

**“THINGS CANNOT GO ON AS THEY ARE”:<sup>1</sup> CONTEXTUALIZING  
HERBERT WECHSLER’S CRITIQUE OF THE SCHOOL  
SEGREGATION CASES**

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This morning, constitutional scholar David Strauss asked us to reconsider Herbert Wechsler’s 1959 critique of *Brown v. Board of Education* in *Toward Neutral Principles of Constitutional Law*.<sup>2</sup> Read outside its historical context, Wechsler’s charge that *Brown* failed to establish a neutral legal principle for invalidating segregation, and that segregation might even have been constitutional, sounds obtuse. Yet, a closer look at the historical record suggests that Wechsler may have had good reason for criticizing *Brown* when he did, and may actually have thought that by doing so he was helping, rather than hurting, the cause of civil rights. This response, though brief, outlines how this might be so.

When Herbert Wechsler stood up to deliver the Oliver Wendell Holmes lecture at Harvard Law School in April 1959,<sup>3</sup> the Supreme Court’s constitutional basis for invalidating racial segregation in the American South was adrift. Five years earlier, the Court had made headlines by ruling that segregation in public schools violated the Equal Protection Clause of the Fourteenth Amendment because racial separation had “a detrimental effect upon [African American] children.”<sup>4</sup> To prove this, the Court had cited social science data assembled by sociologists like Kenneth B. Clark, who used a variety of innovative techniques, including the presentation of colored dolls to children, to prove that segregation “has a tendency to retard the educational

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1. These were the words of Minnie Jean Brown, one of the nine African American students who first integrated Little Rock, after her second expulsion from Central High School. *Little Rock Girl Sees More Strife: Expelled Pupil Doubts That 8 Remaining Negroes Can Stand Harassment*, N.Y. TIMES, Feb. 23, 1958, at 59 [hereinafter *Little Rock Girl Sees More Strife*].

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2. Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 33 (1959).

3. *See id.* at 1, n.†.

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

and mental development of [African American youth].”<sup>5</sup> Despite early problems with this evidence, including its failure to engage the dominant thinking of sociologists at the time, scholars like Allison Davis, Kurt Lewin, and the Chicago School of Sociology, all of whom held that “proximity to the dominant group—not segregation—caused psychological conflict and personality damage,”<sup>6</sup> the Court used Clark’s studies to justify invalidating racial segregation not just in public schools, but in other contexts as well. In 1955, the Court used *Brown* to invalidate segregation in public golf courses in *Holmes v. City of Atlanta*.<sup>7</sup> In 1956, the Court used *Brown* to invalidate segregation on public buses in *Gayle v. Browder*.<sup>8</sup> In 1958, the Court used *Brown* to invalidate segregation in public parks in *New Orleans City Park Improvement Ass’n v. Detiege*.<sup>9</sup> Wechsler questioned the logic behind such opinions, particularly the Court’s tendency to simply invalidate segregation without going into any legal analysis.<sup>10</sup> Assuming that “modern authority”

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5. *Id.* (internal alteration omitted).

6. DARYL MICHAEL SCOTT, *CONTEMPT & PITY: SOCIAL POLICY AND THE IMAGE OF THE DAMAGED BLACK PSYCHE*, 1880–1996 124 (1997). Scott makes the point that not only did the social science evidence in *Brown* contradict the segregationist position advanced by Southern states, but it contradicted the prevailing wisdom of social science generally at the time. *Id.* That wisdom held that psychological damage is more acute when members of subordinate groups come into close proximity with members of dominant groups. *Id.* If members of subordinate groups are successfully segregated from dominant groups, scholars at the time believed, they tend to suffer less psychological harm. *Id.*

7. 350 U.S. 879, 879 (vacating Fifth Circuit decree holding that *Brown v. Board of Education* does not apply to public golf courses, and remanding case to be decided in conformity with *Mayor & City Council of Baltimore v. Dawson*, 350 U.S. 877 (1955), which affirmed the Fourth Circuit holding that segregated beaches and bath houses are unconstitutional pursuant to *Brown v. Board of Education*, 347 U.S. 483 (1954), *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950), *Henderson v. United States*, 339 U.S. 816 (1950), and *Bolling v. Sharpe*, 347 U.S. 497 (1954)). The precise manner in which these four opinions applied to segregated beaches did not enter into the Fourth Circuit’s ruling or into the Supreme Court’s opinions in either *Baltimore v. Dawson*, 350 U.S. 877 (1955), or *Holmes v. Atlanta*, 350 U.S. 141 (1955).

8. 352 U.S. 903, 903 (1956) (affirming district court ruling in *Browder v. Gayle*, 142 F. Supp. 707, 716–17 (M.D. Ala. 1956), that segregated buses violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment based on the Supreme Court’s holdings in *Brown v. Board of Education*, *Mayor & City Council of Baltimore v. Dawson*, and *Holmes v. Atlanta*).

9. 358 U.S. 54, 54 (1958) (affirming Fifth Circuit ruling that segregated public parks violate the Equal Protection Clause of the Fourteenth Amendment whether there is psychological damage to African Americans or not, based on the Supreme Court’s rulings in *Holmes v. City of Atlanta* and *Mayor & City Council of Baltimore v. Dawson*). While the argument might be made that *New Orleans v. Detiege* did not rely on *Brown* because it cited instead to *Holmes* and *Mayor*, neither *Holmes* nor *Mayor* had any clear constitutional basis independent of *Brown*. Indeed, the Court’s legal reasoning had, by 1958, become almost completely circular, citing opinions that cited other opinions that lacked any sustained constitutional analysis.

10. Wechsler, *supra* note 2, at 33.

supported the idea that segregated schools damaged African American children, which it arguably did not, how did Clark's studies apply to buses?<sup>11</sup> Or golf courses?

Long a supporter of merging social science and law, something that he himself had done in his criminal law casebook and later as reporter for the American Law Institute's Model Penal Code, Wechsler began to suspect that the Supreme Court was playing fast and loose with sociological data, a fear that led him to further criticize the Court's social science evidence as it applied in the school context.<sup>12</sup> "Was [the Court] comparing the position of the [African American] child in a segregated school with his position in an integrated school where he was happily accepted and regarded by the whites," wondered Wechsler, "or was [the Court] comparing his position under separation with that under integration where the whites were hostile to his presence and found ways to make their feelings known?"<sup>13</sup> Wechsler's interest in the possibility that white students might be hostile to black students, not something that the Supreme Court had considered in 1954, coincided closely with the experience of the nine African American students who finally gained access to Central High School in Little Rock, Arkansas in 1957.<sup>14</sup> Their first year of integration had been so bad, and their bad experiences so widely publicized, that it seemed difficult to conclude that desegregation had psychologically helped them. For Melba Pattillo, one of the nine black students who enrolled in Central High in September 1957, her first year of integrated education at Little Rock amounted not to psychological uplift but nine months of racial "torture."<sup>15</sup> The white students "physically and mentally tortured us," remembered Pattillo,<sup>16</sup> "no one talked to me, no one acknowledged my presence."<sup>17</sup> The only white students who did acknowledge

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11. *Brown*, 347 U.S. at 494.

12. Wechsler discussed his early interest in social science as a guide for law during an interview conducted by Norman Silber and Geoffrey Miller in August 1978. See Columbia Oral History Project, Life of Herbert Wechsler (Norman Silber & Geoffrey Miller interviewers, 1978–1982). Early examples of Wechsler's interest in social science emerged in his criminal law casebook, JEROME MICHAEL & HERBERT WECHSLER, CRIMINAL LAW & ITS ADMINISTRATION: CASES, STATUTES, & COMMENTARIES (1940), and his work on the American Law Institute's Model Penal Code. See, e.g., Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARV. L. REV. 1097, 1102–04 (1952).

13. Wechsler, *supra* note 2, at 33.

14. See, e.g., *Little Rock Girl Sees More Strife*, *supra* note 1.

15. Interview by *Scholastic*, with Melba Pattillo Beals (Jan. 31, 1995) (on file with author), available at <http://content.scholastic.com/browse/article.jsp?id=4799> [hereinafter *Beals Interview*]; see also MELBA PATTILLO BEALS, *WARRIORS DON'T CRY: A SEARING MEMOIR OF THE BATTLE TO INTEGRATE LITTLE ROCK'S CENTRAL HIGH* (1994).

16. *Beals Interview*, *supra* note 15.

17. *Id.*

Pattillo's presence, she recalled, "called me names or spat on me."<sup>18</sup> Her fellow black students had similar experiences. In December 1957, harassment from white students prompted Minnie Jean Brown, another one of the Little Rock Nine, to lose her temper and dump "food on [a] white boy," conduct for which she was promptly suspended.<sup>19</sup> One month later, Darlene Holloway, a white Central High student, assaulted another one of the African American girls at the school, prompting Holloway's suspension.<sup>20</sup> Over the course of the rest of the spring semester in 1958, white students continued to assault their black peers, striking them with purses, kicking them, showering them with food, intimidating them with signs encouraging them to leave, and in the case of a white student named Billy Ferguson, throwing an African American girl down a flight of stairs.<sup>21</sup>

All of these conflicts made it into the *New York Times* and, presumably, onto Herbert Wechsler's breakfast table. Not only that, but as day-to-day conditions for the African American students in Central High School worsened, New York City reached out to the nine African American students at Little Rock, trying to save them from the horror of their newly integrated conditions. Following her second suspension from Central High School in January 1958, for example, Minnie Jean Brown received a scholarship to attend the private New Lincoln School on West 110th Street in New York City.<sup>22</sup> Convinced that white harassment would only continue in Little Rock, Brown left Arkansas mid-year, moving to New York in February.<sup>23</sup> Once there, she stayed with Kenneth Clark, the same social scientist whose questionable evidence had been used to invalidate segregation,<sup>24</sup> and was greeted by a representative of the Lincoln School and fifty delegates of city youth councils and high schools in New York.<sup>25</sup> Not only did New York school officials become interested in the plight of the Little Rock Nine, but so did national intellectuals. Hannah Arendt, then teaching at the University of California Berkeley, wrote an article in the fall of 1957 questioning the logic behind *Brown*, not because she sympathized with whites, but after viewing a

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18. *Id.*

19. *Negro Suspended at Central High: Girl Dumps Food on White Boys in Little Rock—New Attack on N.A.A.C.P. Aide*, N.Y. TIMES, Dec. 18, 1957, at 31.

20. *White Girl Reports Little Rock Penalty*, N.Y. TIMES, Jan. 11, 1958, at 23.

21. BEALS, *supra* note 15, at 231–34; *Little Rock Gets Guard at Night: Troops Posted at School as "Precautionary" Step After Clash of 2 Students*, N.Y. TIMES, Jan. 17, 1958, at 10.

22. *Little Rock Girl Sees More Strife*, *supra* note 1.

23. Mildred Murphy, *School Welcomes Little Rock Girl: Director Greets Expelled Negro Pupil Here—She Hopes for Calm Stay*, N.Y. TIMES, Feb. 25, 1958, at 29.

24. *Id.*

25. *Id.*; *Little Rock Girl Sees More Strife*, *supra* note 1.

picture of one of the Little Rock Nine surrounded by a mob of her white peers.<sup>26</sup>

The alarming outbreak of white-on-black violence in Central High School over the course of the 1957–1958 school year did more than just bother intellectuals and school officials. From a legal perspective, it undermined the Supreme Court's argument in *Brown* that segregated public schools violated the Equal Protection Clause of the Fourteenth Amendment precisely because they had a "deleterious" effect on the "educational and mental development" of African American children.<sup>27</sup> Ignorant of the extent to which white children would themselves exercise a deleterious effect on black students by terrorizing them, the Court found its constitutional position eroding as each integrated school day in Arkansas passed.

By September 1958, one year after the Little Rock Nine entered Central High School, the question of white-on-black violence in Arkansas's most infamous public school landed on the Supreme Court's doorstep. In response to a petition by the Little Rock School Board showing that the first year of integrated learning had been marked by "chaos, bedlam, and turmoil" in which there were "repeated incidents of more or less serious violence directed against the Negro students," and that the "education of the students had suffered" to the point that a two year suspension of integration was in order, the Supreme Court wheeled out a new constitutional principle to bolster its holding in *Brown*.<sup>28</sup> In *Cooper v. Aaron*, decided on September 29, 1958, the Court accepted the Little Rock School Board's argument that "the educational progress of all the students, white and colored . . . [had] suffered" under integration.<sup>29</sup> Yet, educational progress and psychological health were no longer pivotal to the question of segregation's constitutionality. After twelve months of hearing that desegregation in Little Rock had devolved into torture for black students, the Court did not just affirm *Brown* but *revised* it by suddenly invoking the concept of due process as a constitutional basis for invalidating Jim Crow schools: "The right of a student not to be segregated on racial grounds in schools," announced the Court in *Cooper*, "is indeed so fundamental and pervasive that it is embraced in the concept of due process of law."<sup>30</sup>

The Court's invocation of due process of law, particularly for constitutional scholars like Herbert Wechsler, was troubling. Both the Fifth Amendment to the Constitution, which at that point in time applied only to the federal government, and the Fourteenth Amendment, which applied to the

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26. Hannah Arendt, *Reflections on Little Rock*, 6 DISSENT 45, 50 (1959).

27. Wechsler, *supra* note 2, at 32.

28. *Cooper v. Aaron*, 358 U.S. 1, 13 (1958).

29. *Id.* at 15.

30. *Id.* at 19.

states, possessed due process clauses. In fact, the Supreme Court had relied on the Fifth Amendment's Due Process Clause to justify invalidating public school segregation in Washington D.C. in *Bolling v. Sharpe*, a companion case to *Brown* in 1954.<sup>31</sup> Yet, the Court had made it clear in *Bolling* that proving a violation of due process was harder than proving a violation of equal protection; indeed the only reason the Court turned to due process in the D.C. context was because the capitol was not in fact a state.<sup>32</sup> However, the Court made no effort to explain why, in *Cooper v. Aaron*, segregation violated the due process rights of African American students. Instead, it simply cited to *Bolling v. Sharpe*.<sup>33</sup>

What was going on? Assuming that the Court remembered the Fifth Amendment did not apply to the states, was it trying to incorporate the Fifth Amendment through the Fourteenth Amendment, a move that the Warren Court would become adept at in the 1960s? Or, was the Court trying to raise the possibility that the Fourteenth Amendment's Due Process Clause, along with the Fourteenth Amendment's Equal Protection Clause, also invalidated public school segregation? If so, on what ground did it justify this move? How precisely did segregation deprive black students of their right to life, liberty, and property? The Court provided no explanation, a silence that Herbert Wechsler found unsettling. To him, the Court was not moving towards a neutral principle of constitutional law, but was instead drifting through the Constitution, cutting and pasting bits and pieces of language to justify normative results. While Wechsler did not disagree with the results, a fact he made sure to state before his Harvard audience, he worried that the Court was not only muddling constitutional theory, but jeopardizing the fate of African Americans in the South.<sup>34</sup>

Already, Little Rock had done much to disprove the Court's argument that integration was psychologically beneficial to black students, a theory that the Court had used not only to justify *Brown* but to invalidate segregation in a variety of other contexts as well. Further, the interracial violence that had emerged at Central High School was having mixed results on national attitudes. While it is certainly true that Orval Faubus's defiance of federal authority in September 1957 turned national opinion against massive resistance in the South, the day-to-day realities of integration for white and black students at Central High were not necessarily selling Northern audiences on the benefits

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31. *Bolling v. Sharpe*, 847 U.S. 497, 500 (1954).

32. *Id.* at 498–99. As the Court explained in *Bolling*, the “‘equal protection of the laws’ is a more explicit safeguard of prohibited unfairness than ‘due process of law.’” *Id.* at 499.

33. *Cooper*, 358 U.S. at 19.

34. *See* Wechsler, *supra* note 2, at 27–34.

of desegregation either.<sup>35</sup> In fact, white parents in New York City showed increasing skepticism regarding the normative value of integrating public schools over the course of the 1957–1958 school year. In October 1957, for example, white parents in Brooklyn resisted an attempt by the NAACP to have a school district in Bedford-Stuyvesant, a predominantly black neighborhood, rezoned to incorporate white students.<sup>36</sup> Part of the hesitation resulted from increasing violence between rival teenage gangs, organized along racial lines, in the Bedford-Stuyvesant and Bushwick neighborhoods. In November 1957, a special grand jury called to investigate lawlessness in New York City's integrated public schools called for the assignment of police officers to patrol hallways after reports of fights between gang-affiliated students during class time.<sup>37</sup> In January 1958, the principal of John Marshall Junior High School, an integrated Brooklyn school that had become the site of increasing violence, including the rape of a female student in the school's basement, committed suicide by jumping off the roof of his six-story apartment house before being scheduled to testify before a Kings County grand jury investigating school violence.<sup>38</sup> In April 1958, five teenagers were stabbed and beaten during a gang battle in Brooklyn between two predominantly black gangs, the Chaplains and the Bishops.<sup>39</sup>

Southern voices were quick to point to New York's problems as evidence that integration simply would not work. "[I] would 'hate to think what the metropolitan press would have done to us'" exclaimed Arkansas Governor Orval Faubus, "if the Brooklyn school violence had happened in Little Rock, . . . '[P]eople are not being told one-tenth of the trouble about racial problems outside the South.'"<sup>40</sup> On February 5, 1958, Georgia Governor Herman Talmadge announced that the citizens of Georgia were "deeply sympathetic with the citizens of Brooklyn in the difficulties they are experiencing in maintaining the integrity and independence of their public schools."<sup>41</sup> Talmadge even went so far as to suggest that "the President of the

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35. NUMAN V. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950'S* 277 (1997). Numan V. Bartley shows that national opinion turned against massive resistance in the aftermath of the Little Rock crisis but fails to explain the surprising lack of national interest in Little Rock's schools after Orval Faubus closed them down completely during the 1958–1959 school year. *Id.*

36. Benjamin Fine, *City to Spur Integration by Building of 60 Schools*, N.Y. TIMES, Oct. 31, 1957, at 1, 34.

37. Lawrence Fellows, *Policeman for Each City School Urged by Brooklyn Grand Jury*, N.Y. TIMES, Nov. 26, 1957, at 1.

38. Emanuel Perlmutter, *Head of School Beset by Crime Leaps to Death*, N.Y. TIMES, Jan. 29, 1958, at 1.

39. *2 Judges "Spank" Parents of Boys*, N.Y. TIMES, Apr. 22, 1958, at 35.

40. *Faubus Scores School Violence*, N.Y. TIMES, Feb. 1, 1958, at 10.

41. *2 Senators Clash on City's Schools*, N.Y. TIMES, Feb. 5, 1958, at 16.

United States send Federal troops to Brooklyn to preserve order in the public schools there in the same manner that he did to force a new social order upon the public schools of Little Rock, Arkansas.”<sup>42</sup>

While Talmadge’s request was, of course, ignored, Northern interest in seeing public school integration enforced in the South lagged during the 1958–1959 school year. In fact, few protested when Governor Orval Faubus shut down Little Rock’s secondary schools for the year, including Central High, denying public school education to its students.<sup>43</sup> Meanwhile, integration stalled in other Southern states as well, as school officials abandoned massive resistance in favor of more intricate legal schemes that assigned students to schools based not on their color but a variety of more subtle racially coded criteria that included notions of “psychological fitness” background and “moral standards.”<sup>44</sup> Such schemes held little interest for Northern audiences or the press, particularly as the NAACP began to accuse Northern school boards and Northern parents of thwarting integration attempts, particularly redistricting initiatives, in major cities like New York.<sup>45</sup>

For Herbert Wechsler, looking back on all this in the spring of 1959, neither *Cooper v. Aaron* nor *Brown v. Board of Education* had done much to advance the civil rights of African Americans or the integrity of constitutional law. Disappointed with the “ad hoc” manner in which the Supreme Court had approached the question of dismantling segregation in the South, Wechsler recommended that the Court either put together a coherent constitutional theory, move “toward neutral principles” as the title of his talk suggested, or get out of the political thicket.<sup>46</sup> “[W]here there is room for drawing [legal] lines that courts are not equipped to draw,” wrote Wechsler, “I prefer to see the issues faced through legislation.”<sup>47</sup>

While it has become fashionable to discredit Wechsler’s attack on *Brown* as an “obtuse” attack on the twentieth century’s greatest Supreme Court opinion,<sup>48</sup> this view fails to take into consideration the day-to-day history of the 1957–1958 school year, not to mention the drop in national concern over continued segregation in the South during the 1958–1959 school year. A close survey of the events leading up to Wechsler’s April 1959 address suggest that, if anything, he wanted the Court to do its homework or to leave things up to the other political branches. Professor Strauss’s resurrection of Wechsler’s

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42. *Id.*

43. BARTLEY, *supra* note 35, at 275.

44. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 358 (2004).

45. Fine, *supra* note 36, at 1.

46. Wechsler, *supra* note 2, at 31.

47. *Id.*

48. See, e.g., David A. Strauss, *Little Rock and the Legacy of Brown*, 52 ST. LOUIS U. L.J. \_\_\_ (2008).



critique, consequently, invites us to reevaluate both the constitutional and political motivations that animated his neutral principles argument. However, Strauss's claim that Little Rock and *Cooper v. Aaron* acted as catalysts for the civil rights movement deserves closer scrutiny.

By April 1959, the Supreme Court had failed to either achieve integration or sustain national interest in the cause of civil rights. In fact, the Court's glaring failure to accomplish appreciable results in the South led African American college students Ezell Blair, Jr., David Richmond, Joseph McNeil, and Franklin McCain to shun the courts and turn to direct action protest in February 1960, purposely entering not public schools but white lunch counters in Greensboro, North Carolina, and sitting down.<sup>49</sup> Within a matter of weeks, black college students around the South staged sit-ins in public restaurants and cafeterias, leading Ella Baker to form a new civil rights organization, separate from the NAACP, called the Student Non-violent Coordinating Committee, or SNCC in April 1960.<sup>50</sup> SNCC, together and sometimes in competition with Martin Luther King, Jr.'s Southern Christian Leadership Conference, or SCLC, mounted a very different, non-litigation centered campaign to effect social change, a campaign that hinged for SNCC on voter registration and for the SCLC on using direct action protest as a means of attracting national attention, shaping national opinion, and achieving legislative victory in Congress.<sup>51</sup> As if reading Herbert Wechsler's mind, in other words, young black activists turned away from the judiciary and toward the legislative branches of American government to dismantle Jim Crow. In fact, in 1963, Wechsler even intervened on behalf of the Civil Rights Movement, arguing that the *New York Times* should be allowed to publish arguably slanderous information on Southern segregationist officials, precisely to effect political change.<sup>52</sup> It was in this position, as supporting cast to the civil rights movement and the legislative process, that the Supreme Court finally played a role in influencing national opinion by indemnifying Northern media in *New York Times v. Sullivan*, a move that, as Gene Roberts and Hank Klibanoff argue in their 2007 Pulitzer Prize winning book *The Race Beat: The Press, the Civil Rights Struggle and the Awakening of a Nation*, led to the Civil Rights Acts of 1964

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49. WILLIAM H. CHAFE, CIVILITIES AND CIVIL RIGHTS: GREENSBORO, NORTH CAROLINA AND THE BLACK STRUGGLE FOR FREEDOM 71–86 (1981).

50. CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960s 19–23 (1981).

51. For SNCC's political program, see CARSON, *supra* note 50, at 56–132. For the SCLC's program, see DAVID J. GARROW, PROTEST AT SELMA (1978) and DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1986). For tensions between the NAACP and the SCLC, see ALDON D. MORRIS, THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE 123 (1984).

52. LUCAS A. POWE, JR., THE WARREN COURT AND AMERICAN POLITICS 303–10 (2000).

and 1965, and finally, long after *Brown v. Board of Education* and *Cooper v. Aaron*, the beginning of the end for segregated public schools in the American South.<sup>53</sup>

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53. GENE ROBERTS & HANK KLIBANOFF, *THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE AND THE AWAKENING OF A NATION* 358, 364 (2007). The centrality of the Northern press to the Civil Rights movement is also highlighted by David J. Garrow in *Bearing the Cross*. GARROW, *BEARING THE CROSS*, *supra* note 51, at 239, 408–09.