today about race and the struggle for equal opportunity, I am always poignantly struck by the historical disconnect between us. No one of college age today had yet been born when Ronald Reagan was first elected president, and the events that shaped my life have not shaped theirs.

Therefore, when speaking about issues like affirmative action or the unredeemed promises of the civil rights movement, one must establish historical predicates: It becomes crucial to describe where we were in order to understand both how far we have come and how far we still have to go.

I was born in 1938, grew up during World War II, and came to political consciousness during the postwar years. As children during this time, we were told that World War II was a war fought against racism, against the idea that a whole class of people could be separated, subjugated, and even murdered because of their race or religion. But back home in the United States, while the war was being fought and in the years immediately following, racial separation and subjugation were entrenched by law in the Deep South and by custom nearly everywhere else. Even within America's armed forces, ostensibly fighting for the principles of democracy, fairness, and equal opportunity, Black Americans were segregated into separate units that were not allowed to fight alongside Whites but instead were often relegated to building roads and digging latrines. Though military nurses were badly needed, the number of Black nurses was kept small and permitted to treat only Black patients.

This moral contradiction between what America said it stood for and the way it was actually organized was most clearly articulated at the time by the eminent sociologist Gunnar Myrdal in *An American Dilemma*, published in 1944. His thesis was that a terrible tension existed in American society between our professed ideals of equality and fairness based on individual merit and the reality of harsh, suffocating exclusion and suppression based on skin color.

The evidence of that suppression was manifest most clearly in the South. In those days, Blacks and Whites were kept apart by law and custom in schools, buses, and theaters; at restaurants, hotels and public toilets; at drinking fountains, swimming pools, parks, and baseball games; at the ballot box (where Blacks were in various ways kept from voting and intimidated if they tried); in the jury box (where Blacks were effectively excluded altogether); in the workplace (where Blacks were pervasively denied fair opportunities); and in housing. Whereas such separation was enforced by law in the South, much the same separation was found in the North, effectively maintained by custom and tradition.

Moreover, such separation was not benign; "separate but equal" was a lie. Indeed, the purpose of separation was to maintain subjugation and inequality. Inferiority and

exclusion were enforced by the police power of the state and by traditions so strong they virtually had the force of law. If you were Black, individual merit was irrelevant, even dangerous. As author James Baldwin told us, Black parents, even in the North, often feared for their children if they showed ambition or revealed hope. Joe Black, a star pitcher for the Brooklyn Dodgers in the early `50s, once said that when, as a boy, he expressed the hope of one day playing in the major leagues, he was admonished and told to give up his dream because it was not allowed. Oppression thus became internalized, the near-final solution of a racist society.

The dissonance between the American ideal of equal opportunity based on individual merit and the reality of oppressive inequality based on skin color threatened, after WW II, to split America asunder. But there were those, including Myrdal, who saw hope in the dissonance, who believed that if we could somehow come to grips with it and make genuine efforts to conform reality to our ideals, it could be the source of our moral redemption.

The story of that redemptive struggle is by now well known: How in 1954, in the case of *Brown v. Board of Education*, a unanimous Supreme Court declared racial segregation in public schools unconstitutional; how 19 months later, Rosa Parks sat down in a seat reserved for Whites on a bus in Montgomery, Alabama; and how a then little-known, 27-year old Baptist minister named Martin Luther King Jr. stood up and aroused the conscience of a nation by organizing a bus boycott on her behalf. The modern civil rights movement was born and galvanized into action. Within a decade, it succeeded in dismantling the legal infrastructure of Jim Crow segregation and secured the passage of federal laws prohibiting racial discrimination in employment, public accommodations, voting, and, a few years later, housing.

The *Brown* decision undoubtedly had the broadest consequences of any Supreme Court decision of the 20th century, going way beyond the incremental decisions that had preceded it. *Brown* did not evaluate whether each particular separate school for Black children was in fact unequal. Instead, it ruled that state-enforced racial separation of schoolchildren was itself inherently unequal. All segregated systems were struck down at once.

The 1896 decision *Plessy v. Ferguson,* which had given birth to the constitutional doctrine of "separate but equal," though it was not formally overruled by *Brown*, did not long survive it. *Brown* unleashed the power of the 14th Amendment, long dormant, to unravel the Jim Crow legal caste system in the South. It delivered a jolt of electric energy and hope to the civil rights movement that would propel it to victory after victory during the next 15 years.

But the *Brown* decision did more. It also launched a generic egalitarian legal revolution that made the Bill of Rights a living and enforceable document for tens of millions of people who had not previously enjoyed its protections. After *Brown*, the demand for equal rights became contagious. Women seeking an end to discrimination based on sex were the first, but the movement for legal equality spread quickly to all sectors of society.

Equal rights became a rallying cry for groups never before thought to be protected by the Bill of Rights: Asians, Hispanics, American Indians, gay people, children in school and in foster care, people with disabilities, soldiers, inmates of mental institutions, prisoners, immigrants, and those too

poor to protect their rights in a variety of legal proceedings. All began to see the Bill of Rights as a weapon they could use, as Black citizens had, to gain rights long denied.

On June 26, 2003, less than a year before the 50th anniversary of *Brown*, two events provided bookend markers to the legal and social revolution *Brown* had launched. First, South Carolina Senator Strom Thurmond died at the age of 100. Thurmond had built a political career on resisting *Brown* and played a catalytic role in realigning the South behind conservatives long, and to this day, opposed to equal rights. In the 1956 *Southern Manifesto*, which Thurmond helped draft and was signed by all but three Southern senators, he defended the democratic right of the White majority to decide whether Blacks should have equal rights. The Supreme Court, he charged, "With no legal basis ... undertook to exercise their naked judicial power and substituted their personal and political ideas for the established law of the land." Thurmond always insisted he was not a racist but rather was inalterably opposed to excessive federal authority over what local majorities preferred. But his insistence on having the rights of minorities determined by democratic majorities instead of by constitutional principles that established the rights of minorities by limiting majoritarian discretion would, if it had prevailed, have effectively suppressed minority rights, perhaps indefinitely.

On the same day Thurmond died, it became clear that the position he took, and the debate over rights it provoked, was still very much alive in America. On that day, the current U.S. Supreme Court decided *Lawrence v. Texas*, striking down all state and local laws criminalizing sodomy and establishing a broad platform of constitutional support for the equal rights of homosexuals. This decision was a direct outgrowth, and for gay men and lesbians the culmination, of the generic movement for legal equality that was launched by *Brown*. Significantly, the arguments Thurmond made in 1956 against *Brown* found an echo in the dissenting opinion in *Lawrence* by Associate Justice Antonin Scalia, who wrote: "Let me be clear that I have nothing against homosexuals, or any other group, promoting their agenda through normal democratic means.... But it is the premise of our system that those judgments are to be made by the people, and not imposed by a governing caste that knows best...." The governing caste he was referring to was the same one that was the subject of Thurmond's ire nearly a half-century ago: the Supreme Court, acting as it was designed to act, interpreting the Constitution and protecting minority rights against tyrannical majorities.

Like Thurmond, Scalia would leave the rights of minorities to the mercies of the majority that despised them and would subordinate constitutional protections to majoritarian authority - precisely what the Bill of Rights and the Civil War Amendments were designed to avoid. Scalia would argue that the analogy is wrong because the right not to be discriminated against on the basis of race is fundamental under the Constitution, while the right not to be discriminated against on the basis of sexual orientation is not. But at the time of *Brown*, the right not to be discriminated against on the basis of race was no more established as fundamental than the rights of homosexuals are today. And that was precisely what Thurmond argued in 1956.

Scalia's echo of Thurmond's *Manifesto* shows how far we have yet to go to establish firmly a constitutional

basis for minority rights and how vigorously conservatives still subscribe, unapologetically, to Thurmond's view that democratic majorities should decide whether and to what extent minorities should have legal rights. But the *Lawrence* decision is also a testament to the generic glory of *Brown* and what it accomplished even beyond the arena of racial justice.

But before the glory was an ugly time because Strom Thurmond was far from alone in the years following *Brown*. In the immediate aftermath, there was massive resistance, much of it violent, nearly all of it orchestrated, encouraged, or led by public officials.

Within three years of the *Brown* decision, seven Southern states passed resolutions calling for defiance of the Supreme Court and threatening armed resistance. Arkansas promised to defend itself against "all illegal encroachments upon the powers reserved to the state." In 1957, Arkansas Governor Orval Faubus made good on that threat. He called out the National Guard to prevent Black teenagers from entering Central High School in Little Rock. They were joined by an angry, seething White mob. One woman later recalled how, as a 15-year-old Black girl, she had walked excitedly to school on what she thought would be a great day, only to have her way blocked by soldiers brandishing bayonets, while the mob taunted her, calling her "nigger bitch" and yelling for her to be lynched then and there.

Hostility and resistance were not limited to Arkansas. In 1956, Senators Thurmond and Harry Byrd of Virginia helped persuade 19 Southern senators and 82 members of the House of Representatives—virtually the entire Southern delegation—to sign the *Southern Manifesto* denouncing *Brown*. And some who signed did not bother to hide behind "states rights" or the principle of unlimited democratic majoritarianism. One Mississippi senator called racial integration "a radical, pro-Communist political movement." And it should be remembered that the *Manifesto* was organized and led not only by Strom Thurmond. Senator Sam Ervin of North Carolina, now mostly remembered for his vigorous defense of constitutional rights during the Watergate scandal, in 1956 was less reverential about constitutional rights and bestowed his prestige and credibility upon the movement to resist *Brown*.

The resistance of Southern officials, all Democrats, was strongly supported by respectable Northern conservatives, including the scion of the then-nascent conservative movement, William F. Buckley Jr. In the summer of 1957, Buckley's *National Review*, the leading beacon of conservative thought and opinion, stated the following: "The central question ... is whether the white community in the South is entitled to take such measures as are necessary to prevail, politically and culturally, in areas where it does not predominate numerically. The sobering answer is 'yes'.... The white community is so entitled because, for the time being, it is the advanced race.... *National Review* believes that the South's premises are correct...."

And Buckley himself, many times during these critical years, echoed and repeated such views, defending the South's resistance and championing states' rights over civil rights. What Scalia says now in the context of gay rights, Buckley said then in the context of civil rights, establishing a clear line of principled contempt for minority rights between conservative thought, 50 years ago and today.

Thus encouraged by the resistance of Southern

Democrats and the complicity of Northern conservatives, White hostility remained bitter and undiminished throughout the South. In 1956, when Autherine Lucy entered the University of Alabama under a federal court order, she was forcibly removed by state officials. In 1961, violence greeted Black students who had been admitted to the University of Georgia. In 1962, James Meredith was attacked at the University of Mississippi when he became the first Black student to enroll, provoking President John F. Kennedy to send troops to protect one man's right to attend a state-supported school.

In 1963, nearly a decade after *Brown*, Alabama Governor George C. Wallace defiantly proclaimed: "Segregation now, segregation tomorrow, segregation forever." Six months later, on a warm June night in Jackson, Mississippi, Medgar Evers, head of the local NAACP branch, was shot and killed in his driveway. Three months after that, a Black church in Birmingham, Alabama, was bombed during Sunday morning services, killing four young girls and injuring 23 others. The following summer, three young civil rights workers—one Black, two White—were abducted by a local Mississippi sheriff, murdered, and buried in an earthen dam. In March 1965, Viola Liuzzo, a White woman who had come from Detroit to work in the Southern voter-registration movement, was shot and killed in her car.

During all these years, the FBI, under the direction of J. Edgar Hoover, offered no relief for the terrorism that enveloped civil rights activists. Indeed, the FBI was often part of the problem, sometimes collaborating with local police, who themselves were frequently associated with the local Ku Klux Klan.

By 1964, a decade after the Supreme Court first decided *Brown*, seven of the 11 Southern states still had failed to achieve even 1 percent integration in their public schools. Five years later, only about 10 percent of Black children attended majority-White schools in Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

But if *Brown* provoked rage and resistance among Southern white supremacists and their conservative sympathizers in the North, it also and significantly filled Black people and their White allies with hope, emboldening them to assert their rights and to believe that if they continued to do so, they would prevail.

In 1955, the Montgomery bus boycott gave birth to the tactic of nonviolent resistance to racial injustice, and it became the central strategy, outside of litigation, for the growing civil rights movement. On February 1, 1960, the first sit-in took place in Greensboro, North Carolina. Four Black college students sat down at a segregated lunch counter and requested service. They were refused and arrested for trespassing. (A then little-known disc jockey named Jesse Helms regularly railed against those sit-ins on his radio show.) No law protected those students because the Supreme Court had long ago ruled that the 14th Amendment could not be used to outlaw racial discrimination in privately owned public facilities. But this was no longer just a legal struggle. Black citizens kept coming back, in larger and larger numbers, to exercise their rights—enduring arrest, imprisonment, and sometimes fearful beatings—without responding violently.

In the wake of *Brown*, over the next few years, hundreds of such nonviolent actions took place: sit-ins at segregated restaurants, kneel-ins at segregated churches,

wade-ins at segregated swimming pools, read-ins at segregated libraries. Voter registration campaigns sprung up throughout the South, the first since just after the Civil War. Freedom rides were organized to test the right of Blacks and Whites to ride together on interstate buses.

Many of these actions met with violence. People were beaten brutally, some permanently injured, and more than a few were killed. Southern police usually provided no protection, sometimes perpetrating the violence or quietly encouraging it. Those who were not beaten were often arrested, usually for walking peacefully to the courthouse to register to vote or to express grievances. The First Amendment gave them the legal right to do that but in fact provided no shelter. The First Amendment, 175 years after it had been adopted, was not recognized in the South, and protestors again and again had to go to federal court to vindicate their right to free speech.

Towns passed ordinances barring speech they found "offensive," which usually meant speech advocating elementary rights for Black citizens. Insurance bonds that could not be obtained were required as a condition for marching in a parade. And permits were required that could be denied at the whim of hostile public officials. Much of what all Americans now take for granted as ordinary First Amendment rights was established during this period in the context of civil rights activities. In this sense, all Americans exercising their right to free speech today owe a debt to *Brown* and the civil rights movement that followed.

On August 28, 1963, these actions reached a stirring climax when 250,000 people, of all races and religions from all over the country, assembled in Washington, D.C., to voice their demand for federal legislation that would at last guarantee equal opportunity in employment, equal access to public accommodations, prompt enforcement of school desegregation, and equal voting rights—in short, equal citizenship.

A year later, in 1964, the first major federal civil rights law since just after the Civil War was enacted, limiting the use of discriminatory literacy tests as a bar to voting, authorizing the U.S. attorney general to file lawsuits challenging segregated public facilities and schools; outlawing racial discrimination in public accommodations such as hotels, restaurants, and recreational facilities; prohibiting discrimination in any program accepting federal funds; and forbidding discrimination in employment by all but the smallest private employers.

In 1965, the Voting Rights Act was passed. At the time, relatively few Blacks were registered to vote in the South. In Mississippi, only 6.4 percent were registered; in Alabama, 19.4 percent; and in Louisiana, 31.8 percent, compared to 80.2 percent of Whites. The Voting Rights Act and its subsequent amendments outlawed discriminatory voting tests and, for the first time since 1871, authorized federal courts to appoint registrars to supersede state officials in cases where the denial of the right to vote or register was widespread. The Voting Rights Act also contained a new device: preclearance. In any jurisdiction with a history of racially discriminatory tests or low voter participation by minorities, no local change in voting procedures or election laws could take place without prior approval by either the U.S. Department of Justice or a federal court.

Finally, in 1968—14 years after *Brown* and only a few weeks after Martin Luther King Jr. was murdered at the age

of 39 on a hotel balcony in Memphis, Tennessee—Congress passed the Civil Rights Act of 1968, outlawing racial discrimination in the sale, purchase, rental, financing, and advertising of housing. It was the nation's first federal fair housing law.

With the passage of this law, most of the basic legal principles sought by the civil rights movement were established. The destruction of Jim Crow laws and their replacement by a federal legal infrastructure of formal equality was, without doubt, a major part of the legacy of *Brown*, which sparked this legal revolution, not only in the courts but also in the streets and in the hearts and hopes of Black citizens and all those who believed in equal citizenship.

II. THE PREDICATE YEARS: GROWING UP BEFORE BROWN

History is usually written in terms of what happened in courts, in legislatures, and in large-scale political demonstrations. But the predicates of fundamental social changes sometimes occur below these formal platforms, in the arenas of popular culture, whose impact is often underestimated by historians. The history of *Brown*, and what prepared me for it as a young boy, provides a clear example.

I grew up in Brooklyn, New York, in the years before *Brown*, and although many Black families also lived in Brooklyn at that time, I never saw any as a child. Separation of the races was not legally imposed in New York, as it was in the South, but in some ways racial separation in the North was even more perfectly maintained. I went to a public school that was not required by law to exclude Blacks; nonetheless, from kindergarten through the 8th grade, in three different schools, I never saw a Black child.

When I went to the movies, there were no Black people—not in the audience and only rarely on the screen. If a Black person did appear on the screen, it virtually was always in a cartoonish, stereotyped role.

When I accompanied my mother to the market, I saw no Blacks. When I accompanied my parents to the voting booth, no Blacks were in line to vote. I never saw a Black elected official. When I went with my father, a construction worker, to the union hiring hall, there were no Blacks there either. And before 1947, when he took me to Ebbets Field to see my beloved Dodgers, the crowd in the stands and the players on the field were as white as the ball.

None of this seemed startling, not to me and not to my friends on the street. Children growing up, even as liberals in a liberal New York family and neighborhood, became used to the racial exclusions, as if somehow that was the natural order of things. Among Whites, it was the rare parent who said anything to small children about the massive immorality of racial discrimination, and it was nearly impossible for White children on their own to break free from the pervasive images that surrounded them. Thus were the cultural habits of racial separation—and its close cousin, racial subjugation—maintained.

It would be years before such separation and invidious discrimination became the subject of debate in Congress and still more years before such discrimination would be remedied by law. How the nation became ready for that debate, and why groundbreaking civil rights laws and court decisions happened when they did—essentially between 1954 and 1968—is a complicated question, admitting to no singular answer. But surely part of the reason can be traced—

for me and many thousands like me who were young at the time—to the breaking of the color line in baseball in 1947.

Before then, most Americans, unless they were personally affected by racial separation and exclusion, were not engaged by what Myrdal called the American dilemma. Of necessity, that meant virtually all Whites, most of whom benefited unjustly from racial exclusion, whether they knew it or not. For example, before 1947, only 400 major league jobs existed in baseball, all held by Whites. Some of those Whites were not as good as some of the Blacks playing in the Negro Leagues. Had competition been open and decisions made on individual merit alone, some Blacks would have replaced some Whites. Those Whites who were not good enough held their jobs—not on merit—but only because Blacks were prohibited from competing. They benefited unjustly from racial exclusion.

The same thing was true in more ordinary employment. My father, who struggled to find work as a construction worker toward the end of the Depression, was helped by the fact that Blacks were excluded from labor unions. In a situation where jobs were scarce and limited, excluding a whole class of people arbitrarily benefits those not excluded. My father benefited from racial exclusion, whether he realized it or not, and whether he was responsible for it or not, and as his son, so did I. Before 1947, few Whites thought about such things or related them to the patterns of separation and exclusion that prevailed at the time.

For young people, that was especially true. I was 9 years old when Jackie Robinson broke the color line in baseball. How many 9-year-olds, particularly White 9-year-olds, followed the drama of the Montgomery bus boycott in 1955? How many White 9-year-olds outside the Deep South were moved by the Supreme Court's decision in 1954? And how many closely followed the debates in Congress during the 1960s or identified with the struggles that led to those debates? How many 9-year-olds, especially White 9-year-olds, were touched by those events in a personal way, or came to understand viscerally what they meant? How many were transformed? Not many.

But fully seven years before the Supreme Court's decision in *Brown* and nearly nine years before Rosa Parks sat down on that Alabama bus, ordinary people all over this country, including small children, Black and White, participated in and learned from Jackie Robinson's struggle in a way that was direct, powerful, and enduring. In that sense, Robinson's feat and Branch Rickey's leadership in recruiting him, hiring him, and supporting him constituted the first great public civil rights event of the post-WW II era. One observer later called it "perhaps the most visible single desegregation action ever taken," while a veteran of the civil rights movement said it "helped lay the predicate for the Supreme Court's (1954) decision."

Growing up on the streets in Brooklyn, my friends and I felt passionately involved, in a way that seemed to us familial, with our teams. We were, after all, 9 years old, and larger political issues had not yet penetrated our consciousness. But in Brooklyn, in the late 1940s, we felt a personal relationship with the Dodger players, and that was true for many adults as well. All of a sudden, there was Jackie Robinson, part of our family.

For many of us in the streets of Brooklyn, Jackie Robinson quickly became our favorite player. On a team

filled with heroes and stars, he above all the others captured our hearts and shaped our aspirations. We tried to incorporate everything about him into our own styles—his intense competitiveness and assertive play, his exquisite sense of timing and surprise, his slashing disruption of the opposing team's poise, even his batting stance.

None of this would be worth noting today—after all, favorite athletes come and go—but this was 1947, Robinson was Black and we were White, living segregated lives. And while we were rooting for Robinson to steal home, or beat out a bunt, or make a saving catch in the field, we were also participants, to a degree little understood at the time, in a major racial drama, engaged in a way none of us had expected in a conflict to resolve the American dilemma.

Before we had ever heard the phrase "Jim Crow" or knew what it meant, we knew that when the Dodgers went to St. Louis to play the Cardinals, Jackie (and, later, the other Black players on the team) was not allowed to stay in the hotels where the other Dodgers stayed or to eat where they ate. That—not from a book, not in school, not from a Congressional debate, and not from a court case—was how I learned about racial discrimination in public accommodations. And that is how I came to hate it. That was also what led to discussions at dinner that had never taken place before, and it was how many children first heard their parents address the issue and say, even if unenthusiastically, "That isn't right."

We also knew about the death threats, about the resistance of some White teammates and the support of others, like Pee Wee Reese of Louisville, Kentucky. We knew about the vicious race-baiting from opposition dugouts. We knew about Branch Rickey, and what he had done, and we learned what leadership was. And we learned most of this from Red Barber, the Dodger broadcaster, himself from Mississippi, who resigned his coveted position after learning that Robinson had been hired and then found a way to rise above his own prejudices and report the drama fairly and accurately every day—and in a Southern drawl.

Most of all, we learned from Robinson himself, from his extraordinary performance under what certainly was, and remains, the most sustained pressure any athlete has ever endured. He taught us to be restrained when restraint was strategically necessary, to be daring when being daring was least expected, to be intense when others relaxed, to resist adversity, stay focused, and come back to win. And we learned about family, about the incredible support of his wife, Rachel, and about how crucial family can be. It is quite possible that for many of us, these were the first images of Black humanity we as White children had ever been allowed to see.

We learned other lessons as well. We learned that the owners of baseball teams, who for decades had hired White players of limited talent while refusing to hire Black players because they were not "qualified," were lying. We learned that individual merit and even the success of their teams did not matter to them. We learned not to trust such arguments when race was involved.

By watching Jackie Robinson and the players who followed him, we learned when we were very young and in a way deeply meaningful to us, that skin color had nothing to do with talent, ability, hard work, strength of character, or any other trait that mattered. Skin color, it seemed to us then,

was like eye color or hair color. It told you nothing about a man's character or his ability to hit a baseball. For many of us, it was not a hard jump to understanding that skin color also told you nothing about a person's ability to play the violin or do mathematics or help build a tall building in New York.

In the years after 1947, we learned about the difference between tokenism and true integration. We watched while some teams, still claiming they were not prejudiced, continued to refuse to hire Black players. (The New York Yankees were all White until 1955. The Red Sox were the last team to hire a Black player in 1959-12 years after Robinson broke the color line.) We knew for many years afterward that Black and White players were not allowed to room together on road trips, and mediocre White players were still being hired while Blacks had to be superstars to crack the lineup. We watched the long resistance to hiring Black coaches, managers, and general managers, even though most of these jobs traditionally had been filled by former players. And we learned from this about the difference between token symbolic progress and real progress, about the layers of resistance to ending racial discrimination, and about how even the most dramatic single act of desegregation cannot, without more, remedy decades of institutionalized racial exclusion.

Finally, there was the breaking of racial separation itself among the fans. Before 1947, the crowd at Ebbets Field was virtually all White. But, after 1947, things began to change. By 1949, I sat in integrated bleachers, and it felt natural. I remember Robinson winning one game with a dramatic, late-inning drive to left center. I found myself, an 11-year-old White boy, embracing a middle-aged Black man in the next seat. There was a sense of community between Black and White that day at Ebbets Field, a meeting ground in a society that had banished most other meeting grounds, a place where Black and White made common cause, both on the field and in the bleachers. It is quite possible that, in those early years, Ebbets Field was the only fully integrated public accommodation in America.

It was also a unique experience at that time to see, in such a visible and public arena, Black and White teammates, working together, partners in a joint venture, and doing so successfully. (The Dodgers were by far the most successful team in the National League during the decade after Robinson broke in.) In a land where such interracial ventures were discouraged, if not prohibited, and thought by almost all to be a practical impossibility, the performance of the Brooklyn Dodgers as a team from 1947 to 1956 was an extraordinary and, at the time, an unprecedented image.

I do not mean to suggest that everyone loved each other at the ballpark or on the field, and went home newly free of racial prejudices and determined to fight for racial justice. But it is hard today to imagine what it meant then—in the late 1940s—for a young White boy to identify with the struggle of a proud, talented, and assertive Black man in his fight against racism, what it meant to watch White men like Branch Rickey and Pee Wee Reese stand alongside Robinson and exercise leadership, what it meant to somehow ingest that struggle and consider it his own, and how unusual and reformative it was at the time to experience, even sometimes, a sense of commonality between White and Black.

Many of us, perhaps most, were not even aware that we were learning these lessons. But they were learned

nonetheless, and in a way no book, no formal abstract lesson could have taught us. And these lessons prepared us for the struggles that would come in the larger society a decade and more later. When *Brown* was decided, I was 16 years old and I knew, because of Jackie Robinson, what that decision was about, what resistance could be expected, and that despite such resistance it was possible to prevail. By the time of the March on Washington for Jobs and Freedom, we 9-year-olds were 25. Standing there in that huge crowd, some of us felt we had borne witness to this before.

III. THE UNFINISHED YEARS: CONTINUING THE SEARCH FOR REMEDIES

Brown was, above all else, a declaration of formal, legal equality. That *Brown* would not be easily or quickly enforced soon became apparent. Less well understood was the fact that, even if fully enforced, the removal of legal barriers to equal opportunity was only the first stage in a longer, more frustrating, and more difficult struggle involving much more than legal norms. *Brown* was necessary—critically necessary, to be sure—and it launched a profound and enduring legal revolution. But it was not sufficient, as we now know.

In many, perhaps most, school systems North and South, racially disproportionate inequality of education still reigns, as does racial separation. Cynical and dysfunctional proposals are made to remedy such persistent inequalities, often by those whose ideological forebears supported the South's resistance a half-century ago. A prime example of this phenomenon is the idea of school vouchers, a proposal initiated and driven by conservatives, ostensibly to give poor Black families the same school choices as wealthy families. But no such choice would in fact be provided under any federal or state voucher law actually proposed.

Advocates of vouchers—essentially a system to privatize public schools at taxpayer expense—claim, for example, that the children of poor Black families in cities like the District of Columbia or New York should have the same school choices as wealthy families, a perhaps unassailable goal. But no voucher plan actually proposed would provide such choices.

In the inner cities where most Black families live, the better private schools—the ones wealthy families choose for their children—cost $15,000 or more per student per year. Voucher plans actually proposed would provide no more than $3,000, and most proposed plans would provide less. Moreover, such vouchers could not be used unless the private school chosen accepts the student and the parent can pay the difference between the value of the voucher and the actual tuition. For schools that charge $15,000 and vouchers that provide $3,000, families would have to come up with $12,000 a year per child. Families with two or three children would need $24,000 to $36,000 annually to use the vouchers in a way that provides them with the same school choices as wealthy families. How many poor Black or Latino families in the District of Columbia, New York, or any other major city could afford that? None would be a pretty accurate answer.

Moreover, if somehow a large sum were made available to a poor family so it could use the voucher, the private school chosen need not accept the child. Unlike public schools, private schools can choose their students carefully and often exclude "difficult" students. Few if any

proposed voucher plans would disturb such discretion over admissions decisions. Thus, private schools would receive public funds and retain the ability to choose their students. But students would not acquire the ability to choose their school.

The most likely result of this scam is this: The main beneficiaries of voucher plans would be middle- and upper-middle class families who could afford $12,000 a year per student, but not $15,000, and the schools themselves, which would enjoy an infusion of taxpayer money. Poor Black and Latino children would be the least likely to benefit, and certainly would never, under any actual proposed plan, enjoy the same choices as wealthy or even affluent families.

Finally, the money to fund such vouchers would not come from new taxes because the chief advocates of vouchers generally oppose raising taxes, especially for expanding social services. The funds for vouchers would have to come from existing educational budgets, thus further impoverishing public schools, where most of the intended beneficiaries of vouchers—poor Black and Latino children—would remain, trapped in declining public schools with declining public budgets. Or they would be funneled into sectarian religious schools, whose tuition more closely matches the value of vouchers. But that is not exactly the choice wealthy families have.

For these reasons, voucher plans as they actually exist are a trap for poor Black and Latino families, a trap constructed by many of the very conservatives who for decades found reasons to oppose *Brown* and its implementation. Fifty years after *Brown*, the landscape of equal opportunity is strewn with such traps.

Despite all this, it is fair to say that the regime of legalized discrimination based on skin color that was entrenched before *Brown* no longer exists and that formal, legal equality has replaced it. However, the establishment of formal, legal equality has not led to the elimination of unjust differences based on skin color: Major disproportions persist in education, housing, imprisonment, family structure, unemployment, wealth, and opportunities for advancement. To some commentators, notably those who, like Charles Murray, never were prominently involved in the effort to dismantle Jim Crow or establish formal equality, the persistence of these disproportions is evidence of innate inferiorities linked to skin color. To others, notably those who were in the forefront of the civil rights movement, the persistence of these disproportions is evidence that the institutionalized injuries imposed by centuries of slavery and legalized skin-color subjugation were far more severe and durable than imagined. The remedies for such injuries are somewhere beyond the establishment of formal, legal equality.

Melvin Oliver's work on the huge and persistent differentials in wealth and assets, as distinct from the narrowing diffe rentials in income, provides a profound example of how past injuries have functioned as a kind of seniority system for inequality.

Seniority systems in employment, in the absence of prior skin-color discrimination, would seem to be a fair way of distributing scarce jobs and promotions. But layered on top of centuries of skin-color discrimination and exclusion, seniority systems have the effect, if not the intention, of replicating and reifying inequality, of rewarding unjust beneficiaries and punishing victims of prior discriminations and

exclusions, thereby deepening and aggravating the initial injury. This is true, even if the seniority system is currently and prospectively implemented in a race-neutral way. Indeed, race-neutral mechanisms layered onto systems created by prior exclusions and discrimination almost always perpetuate and worsen the original exclusion. This fact is the moral and legal basis for affirmative action.

But while traditional affirmative action remedies, if implemented, may cure structurally discriminatory employment systems, the deeper inequalities in wealth and assets, and the ways in which those deeper inequalities limit equal opportunities across a broad spectrum of essential items, such as housing, jobs, education, and capital formation, do not yield and probably cannot yield to traditional legal remedies. In effect, such deeper inequalities are able to sustain themselves and a regime of persistent differentials in education, housing, and jobs without any current violation of law and in the absence of any current discrimination. While those structural inequalities based on skin color were created and maintained by governmental actions, they do not require any discriminatory governmental action now or prospectively in order to maintain unjust skin-color differentials into the indefinite future. Nor is it necessary for anti-discrimination laws to be violated in order for such differentials to endure. In effect, a regime of formal equality, layered on top of these structural inequalities, functions as a seniority system for injustice, placing a veneer of fairness over a fundamentally unfair structure. For this reason, the remedies of formal equality, developed during the era when establishing formal equality was critical, are not sufficient to establish remedies for racial injustice, and in some instances may be regressive.

It is as if the soft and mobile substance of social opportunities had been constrained and deformed for centuries by the hard shell of legalized skin-color subjugation. The heroic and revolutionary achievement of the civil rights movement of the mid-20th century, beginning with *Brown*, was to break apart and remove that hard outer shell. But when it did, the substance of opportunity did not spring back into a race-neutral form; too many decades of constraint had robbed it of its elasticity; the deformation had become ossified. To the deep disappointment of advocates for racial justice, once the hard outer shell of legalized skin-color subjugation had been broken apart and removed, we discovered that the inside had assumed the form of the shell, More, much more, would be required to restore its shape, its elasticity. Furthermore, the obligation to do more must fall upon society as a whole and government in particular. It was society as a whole and government at every level, through action and inaction, that created and maintained the injuries and the consequences we now face and endure. The obligation to remedy them derives from the source of the injury. This is the moral and philosophical basis for both affirmative action and the recent movement for reparations. It is not necessary to endorse any particular affirmative action proposal or any particular reparations proposal in order to recognize the moral and philosophical societal obligation to repair the institutionalized damage done.

New paradigms, new ways of thinking about and analyzing the problem, new ways of conceiving the problem will have to be invented before remedies can be found for the racial injustice lying ossified beneath the hard outer

shell. The search for such remedies represents an entirely different stage of the quest for racial justice. As it turns out, the legal paradigms and remedies that were developed for the successful assault on the hard outer shell of legalized skin-color subjugation, and which were responsible for the establishment of formal equality—an immense and revolutionary accomplishment—are insufficient for the next stage of the struggle: the assault on the ossified social and economic inequalities created by centuries of legalized subjugation. It is also possible that the people—heroes all—who led the initial assault on the outer shell, many of whom were lawyers, are too confined by their training and by their past success to be the ones likely, or exclusively likely, to develop new paradigms and new remedies.

At the same time, it would be a mistake to assume that because formal equality exists, current skin—color and ethnic discrimination does not. To the contrary, traditional race-based discrimination—against Latinos, Asian Americans, Arab Americans, and others, as well as African Americans—continues to escape the enforcement of civil rights laws. More significantly, new forms of government-driven skin-color subjugation have developed, of which drug prohibition and the explosions of racially targeted incarceration provide one outstanding and consequential example. The racially targeted enforcement of drug prohibition and the racially skewed exponential growth of the prison population have functioned as a successor state-action system to Jim Crow injustice. This is evident from arrest patterns, search and seizure patterns, conviction rates, sentencing disparities, racial profiling on highways and at customs checkpoints, and felony disenfranchisement. In effect, the racially skewed prosecution of the drug war represents a partial resurrection of the hard outer shell of legalized discrimination and must be attacked as such. What happened in Tulia, Texas, recently is only the pathological tip of a very large and systemic iceberg.

Looking back 50 years later, *Brown* seems to me every bit as revolutionary and consequential as it seemed then: a groundbreaking landmark along the road to racial justice and a beacon of fundamental principle. But we know now, as perhaps we did not in our exultation then, that while *Brown* was necessary, it was far from sufficient. While it was a critical first step, many more steps will be necessary. After all, skin-color subjugation had been institutionalized for centuries. Why did we ever think we could reverse its effects in only 50 years? *Brown* and the establishment of formal equality should encourage us, but uncommon stamina and creative energy will be required to complete the task. This relay race is not over, and fresh runners are waiting to take our batons.

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