



Brown, Racial Change, and the Civil Rights Movement

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ARTICLE

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Michael J. Klarman*

INTRODUCTION.....	8
I. THE LONG-TERM INEVITABILITY OF RACIAL CHANGE	13
A. <i>World War II</i>	14
1. <i>Impact on Black Attitudes</i>	16
2. <i>Increased Political Opportunities</i>	18
3. <i>Increased Economic Opportunities</i>	20
4. <i>Other Effects of the War</i>	21
B. <i>Ideological Readjustment</i>	23
C. <i>The Cold War Imperative</i>	26
D. <i>The Changing Politics of Race</i>	30
E. <i>Economic and Social Integration of the Nation</i>	37
F. <i>Changing Southern Racial Norms</i>	51
1. <i>Increasing Urbanization & Industrialization</i>	52
2. <i>Higher Education Levels</i>	65
3. <i>Southern Demographic Shifts</i>	67
4. <i>Changing Attitudes Towards Racial Difference</i> ...	70

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G. Conclusion	71
II. THE SHORT-TERM SIGNIFICANCE OF <i>Brown</i>	75
A. The Conventional View of <i>Brown's</i> Connection to the 1960s Civil Rights Movement	77
B. The <i>Brown</i> Backlash Thesis	85
1. The Limited Nature of the pre- <i>Brown</i> Southern Backlash	85
2. The post- <i>Brown</i> Unification of Southern Resistance Sentiment	97
3. The Politics of Civil Rights Repression	118
a. Orval Faubus	118
b. Ross Barnett	119
c. Bull Connor	121
d. Jim Clark	123
e. George Wallace	125
4. Civil Rights Legislation	129
a. The Short-Term Contingency of the mid-1960s Civil Rights Legislation	129
b. The Link Between Violent Confrontation and Civil Rights Legislation	141
CONCLUSION	149

INTRODUCTION

*BROWN v. Board of Education*¹ is commonly deemed to be one of the most important decisions in the history of the United States Supreme Court.² Yet virtually no scholarly attention has been devoted to corroborating this conventional estimation of

¹ 347 U.S. 483 (1954).

² See J. Harvie Wilkinson III, *From Brown to Bakke: The Supreme Court and School Integration: 1954-1978*, at 6 (1979) ("*Brown* may be the most important political, social, and legal event in America's twentieth-century history."); Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 *Stan. L. Rev.* 61, 62 (1988) (calling *Brown* "one of the most celebrated civil rights cases in American history"); Robert L. Gill, *The Impact, Implications and Prospects of Brown v. Board of Education: Twenty-Five Years After*, 30 *Negro Educ. Rev.* 64, 99 (1979) (stating that *Brown* was one of the Court's "most significant decisions"); Howard A. Glickstein, *The Impact of Brown v. Board of Education and its Progeny*, 23 *How. L.J.* 51, 55 (1980) (asserting that *Brown* served "as the foundation of our quest for equal justice in the United States"); Lino Graglia, *Remarks at Roundtable Discussion of the Judiciary Act of 1789* (Feb. 10, 1989), *reprinted in* 14 *Nova L. Rev.* 269, 271 (1989) (calling *Brown* "[t]he pivotal event in the history of judicial review"); Nathaniel R. Jones, *The Desegregation of Urban Schools Thirty Years After Brown*, 55 *U.*

Brown's significance. While nearly everyone assumes that *Brown* has had momentous implications for American race relations, nobody has bothered to identify the precise channels through which *Brown* effected change.

This scholarly oversight appears all the more peculiar in light of the uncontested fact, well known to informed observers though perhaps not to the general public, that *Brown* was *directly* responsible for only the most token forms of southern public school desegregation. In North Carolina, for example, just 0.026% of black schoolchildren attended desegregated schools in 1961—seven years after the original *Brown* decision—and that figure did not rise above 1% until after passage of the 1964 Civil Rights Act.³ Likewise in Virginia, a grand total of 208 blacks, out of a statewide school population of 211,000 (or 0.09%), were attending desegregated schools as of May 1961; that number had risen to only 1.63% in 1964.⁴ Such figures actually would have represented a stunning success by comparison with desegregation rates in the deep South; *not a single* black child attended an integrated public grade school in South Carolina, Alabama or Mississippi as of the 1962-1963 school year.⁵ Across the South as a whole, just over 0.15% of black schoolchildren in 1960 and 1.2% in 1964 were attending school with whites.⁶ Only after the 1964 Civil Rights Act threatened to

Colo. L. Rev. 515, 553 (1984) (stating that *Brown* “transformed the face and heart of America”); see also *infra* note 328 (citing additional sources).

³ See Earl Black, *Southern Governors and Civil Rights: Racial Segregation as a Campaign Issue in the Second Reconstruction* 109 (1976); William H. Chafe, *Civilities and Civil Rights: Greensboro, North Carolina, and the Black Struggle for Freedom* 105-06 (1980).

⁴ See Mark Howard, *An Historical Study of the Desegregation of the Alexandria, Virginia, City Public Schools, 1954-73*, at 90 (1976) (unpublished Ed.D. dissertation, George Washington University).

⁵ Alabama and South Carolina underwent token desegregation in the fall of 1963, Mississippi in 1964. See Neil R. McMillen, *The Citizens' Council: Organized Resistance to the Second Reconstruction, 1954-64*, at 9-10 (1971). Attempting to desegregate schools in the deep South could be a life-threatening activity. See Glenn T. Eskew, *The Alabama Christian Movement for Human Rights and the Birmingham Struggle for Civil Rights, 1956-1963*, in *Birmingham, Alabama, 1956-1963: The Black Struggle for Civil Rights* 32-33 (David J. Garrow ed., 1989) (reporting the experience of Reverend Fred Shuttlesworth).

⁶ See Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 50 (1991); Harvard Sitkoff, *The Struggle for Black Equality 1954-1980*, at 38 (1981). Ninety percent of this paltry sum came from six peripheral South states. See McMillen, *supra* note 5, at 92.

cut off federal educational funding for segregated school districts and the Department of Health, Education, and Welfare in 1966 adopted stringent enforcement guidelines did the integration rate in the South rise to 32% in 1968-1969 and 91.3% in 1972-1973.⁷ As one commentator has rightly observed: "The statistics from the Southern states are truly amazing. For ten years, 1954-1964, virtually *nothing happened*."⁸

That *Brown* failed to desegregate southern schools without the assistance of federal legislation does not mean, of course, that the decision was unimportant. After all, conventional wisdom holds that such legislation was attainable only because *Brown* had first laid the groundwork for it.⁹ My objective in this Article is to reconsider the question of *indirect* causation—namely, the relationship between *Brown* and the landmark civil rights legislation of the mid-1960s. I shall also investigate, more generally, the connection between *Brown* and the transformation of race relations in the United States.

Briefly stated, my argument consists of two parts. First, I argue that from a long-range perspective (by which I mean decades, not centuries) racial change in America was inevitable owing to a variety of deep-seated social, political, and economic forces. These impulses for racial change, I shall suggest, would have undermined Jim Crow regardless of Supreme Court intervention; indeed, the *Brown* decision was judicially conceivable in 1954 only because the forces for change had been preparing the ground for decades.¹⁰

To say that transformative racial change was ultimately inevitable, though, is not to say that it had to transpire when it did—largely in the 1960s. Judged from a narrower time horizon, *Brown*

⁷ See Rosenberg, *supra* note 6, at 50, 99-100. Rosenberg's figures do not distinguish between token and meaningful desegregation.

⁸ See *id.* at 52.

⁹ See sources cited *infra* notes 328-29. Rosenberg's challenge to the conventional estimation of *Brown*'s importance is noteworthy principally because he rejects the claim for *Brown*'s indirect significance as well. See Rosenberg, *supra* note 6, at 107-56.

¹⁰ I emphasize that my argument is that racial change would have come regardless of *Brown*, not that it would have come regardless of *any* federal intervention. It seems likely that racial change would not have come to the deep South any time this century without the civil rights legislation of the mid-1960s. See *infra* text accompanying notes 321-26. Part of my argument, then, is that the social, political, and economic forces identified in Part I eventually would have impelled federal *legislative* intervention against deep South outliers, regardless of *Brown*'s existence.

did play a vital role in the enactment of landmark civil rights legislation in the mid-1960s. The precise chain of causation linking *Brown* with this transformative racial change, however, is very different from what has been commonly supposed. The conventional view is that *Brown* instigated racial change either by pricking the conscience of northern whites or by raising the hopes and expectations of southern blacks.¹¹ I shall suggest in Part II that surprisingly little evidence supports either of these claims regarding *Brown's* contribution to the civil rights movement of the 1960s. The crucial link between *Brown* and the mid-1960s civil rights legislation inheres, rather, in the decision's crystalizing effect on southern white *resistance* to racial change. By propelling southern politics dramatically to the right on racial issues, *Brown* created a political climate conducive to the brutal suppression of civil rights demonstrations. When such violence occurred, and was vividly transmitted through the medium of television to national audiences, previously indifferent northern whites were aroused from their apathy, leading to demands for national civil rights legislation which the Kennedy and Johnson administrations no longer deemed it politically expedient to resist.

One final point must be made by way of introduction. It is my view that revolutionary racial change took place in the United States in the quarter century following World War II. Formal state-sponsored racial segregation has been eradicated; racially-motivated lynchings, which remained an all too common feature of 1960s Mississippi and Alabama, are virtually unheard of today (and when they do occur, are vigorously investigated, condemned, and prosecuted by public authorities); southern blacks have advanced from nearly universal exclusion from the political community to participation rates roughly comparable to those of southern whites of similar economic class, with concomitant increases in the responsiveness of public officials to the interests of the black community; many areas of public life, including schools, public accommodations, and employment have been de facto as well as de jure integrated to a significant degree; and per capita income and educational disparities between *middle class* whites and blacks have

¹¹ See sources cited *infra* notes 332-33.

been largely eliminated.¹² Yet there is no denying that in many contexts racial change has been far less substantial than the civil rights movement once aspired to achieve. Residential segregation has increased in nearly every American city since the civil rights revolution began; relatedly, de facto school segregation in all large urban school districts has intensified since the late 1960s, with the Northeast now possessing the most racially segregated (and usually unequal) schools in the country; an urban minority underclass has grown in size, for whom differentials in education, income, and job opportunities have been widening, rather than narrowing; and black political participation has failed to produce either proportionate numbers of black officeholders or remedies for the relative

¹² Generally concurring in my assessment that racial change in America has been transformative, rather than superficial, are Robert J. Norrell, *Reaping the Whirlwind: The Civil Rights Movement in Tuskegee* 210 (1985) (noting that widespread disappointment with failures of the civil rights movement sometimes obscures recognition of the fundamental changes in race relations that have been achieved); William C. Havard, *The South: A Shifting Perspective*, in *The Changing Politics of the South* 3, 11 (William C. Havard ed., 1972) (asserting that racial changes occurring in the South since the 1950s have been greater than anyone from a previous generation could possibly have conceived); J. Mills Thornton III, *Municipal Politics and the Course of the Movement*, in *New Directions in Civil Rights Studies* 38, 40 (Armstead L. Robinson & Patricia Sullivan eds., 1991) (noting that "by the 1970s the legal, political, and social status of blacks in the South did not differ appreciably from their status in the North"). On increases in southern black voter participation, see David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965*, at 181-90 (1978).

On the achievements of black voting, see *Black*, supra note 3, at 65, 86; Garrow, supra, at 187-88, 199, 205; Steven F. Lawson, *Running for Freedom: Civil Rights and Black Politics in America Since 1941*, at 127, 167, 245-46 (1991) [hereinafter *Lawson, Running*]; Steven F. Lawson, *In Pursuit of Power: Southern Blacks and Electoral Politics, 1965-1982*, at 230, 267-71 (1985) [hereinafter *Lawson, Pursuit*]; Ralph Eisenberg, *Virginia: The Emergence of Two-Party Politics*, in *The Changing Politics of the South*, supra, at 39, 58, 85-86; Charles N. Fortenberry & F. Glenn Abney, *Mississippi: Unreconstructed and Unredeemed*, in *The Changing Politics of the South*, supra, at 472, 486-87; Donald S. Strong, *Alabama: Transition and Alienation*, in *The Changing Politics of the South*, supra, at 427, 442; see also Michael J. Klarman, *The Puzzling Resistance to Political Process Theory*, 77 Va. L. Rev. 747, 801-03 (1991) (summarizing some of the secondary literature).

On contemporary black educational and income levels, see Lawson, *Running*, supra, at 262-63; Sitkoff, supra note 6, at 232-33; William H. Chafe, *The End of One Struggle, The Beginning of Another*, in *The Civil Rights Movement in America* 140-41 (Charles W. Eagles ed., 1986). On the extent of public school integration, see Lawson, *Running*, supra, at 189; Gary Orfield, *Public School Desegregation in the United States, 1968-1980*, at 6 tbl. 3 (1983).

material deprivation of many blacks.¹³ I wish to emphasize that *nothing* in my argument turns on whether one accepts my judgment that racial change in this country has been transformative. My claims are simply that, *whatever change did occur* (whether judged to be revolutionary, superficial, or somewhere in between) was (1) inevitable over the long haul, and (2) substantially facilitated by *Brown* in the short term, albeit in an indirect, almost perverse, manner.

I. THE LONG-TERM INEVITABILITY OF RACIAL CHANGE

There exists a widespread tendency to treat *Brown* as the inaugural event of the modern civil rights movement.¹⁴ Nothing could be farther from the truth. The reason the Supreme Court could unanimously invalidate public school segregation in 1954, while

¹³ For scholars taking a balanced view—that dramatic change has occurred but that notorious ills remain unredressed, see Numan V. Bartley, *The Creation of Modern Georgia* 203-04 (1983); Garrow, *supra* note 12, at 190-91, 210-11; Lawson, *Running*, *supra* note 12, at 261-64 (noting that the political emancipation of blacks has made a critical difference, while acknowledging the limitations of the ballot “as an instrument of liberation”); Bruce J. Schulman, *From Cotton Belt to Sunbelt: Federal Policy, Economic Development, and the Transformation of the South, 1938-1980*, at 208 (1991); Chafe, *supra* note 12, at 141-47; John Dittmer, *The Politics of the Mississippi Movement, 1954-1964*, *in* *The Civil Rights Movement in America*, *supra* note 12, at 65, 92-93.

On increasing residential and educational segregation, see Orfield, *supra* note 12, at 7-12; Sitkoff, *supra* note 6, at 232-33. For a disturbing anecdotal account of the extent to which public schools in large urban centers have become both racially separate and unequal, see Jonathan Kozol, *Savage Inequalities: Children in America's Schools* (1991).

On the relatively low numbers of black elected officials, see Garrow, *supra* note 12, at 210-11; Lawson, *Running*, *supra* note 12, at 260 tbl. 5, 261; Lawson, *Pursuit*, *supra* note 12, at 271-72. On the elusiveness of economic prosperity, see, e.g., Garrow, *supra* note 12, at 211; Norrell, *supra* note 12, at 206-08 (regarding Tuskegee, Alabama); Sitkoff, *supra* note 6, at 231. On the existence of two separate black communities, see Lawson, *Running*, *supra* note 12, at 168-69, 262-63; Chafe, *supra* note 12, at 140-42, 144-45; see also Theodore H. White, *The Making of the President 1964*, at 271-73 (paperback ed. 1965) (noting the “two nations” phenomenon as early as the mid-1960s).

For commentators emphasizing the relative insignificance of racial change in America, see Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* (1992); Philip Carey, *The Impact of the Implementation of the Brown vs. Topeka Decision on American Society, 1955-1980*, 32 *Negro Educ. Rev.* 5, 10-11 (1981).

¹⁴ See Black, *supra* note 3, at 4 (dating the beginning of the Second Reconstruction from *Brown*); Havard, *supra* note 12, at 10 (same); Introduction: *Reassessing the History of the Civil Rights Movement*, *in* *New Directions in Civil Rights Studies*, *supra* note 12, at 1, 1 (same); Dittmer, *supra* note 13, at 67 (“In a sense the modern civil rights movement in Mississippi began [with *Brown*].”); Eskew, *supra* note 5, at 3, 11 (observing that the civil rights movement has been gaining momentum since *Brown*).

unanimously declining to do so just twenty-seven years earlier,¹⁵ was that deep-seated social, political, and economic forces had already begun to undermine traditional American racial attitudes.¹⁶ I shall argue in this Part that the same underlying forces that made *Brown* a realistic judicial possibility in 1954 also rendered it unnecessary from the perspective of long-term racial change. The factors that I identify and discuss in ensuing Sections are World War II, the ideological revulsion against Nazi fascism, the Cold War imperative, the growing political empowerment of northern blacks, the increasing economic and social integration of the nation, and changing southern racial attitudes.

A. World War II

Many of the factors conducive to racial change that are addressed in subsequent Sections were byproducts of World War II—for example, the acceleration of black migration from the South which translated into growing northern black political power, the Cold War imperative for transformation of American race relations, and ideological revulsion against Nazi theories of racial difference. Each of these factors is of sufficient importance, however, to merit individualized treatment; in this Section, I shall consider some other war-related developments that proved conducive to racial change.

Some contemporary observers and subsequent scholars have appreciated the profound impact of the Second World War upon American race relations.¹⁷ That World War II should accelerate

¹⁵ See *Gong Lum v. Rice*, 275 U.S. 78 (1927).

¹⁶ For general recognition that *Brown* piggy-backed on deep underlying trends, see Rosenberg, *supra* note 6, at 169; Derrick A. Bell, Jr., *Brown v. Board of Education* and the Interest-Convergence Dilemma, 93 Harv. L. Rev. 518, 524-25 (1980); Wiley A. Branton, *The Effect of Brown v. Board of Education: A Retrospective View*, 23 How. L.J. 125, 126-27 (1980); Constance B. Motley, *The Historical Setting of Brown and its Impact on the Supreme Court's Decision*, 61 Fordham L. Rev. 9, 9, 14 (1992).

Interestingly, the Supreme Court justices deliberating upon *Brown* expressly noted how much racial change had already occurred. See Justice Douglas, Conference Notes on *Briggs v. Elliot* (Dec. 12, 1953) (Library of Congress, Douglas Papers, Box 1149, case file: segregation cases) (on file with the Virginia Law Review Association) (Justice Burton noting the "trend away from separation of the races in restaurants, armed forces, etc.") (Justice Minton noting that "[s]egregation is on its way out in Indiana").

¹⁷ See Michael Barone, *Our Country: The Shaping of America From Roosevelt to Reagan* 211 (1990) ("World War II was the beginning of the end for segregation."); Harold

preexisting trends towards racial equality is unsurprising in light of the similar impact of virtually all previous American wars. The Revolutionary War is often credited with initiating the trend towards abolition of slavery in the northern states, as well as producing a temporary liberalizing effect in parts of the South.¹⁸ The Civil War not only was ultimately converted from a war to preserve the Union into a war to abolish slavery, but it also produced dramatic changes in the legal status of northern (free) blacks and, later, led to postwar constitutional amendments which were designed in substantial part to guarantee a certain measure of civil and political equality to blacks.¹⁹ Even World War I had a destabilizing influence upon, without fundamentally undermining, a Jim Crow system then at its historical zenith in the American South.²⁰

R. Isaacs, *The New World of Negro Americans* 43-44 (1963) (noting Walter White's *A Rising Wind*, which predicted in 1945 that a wind was rising all over the world which would doom white racial superiority); Morton Sosna, *In Search of the Silent South: Southern Liberals and the Race Issue* 106, 111, 120, 205 (1977); Richard M. Dalfiume, *The "Forgotten Years" of the Negro Revolution*, 55 *J. Am. Hist.* 90, 90-91 (1968) (citing numerous examples both from contemporary and subsequent scholars). But see Richard Polenberg, *The Good War? A Reappraisal of How World War II Affected American Society*, 100 *Va. Mag. Hist. & Biography* 295, 321 (1992) (surveying recent scholarship and concluding that World War II dampened black militancy and delayed racial change).

¹⁸ See Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860*, at 6-12, 14-15 (1961); Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* 109-12, 117-19, 126-27, 137-38, 146-47, 169-70, 227-29 (1967). The ideology of the Revolution convinced many Americans that slavery contravened natural law; in addition, military necessity led eventually to enlistment of slaves in the Continental Army, which in turn led to manumission.

¹⁹ See Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, at 114-15, 223, 244-45, 255 (1988); William Gillette, *The Right to Vote: Politics and the Passage of the Fifteenth Amendment* 81, 85 (1965) (noting that most Republican legislators accepted the argument that "if the Negro was good enough to fight and die for the Union during the war, he was a good enough citizen to vote"); Earl M. Maltz, *Civil Rights, the Constitution, and Congress, 1863-1869*, at 6 (1990) (noting that "the performance of black soldiers on the battlefield generated increased respect among the white population," leading both state and national governments to adopt various measures connoting greater racial equality); James M. McPherson, *Abraham Lincoln and the Second American Revolution* 29-37 (1990); James M. McPherson, *Battle Cry of Freedom: The Civil War Era* 494-97 (1988).

²⁰ See Isaacs, *supra* note 17, at 37-38 (noting the northern migration of a million blacks, the significance of 400,000 blacks serving in the armed services, and the heightened black aspirations flowing from rhetoric about making the world safe for democracy); Neil R. McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* 316-17 (1989); Neil A. Wynn, *The Afro-American and the Second World War* 6-10 (1976) (noting these points, as well as the formation of southern interracial organizations dedicated to ameliorating race relations); Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950*,

Apparently, the equality of sacrifice that war imposes on soldiers of different races “point[s] up the absurdity of demanding unequal treatment for civilians.”²¹ Moreover, because war is inherently a cooperative endeavor between constituent components of a society confronted with a common enemy, points of division, such as race, tend to be submerged beneath a display of common interest.²²

I. Impact on Black Attitudes

The Second World War's most significant ramification for racial change may have been its impact on black attitudes. American blacks had almost universally supported the preceding generation's “war to make the world safe for democracy,” only to be disappointed when neither the ideological underpinnings of the war nor their own contributions to the war effort yielded substantial changes in American racial practices.²³ They were determined to avoid a repetition of that embittering experience in World War II. Accordingly, many black leaders initially evinced a marked tepidity towards the Allied cause. Widespread black support was mobilized only upon the condition that the war be conducted upon two fronts (the famous “double V” campaign)—the fight against the Axis in Europe and Asia and the battle against Jim Crow at home.²⁴ Black

at 51, 57-58 (1980) (same); Raymond Gavins, *The NAACP in North Carolina During the Age of Segregation*, in *New Directions in Civil Rights Studies*, supra note 12, at 104, 107 (noting substantial growth in NAACP during World War II).

²¹ Barone, supra note 17, at 211; accord Wynn, supra note 20, at 2, 99.

²² See Peter Levine, *Ellis Island to Ebbetts Field: Sport and the American Jewish Experience* 130, 272-73 (1992) (noting that World War II ameliorated Americans' prejudice against Jews and blacks by uniting the nation against a common external foe); Wynn, supra note 20, at 79-80, 86-87 (noting substantial efforts made by the American film industry during World War II, with government encouragement, to portray blacks in a positive image and as loyal patriots contributing to the war effort); Dudziak, supra note 2, at 72-73. Wynn notes one particularly effective propaganda film made during the war that pictured black and white Americans working together to rebuild airfields and railroad tracks, with the commentator observing: “They were busy hating Germans, not each other.” Wynn, supra note 20, at 84. Peter Levine also reports one particularly notable illustration of this phenomenon—Americans of all races united behind the black boxing champion Joe Louis in his two heavyweight bouts against Germany's “Aryan idol,” Max Schmeling, in the late 1930s. See Levine, supra, at 185-87.

²³ See Wynn, supra note 20, at 100; Dalfiume, supra note 17, at 92. Black leaders like W.E.B. DuBois had urged blacks to set aside their racial grievances during World War I and make victory overseas the first priority, on the assumption that wholehearted black support for the war effort would bring its own rewards. See Wynn, supra note 20, at 11.

²⁴ See Wynn, supra note 20, at 25, 100; Dudziak, supra note 2, at 72.

attitudes towards the war were encapsulated by opinion polls showing that 42% of New York City blacks thought it more important to secure democracy at home than to defeat Germany and Japan abroad.²⁵ In the end, however, black militancy was manifested more in efforts to participate equally in, rather than to resist, the war effort.²⁶

Ultimately, large numbers of blacks served in the wartime military, and returning soldiers evinced a special aggressiveness in demanding their civil rights.²⁷ Many black servicemen apparently calculated that if they were good enough to die for their country, they were also good enough to vote, to work, or to attend school with white people.²⁸ As one black veteran returning to Alabama after the war observed as he registered to vote: "After having been overseas fighting for democracy, I thought that when we got back here we should enjoy a little of it."²⁹ Blacks serving overseas frequently experienced a brand of freedom unknown at home; foreign civilian populations generally regarded them as part of an army of liberation and treated them accordingly.³⁰ Thus, Walter White, NAACP executive secretary, reported after traveling through the

²⁵ Wynn, *supra* note 20, at 100; see also *id.* at 102 (noting the frequently cited epitaph for black soldiers: "Here lies a black man killed fighting a yellow man for the protection of a white man.").

²⁶ See *id.* at 105-06.

²⁷ See Rosenberg, *supra* note 6, at 61 (noting the determination of returning black soldiers to cast their ballots); Wynn, *supra* note 20, at 28 (noting that wearing military uniforms gave black soldiers a measure of self respect and a degree of authority); Dittmer, *supra* note 13, at 68 (noting that black World War II veterans from Mississippi "returned home fighting"); Emma Lou Thornbrough, *Breaking Racial Barriers to Public Accommodations in Indiana, 1935 to 1963*, 83 *Ind. Mag. Hist.* 301, 310-11 (1987). Professor Wynn notes a letter from a black soldier on Okinawa:

"Our people are not coming back with the idea of just taking up where they left off. We are going to have the things that are rightfully due us or else, which is a very large order, but we have proven beyond all things that we are people and not just the servants of the whiteman."

Wynn, *supra* note 20, at 106.

²⁸ See Wynn, *supra* note 20, at 29; see also Norrell, *supra* note 12, at 44-46 (noting that the first serious challenge to the political exclusion of blacks in Tuskegee, Alabama came in 1941); cf. Jules Tygiel, *Baseball's Great Experiment: Jackie Robinson and His Legacy* 69, 74 (1983) (noting a political advertisement in a New York city council race in 1945 featuring two blacks, one a dead soldier and the other a baseball player, with a caption reading "'Good enough to die for his country, but not good enough for organized baseball'").

²⁹ Norrell, *supra* note 12, at 61.

³⁰ See Wynn, *supra* note 20, at 32-34.

European theatre of operations in 1944 that many black soldiers serving in England had gained their "first experience in being treated as normal human beings and friends by white people."³¹

Such liberating experiences could not be forgotten overnight. The impact of military service upon black aspirations for equal citizenship is confirmed by the disproportionate number of subsequent civil rights leaders who had served in the military.³² The nearly ten-fold increase in NAACP membership during the war also suggests a dramatic arousal of civil rights consciousness among blacks.³³ Another concrete indicium of the heightened activism of black war veterans was the wave of lynchings that greeted them, some while still in uniform, upon their return to the South—a phenomenon very similar to that occurring at the end of World War I.³⁴

2. *Increased Political Opportunities*

As blacks increasingly perceived that the war was unleashing revolutionary forces for racial change, even traditionally conservative black organizations became more militant in their demands upon government.³⁵ Simultaneous with the rise in black militancy, wartime exigencies created a ripe setting in which to extract political concessions from a national administration anxious to avoid the disunity and disorder that civil rights demonstrations

³¹ *Id.* at 34-35.

³² See Sitkoff, *supra* note 6, at 82; Morton Sosna, *More Important than the Civil War? The Impact of World War II on the South*, in 4 *Perspectives on the American South* 145, 155 (James C. Cobb & Charles R. Wilson, eds., 1987); see also Jack L. Walker, *Sit-Ins in Atlanta: A Study in the Negro Revolt* 4 (1964) (noting that the principal instigator of the Atlanta sit-ins was a veteran).

³³ See Patricia Sullivan, *Southern Reformers, the New Deal and the Movement's Foundation*, in *New Directions in Civil Rights Studies*, *supra* note 12, at 81, 86; see also Norrell, *supra* note 12, at 57 (attributing the formation of the Tuskegee branch of the NAACP to ideology of freedom inspired by the war). The accepted figures for the increase in NAACP membership seem to be from 50,500 in 1940 to 450,000 in 1946. See Mark V. Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950*, at 135 (1987); Dalfiume, *supra* note 17, at 99-100.

³⁴ See *infra* note 368. Lynchings during and after World War I had increased from 38 in 1917 to 64 in 1918 to 83 in 1919, including many black victims still in uniform. See Wynn, *supra* note 20, at 9-10; Zangrando, *supra* note 20, at 35 (providing slightly different figures).

³⁵ See Dalfiume, *supra* note 17, at 96-97, 99.

threatened to produce.³⁶ As one black newspaper observed, "effective protest during emergency is infinitely more productive of results than ten times the effort during periods of comparative normalcy."³⁷

Initially, black leaders succeeded in reversing interwar policies that had substantially eviscerated black representation in the military services. While black demands for an end to service segregation were rejected, the first black Army Air Corps unit was established, and the Navy and Marine Corps accepted their first blacks for general service.³⁸ By the end of the war, black protest had yielded incipient breaches in the Army's Jim Crow policies, including the desegregation of some bus services and camp facilities, while the Navy had taken considerable strides towards integrating its warships.³⁹

The most celebrated example of blacks extracting wartime political concessions from the Roosevelt administration was A. Philip Randolph's March on Washington Movement, which successfully sought the establishment of a temporary Fair Employment Practices Committee ("FEPC") to monitor race discrimination in war-related industries.⁴⁰ The enhanced political bargaining power that wartime exigencies created for blacks produced other measures designed to promote fair employment practices as well. The War Labor Board outlawed racial wage differentials; the United States

³⁶ See Barone, *supra* note 17, at 160.

³⁷ See Wynn, *supra* note 20, at 101.

³⁸ See *id.* at 24, 27. Previously, the Navy had used blacks mainly as messmen, and the Marine Corps had entirely excluded them.

³⁹ See *id.* at 30, 37-38. Moreover, the Army was driven to desegregate its combat units (though maintaining segregated platoons) when the German offensive known as the Battle of the Bulge severely pressed Allied troop strength late in the war. See 1 Stephen E. Ambrose, *Eisenhower: Soldier, General of the Army, President-Elect, 1890-1952*, at 370 (1983); Wynn, *supra* note 20, at 35.

⁴⁰ See Wynn, *supra* note 20, at 42-44; Dalfiume, *supra* note 17, at 98-99. Concededly, the FEPC had little impact on race discrimination. The committee possessed no enforcement powers, a small staff, and an inadequate budget; moreover, in federal agencies and defense plants in the South, the committee showed considerable deference to local racial norms. See David R. Goldfield, *Black, White, and Southern: Race Relations and Southern Culture, 1940 to the Present* 34 (1990); Schulman, *supra* note 13, at 83; Wynn, *supra* note 20, at 48-51; Dalfiume, *supra* note 17, at 99. Nonetheless, at the time, the leading black newspaper in the country hailed the President's executive order creating the FEPC as "one of the most significant pronouncements that has been made in the interests of the Negro for more than a century." Wynn, *supra* note 20, at 46.

Employment Service refused for the first time to honor racially restricted job applications; and the National Labor Relations Board declared its intention to deny certification to unions practicing racial exclusion.⁴¹

3. *Increased Economic Opportunities*

World War II also created new economic opportunities for blacks, as the conscription of white males into military service produced a tightening labor market, which induced employers to hire blacks for positions that previously had been denied to them.⁴² Blacks had been hardest hit by the Great Depression; their unemployment rate doubled that of whites in the North, reaching 38.9% in 1937.⁴³ With the nation's economy on a war footing, black unemployment fell from 937,000 in 1940 to 151,000 four years later.⁴⁴ The number of blacks employed by the federal government nearly tripled during the war, and the black employment rate in war industries increased from 3% in 1942 to 8.3% in November 1944.⁴⁵ Black employment gains were qualitative as well as quantitative, as the number of blacks employed in skilled industrial positions doubled between 1940 and 1944.⁴⁶ The average income of black urban workers also more than doubled during the war years, a hefty increase even discounting for the rise in the cost of living.⁴⁷ Blacks employed by the military rather than by war industries received (notwithstanding the rampant discrimination) skills training, education, and, for many, the first semblance of economic security they had ever known.⁴⁸

The expanded economic opportunities created by the war had two important ramifications for American race relations. First, the postwar civil rights movement was rendered possible only by the

⁴¹ See Robert F. Burk, *The Eisenhower Administration and Black Civil Rights* 90 (1984); Schulman, *supra* note 13, at 76-77. All these measures were undone at war's end.

⁴² See Wynn, *supra* note 20, at 39; Thornton, *supra* note 12, at 38.

⁴³ See Wynn, *supra* note 20, at 39.

⁴⁴ See *id.* at 55.

⁴⁵ See *id.*; Goldfield, *supra* note 40, at 32-33; Polenberg, *supra* note 17, at 296. Improving black prospects in war industries stemmed more from labor shortages than from FEPC mandates.

⁴⁶ See Wynn, *supra* note 20, at 56-57.

⁴⁷ See *id.* at 57-58.

⁴⁸ See *id.* at 28.

existence of a burgeoning black middle class; by finally ending the Great Depression, World War II laid the groundwork for the massive postwar growth which enabled blacks to participate in a rapidly expanding economy.⁴⁹ The second implication, in some tension with the first, was that by creating black economic opportunities which sometimes dissipated with the end of hostilities, the war heightened black frustration and resentment, which one day would threaten to reach the boiling point.⁵⁰ Black family income relative to white reached an historic high during the war which was not to be exceeded for a long time.⁵¹ And many black servicemen, returning from the war with the hope of putting their new skills to fruitful use, were disappointed to see postwar reconversion eliminating a disproportionate share of black jobs.⁵²

4. *Other Effects of the War*

World War II had other effects that proved conducive to racial change—in the South, the North, and the world as a whole. By exposing Dixie to novel external influences, the war helped to erode southern insularity.⁵³ For example, millions of southerners, temporarily departing the region for the first time through military service, were exposed to racial norms never before experienced.⁵⁴ Other southerners, disproportionately black, left the South perma-

⁴⁹ See Sitkoff, *supra* note 6, at 14-15; *infra* notes 238-39 and accompanying text.

⁵⁰ See Thornbrough, *supra* note 27, at 311; cf. Neil A. Wynn, *The Impact of the Second World War on the American Negro*, 6 *J. Contemp. Hist.* 42, 51-52 (1971) (“[T]he increased opportunities and freedom which the war had brought made it possible for many Negroes to conceive of first-class citizenship for the first time.”).

⁵¹ See Wynn, *supra* note 20, at 59; see also Norval D. Glenn, *Some Changes in the Relative Status of American Nonwhites, 1940 to 1960*, 24 *Phylon* 109, 109, 116 *tbl. 5*, 120-22 (1963) (noting the significant rise in the relative economic status of blacks in the 1940s and early 1950s and the subsequent tapering off).

⁵² See Wynn, *supra* note 20, at 114.

⁵³ See Goldfield, *supra* note 40, at 43-44. Morton Sosna notes, in addition, that the war first introduced roughly four or five million northerners (including many blacks) to the reality of southern racial practices. See Morton Sosna, *The GIs' South and the North-South Dialogue During World War II*, in *Developing Dixie: Modernization in a Traditional Society* 311, 312-13, 322 (Winfred B. Moore, Jr., Joseph F. Tripp & Lyon G. Tyler, Jr., eds., 1988).

⁵⁴ See John R. Skates, Jr., *World War II as a Watershed in Mississippi History*, 37 *J. Miss. Hist.* 131, 135-36 (1975) (emphasizing the importance of this phenomenon and noting that a quarter of a million Mississippians served during the war); John C. McKinney & Linda B. Bourque, *The Changing South: National Incorporation of a Region*, 36 *Am. Soc. Rev.* 399, 411 (1971).

nently in search of new economic opportunities in the North and West, thus altering the demographics of southern, and the politics of northern, race relations.⁵⁵ Other southerners left their farms for southern cities in pursuit of war-related industrial jobs.⁵⁶ By "spark[ing] a thoroughgoing transformation of the southern economy," the war helped erode the original agricultural basis for the Jim Crow social system.⁵⁷

That World War II had a marked impact on *northern* race relations as well, either through the mechanism of ideological readjustment or political power shifts (both of which are explored below), is confirmed by the veritable flood of antidiscrimination laws enacted by northern cities and states either during or immediately after the war.⁵⁸ By 1953, no fewer than twelve northern states had passed fair employment laws.⁵⁹ Perhaps even more strikingly, several northern states enacted laws or constitutional provisions forbidding public school segregation in the years *preceding Brown*.⁶⁰

Finally, World War II dramatically affected *world* race relations by laying the groundwork for the destruction of Third World colonialism. The empires that white Europeans had created over hundreds of years were almost completely obliterated in the generation following World War II. No longer would the white man be

⁵⁵ See *infra* text accompanying notes 97-129 and 297-304.

⁵⁶ See Schulman, *supra* note 13, at 102.

⁵⁷ *Id.*; see *infra* text accompanying notes 215-19.

⁵⁸ See Numan V. Bartley, *The Rise of Massive Resistance: Race and Politics in the South During the 1950's*, at 4 (1969); Wynn, *supra* note 20, at 55; Dominic J. Capece, Jr., *Fiorello H. LaGuardia and Employment Discrimination, 1941-1943*, 7 *Italian Americana* 49 (1983); Peter J. Kellogg, *Civil Rights Consciousness in the 1940s*, 42 *Historian* 18, 22 (1979); Thornbrough, *supra* note 27, at 311; Thornton, *supra* note 12, at 38-39; Frieda Wunderlich, *New York's Antidiscrimination Law*, 17 *Soc. Res.* 219, 247 n.71 (1950). It is important to note that generally these laws were more important symbolically than for practical accomplishments. See Wynn, *supra* note 20, at 55; Thornbrough, *supra* note 27, at 311. It was not until the civil rights movement of the 1960s that a strong northern consensus developed behind antidiscrimination principles. See *infra* Part II.B.4.b.

⁵⁹ See Sitkoff, *supra* note 6, at 18; Burk, *supra* note 41, at 92 (putting the figure at 21 by 1950).

⁶⁰ See Bartley, *supra* note 58, at 4 (New Jersey, Indiana, and Illinois); Thornbrough, *supra* note 27, at 311; Jason Brener, "Upon Our Own Strong Arms": Public School Desegregation Through Political Process—A Case Study of New Jersey (Spring 1992) (unpublished student paper, on file with the Virginia Law Review Association); see also Ronald D. Cohen, *The Dilemma of School Integration in the North: Gary, Indiana, 1945-1960*, 82 *Ind. Mag. Hist.* 161 (1986) (discussing the fate of a nondiscrimination policy adopted by the Gary school board in 1946).

master of the Earth, and the United States could not forever resist the force of such global dislocations.⁶¹

American civil rights leaders were among the first to appreciate that their cause was “part and parcel of the struggle against imperialism and exploitation” in the Third World.⁶² They hoped that if the principle of self-determination for all colonized people could be established, “a tide of change would rush forth that the United States could not resist.”⁶³ Thus, American civil rights leaders went to the inaugural United Nations session in San Francisco in April 1945 with a dual agenda—racial equality in the United States and self-determination for colonized people abroad.⁶⁴ As we shall soon see, subsequent events amply confirmed their prediction that Third World decolonization would have a profound impact on American race relations.⁶⁵

B. Ideological Readjustment

The United States fought the Second World War against a fascist enemy. Allied war propaganda attacked the illiberal regimes of the Axis nations, one important component of which was the Nazi creed of racial superiority. Critics of American race relations, though, were quick to identify the seeming hypocrisy in that position.⁶⁶ “An army fighting allegedly for Democracy should be,” as

⁶¹ See Isaacs, *supra* note 17, at 4, 36-37.

⁶² Robert L. Harris, Jr., *Racial Equality and the United Nations Charter*, in *New Directions in Civil Rights Studies*, *supra* note 12, at 126, 126; see also *id.* at 136-37 (quoting the *Chicago Defender* observation that “the Negro is the colonial of America”). For Martin Luther King, Jr.’s recognition of this linkage, see Martin Luther King, Jr., *The Current Crisis in Race Relations*, *New South*, Mar. 1958, at 8, 9; see also David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* 54, 63, 71 (1986) (noting King’s linkage of the Montgomery bus boycott with the worldwide uprising of exploited peoples).

⁶³ Garrow, *supra* note 62, at 137.

⁶⁴ See *id.* at 126, 130-31, 137. Their efforts succeeded in securing statements in the U.N. charter condemning race discrimination but not in eliciting any immediate steps towards decolonization. See *id.* at 140, 144. The dramatic shift in American racial attitudes between World War I and World War II is illustrated by the fact that after the first war the United States played a significant role in defeating a Japanese proposal that the Treaty of Versailles include a condemnation of race discrimination. See Isaacs, *supra* note 17, at 27; Harris, *supra* note 62, at 141, 144.

⁶⁵ See *infra* Part I.C.

⁶⁶ See Barone, *supra* note 17, at 211; Wynn, *supra* note 20, at 28; *id.* at 107 (noting a *New York Times* editorial in 1942 urging America to ameliorate its racial practices in order to

Secretary of the Navy Frank Knox told a 1940 deputation of civil rights leaders, "the last place in which to practice undemocratic segregation."⁶⁷ Yet the American military remained segregated throughout the war.

Thus, the war against fascism forced white Americans "to contemplate the content of their own values and to emphasize distinctions between themselves and the German menace."⁶⁸ Since segregation and racial inferiority were, as Justice Hugo Black told his brethren at one Court conference on *Brown*, "Hitler's creed," it was not immediately apparent how what "[Hitler] preached" was so very different from "what the south believed."⁶⁹ Indeed, substantial percentages of black Americans saw no obvious difference between the fascist enemy abroad and the southern enemy at

avoid "the sinister hypocrisy of fighting abroad for what it is not willing to accept at home"); Kellogg, *supra* note 58, at 31, 33; Thornbrough, *supra* note 27, at 306-07.

⁶⁷ Barone, *supra* note 17, at 160; see also Wynn, *supra* note 20, at 45 (noting President Roosevelt's urging of Americans to "refut[e] at home the very theories which we are fighting abroad"); *id.* at 107 (noting statement by Republican presidential candidate Wendell Willkie that Americans could not in all honesty fight "the forces of imperialism abroad and maintain any form of imperialism at home"); Sullivan, *supra* note 33, at 86 (quoting an NAACP official during the war to the effect that "if full democracy was to be brought to all peoples, then surely America in good conscience was compelled to begin at home with her thirteen million underprivileged black citizens").

⁶⁸ Robert J. Norrell, *One Thing We Did Right: Reflections on the Movement*, in *New Directions in Civil Rights Studies*, *supra* note 12, at 65, 68; see also Isaacs, *supra* note 17, at 42 (noting that World War II "finally brought Western white racist practice face to face with the great Western Christian and democratic profession"); Dalfiume, *supra* note 17, at 96-97, 106 (noting that many blacks appreciated that the war provided "an excellent opportunity to prick the conscience of white America"); Kellogg, *supra* note 58, at 31 (noting that because of the war against fascism, racism was "seen to call into question the basic moral values and integrity of the nation"); Richard Weiss, *Ethnicity and Reform: Minorities and the Ambience of the Depression Years*, 66 *J. Am. Hist.* 566, 566 (1979) ("The identification of totalitarianism with the ruthless repression of ethnic minorities resulted in a counteridentification of democracy with minority group encouragement and tolerance.").

⁶⁹ See Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*, at 142 (1994). Interestingly, white southerners overwhelmingly rejected the Nazis' efforts to analogize their own racial theories to those of the Jim Crow South, apparently alleviating any cognitive dissonance by focusing upon Nazi anti-Semitic, rather than antiblack, propaganda. See Johnpeter H. Grill & Robert L. Jenkins, *The Nazis and the American South in the 1930s: A Mirror Image?*, 58 *J.S. Hist.* 667, 668, 675-76, 684-88, 693 (1992).

home.⁷⁰ And the American black press before and during the war frequently noted similarities between southern American treatment of blacks and Nazi treatment of racial, religious, and ethnic minorities.⁷¹

Many scholars have identified the ideological revulsion against fascism as a crucial factor in the postwar transformation of American racial attitudes.⁷² Plainly, revulsion against Nazi practices had a pronounced impact on many American civil liberties issues, including Jehovah's Witnesses' right to refuse to salute the flag,⁷³ procedural safeguards for accused criminals,⁷⁴ and state steriliza-

⁷⁰ See Wynn, *supra* note 20, at 105 (noting that substantial percentages of black Americans claimed they would expect better treatment from the Japanese than they received from Americans).

⁷¹ See Isaacs, *supra* note 17, at 42-43; Dalfiume, *supra* note 17, at 96; Grill & Jenkins, *supra* note 69, at 668, 688-92.

⁷² See John F. Martin, *Civil Rights and the Crisis of Liberalism: The Democratic Party, 1945-1976*, at 53 (1979); August Meier & Elliot Rudwick, *CORE: A Study in the Civil Rights Movement 1942-1968*, at 4 (1973); McMillen, *supra* note 20, at 317 (noting that "the war against Hitler's master race ideology marked the beginning of Jim Crow's end"); Bell, *supra* note 16, at 524; Dudziak, *supra* note 2, at 68-70; Kellogg, *supra* note 58, at 18, 23; Thornton, *supra* note 12, at 38; see also Goldfield, *supra* note 40, at 32 (noting William Faulkner's prediction that the war against fascism would have a transformative impact on American race relations in the postwar period). But see Polenberg, *supra* note 17, at 318-20 (rejecting the conventional focus on American revulsion against Nazi racial doctrines and emphasizing instead the widespread acceptance of negative stereotypes regarding the Japanese).

⁷³ See *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943) (citing the "fastfailing efforts of our present totalitarian enemies" as an example of the futility of state efforts to coerce belief, as through a compulsory flag salute), overruling *Minersville Sch. Dist. v. Gobiitis*, 310 U.S. 586 (1940); cf. David R. Manwaring, *Render Unto Caesar: The Flag-Salute Controversy* 123, 154 (1962) (noting that the Jehovah's Witnesses' brief in *Gobitis* emphasized the physical similarity between the flag salute and the Nazi "heil Hitler" salute, and also noting that the *New Republic* attacked *Gobitis* by invoking a recent German court decision punishing Witnesses for refusing to perform the Nazi salute); Victor W. Rotnem & F.G. Folsom, Jr., *Recent Restrictions Upon Religious Liberty*, 36 *Am. Pol. Sci. Rev.* 1053, 1063 (1942) (linking the flag salute controversy to the "four great freedoms" of the Atlantic Charter for which the Allies were fighting).

⁷⁴ See *Chambers v. Florida*, 309 U.S. 227, 241 (1940) ("Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny."); see also Richard C. Cortner, A "Scottsboro" Case in Mississippi: The Supreme Court and *Brown v. Mississippi* 121 (1986) (suggesting that public awareness of the police brutality prevalent in contemporary totalitarian regimes such as Russia, Italy, and Germany heightened sensitivity to the use of such tactics in the United States and thus might have influenced the Court in *Brown v. Mississippi*, 297 U.S. 278 (1936)); Francis A. Allen, *The Supreme Court, Federalism, and State Systems of Criminal Justice*, 8 *DePaul L. Rev.* 213, 219 (1959) (noting a connection

tion of habitual criminals.⁷⁵ Americans sought to distinguish themselves from the evil that Hitler represented in every available manner. Because Nazism was so strongly dependent upon racism, Hitler "gave racism a bad name."⁷⁶

C. *The Cold War Imperative*

In the wake of World War II came the Cold War. American isolationism, possessed of an impressive historical pedigree and politically ascendant as recently as the late 1930s, had been rendered increasingly obsolete by the technological and economic developments of mid-century. In an isolationist era, American race relations conceivably could remain solely an American concern. But with the commencement of a life-or-death struggle against the Soviet Union for the allegiance of a predominantly nonwhite Third World, American race relations acquired international implications.⁷⁷ In this contest, the nature of American democracy was at issue. And with the sudden demise of white supremacy in most of the world, its survival in the United States became all the more conspicuous; "[i]t became our most exposed feature and in the swift unfolding of the world's affairs our most vulnerable weakness."⁷⁸

between the Supreme Court decision in *Powell v. Alabama*, 287 U.S. 45 (1932) (the Scottsboro Boys case), and the rise of Hitler in Germany); Francis A. Allen, *The Judicial Quest for Penal Justice: The Warren Court and the Criminal Cases*, 1975 U. Ill. L.F. 518, 522 (1975) (same).

⁷⁵ See *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) ("In evil or reckless hands [the power to sterilize] can cause races or types which are inimical to the dominant group to wither and disappear."); *id.* at 546 (Jackson, J., concurring) (condemning a legislative majority's conducting of "biological experiments" at the expense of a minority); see also Louis Lusky, *Minority Rights and the Public Interest*, 52 *Yale L.J.* 1, 30 & n.83 (1942) (noting the role of the "minorities problem" in *Skinner*). For the ideological impact of the revulsion against Nazism on social science and popular attitudes towards eugenics, see Carl N. Degler, *In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought* 202-05 (1991).

⁷⁶ Norrell, *supra* note 68, at 68 (quoting historian Morton Sosna); accord Kellogg, *supra* note 58, at 30-31 (noting that after Hitler, racism "seemed an unmitigated evil"); Weiss, *supra* note 68, at 566 (noting that "racial and ethnic tolerance grew, in considerable measure, as a reaction against the racism of totalitarian Germany"); Dudziak, *supra* note 2, at 67-69.

⁷⁷ See Doug McAdam, *Political Process and the Development of Black Insurgency 1930-1970*, at 82-83 (1982); Dudziak, *supra* note 2, at 62-63, 107-11.

⁷⁸ Isaacs, *supra* note 17, at 6-7; accord McAdam, *supra* note 77, at 82-83.

Many scholars have appreciated the significance of the Cold War imperative as a force for racial change in this country;⁷⁹ its importance is difficult to overstate. As early as the 1930s, the Communist Party of America used domestic racial incidents—most notably, the Alabama trial and conviction of the Scottsboro boys in 1931—as instruments of propaganda with which to bludgeon America's democratic pretensions.⁸⁰ In the late 1930s, when Americans criticized Nazi anti-Semitism, the Nazis defended themselves by highlighting southern Jim Crow and complaining of a double standard.⁸¹ During World War II, the Japanese launched a propaganda campaign in its Asian-occupied zones, highlighting American discrimination against blacks in the military, domestic race riots, and so forth; the lesson to be drawn was that Asian peoples could expect similar treatment should the Allies emerge from the war victorious.⁸²

In the years immediately following the war, desegregation as a Cold War imperative became standard political fare. The Truman administration was greatly embarrassed in 1946-1947 when the international news media devoted considerable attention to United Nations petitions from the NAACP and the National Negro Congress calling for redress of human rights violations in the American South.⁸³ The Truman Justice Department repeatedly invoked the Cold War imperative in its amicus briefs in the Supreme Court's race discrimination and segregation cases of the late 1940s and

⁷⁹ See William C. Berman, *The Politics of Civil Rights in the Truman Administration* 63, 77-78, 85, 240 (1970); Isaacs, *supra* note 17, at 6-20; Rosenberg, *supra* note 6, at 162-67; Sosna, *supra* note 17, at 163-64; Stephen J. Whitfield, *A Death in the Delta: The Story of Emmett Till* 141 (1988); Malcolm X, *The Autobiography of Malcolm X* 275, 275 (1964); Bell, *supra* note 16, at 524; Dudziak, *supra* note 2, at 62-63, 107-11; Irving F. Lefberg, *Chief Justice Vinson and the Politics of Desegregation*, 24 *Emory L.J.* 243, 297-302 (1975).

⁸⁰ See Dan T. Carter, *Scottsboro: A Tragedy of the American South* 167-69, 172 (1969); Isaacs, *supra* note 17, at 26.

⁸¹ See Grill & Jenkins, *supra* note 69, at 669-70, 676.

⁸² See Isaacs, *supra* note 17, at 28-29; Wynn, *supra* note 20, at 112; Dudziak, *supra* note 2, at 67-68. Republican presidential candidate Wendell Willkie urged during the war that the United States adopt racial practices consistent with Allied propaganda in order to demonstrate good faith to Asian and African nations. See Wynn, *supra* note 20, at 107; see also Kellogg, *supra* note 58, at 31-32 (noting that some Americans during the war began to appreciate that racism "made America vulnerable to enemy propaganda").

⁸³ See Berman, *supra* note 79, at 65-66; Dudziak, *supra* note 2, at 94-95 (noting that the NAACP claimed that "[i]t is not Russia that threatens the United States so much as Mississippi; not Stalin and Molotov but [Senator] Bilbo and [Representative] Rankin").

early 1950s.⁸⁴ It is difficult, moreover, to explain Chief Justice Fred M. Vinson's relatively progressive posture in racial segregation cases in terms other than anticommunism, given his scant regard for most civil liberties claims.⁸⁵

From the Montgomery bus boycott of 1955-1956 through the momentous civil rights demonstrations at Birmingham and Selma in 1963 and 1965, every American racial conflagration of note became fodder for the Soviet propaganda mill: Emmett Till's lynching and the acquittal of his killers in Mississippi in 1955; race riots over the desegregation of schools in Little Rock in 1957-1958 and New Orleans in 1960-1961; the brutalization of Freedom Riders in Alabama in 1961; the use of police dogs and high pressure water hoses against civil rights demonstrators in Birmingham in May 1963; and so on.⁸⁶ Indeed, the Little Rock imbroglio garnered sufficient international attention for the city's name to enter the world's vocabulary as a synonym for American racism; American dignitaries traveling around the world encountered hostile demonstrators invoking Little Rock.⁸⁷ Editorials in African and Asian newspapers stressed that the federal government's inability or unwillingness to stem violence against civil rights demonstrators made it impossible to convince the nonwhite world that America stood for genuine equality.⁸⁸ When President Dwight D. Eisenhower finally was impelled to intervene with federal troops at Little Rock, he justified his action to the nation by invoking the international ramifications of the desegregation crisis, and he sought to exploit the full propaganda value of one of his few decisive civil rights stands by having the speech translated into forty-three languages and broadcast over the Voice of America.⁸⁹

⁸⁴ See Dudziak, *supra* note 2, at 65, 103-13.

⁸⁵ See Lefberg, *supra* note 79, at 297-302.

⁸⁶ See Carl M. Brauer, John F. Kennedy and the Second Reconstruction 240-41 (1977); Isaacs, *supra* note 17, at 9, 12, 14-15; Rosenberg, *supra* note 6, at 165; Sitkoff, *supra* note 6, at 105; Tushnet, *supra* note 69, at 188; Whitfield, *supra* note 79, at 46, 146; Dudziak, *supra* note 2, at 80-90; Morton Inger, The New Orleans School Crisis of 1960, in *Southern Businessmen and Desegregation* 82, 93-94 (Elizabeth Jacoway & David R. Colburn, eds., 1982).

⁸⁷ See Isaacs, *supra* note 17, at 10.

⁸⁸ See Sitkoff, *supra* note 6, at 105; Dudziak, *supra* note 2, at 80-93.

⁸⁹ See 2 Stephen E. Ambrose, *Eisenhower: The President* 420 (1984); Burk, *supra* note 41, at 175, 186; Isaacs, *supra* note 17, at 12.

The persistence of southern Jim Crow not only created embarrassing episodes of racial violence that besmirched the international reputation of American democracy; it also was responsible for concrete incidents of diplomatic outrage.⁹⁰ In 1957, President Eisenhower felt compelled to invite the finance minister of the newly independent African nation of Ghana to breakfast at the White House to make amends for the refusal of a Howard Johnson restaurant in Delaware to serve him.⁹¹ Over the next several years, as the number of newly independent African states rose to above thirty, the Kennedy administration was swamped with similar diplomatic incidents.⁹² The Soviet Union jeered at "how the most democratic nation in the world" treated its visiting African diplomats.⁹³ In 1961, President Kennedy appealed to Maryland civic leaders to abolish segregation in restaurants, motels, and hotels in order to end such diplomatic disturbances, and a high State Department official called upon Washington, D.C., realtors to ameliorate housing discrimination in the nation's capital, which was creating a similarly explosive diplomatic situation.⁹⁴ Official apologies could go only so far in redressing such embarrassments, Secretary of State Dean Rusk told Attorney General Robert Kennedy in a letter. Rusk later declared that "the biggest single burden that we carry on our backs in our foreign relations in the 1960's is the problem of racial discrimination here at home."⁹⁵

⁹⁰ In addition to the particular incidents noted below, see Isaacs, *supra* note 17, at 16-18; Sitkoff, *supra* note 6, at 16; Dudziak, *supra* note 2, at 90-92; George C. Wright, *Desegregation of Public Accommodations in Louisville*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 191, 196.

⁹¹ See Isaacs, *supra* note 17, at 16.

⁹² See *id.* at 16-18.

⁹³ *Id.* at 17.

⁹⁴ See *id.* at 17-18; see also Taylor Branch, *Parting the Waters: America in the King Years, 1954-63*, at 414 (1988) (noting that Robert Kennedy's first important civil rights speech, before a Georgia audience in 1961, invoked the Cold War imperative as an argument for avoiding future racial crises such as Little Rock and New Orleans); McAdam, *supra* note 77, at 158-59 (providing other examples of political leaders around 1960 invoking the Cold War imperative as an argument for acceding to blacks' civil rights demands); Norrell, *supra* note 68, at 72 (noting President Kennedy's frequent invocation of the Cold War imperative as an argument for acceding to civil rights demands).

⁹⁵ Isaacs, *supra* note 17, at 18, 19.

D. The Changing Politics of Race

One of the most important long-term forces for racial change in America was the burgeoning political power of northern blacks. At the beginning of the twentieth century, over 90% of American blacks lived in the eleven former Confederate states, where they had suffered almost universal disfranchisement during the final decades of the nineteenth century.⁹⁶ Beginning around World War I, the Great Migration commenced, as black migration from the South increased from roughly 200,000 in the first decade of the twentieth century to approximately half a million in the second decade.⁹⁷ Over the half-century between 1910 and 1960, nearly five million southern blacks relocated to northern and western cities, where they faced relatively unimpeded access to the ballot.⁹⁸ Of these millions of black migrants, over 85% settled in industrial centers in seven states that were both disproportionately populous and electorally marginal (in the economic sense of the term): New York, New Jersey, Pennsylvania, Ohio, Michigan, Illinois, and Cali-

⁹⁶ See Henry L. Moon, *Balance of Power: The Negro Vote* 83 (1948); McAdam, *supra* note 77, at 68-69. Blacks had voted in large numbers during Reconstruction, indeed even comprising a majority of the electorate in three deep South states. See Foner, *supra* note 19, at 294, 314; J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*, at 14-15 (1974). Disfranchisement was effectuated first through fraud and intimidation and then through more formal techniques such as poll taxes, literacy tests, secret ballots, and white primaries. The leading work on southern disfranchisement is Kousser, *supra*; see also Edward Ayers, *The Promise of the New South: Life After Reconstruction* 283-309 (1992); 9 C. Vann Woodward, *A History of the South: Origins of the New South 1877-1913*, at 321-49 (1951).

⁹⁷ See McAdam, *supra* note 77, at 74; Zangrando, *supra* note 20, at 36; Guy B. Johnson, *The Negro Migration and Its Consequences*, 2 *J. Soc. Forces*, 404, 405-06 (1924).

⁹⁸ See McAdam, *supra* note 77, at 77, 78 tbl. 5.2 (providing decade-by-decade figures); Jack T. Kirby, *The Southern Exodus, 1910-1960: A Primer for Historians*, 49 *J.S. Hist.* 585, 594 (1983) (placing the figure at closer to 4.5 million); see also McMillen, *supra* note 20, at 262 (noting that between 1910 and 1960 Mississippi alone lost 938,000 blacks to migration). The Great Migration was fueled by both push and pull factors. Blacks were driven from the South initially by racial oppression and boll weevils, and subsequently by New Deal farm policy and the mechanization of southern agriculture. Blacks were attracted to northern cities principally by the much higher wages available in the tight industrial labor markets that resulted from the demands of wartime economies and the dramatic curtailment of foreign immigration resulting first from World War I and then from the stringent 1924 immigration law. These various factors are discussed in McAdam, *supra* note 77, at 74-75; McMillen, *supra* note 20, at 263-67; Wynn, *supra* note 20, at 7-8; Johnson, *supra* note 97, at 405; Kirby, *supra*, at 589-90.

fornia.⁹⁹ These seven states alone controlled nearly 80% of the electoral votes necessary to elect a president.¹⁰⁰ Moreover, the electoral realignment effectuated by Franklin Roosevelt's landslide presidential victories of 1932 and 1936 rendered several of these states electorally competitive (i.e., winnable for the Democrats) for the first time since the late nineteenth century.¹⁰¹

The Democratic Party's new-found electoral competitiveness in the industrial Northeast and upper Midwest had two profound political implications for northern blacks. First, the party's traditional dependence on southern electoral votes was greatly reduced; each of Roosevelt's four sweeping presidential victories could have been secured without a single southern electoral vote.¹⁰² The diminished importance of southern electoral votes to the Democratic Party left it freer to compete for northern black votes, notwithstanding the risk of alienating the South.¹⁰³

Second, at the same time that many northern industrial states were becoming electorally marginal for the first time in a generation, the black vote in those states was becoming competitive for the first time ever. The 1936 presidential election saw a majority of black voters desert the party of the Great Emancipator, after seventeen consecutive presidential elections of majority black support

⁹⁹ See Berman, *supra* note 79, at 80-81; Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969*, at 346 (1976); McAdam, *supra* note 77, at 79-80 & tbl. 5.4, 157; Moon, *supra* note 96, at 10, 35, 198; Nancy J. Weiss, *Farewell to the Party of Lincoln: Black Politics in the Age of FDR 181-83* (1983).

¹⁰⁰ See McAdam, *supra* note 77, at 157.

¹⁰¹ See *id.* at 81-82; E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America 89-90* (1960); Walter D. Burnham, *The Changing Shape of the American Political Universe*, 59 *Am. Pol. Sci. Rev.* 7, 12 (1965). After the electoral realignment of 1896, only six states remained competitive between the two political parties, and thus the Republican Party had little incentive to cater to the black vote, which was very small, and concentrated in regions where the Republican Party was dominant. See McAdam, *supra* note 77, at 70.

¹⁰² See Alexander Heard, *A Two-Party South?* 17 (1952); Alan Brinkley, *The New Deal and Southern Politics*, in *The New Deal and the South* 97, 113 (James C. Cobb & Michael V. Namorato eds., 1984); see also Schulman, *supra* note 13, at 45 (noting that the 1936 presidential election revealed the Democratic Party was no longer primarily dependent upon southern electoral votes); *id.* at 123 (stating that Truman's victory in 1948 "completed the de-southernization of the National Democrats"). While Roosevelt received between 23.7% and 29.4% of his electoral votes from the South in his four presidential wins, the South had provided 48.9% and 40.4% for Democrat Grover Cleveland's two wins, and 45.5% for Woodrow Wilson's 1916 victory. See Heard, *supra*, at 18 tbl. 2.

¹⁰³ See Heard, *supra* note 102, at 151; Schulman, *supra* note 13, at 45.

for the Republican candidate.¹⁰⁴ With northern blacks having demonstrated their willingness to support either political party, and the industrial states in which most blacks voted having become once again electorally competitive, black leaders began proclaiming the black vote available to the "highest bidder."¹⁰⁵ Unsurprisingly, the two major parties, beginning most notably in the 1940s, competed against one another with civil rights proposals designed to cultivate northern black support.¹⁰⁶ And, as it turned out, the black vote did prove electorally decisive in the closely fought presidential elections of 1948 and 1960. A simple switch in the percentages of black support for the two parties—that is, if blacks had voted roughly two-to-one Republican rather than two-to-one Democratic—would have produced Republican presidential victories.¹⁰⁷

The first exercise of burgeoning black political power was directed towards securing national intervention against southern racial atrocities, as northern blacks evinced solicitude for the interests of their politically dispossessed southern kinfolk. The first federal anti-lynching legislation was proposed in 1918 by a Republican

¹⁰⁴ See Berman, *supra* note 79, at 3-4; McAdam, *supra* note 77, at 81-82; Moon, *supra* note 96, at 18, 22, 199; Weiss, *supra* note 99, at 180, 205-07, 240-41; Kellogg, *supra* note 58, at 24. Black desertion of the Republican Party was partially owing to Republican neglect and partially to FDR's inclusion of blacks among recipients of New Deal largesse. FDR's overtures to blacks were limited to economic inclusion and to symbolic gestures (often associated more with Eleanor than with Franklin), such as evincing a willingness to be photographed with blacks, inviting them to the White House, and hiring them as racial advisors to New Deal agencies. On concrete civil rights issues, such as anti-lynching and anti-poll tax legislation, or bans on discrimination within New Deal agencies, FDR's performance was abysmal. See Berman, *supra* note 79, at 5-8; Moon, *supra* note 96, at 22, 36-38; Schulman, *supra* note 13, at 46-47; Weiss, *supra* note 99, at 40-44, 53-59, 100-01, 105-06, 119, 155-56, 209-11, 218-25, 244-45, 249-55, 299; Brinkley, *supra* note 102, at 97, 101-02.

On Republican Party neglect of black interests, see Berman, *supra* note 79, at 3-4; Harold F. Gosnell, *Negro Politicians: The Rise of Negro Politics in Chicago* 25, 29-31 (1935); Heard, *supra* note 104, at 224-25; Moon, *supra* note 96, at 93, 103, 107-08; Weiss, *supra* note 99, at 3-17; Zangrando, *supra* note 20, at 66, 69, 73, 76.

¹⁰⁵ See J.W. Anderson, *Eisenhower, Brownell, and the Congress: The Tangled Origins of the Civil Rights Bill of 1956-1957*, at 51-52 (1964); Berman, *supra* note 79, at 107-08; Moon, *supra* note 96, at 199-200; Weiss, *supra* note 99, at 180-81, 299.

¹⁰⁶ See Burk, *supra* note 41, at 8; Moon, *supra* note 96, at 22; Schulman, *supra* note 13, at 194; Weiss, *supra* note 99, at 185-92, 272-73; William C. Hovard, *Intransigence to Transition: Thirty Years of Southern Politics*, 51 *Va. Q. Rev.* 497, 507-08 (1975); Kellogg, *supra* note 58, at 24; Thornbrough, *supra* note 27, at 303-04.

¹⁰⁷ See Berman, *supra* note 79, at 129-30, 133; Burk, *supra* note 41, at 260; McAdam, *supra* note 77, at 81, 158; Theodore H. White, *The Making of the President 1960*, at 354 (1961).

congressman representing a St. Louis constituency with a large black population and was supported by congressmen from the Northeast and Midwest who were responsive to black political power.¹⁰⁸ Another important early manifestation of rising black political clout was the Senate's narrow defeat in 1930 of President Herbert Hoover's nomination of Judge John Parker to the Supreme Court; a substantial portion of the credit for that defeat went to the combined lobbying efforts of the American Federation of Labor ("AFL") and the National Association for the Advancement of Colored People.¹⁰⁹ The Parker nomination defeat, together with the (at least partially) successful subsequent NAACP campaign against particular pro-Parker senators, was regarded contemporaneously as the first major political victory of the NAACP.¹¹⁰

Northern black political power was similarly instrumental in the early 1940s in securing House passage of anti-poll tax legislation,¹¹¹ and in blocking the 1944 Democratic vice-presidential nomination of South Carolina's James Byrnes, whom northern political bosses such as the Bronx's Ed Flynn believed would alienate northern black (and labor union) constituents.¹¹² The ultimate recipient of that nomination, Harry S Truman, had first been elected to the Senate as the candidate of the Pendergast machine, which depended heavily on the support of Kansas City blacks, and had

¹⁰⁸ See Zagando, *supra* note 20, at 42-43; George C. Rable, *The South and the Politics of Antilynching Legislation, 1920-1940*, 51 *J.S. Hist.* 201, 203, 209 (1985).

¹⁰⁹ See Kenneth W. Goings, "The NAACP Comes of Age": The Defeat of Judge John J. Parker 34, 38, 48 (1990); Moon, *supra* note 96, at 109-12; Richard L. Watson, Jr., *The Defeat of Judge Parker: A Study in Pressure Groups and Politics*, 50 *Miss. Valley Hist. Rev.* 213, 217-22, 230 (1963). The NAACP opposed Parker because of his stated opposition to black voting during a North Carolina gubernatorial campaign in 1920.

¹¹⁰ See Ethan Bronner, *Battle for Justice: How the Bork Nomination Shook America* 115 (1989); Moon, *supra* note 96, at 111; see also Goings, *supra* note 109, at 53 (noting that the Parker fight "brought about the recognition that the black vote in the North and in border states was a force to be reckoned with"). On the NAACP's subsequent campaign against selected pro-Parker senators, see *id.* at 54-74.

¹¹¹ See Lawson, *supra* note 99, at 66-68. The legislation was filibustered to death in the Senate. *Id.* at 69-70.

¹¹² See David McCullough, *Truman* 297-98, 311-12 (1992); Leon Friedman, *Election of 1944*, in *4 History of American Presidential Elections 1789-1968*, at 3009, 3025 (Arthur M. Schlesinger, Jr., & Fred L. Israel, eds., 1971).

compiled a respectable voting record on civil rights matters, supporting both federal anti-lynching and anti-poll tax legislation.¹¹³

Burgeoning black political clout was most impressively demonstrated by President Truman's conversion into a civil rights enthusiast in 1947-1948 (well before *Brown*).¹¹⁴ In 1946, Truman had failed to exert serious pressure upon Congress with regard to the proposed permanent extension of the wartime FEPC.¹¹⁵ Only after the Democrats' crushing off-year congressional defeat of 1946 did Truman issue an executive order creating a civil rights committee to investigate southern racial practices.¹¹⁶ Truman's principal domestic advisor, Clark Clifford, authored a political strategy memorandum regarding the 1948 presidential election which bluntly declared the imperative of winning the black vote if Truman was to be reelected; Clifford predicted that the South had nowhere else to turn regardless of how interventionist Truman became on civil rights.¹¹⁷ There soon followed, in turn, Truman's "racial justice" speech before an NAACP gathering at the Lincoln Memorial (June 1947), his civil rights message to Congress endorsing most of the proposals made in his civil rights committee's

¹¹³ See Berman, *supra* note 79, at 8-10, 15; McCullough, *supra* note 112, at 234, 323.

¹¹⁴ I do not mean to deny that part of Truman's enthusiasm for civil rights can be explained on humanitarian grounds. See McCullough, *supra* note 112, at 587-89 (downplaying the political explanation and stressing the humanitarian); 2 Harry S Truman, *Memoirs: Years of Trial and Hope 179-84* (1956). Yet Truman's almost visceral racism—Independence, Missouri, was in many ways a southern town—and the expedient timing of his conversion to civil rights enthusiast should at least cause one to take the political explanation seriously. The political explanation is espoused in Berman, *supra* note 79, at 27, 29, 72, 240; Goldfield, *supra* note 40, at 54-55; Klarman, *supra* note 12, at 799-801. On Truman's racial prejudices, see McCullough, *supra* note 112, at 86, 588. Surely both theories have some explanatory power, as some scholars have emphasized. See Lawson, *supra* note 99, at 120, 137; Martin, *supra* note 72, at 78-81; Dudziak, *supra* note 2, at 65 n.14.

¹¹⁵ See Berman, *supra* note 79, at 25-33; Harvard Sitkoff, *Harry Truman and the Election of 1948: The Coming of Age of Civil Rights in American Politics*, 37 *J.S. Hist.* 597, 599 (1971); see also Berman, *supra* note 79, at 35 (noting that within a matter of days Truman stated contradictory views on anti-poll tax legislation); *id.* at 38 (noting that until late in 1946, Truman generally "avoided . . . any direct confrontation with civil rights issues that could have split his party and further undermined his position as party leader").

¹¹⁶ See Berman, *supra* note 79, at 55; see also *id.* at 58 (noting that only after the mid-term election did Truman send a proposal for FEPC legislation to Congress).

¹¹⁷ See *id.* at 81-83; McCullough, *supra* note 112, at 592; Schulman, *supra* note 13, at 122; Sitkoff, *supra* note 115, at 597; Mark Stern, *Presidential Strategies and Civil Rights: Eisenhower, The Early Years, 1952-54*, 19 *Presidential Stud. Q.* 769, 772 (1989).

report, "To Secure These Rights," (February 1948), and his executive orders desegregating the military and the federal civil service (July 1948).¹¹⁸ While Truman's astonishing activism on civil rights ultimately did produce the Dixiecrat defection from the Democratic fold, Truman may well have concluded (correctly, as it turned out) that southern losses—four deep South states possessed of thirty-eight electoral votes, plus one aberrant Tennessee elector—would be more than counterbalanced by northern gains.¹¹⁹ Truman's combined popular vote margin in Illinois, Ohio, and California—the loss of any two of which would have deprived him of his electoral college majority—was just *one-tenth* the number of black votes he received in those same states.¹²⁰

Nor were Democrats alone in maneuvering for the northern black vote. In 1940 and 1944 the Republican presidential candidates, Wendell Willkie and Thomas Dewey, respectively, evinced greater commitment to the civil rights cause than had Franklin Roosevelt.¹²¹ Indeed, among the factors impelling Truman to move so aggressively on civil rights in 1948 was the strong support Governor Dewey enjoyed among blacks in his home state of New York and the Republican Party's aggressive civil rights posture that year.¹²² Concededly, both parties took a step backwards on civil rights in 1952, owing both to the diverting influence of developments such as Korea and McCarthyism and to the more conservative predispositions of their two standard bearers, Adlai Stevenson and Dwight Eisenhower.¹²³ Yet in late 1955, with Eisenhower

¹¹⁸ See Berman, *supra* note 79, at 61-63, 68-70, 83-84, 116-18; Martin, *supra* note 72, at 70-72.

¹¹⁹ See Barone, *supra* note 17, at 213-14, 275.

¹²⁰ See McAdam, *supra* note 77, at 81; see also Berman, *supra* note 79, at 129; McCullough, *supra* note 112, at 713; Schulman, *supra* note 13, at 122-23; White, *supra* note 107, at 233; Richard S. Kirkendall, Election of 1948, in 4 *History of American Presidential Elections 1789-1968*, *supra* note 112, at 3099, 3139-40.

¹²¹ See Barone, *supra* note 17, at 212 (identifying Willkie as "probably the most pro-civil rights politician of the 1940s" and noting that Governor Dewey had sponsored the nation's most advanced state antidiscrimination law, probably owing to New York's large black and Jewish pro-civil rights constituencies); Kellogg, *supra* note 58, at 24 (noting that the Republicans in 1944 had a stronger civil rights plank than the Democrats).

¹²² See Berman, *supra* note 79, at 87, 103; Kellogg, *supra* note 58, at 24. Truman was also competing with the Progressive Party candidate, Henry Wallace, for the black vote. See Berman, *supra* note 79, at 16-19, 76, 116-19; Sitkoff, *supra* note 115, at 597, 608.

¹²³ See *infra* text accompanying notes 565-68.

recuperating from a severe heart attack and the Republican Party's 1956 presidential prospects accordingly in doubt, liberal northern Republican congressmen representing urban constituencies with large black populations pressed the administration for a civil rights bill, which was introduced in the spring of 1956 and eventually enacted (albeit in watered-down form) the following year.¹²⁴ After Eisenhower demonstrated in 1956 that the Republican Party retained substantial appeal among black voters—he won roughly 40% of the black vote, an increase of fifteen to twenty percentage points from 1952—both parties resumed their maneuvering for black support in 1960 by adopting their most progressive civil rights planks ever.¹²⁵ And the black vote once again provided the Democrats with their margin of victory. Had Nixon achieved the same percentages of black support in 1960 that Eisenhower had in 1956, New Jersey, Michigan, Illinois, and Texas all would have shifted to the Republican column, thus electing Nixon, rather than Kennedy, as president.¹²⁶

We have seen that, by at least the 1940s, black political power was a force to be reckoned with in the national arena. The same phenomenon was at work on the local level from a somewhat earlier date. In Chicago, by the 1920s, the Great Migration had produced a sizeable black population, which reaped the rewards of providing the margin of victory for the mayoral candidacies of Republican "Big Bill" Thompson: civil service positions proportionate to black percentages of the population, appointment of substantial numbers of black police officers, considerable school desegregation, vocal mayoral criticism of discrimination in public accommodations, and in 1928 the election of the first black U.S.

¹²⁴ See Anderson, *supra* note 105, at 3-4, 25, 28; Garrow, *supra* note 12, at 12; Lawson, *supra* note 99, at 150-51, 156. Both the Attorney General, Herbert Brownell, and the most ardent House Republican proponent of civil rights legislation, Hugh Scott, had entered politics representing large eastern cities with substantial black populations—New York and Philadelphia, respectively.

¹²⁵ See Brauer, *supra* note 86, at 35-36, 39; Martin, *supra* note 72, at 169, 171; McAdam, *supra* note 77, at 158; Rosenberg, *supra* note 6, at 161-62. On the significant shift of black votes to Eisenhower in 1956, see Henry L. Moon, *The Negro Vote in the Presidential Election of 1956*, 26 *J. Negro Educ.* 219, 219-20 (1957).

¹²⁶ See Burk, *supra* note 41, at 260; McAdam, *supra* note 77, at 158; Mark Stern, *Calculating Visions: Kennedy, Johnson, and Civil Rights* 39 (1992); White, *supra* note 107, at 323, 359.

congressman since the nineteenth century.¹²⁷ Similarly, in New York City an explosion of black migration into Harlem between 1910 and 1930 produced political power sufficient to secure appointment of large numbers of black policemen and firemen, access for black doctors to Harlem Hospital and establishment of a training school for black nurses, enactment of civil rights laws extending the reach of earlier equal accommodations provisions, creation of the first black National Guard unit, construction of new playgrounds and parks for the black community, and elevation of blacks to the state legislature and state bench.¹²⁸ Finally, in the years during and after World War II, rising black political power, in conjunction with the ideological reorientation ignited by the war against fascism, secured the enactment of an impressive array of northern state and local antidiscrimination laws, including several that proscribed state-sponsored public school segregation.¹²⁹

E. *Economic and Social Integration of the Nation*

Another critical factor in American racial transformation was the nation's increasing economic and social integration.¹³⁰ I shall argue in the next Section that even *southern* racial norms were in a state of flux by mid-century. Yet even were this not the case, once the forces identified in preceding Sections fostered a national climate conducive to racial change, the South would find maintenance of its outlier racial status increasingly difficult because of national economic and social integration. During the First Reconstruction (1865-1877), only military force could induce the South to

¹²⁷ See Gosnell, *supra* note 104, at 37, 40-41, 55-56, 80-81, 200, 204, 213, 237, 250-51, 367-68. For one fascinating illustration of black voting power in the North, see Richard C. Cortner, *A Mob Intent on Death: The NAACP and the Arkansas Riot Cases* 55-83 (1988) (noting that Kansas blacks exercised sufficient political power in 1920 to block the extradition to Arkansas of one of the black defendants in the Phillips County riot case, *Moore v. Dempsey*, 261 U.S. 86 (1923)).

¹²⁸ See Gilbert Osofsky, *Harlem: The Making of a Ghetto: Negro New York, 1890-1930*, at 166, 170-72 (1966). For similar achievements of black political power around the same time in Cleveland, see Kenneth L. Kusmer, *A Ghetto Takes Shape: Black Cleveland, 1870-1930*, at 245-47, 252, 271-74 (1976).

¹²⁹ See *supra* notes 58-60 and accompanying text.

¹³⁰ See McKinney & Bourque, *supra* note 54, at 399; see also Havard, *supra* note 12, at 11-12 (noting that from Reconstruction until the New Deal, the southern political and social system was in a state of semiquarantine from the rest of the nation).

accept national racial prescriptions.¹³¹ By the time of the Second Reconstruction, though, integrating social and economic forces provided a crucial supplement to the military option (which Little Rock and Ole Miss demonstrated was not obsolete, even by the mid-twentieth century).

Beginning in the late 1930s, the South found itself increasingly propelled into the national economic mainstream from two different directions. In 1938, President Roosevelt's National Emergency Council produced its famous Report on the Economic Conditions of the South, which identified that region as a national economic problem impeding America's recovery from the Great Depression.¹³² From approximately that date forward, national economic policy was oriented towards narrowing, and ultimately eliminating, economic differentials between the South and the rest of the nation.¹³³ This national economic policy was to have two decisive effects on southern racial norms. First, by substantially reducing regional disparities, national economic policy aided the destruction of the plantation agriculture and extractive resource economy that Jim Crow had originally been designed to infuse with a subservient labor force.¹³⁴ Second, as the South became increasingly dependent on federal government largesse, Washington came to exercise substantial leverage over southern racial mores.

Beginning around the same time and working from the opposite direction, southern state governments' indigenous economic growth policies likewise accelerated southern integration into the national economy. In 1936, Mississippi Governor Hugh White inaugurated his "Balance Agriculture with Industry" program, marking the initial southern state effort to compete on a grand scale for northern industrial investment through tax incentives,

¹³¹ Thus, when the nation's will to protect the freedmen through military exertion waned and then finally collapsed, the last Republican southern state governments fell, and the region was returned to racial home rule. See Foner, *supra* note 19, at 561-63, 582; William Gillette, *Retreat from Reconstruction 1869-1879*, at 345-46 (1979).

¹³² See Bartley, *supra* note 13, at 177; Schulman, *supra* note 13, at 50; Sullivan, *supra* note 33, at 85. The President declared the South "the Nation's No. 1 economic problem—the Nation's problem, not merely the South's." Schulman, *supra* note 13, at 3.

¹³³ See Schulman, *supra* note 13, at 3, 51.

¹³⁴ See *id.* at 209 (noting that "federal policy eroded the South's economic investment in segregation," by transforming the needs of southern agriculture and altering the structure of southern low wage industry).

subsidized loans, grants of real estate and industrial plant, and low wage and non-union labor.¹³⁵ Henceforth, southern states and localities would recruit outside industrial investment to the South "with an intensity and single-mindedness never before seen."¹³⁶

It is important to acknowledge the absence of any necessary link between industrial growth and racial betterment; most of the new jobs thus created were reserved for whites, and those made available to blacks tended to be lower status and lower wage.¹³⁷ The key to racial transformation was not in industrial development *per se* but rather in the increasing dependence of southern economic prosperity on northern investment. As economic growth became addictive, southern businessmen and growth-minded politicians focused their efforts upon preserving the ordered social environment most conducive to outside investment.¹³⁸ Once pressure for racial change developed, issuing either from indigenous or exogenous forces, extreme forms of resistance to racial change—such as school closures, church bombings, and so forth—would threaten to destroy this social order. At that point, the principal beneficiaries of decades of externally financed economic growth made their presence felt. During the racial conflagrations of the early 1960s, southern businessmen generally manifested a greater commitment to maintaining economic growth than to preserving the racial status quo.¹³⁹

I shall consider in turn these two crucial forces—one federal, one state—propelling the South into the nation's economic main-

¹³⁵ See James C. Cobb, *The Selling of the South: The Southern Crusade for Industrial Development, 1936-1980*, at 5-34 (1982); Schulman, *supra* note 13, at 162-64; Gavin Wright, *Economic Consequences of the Southern Protest Movement*, in *New Directions in Civil Rights Studies*, *supra* note 12, at 175, 176.

¹³⁶ Wright, *supra* note 135, at 176; accord Cobb, *supra* note 135, at 35-63; Schulman, *supra* note 13, at 129.

¹³⁷ See Cobb, *supra* note 135, at 115-19; Schulman, *supra* note 13, at 83, 160-61, 179-80; Wright, *supra* note 135, at 178.

¹³⁸ An obvious exception to this general pattern was Governor Ross Barnett of Mississippi, who launched a last-ditch defense of segregation while simultaneously engaging in an aggressive campaign to attract northern industrial investment. See Erle Johnston, *I Rolled with Ross: A Political Portrait 6-11* (1980). Governor George Wallace of Alabama was the other principal exception. See Cobb, *supra* note 135, at 140.

¹³⁹ See Bartley, *supra* note 58, at 314-15, 338-39; Cobb, *supra* note 135, at 140; Schulman, *supra* note 13, at 128-29, 133; Elizabeth Jacoway, *An Introduction*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 3, 5-7; Wright, *supra* note 135, at 176.

stream, and thus paving the way for southern racial change. Roosevelt's first New Deal had largely accommodated the economic and racial concerns of the southern oligarchy. Southern plantation owners dominated the Agricultural Adjustment Agency's decentralized bureaucracy and thus were able to deprive tenant farmers and sharecroppers of their legally prescribed share of acreage reduction payments. Southern industrialists maintained their competitive advantage against higher wage northern manufacturers through regional differentials in the minimum wages imposed under the National Industrial Recovery Act ("NIRA").¹⁴⁰

By 1938, though, Roosevelt, liberated from the Democratic Party's traditional southern electoral base by his recent landslide presidential victory, launched a political and economic assault against the southern Old Guard.¹⁴¹ While his famous attempt to purge southern conservatives in 1938 Democratic senatorial primaries failed,¹⁴² Roosevelt's economic assault proved more successful, as Congress overcame concerted southern Democratic opposition to enact the Fair Labor Standards Act ("FLSA"), the minimum wage provisions of which were contemporaneously understood to be directed principally towards the South.¹⁴³ The FLSA was part of an effort to phase out the low wage, low skill industrial jobs that the southern economy had traditionally generated, and evidence suggests that the Act had a marked impact on

¹⁴⁰ See Schulman, *supra* note 13, at 14-17, 21-22, 25-26. On the New Deal's accommodation of southern racial norms, see Weiss, *supra* note 99, at 50-53; Brinkley, *supra* note 102, at 98-101; Harvard Sitkoff, *The Impact of the New Deal on Black Southerners*, in *The New Deal and the South*, *supra* note 102, at 120, 122. The Roosevelt administration was also lax in preventing southerners from employing *de facto* racial pay differentials under the NIRA and various relief projects. See Schulman, *supra* note 13, at 29, 32-33. Perhaps the best illustration of the Roosevelt administration's willingness to accommodate the South was the practice of releasing workers from federal relief projects during planting and harvesting season. See *id.* at 31.

¹⁴¹ See *id.* at 45, 51-52.

¹⁴² See Barone, *supra* note 17, at 120-21; William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal 1932-1940*, at 267-68 (1963); William Manchester, *The Glory and the Dream: A Narrative History of America 1932-1972*, at 168-70 (1973); Schulman, *supra* note 13, at 53.

¹⁴³ See Schulman, *supra* note 13, at 54-56. Schulman rejects the argument that the FLSA was principally motivated by northern industrial protectionist sentiments rather than by genuine concern for "decolonizing" the southern economy. See *id.* at 59-60.

the wage scales of many southern industries.¹⁴⁴ The FLSA marked the onset of sustained federal government intervention in the southern economy—"intervention which would catalyze tremendous economic change over the following two decades."¹⁴⁵ Between the mid-1930s and the mid-1950s, convergence between national and southern economic indices occurred at a rapid rate. By the early 1980s, on measures such as percentage of the workforce employed in manufacturing, differences between southern and national averages had virtually disappeared.¹⁴⁶

A more important phase of southern-oriented federal economic policy commenced with World War II—federal military spending policy. Beginning with the Second World War and then accelerating with National Security Council directive number sixty-eight and the Korean War, the South won an increasingly disproportionate share of federal military installations and defense contracts.¹⁴⁷ The South's share of prime military contracts, for example, increased from 7% to 15% of the national total during the 1950s, and then continued to climb steeply, reaching 25% by the 1970s.¹⁴⁸ The South also housed a disproportionate number of military bases, which meant that southern communities benefited disproportionately from servicemen's salaries, as well as from the various forms of non-salary assistance that accrue to military communities (for example, special federal educational subsidies).¹⁴⁹

Southerners benefited more, per capita, from federal government spending even when allocations were apportioned according to population, because southerners contributed less in taxes owing

¹⁴⁴ See *id.* at 54, 63-64, 66-67, 85. The FLSA, of course, not only raised wages but also resulted in the loss of many jobs.

¹⁴⁵ *Id.* at 60-61.

¹⁴⁶ See *id.* at 152-53 & tbl. 6-2; see also *id.* at 173 (noting that southern per capita income increased from 60% of the national average in 1940 to 88% in 1980).

¹⁴⁷ See *id.* at 94-95, 109, 135-36. Schulman suggests that the Roosevelt administration consciously used the war emergency to further the South's economic development, bestowing upon the region more war-related military construction projects than the South's underdeveloped manufacturing capability might have warranted. See *id.* at 100.

¹⁴⁸ See *id.* at 139. The South's disproportionate share of federal military spending was partially owing to southern congressional seniority and also partially to an informal alliance between southern congressmen and the Pentagon, in which the former supported higher defense spending while the latter directed disproportionate amounts of that spending to the former's constituencies. See *id.* at 145-47.

¹⁴⁹ See *id.* at 149.

to their relative poverty.¹⁵⁰ After the war, though, this southern advantage was compounded when the federal nonmilitary spending formula shifted from the population-based, one-to-one matching requirement of the 1930s to more relaxed matching requirements and a new "equalization" standard, which dispensed aid disproportionately to poorer regions like the South.¹⁵¹ Thus, for example, southerners won a hugely disproportionate share of construction appropriations for hospital and other medical facilities, as well as of federal aid to education.¹⁵² At a time when the federal government was contributing a rising share of state government revenues,¹⁵³ all southern states except Florida were more dependent on federal funds than the national average.¹⁵⁴ The deep South states—those most resistant to racial change—were also those most dependent upon federal monies.¹⁵⁵

Moreover, as the South was becoming increasingly dependent upon federal largesse, its control over national policy (racial and otherwise) was diminishing. Franklin Roosevelt's New Deal policies reoriented the Democratic Party from its southern base towards a broader geographic and demographic coalition of ethnic and racial minorities, labor union members, and farmers.¹⁵⁶ Ultimately, as the national political community became increasingly committed to racial change (for the reasons explored in earlier Sections), the threat of cutting off federal funds to southern states showing recalcitrance on the race issue became both more realistic and potentially more damaging to the South.¹⁵⁷ As the federal gov-

¹⁵⁰ See *id.* at 117.

¹⁵¹ See *id.* at 112, 114-16, 195.

¹⁵² See *id.* at 117-18 (noting that by 1962 the South was receiving over 40% of appropriations under the federal hospital construction program); *id.* at 197 (noting that by 1970-1971 the South was receiving over 40% of Elementary and Secondary Education Act ("ESEA") funds).

¹⁵³ See *id.* at 116 *tbl.* 5-1 (showing that federal highway funds, as a percentage of total state highway spending in the South, rose from 8.4% to 23.1% between 1955 and 1960); *id.* at 165 (showing that federal government contributions as a percentage of state and local revenue rose from 11.4% in 1954 to 26.5% in 1974).

¹⁵⁴ See *id.* at 118.

¹⁵⁵ See *id.* at 119 *fig.* 5-1.

¹⁵⁶ See *id.* at 122, 125-26; *supra* notes 102-03 and accompanying text.

¹⁵⁷ See *id.* at 132-33, 209-10; see also Brauer, *supra* note 86, at 225 (noting the Civil Rights Commission report of 1963, which observed that the federal government channeled into Mississippi \$380 million more than it received back in revenues and recommended that the President explore the possibility of withholding federal funds until Mississippi

ernment came increasingly to pay the fiddler, it began to exercise its prerogative to call the tune.¹⁵⁸ Thus, for example, even at the peak of massive resistance frenzy, the Mississippi State Sovereignty Commission, the state's institutional defense mechanism against integration, preferred construction of an integrated Veterans' Administration hospital to none at all.¹⁵⁹ Most significantly, after passage of the 1965 Elementary and Secondary Education Act, southern states were too dependent upon federal educational subsidies to resist integration pressure from the Department of Health, Education and Welfare.¹⁶⁰ While the average state relied on federal aid for just 7% of its education budget, the corresponding figure for southern states ranged from 9% to 22%.¹⁶¹

At the same time that federal spending policy was creating pressure for southern compliance with national racial norms, indigenuous efforts by southern businessmen and politicians to cultivate outside industrial investment were having a similar effect. It is important to recognize that white southern businessmen were, all things being equal, no more predisposed towards racial egalitarianism than the average person on the street.¹⁶² Before the civil rights confrontations of the late 1950s and early 1960s put them to the choice of maintaining economic growth or preserving Jim Crow,

ceased its constitutional violations); cf. Stephen L. Longenecker, *Selma's Peacemaker: Ralph Smeltzer and Civil Rights Mediation* 133-34 (1987) (noting that in 1964-1965 the Defense Department was threatening to put Selma, Alabama, off limits to servicemen from nearby Craig Air Force Base, to the substantial economic detriment of Selma merchants, owing to the city's racial intransigence).

¹⁵⁸ See Schulman, *supra* note 13, at 133.

¹⁵⁹ See *id.* at 286, n.55; McMillen, *supra* note 5, at 323-24.

¹⁶⁰ See Schulman, *supra* note 13, at 197; see also Howard, *supra* note 4, at 98-99 (noting that Virginia stood to lose over \$85 million in federal education aid in the 1967-1968 school year).

¹⁶¹ See Schulman, *supra* note 13, at 197; see also Rosenberg, *supra* note 6, at 98 (providing slightly different statistics).

¹⁶² See James W. Ely, Jr., *A Crisis of Conservative Virginia: The Byrd Organization and the Politics of Massive Resistance* 84-85 (1976); David R. Colburn, *The Saint Augustine Business Community*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 211, 217; David A. Horowitz, *White Southerners' Alienation and Civil Rights: A Response to Corporate Liberalism, 1956-1965*, 54 *J.S. Hist.* 173, 188 (1988); Jacoway, *supra* note 139, at 1-2, 5-6; Elizabeth Jacoway, *Taken By Surprise*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 15, 15-16; Thornton, *supra* note 12, at 41. A well-known study of southern businessmen conducted during the early 1960s showed nearly all of them in favor of segregation. See M. Richard Cramer, *School Desegregation and New Industry: The Southern Community Leaders' Viewpoint*, 41 *Soc. Forces* 384, 386 (1963).

the vast majority of southern businessmen evinced little dissatisfaction with the racial status quo. They were not prepared, however, to permit civil disorder detrimental to a stable investment environment to ruin their hard-fought efforts to bring economic growth to the South.¹⁶³ When judicial desegregation orders led to school closures and race riots, or when civil rights demonstrations led to brutal suppression of peaceful protestors and mass incarcerations, southern businessmen came to appreciate that preservation of Jim Crow might be incompatible with continued economic growth, and they had little difficulty choosing to sacrifice the former in order to safeguard the latter. As one Birmingham Chamber of Commerce official noted late in 1962 after the city's seventeenth bombing in five years of a black church or home, "Let a carload of riffraff throw a stick of dynamite and—boom—we're set back another five years."¹⁶⁴

In city after city, southern businessmen played critical roles in desegregating the South. Sometimes their early interventions produced compromises that preempted violence; other times, their cautious mediations occurred only after a racial crisis had erupted.¹⁶⁵ In fast-growing cities, such as Atlanta or Dallas, where their political and economic power was greatest, businessmen were able to secure desegregation without accompanying racial violence.¹⁶⁶ In more traditional, slow-growth cities like New Orleans, a less vibrant business community could successfully intervene only after substantial violence already had transpired.¹⁶⁷ But across the

¹⁶³ See Bartley, *supra* note 58, at 22 (noting that southern businessmen, though segregationist, did not show "a willingness to battle for white supremacy much beyond pocketbook dictates"); Bartley, *supra* note 13, at 193; Carl Abbott, *The Norfolk Business Community*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 98, 113; Cramer, *supra* note 162, at 385-87; Thornton, *supra* note 12, at 41-42.

¹⁶⁴ Cobb, *supra* note 135, at 136; see also *id.* at 148 (quoting a southern business booster observing that "[o]ne lynching and we've wasted two hundred thousand dollars in magazine advertising").

¹⁶⁵ See Jacoway, *supra* note 139, at 8-9; Steven F. Lawson, *From Sit-In to Race Riot*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 257, 257-58.

¹⁶⁶ See William Brophy, *Active Acceptance—Active Containment*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 137, 139-40, 142, 149 (Dallas); Lawson, *supra* note 165, at 260, 274-75 (Tampa).

¹⁶⁷ See Bartley, *supra* note 58, at 336-37; Cobb, *supra* note 135, at 132; Goldfield, *supra* note 40, at 111-13; McMillen, *supra* note 5, at 291; Inger, *supra* note 86, at 94, 97; Jacoway, *supra* note 139, at 8-9, 11; see also Garrow, *supra* note 12, at 122 (noting that after the violence at Selma, in the winter of 1965 the Alabama State Chamber of Commerce and

South the bottom line was the same: once a racial crisis was at hand, local businessmen sought to broker a compromise that invariably included some dismantling of the walls of Jim Crow.¹⁶⁸

To consider just a few of the more notable examples, the momentous Birmingham demonstrations of 1963, which were largely responsible for the introduction of landmark civil rights legislation which passed the following year, were resolved by clandestine negotiations between local businessmen and the Southern Christian Leadership Conference.¹⁶⁹ In 1958-1959, Virginia business leaders played a crucial role in persuading Governor Lindsay Almond, elected on a massive resistance platform in 1957, to abandon the cause.¹⁷⁰ In Little Rock it was the local chamber of commerce that finally put an end to Governor Orval Faubus's escapades after the governor closed the city's schools in response to the Supreme Court's decision in *Cooper v. Aaron*.¹⁷¹ The chamber ran its own slate of school board candidates in late 1958 and then led a successful recall drive against the remaining school board segregationists in 1959.¹⁷² And in prosperous Atlanta, the

local chambers placed a full-page ad in state papers and the *Wall Street Journal* urging obedience to the 1964 Civil Rights Act as well as recognition of equal voting rights for all; Fortenberry & Abney, *supra* note 12, at 518 & n.66 (noting the importance of the Mississippi Economic Council's decision in early 1965 to urge compliance with the 1964 Civil Rights Act after the violence of Freedom Summer had adversely affected outside investment in the state).

¹⁶⁸ See Cobb, *supra* note 135, at 130-31 (Charlotte); Abbott, *supra* note 163, at 99-100, 109-110 (Norfolk); William Chafe, Greensboro, North Carolina, in *Southern Businessmen and Desegregation*, *supra* note 86, at 42, 43, 45-46 (Greensboro); Colburn, *supra* note 162, 231-32 (St. Augustine); Lawson, *supra* note 165, at 266-67, 274-75 (Tampa); Wright, *supra* note 90, at 202-04 (Louisville).

¹⁶⁹ See Branch, *supra* note 94, at 768-69, 780, 790-91; Garrow, *supra* note 62, at 251-59; Thornton, *supra* note 12, at 41, 53; see also *id.* at 48-49 (detailing the efforts of Birmingham businessmen to evict Bull Connor from politics and reorganize the city's form of government in 1961-1962 in order to redress the city's reputation for racial violence and extremism); Lee E. Bains, Jr., Birmingham, 1963: Confrontation Over Civil Rights, in *Birmingham, Alabama, 1956-1963: The Black Struggle for Civil Rights*, *supra* note 5, at 151, 170 (same).

¹⁷⁰ See Bartley, *supra* note 58, at 322; Cobb, *supra* note 135, at 126; Ely, *supra* note 162, at 83; J. Harvie Wilkinson III, Harry Byrd and the Changing Face of Virginia Politics 1945-1966, at 145 (1968). Future Supreme Court Justice Lewis Powell was among those leaders. See John C. Jeffries, Jr., Justice Lewis F. Powell, Jr., and the Era of Judicial Balance 151-53 (forthcoming 1994).

¹⁷¹ 358 U.S. 1 (1958).

¹⁷² See Bartley, *supra* note 58, at 328-31; Cobb, *supra* note 135, at 124-25; Goldfield, *supra* note 40, at 110-11; Jacoway, *supra* note 162, at 32, 34; Lee Powell, *Massive Resistance*

"city that was too busy to hate," community business leaders ensured that court-ordered desegregation would not follow the economically disastrous path laid down by Little Rock in 1957-1958 and New Orleans in 1960-1961.¹⁷³ Appreciating the important moderating influence of southern businessmen, the Kennedy and Johnson administrations sought to conscript them into pressuring state politicians to show restraint during racial conflagrations, as with Governor Ross Barnett during the Ole Miss crisis of 1962 and with Governor George Wallace during the barely aborted desegregation crisis at Tuscaloosa in 1963.¹⁷⁴

Where businessmen were unable to head off violent confrontations, the economic implications for the stricken community often were disastrous. Little Rock is the most striking example. Nationally and internationally televised scenes of redneck whites shouting obscenities at neatly tailored and well-mannered black high school students remained for years the image evoked by Little Rock.¹⁷⁵ The city, having attracted eight new industrial plants in 1957 and an average of five major new plants a year between 1950 and 1957, failed to secure a single new industrial relocation in the four years following the school desegregation crisis.¹⁷⁶ New investment in Arkansas between 1956 and 1958 declined from \$131 million to \$25.4 million.¹⁷⁷ Seeking to share the lesson of Little Rock's experience, one Chamber of Commerce official toured other southern cities, urging peaceful acquiescence in school desegregation in the service of promoting business development.¹⁷⁸ Businessmen in other cities, such as Atlanta and Dallas, explicitly invoked the les-

in Arkansas: A Tale of Race Relations in an Undemocratic Political System in the 1950s, at 77 (Spring 1992) (unpublished student paper, on file with the Virginia Law Review Association).

¹⁷³ See Bartley, *supra* note 58, at 332-33; Bartley, *supra* note 13, at 193-94; Cobb, *supra* note 135, at 128 (noting that Atlanta businessmen petitioning against school closures warned that "[n]ext to our children, the Georgia business community has the most at stake in the present school crisis"); Goldfield, *supra* note 40, at 112-13; Alton Hornsby, Jr., *A City That Was Too Busy to Hate*, in *Southern Businessmen and Desegregation*, *supra* note 86, at 120, 121, 131-32.

¹⁷⁴ See Brauer, *supra* note 86, at 182-83, 256-57; Cobb, *supra* note 135, at 137; Sitkoff, *supra* note 6, at 138-41; Bains, *supra* note 169, at 197; Horowitz, *supra* note 162, at 189, 192.

¹⁷⁵ See Powell, *supra* note 172, at 51-52.

¹⁷⁶ See Cobb, *supra* note 135, at 125; Cramer, *supra* note 162, at 384.

¹⁷⁷ See Goldfield, *supra* note 40, at 132.

¹⁷⁸ See Cobb, *supra* note 135, at 125.

son of Little Rock in urging peaceful desegregation.¹⁷⁹ Where Little Rock went unheeded, as in New Orleans and Mississippi, the result was substantial economic harm as the tourist trade suffered or prospective industrial relocations turned elsewhere.¹⁸⁰ As one firm from Cleveland, Ohio, told a Mississippi developer in the wake of the appalling violence of Freedom Summer: "We won't consider expanding in Mississippi again until the state and its people join the Union again."¹⁸¹

In sum, southern dependence on outside business investment substantially undermined the unity of southern resistance to racial change. Once changing national racial norms led to a mandate for federal intervention in the South, whether judicial or legislative, the willingness of significant numbers of powerful southerners to abandon segregation in order to protect economic development fundamentally eroded the white South's capacity to resist change.

Other forms of increasing economic integration likewise rendered southern recalcitrance on the race issue more difficult to maintain. During the 1960s, northern branches of national chain stores frequently were subjected to intense lobbying pressure, including customer boycotts, when they initially declined to desegregate their southern units.¹⁸² For example, during the sit-in movement of 1960, a Boston group obtained more than ten thousand signatures endorsing a consumer boycott against Woolworth's,

¹⁷⁹ See Brophy, *supra* note 166, at 141 (Dallas); Hornsby, *supra* note 173, at 134 (Atlanta); Lawson, *supra* note 165, at 266 (Tampa).

¹⁸⁰ See Brauer, *supra* note 86, at 256 (reporting that Ole Miss suffered an estimated 50% decline in its out-of-state enrollment after the desegregation crisis of 1962); Cobb, *supra* note 135, at 135 (observing that industrial promoters in the last months of 1964 reported that at least a dozen firms seriously considering location in Mississippi chose to go elsewhere in response to the violence of Freedom Summer); *id.* at 133-34 (noting the precipitous fall in tourist spending and retail trade in New Orleans after violent resistance to school desegregation); Colburn, *supra* note 162, at 212, 231-32 (reporting that in St. Augustine's racial crisis, the tourist trade, which accounted for 85% of the city's income, declined by 40-60%); Fortenberry & Abney, *supra* note 12, at 518 & n.66 (noting that new industrial plant construction declined 28% in Mississippi during 1964's Freedom Summer); Horowitz, *supra* note 162, at 194 (same); Inger, *supra* note 86, at 93-94 (observing that the New Orleans hotel and restaurant trade fell off 20% during the school desegregation riots); see also Cobb, *supra* note 135, at 122-23, 136-37 (providing numerous additional examples from other locales).

¹⁸¹ Cobb, *supra* note 135, at 135.

¹⁸² See Chafe, *supra* note 3, at 120; Cobb, *supra* note 135, at 145-46; McAdam, *supra* note 77, at 21.

owing to the chain's complicity in southern segregation.¹⁸³ There is reason to believe that the southern branches of national concerns were quicker to respond to changing national racial norms than were purely local outfits, owing to the chains' fear of economic retaliation by non-southern clientele.¹⁸⁴ The overall impact of this phenomenon may have been substantial, given that a considerable portion of postwar southern industrial development consisted of branch plants of national firms with head offices outside the South.¹⁸⁵

An integrated national social and economic structure increased the costs to the South of maintaining Jim Crow practices in another way as well. Southern communities increasingly found themselves passed over by national organizations, as national and southern racial norms diverged at a time when the civil rights issue was gaining greater salience.¹⁸⁶ In the early 1950s, the American Psychiat-

¹⁸³ See James H. Laue, *Direct Action and Desegregation, 1960-62: Toward a Theory of the Rationalization of Protest* 92 (1989); see also Manchester, *supra* note 142, at 848 (noting that 400 Boston area college students picketed a dozen local Woolworth stores in sympathy with the Greensboro sit-ins).

¹⁸⁴ See Colburn, *supra* note 162, at 220 (noting that as of 1963 only the national chain stores in St. Augustine had desegregated lunch counters); see also Thornbrough, *supra* note 27, at 342 (observing that blacks were more likely to get served at Indiana motels linked to national chains than at locally owned outfits).

¹⁸⁵ See Schulman, *supra* note 13, at 108.

¹⁸⁶ A useful analogy consists of the position of southern Democrats within the national party. While southern Democrats dominated the Senate owing to greater seniority, it was widely appreciated that no southerner could become president while the civil rights issue remained unresolved. The concerns of black and liberal white northerners kept Jimmie Byrnes of South Carolina off the Democratic ticket in 1944 and doomed Georgia Senator Richard Russell's presidential aspirations in 1952 before they got off the starting blocks. See *supra* note 112 (regarding Byrnes); Robert Dallek, *Lone Star Rising: Lyndon Johnson and His Times, 1908-1960*, at 417-18 (1991) (regarding Russell); Barton J. Bernstein, *Election of 1952*, in *4 History of American Presidential Elections 1789-1968*, *supra* note 112, at 3215, 3238-39 (same). Presidential aspirants Estes Kefauver of Tennessee (in 1952 and 1956) and Lyndon Johnson of Texas (in 1956 and 1960) astutely recognized that endorsement of the Southern Manifesto in 1956 would doom any hopes of national office; they were two of the three southern senators who refused to sign. See Bartley, *supra* note 58, at 116 & n.30; Dallek, *supra*, at 496; Martin, *supra* note 72, at 140; see also Black, *supra* note 3, at 120 (attributing Tennessee Governor Frank Clement's racial moderation during the mid-1950s partially to his ambitions for national office). Likewise, Johnson's brilliant stewardship of the 1957 Civil Rights Act represented his effort to make himself acceptable to the civil rights lobby without simultaneously undermining his Texas base or destroying his credibility with the southern Democrats. See *infra* note 583 and accompanying text. The point, again, is that southern Democrats, as a minority group within a national

ric Association voted to withdraw its annual convention from the still-segregated District of Columbia,¹⁸⁷ and in the "southern" state of Indiana, the American Bar Association, the Congress of Industrial Organizations, and the Veterans of Foreign Wars all threatened boycotts over the issue of hotel discrimination.¹⁸⁸ In Birmingham, the price of preserving Jim Crow practices included exclusion from tours of the Metropolitan Opera and traveling theatrical groups, as well as (the ultimate blow!) surrender of its minor league baseball team.¹⁸⁹ In 1962, black students in Augusta, Georgia, used the threat of nationally televised protests at the upcoming Masters' Golf tournament as a bargaining lever to extract mayoral promises of desegregated lunch counters.¹⁹⁰ And it was the tremendous revenue generated by the spring training sojourns of newly desegregated major league baseball teams which impelled many Florida cities reluctantly to relax their bans on interracial sporting competition and ultimately to desegregate some of their public accommodations, as well as propelling some of those teams inhabiting racially recalcitrant cities across the country to Arizona.¹⁹¹ Throughout the South in the late 1940s and early 1950s, "communities toppled like dominoes in their acceptance of interracial competition," as the economic lure of a visit from the Brooklyn Dodgers, Cleveland Indians, or other teams early to integrate proved irresistible.¹⁹²

One final point regarding national integration warrants brief mention here, though it will receive further attention later on.¹⁹³ Just as economic integration rendered southern resistance to changing racial norms more costly, the social integration resulting from the transportation and communication revolutions rendered southern deviance on racial matters more difficult to maintain.

organization, could expect to suffer substantial costs for retaining Jim Crow as the civil rights issue increased in importance.

¹⁸⁷ See Beverly W. Jones, *Before Montgomery and Greensboro: The Desegregation Movement in the District of Columbia, 1950-1953*, 43 *Phylon* 144, 151 (1982).

¹⁸⁸ The statement in the text is based upon an inference from the evidence cited in Thornbrough, *supra* note 27, at 320.

¹⁸⁹ See Cobb, *supra* note 135, at 135-36; Marshall Frady, *Wallace* 38 (1968).

¹⁹⁰ See Cobb, *supra* note 135, at 131.

¹⁹¹ See Tygiel, *supra* note 28, at 110, 225, 313-14, 316.

¹⁹² *Id.* at 226, 268.

¹⁹³ See *infra* Part II.B.4.b.

The percentage of American households containing television sets rose from just 9% in 1950 to 87% in 1960,¹⁹⁴ and the Federal Aid Highway Act of 1956 was instrumental in the construction of more roads in the South within a three-year period than southerners themselves had built between 1789 and 1930.¹⁹⁵ These diverse forms of social or cultural integration accelerated the demise of Jim Crow in two ways. First, distinctive regional mores, of which Jim Crow was among the more notable, are difficult to maintain in a nation that watches the same television programming and is criss-crossed by interstate highways, airplane routes, and long distance telephone wires.¹⁹⁶ As more southerners spent more time outside the South, their commitment to traditional racial norms diminished.¹⁹⁷ Second, mass media integration ensured that deviant southern racial practices received widespread national (indeed, often international) exposure. Moreover, just as the television set had infiltrated the vast majority of American homes, rapidly advancing technology made it possible to process and transmit vivid television footage of events, such as civil rights demonstrations, to network headquarters in time for prominent display on evening news broadcasts.¹⁹⁸ No longer could news of southern racial violence be contained within the bounds of a generally empathetic southern community; rather, such events henceforth would be transmitted to the outside world through the most vivid medium of communication known to man.¹⁹⁹ When Bull Connor

¹⁹⁴ See Barone, *supra* note 17, at 269.

¹⁹⁵ See Schulman, *supra* note 13, at 174.

¹⁹⁶ See McMillen, *supra* note 5, at 238; Schulman, *supra* note 13, at 158-59 (stressing the importance of the Federal Aid Highway Act of 1956 for integrating the South into the national economy); McKinney & Bourque, *supra* note 54, at 409-10; Melvin M. Tumin, *Exposure to Mass Media and Readiness for Desegregation*, 21 *Pub. Opinion Q.* 237, 248, 251 (1957) (noting a "small but consistent" positive correlation between exposure to mass media and readiness for desegregation).

¹⁹⁷ See Herbert H. Hyman & Paul B. Sheatsley, *Attitudes Towards Desegregation*, *Sci. Am.*, Dec. 1956, at 35; Donald R. Matthews & James W. Prothro, *Southern Racial Attitudes: Conflict, Awareness, and Political Change*, 344 *Annals* 108, 114-15 & tbl. 5 (1962).

¹⁹⁸ See Barone, *supra* note 17, at 351-52.

¹⁹⁹ See *id.*; Charles E. Fager, *Selma*, 1965, at 34 (1974) (noting King's strategy of exposing before television cameras the same sort of white violence towards blacks that had gone on for hundreds of years, but without public notice); see also Norrell, *supra* note 68, at 72 (observing that television "communicated white violence against civil rights workers with horrifying reality" and thus "caused a mass revulsion from racial violence that aided

turned loose the police dogs and fire hoses on the demonstrating black children of Birmingham in May 1963, all of America, and much of the world, was watching.²⁰⁰

F. Changing Southern Racial Norms

I argued in the preceding Section that an increasingly integrated national economic and social structure rendered the South more susceptible to shifts in national racial norms. This Section suggests that, independently of national pressure, various potent forces were fomenting indigenous racial change in the South by the mid-twentieth century. I do not mean to suggest that most, or indeed even very many, white southerners were happily prepared to renounce Jim Crow by 1950 or 1960; the history of massive resistance to *Brown* plainly belies such a notion.²⁰¹ I do contend, however, that the harshness and rigidity of southern racial practices were being significantly ameliorated by a variety of social, political, and economic forces operating within the region.²⁰² Changes in racial practice that would have been utterly unthinkable to the average southerner in, say, 1920, were no longer beyond the realm of possibility in 1950. Thus, to consider just a couple of examples, southern racial liberals, who in the 1920s had limited their agenda largely to criticism of black lynchings (while, incredibly to modern eyes, rejecting proposed *federal* anti-lynching initiatives) and occasional pleas for amelioration of vast educational spending disparities, by the late 1940s sometimes went so far as to explicitly endorse racial integration.²⁰³ Similarly, the NAACP itself

the civil rights cause immeasurably"); Pat Watters & Reese Cleghorn, *Climbing Jacob's Ladder: The Arrival of Negroes in Southern Politics* 173 (1967) (quoting Charles Sherrod, project coordinator of the Voter Education Project in southwest Georgia: "One of the reasons the white man with the segregationist attitude has been somewhat successful in blocking the black man in the past has much to do with the effectiveness of isolation . . ."). Several eminent journalists suggested that the principal difference between southern repression of early-1960s civil rights demonstrations and that of earlier generations was the instantaneous transmission into the nation's homes that television coverage made possible. See Garrow, *supra* note 12, at 163-64, 165-66 (quoting Russell Baker, James Reston, and David Brinkley).

²⁰⁰ See *infra* text accompanying notes 612-21.

²⁰¹ See *infra* note 451 (citing sources suggesting that the vast majority of southerners at mid-century favored racial segregation).

²⁰² See Goldfield, *supra* note 40, at 40, 46-49, 52.

²⁰³ See Goldfield, *supra* note 40, at 49-51; Sosna, *supra* note 17, at 30, 40, 97-98, 140, 205.

refrained from mounting direct legal challenges to public school segregation until the late 1940s, choosing instead to pursue an equalization strategy, owing to the prevailing racial climate.²⁰⁴ The principal factors explaining the incipient, indigenous southern racial transformation of mid-century were increasing regional urbanization and industrialization, rising education levels for both whites and blacks, demographic shifts in the southern population, and the gradual transformation of social scientific and popular attitudes towards racial difference.

1. *Increasing Urbanization and Industrialization*

During the middle decades of the twentieth century, the South ceased to be a predominantly agricultural and rural society. In 1900, 65.8% of the southern population engaged in agricultural pursuits, as compared with 28.7% of the nonsouthern population. By 1930, the comparable figures were 42.5% in the South, and 14.7% in the non-South; and in 1960, the numbers were 10.2% in the South, and 5.4% in the non-South.²⁰⁵ In the eleven former Confederate states, the number of farms declined from 2.4 million to 723,000 between 1940 and 1974;²⁰⁶ the number of southern *black* farm operators decreased from 915,000 during the 1920s to 267,000 in 1959.²⁰⁷ Even in Mississippi, the least industrialized southern state, the percentage of the workforce engaged in agriculture decreased from 58% in 1940 to 21% in 1960, and the number of black farmers fell from 159,500 in 1940 to fewer than 9,000 in 1980.²⁰⁸

²⁰⁴ See McMillen, *supra* note 20, at 290-93; Tushnet, *supra* note 33, at 105-37.

²⁰⁵ See McKinney & Bourque, *supra* note 54, at 402 *tbl. 2*; see also McMillen, *supra* note 20, at 152 (noting that Mississippi's farm population decreased by 94% between 1940 and 1980).

²⁰⁶ See Pete Daniel, *The Transformation of the Rural South: 1930 to the Present*, 55 *Agric. Hist.* 231, 244 (1981).

²⁰⁷ See McAdam, *supra* note 77, at 95.

²⁰⁸ See McMillen, *supra* note 20, at 152; Whitfield, *supra* note 79, at 135-36; Fortenberry & Abney, *supra* note 12, at 481 (reporting that the number of Mississippi farms declined from 274,000 in 1945 to 104,000 in 1966, and the number of farm workers from 459,000 in 1950 to 159,000 in 1966); see also Bartley, *supra* note 13, at 192 (reporting that the Georgia work force went from 43% agricultural in 1930 to 20% in 1950); Norrell, *supra* note 68, at 62 (noting that almost four of every ten black farmers and farm workers in Macon County, Alabama left the cotton fields in the 1940s); Strong, *supra* note 12, at 427 (noting that one-

Several factors explain this diminishing southern economic dependence on agriculture.²⁰⁹ First, falling commodity prices and rising boll weevil populations dealt a substantial blow to southern agriculture in the 1920s. The Great Depression then accelerated the demise of King Cotton, as prices plummeted from a high of thirty-five cents a pound in 1919 to less than six cents in 1931.²¹⁰ New Deal crop-restriction policies inadvertently contributed to a flight from the farm, as formal statutory protections for sharecroppers and tenant farmers proved evanescent in practice.²¹¹ The Agricultural Adjustment Act ("AAA"), according to one economic historian, "revolutionized the Cotton Belt and all of southern agriculture," as cotton acreage fell by nearly 30% between 1932 and 1935.²¹² In the first seven years of the statute's operation, the thirteen cotton-producing states lost roughly one-third of their sharecroppers.²¹³

A considerable portion of AAA benefits were, in turn, invested in agricultural mechanization.²¹⁴ The mechanization process was provided an additional boost when World War II industrial labor demands accelerated the migration from southern farm to city, creating agricultural labor shortages which rendered investment in labor-saving technology increasingly cost-effective.²¹⁵ The introduction of labor-saving technology such as the mechanical reaper, in turn, led to another marked decline in the agricultural workforce.²¹⁶ Machines reduced man-hour requirements in cotton

fourth to one-third of Alabama farmers quit the soil between 1954 and 1959, and that over half the state's tenant farmers left the farm during that period).

²⁰⁹ See Daniel, *supra* note 206, at 232 (identifying "depression, war, federal agricultural policy, and technology}" as the principal agents of change).

²¹⁰ See McAdam, *supra* note 77, at 75.

²¹¹ See Peter H. Irons, *The New Deal Lawyers* 156-80 (1982); McAdam, *supra* note 77, at 75; Schulman, *supra* note 13, at 16-18.

²¹² See Schulman, *supra* note 13, at 17.

²¹³ See Daniel, *supra* note 206, at 236, 242; Goldfield, *supra* note 40, at 26; see also Schulman, *supra* note 13, at 20 (noting that the tenant population declined 25% between 1935 and 1940).

²¹⁴ See McMillen, *supra* note 20, at 151; Schulman, *supra* note 13, at 20.

²¹⁵ See McMillen, *supra* note 20, at 151; Schulman, *supra* note 13, at 102-03; Daniel, *supra* note 206, at 243.

²¹⁶ See Nicholas Lemann, *The Promised Land* 5-7, 47-52 (1991); Daniel, *supra* note 206, at 236, 244-45; Fortenberry & Abney, *supra* note 12, at 477, 481 (noting that by about 1970, farm mechanization had reduced the number of people employed on farms to one-third of the 1950 level). Full mechanization came later to cotton than other crops because of the

harvesting by 82% between 1930 and 1964; the amount of cotton picked by machine increased from 3% in 1948 to 94% in 1968.²¹⁷ Simultaneously, postwar competition from foreign markets and from synthetics reduced demand for American cotton, thus encouraging a further exodus from southern farms.²¹⁸ The net effect of these changes was, for example, that cotton farming accounted for only 1.5% of personal income in Alabama by 1959; the state research council declared three years later that the "Cotton Economy, which came into Alabama at about the same time as statehood, has ended."²¹⁹

The decline of southern agriculture fostered the rise of southern urbanization and industrialization.²²⁰ Between 1900 and 1930, the South went from being 84% rural (as compared to the non-South figure of 51%) to being 68% rural (as compared to the non-South figure of 36%).²²¹ The economic pressures of wartime industrial mobilization hastened this rural-to-urban population shift, a pattern that persisted after the war.²²² By 1960, the South's rural population had dipped to 48%, as compared with the relatively stable non-South figure of 33%.²²³ The South's most rural state, Mississippi, went from being 92.3% rural in 1900 to 55.5% rural in

technological difficulty of developing a mechanical cotton picker. See Wright, *supra* note 135, at 175.

²¹⁷ See Daniel, *supra* note 206, at 236.

²¹⁸ See McAdam, *supra* note 77, at 75.

²¹⁹ Schulman, *supra* note 13, at 133-34 (quoting and citing Alabama Business Research Council, *Transition in Alabama* 1-6 (1962)); see also Strong, *supra* note 12, at 427 (same).

²²⁰ See McAdam, *supra* note 77, at 77 (noting that the collapse of cotton tenancy triggered a massive rural-to-urban migration within the South in addition to driving many blacks northwards); Fortenberry & Abney, *supra* note 12, at 483; see also *supra* notes 97-98 and accompanying text (discussing the Great Migration).

²²¹ See McKinney & Bourque, *supra* note 54, at 401 tbl. 1.

²²² See Schulman, *supra* note 13, at 82; Wynn, *supra* note 20, at 61 (noting that, throughout the nation, 5.5 million people, white and black, left farms for cities during the war).

²²³ See McKinney & Bourque, *supra* note 54, at 401, tbl. 1; J. Milton Yinger & George E. Simpson, *Can Segregation Survive in an Industrial Society?*, 18 *Antioch Rev.* 15, 16-17 (1958) (providing slightly different figures); see also Wilkinson, *supra* note 170, at 158 tbl. 12 (noting that Virginia's rural population fell from 81.7% in 1900 to 67.6% in 1930 to 44.4% in 1960); Lee S. Greene & Jack E. Holmes, *Tennessee: A Politics of Peaceful Change*, in *The Changing Politics of the South*, *supra* note 12, at 165, 169-70 (reporting that Tennessee's population was 52.3% urban in 1960); Strong, *supra* note 12, at 428 (noting a 33% gain in Alabama's urban population between 1950 and 1960, leaving the state with a 54.8% urban population by 1960).

1970.²²⁴ The South's least rural state, Texas, which by the postwar period was no longer obviously southern at all, went from being 82.9% rural in 1900 to 75% urban in 1960.²²⁵ The southern black population manifested a similar migration pattern; the percentage of southern blacks living in cities increased from 15.3% in 1890 to 36.5% in 1940, and continued rising to 58% in 1960.²²⁶ As one leading economic historian has observed: "The rural tradition that evolved over 300 years was threatened with extinction in a generation."²²⁷

Increasing urbanization and industrialization had momentous implications for southern race relations.²²⁸ The rigid social code of racial subordination that was Jim Crow was from its inception embedded in the felt imperative of maintaining a submissive black agricultural labor force—a need that gradually disappeared with the reconfiguration of southern agriculture and the growth of southern cities.²²⁹ Thus, for example, lynching in the South has always been predominantly a rural phenomenon.²³⁰ It is no accident that the South's most rural state, Mississippi, has also proved to be the one most adamant about perpetuating the racial status

²²⁴ See Fortenberry & Abney, *supra* note 12, at 475-76 & tbl. 1.

²²⁵ See O. Douglas Weeks, *Texas: Land of Conservative Expansiveness*, in *The Changing Politics of the South*, *supra* note 12, at 201, 203; see also Schulman, *supra* note 13, at 104 (noting that postwar Texas was no longer identifiably southern).

²²⁶ See McAdam, *supra* note 77, at 95; Henry A. Bullock, *Urbanism and Race Relations*, in *The Urban South* 207, 210 (Rupert B. Vance & Nicholas J. Demerath, eds., 1954); see also Wynn, *supra* note 20, at 62 (reporting that 750,000 blacks emigrated to southern cities during the 1940s).

²²⁷ Daniel, *supra* note 206, at 232.

²²⁸ See V.O. Key, Jr., *Southern Politics in State and Nation* 28 tbl. 2, 115, 230, 369, 653, 670, 673 (1949); Bullock, *supra* note 226, at 207; Eisenberg, *supra* note 12, at 59-60, 85-86; Matthews & Prothro, *supra* note 197, at 117; Yinger & Simpson, *supra* note 223, at 16-17. But cf. Cobb, *supra* note 135, at 267; Cramer, *supra* note 162, at 389; Robert A. Elgie, *Industrialization and Racial Inequality within the American South, 1950-70*, 61 *Soc. Sci. Q.* 458, 470-71 (1980) (all denying any necessary linkage between urbanization/industrialization and liberalization of racial norms).

²²⁹ See Bartley, *supra* note 58, at 10; Foner, *supra* note 19, at 198-203; McAdam, *supra* note 77, at 73-74, 77, 96; Schulman, *supra* note 13, at 209; William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 *J.S. Hist.* 31 (1976); Wright, *supra* note 135, at 176 (observing that mechanization of cotton production meant "that the race issue was no longer a life-or-death struggle to the most powerful economic interest in the South").

²³⁰ See Ayers, *supra* note 96, 156-57; McAdam, *supra* note 77, at 89; McMillen, *supra* note 20, at 230; Zangrando, *supra* note 20, at 9.

quo.²³¹ Nor is it fortuitous that the most urbanized southern state, Texas, proved to be one of the least attracted to the call of massive resistance in the 1950s.²³² Thus, as the South became a less rural and agricultural society, Jim Crow imperatives became less exigent. Moreover, as these economic and demographic forces lessened the rigors of Jim Crow, they heightened the prospects for indigenous civil rights protest, as southern blacks became both less fearful about challenging the racial status quo and better informed about changing external racial norms.²³³ Southern black resistance to Jim Crow had scarcely been possible in the brutally repressive rural black belt of the 1930s, as evidenced by the virtual absence of the NAACP from the state of Mississippi at that time²³⁴ and by the still substantial annual number of racial lynchings occurring in the South through the Depression years.²³⁵

Urbanization and industrialization also proved conducive to racial change by facilitating the rise of a southern black middle class. Blacks in southern cities enjoyed more diversified employment opportunities than in the countryside, where the vast majority were employed in agriculture or personal services.²³⁶ Blacks in urban centers were two to four times more likely to secure skilled employment than their rural compatriots.²³⁷ While even urban blacks continued to be disproportionately concentrated in low-skill occupations, the percentage of southern blacks employed in higher

²³¹ See Key, *supra* note 228, at 230; Fortenberry & Abney, *supra* note 12, at 475; see also Doug McAdam, *Freedom Summer* 24-25 (1988) (noting that 68% of Mississippi blacks lived in rural areas as of 1960, as compared with a 39% average elsewhere in the South).

²³² See Black, *supra* note 3, at 123-29; see also Bartley, *supra* note 58, at 116 & n.30 (noting that 17 of the 27 southern congressmen refusing to sign the Southern Manifesto came from Texas).

²³³ See McAdam, *supra* note 77, at 87; Sitkoff, *supra* note 6, at 15; Yinger & Simpson, *supra* note 223, at 18.

²³⁴ See Cortner, *supra* note 74, at 49, 72-73; McMillen, *supra* note 20, at 314, 316; see also *id.* at 285-86 (noting that a civil rights movement in Mississippi before 1940 or so would have been beyond "the realm of possibilities" and that "a judicial challenge to white supremacy would have been, quite simply, suicidal"); Dittmer, *supra* note 13, at 68 (noting that the NAACP maintained a low profile in Mississippi during its formative period "for fear of white reprisal").

²³⁵ See McAdam, *supra* note 77, at 97; Sosna, *supra* note 17, at 35.

²³⁶ See McAdam, *supra* note 77, at 96; Bullock, *supra* note 226, at 215; McKinney & Bourque, *supra* note 54, at 404-06.

²³⁷ See Bullock, *supra* note 226, at 216 & tbl. 1.

job levels rose from 7.3% in 1940 to 12.2% in 1950.²³⁸ Median income for southern blacks increased from \$739 in 1949 to \$1604 in 1962.²³⁹ Desperately poor and physically pressed agricultural laborers were unlikely candidates to participate in civil rights activity.²⁴⁰ Middle class urban blacks, by way of contrast, more often possessed the disposable income and/or leisure time requisite for social protest.²⁴¹ Increasing urbanization thus probably explains at least a portion of the rise in NAACP membership from 85,000 in 1934 to 420,000 in 1946.²⁴²

Moreover, southern blacks frequently discovered that their growing economic power could be successfully translated into pressure for social change. Merchants and industrialists face cross pressures under a regime of racial segregation that plantation owners do not, for while the former may be personally inclined towards segregation, the power of the almighty dollar also disposes them favorably towards black customers and an unrestricted labor pool.²⁴³ Thus, for example, Montgomery blacks, as the majority consumers of local bus transportation, quickly persuaded the bus company to yield to their protests against humiliating seating practices during the famous bus boycott in 1955-1956 (though local politicians vetoed the bus company's efforts at capitulation).²⁴⁴ Blacks protesting segregation or denial of voting rights in cities such as Greensboro, Orangeburg, Tuskegee, and Birmingham put the Montgomery lesson to good use, using economic boycotts with

²³⁸ See Yinger & Simpson, *supra* note 223, at 19.

²³⁹ See McAdam, *supra* note 77, at 97; see also Ruth Searles & J. Allen Williams, Jr., *Negro College Students' Participation in Sit-Ins*, 40 *Soc. Forces* 215, 216 (1962) (noting that the percentage increase in income for blacks and whites, nationwide, was about the same for the period from 1939 to the early 1960s); Yinger & Simpson, *supra* note 223, at 18 (reporting that the national per capita income of blacks was 30% that of whites in 1940 and 53% in 1956).

²⁴⁰ See McAdam, *supra* note 77, at 87-90; McMillen, *supra* note 20, at 315.

²⁴¹ See McAdam, *supra* note 77, at 97.

²⁴² See *id.* at 103.

²⁴³ See Rosenberg, *supra* note 6, at 159; Yinger & Simpson, *supra* note 223, at 17; see also Jennifer Roback, *The Political Economy of Segregation: The Case of Segregated Streetcars*, 46 *J. Econ. Hist.* 893, 894, 916 (1986) (noting that streetcar companies around the turn of the century fiercely resisted statutorily imposed racial segregation because of its costs).

²⁴⁴ See Garrow, *supra* note 62, at 26, 53, 64; Robert J. Glennon, *The Role of Law in the Civil Rights Movement: The Montgomery Bus Boycott, 1955-1957*, 9 *L. & Hist. Rev.* 59, 74 (1991).

devastating effectiveness against white merchants heavily dependent upon black clientele. In Tuskegee, the economic damage suffered by white merchants was so substantial that many became proponents of racial change for purely pecuniary reasons.²⁴⁵ Similarly, in Birmingham, a selective buying campaign by blacks in 1962 produced business falloffs of as much as 40% in some downtown stores and led to the establishment of an interracial committee to discuss steps to end segregation in those stores and to promote the hiring of black sales personnel.²⁴⁶

Black economic clout also played an important role in the desegregation of the national pastime. The demands of middle class blacks for black athletes on minor league baseball teams proved a powerful force for integration, as a black presence on the field translated into significantly higher gate receipts.²⁴⁷ At the major league level, the addition of Jackie Robinson to Branch Rickey's Brooklyn Dodgers in 1947 produced throngs of black fans at Dodgers' games (as well as at games of the Dodgers' Montreal farm team when Robinson played there in 1946), as blacks throughout the nation flocked to watch Robinson "represent" his race.²⁴⁸

²⁴⁵ See Norrell, *supra* note 12, at 72, 96, 101-02, 128-29, 131. Professor Norrell also notes instances in Tuskegee, where a large black middle class thrived owing to the existence of the Tuskegee Institute, of faculty members inducing white housing contractors to vouch for their character—a requirement for voter registration in Alabama—by offering a housing contract as consideration. See *id.* at 37, 44.

²⁴⁶ See Bains, *supra* note 169, at 169; Eskew, *supra* note 5, at 68-71; see also Amelia P. Boynton, *Bridge Across Jordan: The Story of the Struggle for Civil Rights in Selma, Alabama* 134-36 (1979) (Selma); Chafe, *supra* note 168, at 135-36, 150 (Greensboro); Garrow, *supra* note 62, at 191-92, 209 (Albany, Georgia); *id.* at 236 (Birmingham); McMillen, *supra* note 5, at 211-12 (Orangeburg, South Carolina); Walker, *supra* note 32 at 10-11, 15-17, 24 (Atlanta).

²⁴⁷ See Bullock, *supra* note 226, at 218-19. When the New Orleans team in the Southern Association dropped its black players, local blacks began boycotting games, with a resultant decline in black attendance from 40,000 to 3,400 in 1956; the boycott soon spread to other Southern Association teams, all of which remained segregated. See Tygiel, *supra* note 28, at 278.

²⁴⁸ See Tygiel, *supra* note 28, at 52-53, 114-15, 129-31, 141, 196; see also *id.* at 219-20 (suggesting that the St. Louis Browns may have been influenced to hire blacks by the large crowds drawn by Jackie Robinson when the Dodgers visited St. Louis). For an analogous display of economic power by Jewish fans two decades earlier, see Levine, *supra* note 22, at 109-16 (noting that New York Giants' manager John McGraw actively sought to hire his team's first Jewish player in the late 1920s to boost attendance by appealing to New York's large Jewish community).

As blacks came to constitute a rising portion of the clientele of southern department and drug stores, the practice of gratefully accepting their custom in the merchandise department while denying them service at the lunch counter appeared both increasingly absurd and unstable.²⁴⁹ Some white merchants appear to have been willing to dismantle segregation at the behest of their black clientele but nonetheless resisted doing so for fear of losing white customers or suffering retaliation from citizens' councils.²⁵⁰ Where desegregation could be achieved in a manner protecting businessmen from such flank attacks—for example, through collectively-organized, simultaneous desegregation of all establishments, or through legally-mandated desegregation, as under the 1964 Civil Rights Act—they evinced little regret over the interment of what had been economically costly racial practices.²⁵¹

²⁴⁹ See Jones, *supra* note 187, at 150; Martin Luther King, Jr., *The Burning Truth in the South*, *Progressive*, May 1960, at 8, 9; Wright, *supra* note 90, at 195-96; see also Chafe, *supra* note 3, at 115-17 (noting that the first sit-in demonstrators in Greensboro sought to demonstrate the hypocrisy of stores accepting their merchandise custom while denying them lunch counter service).

²⁵⁰ See Longenecker, *supra* note 157, at 97 (noting that the bus company operating between Selma and Craig Air Force Base refused to integrate for fear of white retaliation); Bains, *supra* note 169, at 170 (noting that Bull Connor's harassment forced white Birmingham merchants in 1962 to renege on their promises to desegregate); Eskew, *supra* note 5, at 71-72 (same); Inger, *supra* note 86, at 94 (noting that New Orleans businessmen were intimidated from taking action during the school crisis by fear of retaliation from citizens' councils); see also Samuel Lubell, *The Future of American Politics* 119 (1952) (noting that some southern employers were prepared to hire blacks but were deterred from doing so out of fear of white retaliation against their businesses). On the citizens' councils' suppression of dissident white opinion on racial matters, see *infra* text accompanying notes 428-31.

²⁵¹ See Chafe, *supra* note 3, at 136 (noting that the Atlanta regional office of Woolworth's indicated its willingness to permit a Greensboro store to desegregate if other downtown business establishments did likewise); Fager, *supra* note 199, at 26 (noting that several months after enactment of the 1964 Civil Rights Act, several Selma businessmen privately expressed their willingness to comply voluntarily but preferred to await a federal court injunction which would allow them to appear to submit involuntarily under federal pressure); Longenecker, *supra* note 157, at 138 (same); Lawson, *supra* note 165, at 266-67 (noting that the business community in Tampa was careful to manage desegregation of several white restaurants simultaneously, so as to ensure that none would suffer economically); August Meier, *The Successful Sit-Ins in a Border City: A Study in Social Causation*, 2 *J. Intergroup Rel.* 230 (1961) (noting that one Baltimore department store was willing to desegregate its restaurant in 1960 so long as its competitors did likewise); Wright, *supra* note 90, at 208 (noting that white Louisville merchants who had already desegregated owing to pressure from civil rights groups favored a public accommodations law that would compel all businesses to desegregate). The economic appeal that

Not only did rising black financial status frequently provide a powerful bargaining lever against Jim Crow practices, but it also created a class of blacks relatively independent of white economic control and thus able to engage in civil rights activity without fear of economic retaliation.²⁵² One of the principal forces retarding civil rights progress in the South had been the inability of most blacks to challenge the racial status quo without risking financial ruin, owing to their general economic dependence on whites. In 1930, 79% of all black farm operators were either tenant farmers or sharecroppers and thus were almost entirely dependent on whites for their economic livelihood.²⁵³ In the 1930s and 1940s, the NAACP encountered substantial difficulty securing black teachers as plaintiffs for its salary equalization suits because job termination was a frequent consequence of such legal challenges.²⁵⁴ While civil rights activists of the 1950s and 1960s continued to suffer dire forms of economic retaliation,²⁵⁵ rising black economic status nonetheless translated into a relatively greater potential for "safe" civil rights protest.²⁵⁶ Leaders provided by the three most important institutional props of the civil rights movement—black

desegregation held for many southern merchants partially explains why desegregation of public accommodations was achieved relatively painlessly across much of the upper South in response to the sit-in movement of the early 1960s. See *infra* notes 318-19 and accompanying text; see also Garrow, *supra* note 62, at 339-40 (noting the surprising ease of compliance with the 1964 Civil Rights Act in most Alabama cities).

²⁵² See Laue, *supra* note 183, at 73-74; Yinger & Simpson, *supra* note 223, at 18-19; see also Norrell, *supra* note 12, at 62 (noting that middle class blacks employed at the Tuskegee veterans' hospital were immune from local white pressure owing to their federal employment).

²⁵³ See McAdam, *supra* note 77, at 87.

²⁵⁴ See Tushnet, *supra* note 33, at 59, 61-62, 78, 89; see also Chafe, *supra* note 3, at 29-30 (noting that black public school teachers in Greensboro often preferred to pay their NAACP dues in cash so that no canceled check would be available to serve as the basis for economic retaliation).

²⁵⁵ See Bartley, *supra* note 58, at 193-94, 217-18; Boynton, *supra* note 246, at 149; Longenecker, *supra* note 157, at 41-42 (noting rampant economic retaliation against civil rights workers in Selma); McMillen, *supra* note 5, at 209-10 (noting that 16 of 29 Selma blacks signing a school desegregation petition lost their jobs within weeks); *id.* at 210 (noting that blacks signing a school desegregation petition in Orangeburg, South Carolina, were fired from jobs and evicted from rental homes, leading 31 of 57 petitioners to remove their names); *id.* at 211, 214-16 (providing additional examples); Bains, *supra* note 169, at 167 (noting that large numbers of blacks active in the civil rights struggle in Birmingham during the 1950s were fired from their jobs).

²⁵⁶ See McAdam, *supra* note 77, at 97.

churches, black colleges, and NAACP branches—all tended to share this characteristic of independence from white economic pressure. Black students were protected by the institutional independence of black colleges (as well as by their relative dearth of economic assets, leaving them with little to lose); black churches were freer from white control than any other institution in the southern black community; and most NAACP leaders participating in civil rights demonstrations held employment that was relatively independent of white control.²⁵⁷

Rising economic status not only better positioned blacks to demand racial change; it also increased their inclination to do so. This phenomenon, sometimes known as the revolution of rising expectations, plainly was at work during the civil rights era.²⁵⁸ As blacks became increasingly prosperous and well educated, their anger and frustration at the remaining barriers imposed by racial segregation likewise increased.²⁵⁹ Jim Crow practices appeared most insulting to those who thought of themselves as, and in fact were, middle class according to most relevant indices.²⁶⁰ Thus, for example, it is hardly surprising that a majority of participants in the

²⁵⁷ See *id.* at 135; see also Chafe, *supra* note 3, at 132 (noting that students were natural civil rights demonstrators because they were substantially immune from economic reprisal); Darlene C. Hine, *Black Victory: The Rise and Fall of the White Primary in Texas 56-57, 74-75, 130* (1979) (noting the importance of economic independence from whites for the black plaintiffs in the Texas white primary litigation); Bains, *supra* note 169, at 221-22 (noting that black ministers heading the civil rights movement in Birmingham were generally free from white economic domination); Lawson, *supra* note 165, at 260 (noting that the majority of civil rights leaders in Tampa in the early 1960s worked for black-owned enterprises or were teachers protected under the civil service system from retaliatory discharge).

²⁵⁸ See McAdam, *supra* note 77, at 117-20 (identifying but not embracing this theory); Searles & Williams, *supra* note 239, at 216 (referring to Crane Brinton, *The Anatomy of Revolution* 278 (1952), as a leading expositor of this theory).

²⁵⁹ See Norrell, *supra* note 12, at 100 (noting the deep resentment felt by middle class Tuskegee blacks denied the right to participate in politics, despite their education, property, and employment); Searles & Williams, *supra* note 239, at 216 (explaining blacks' participation in the sit-ins of 1960 according to the concepts of "relative deprivation" and "reference group theory"—that is, middle class, well-educated blacks began comparing their social position with whites of similar economic and educational position, rather than with other blacks).

²⁶⁰ See Walker, *supra* note 32, at 3 (observing that "once the necessary education and income for middle class living is obtained, the social and political restrictions of segregation . . . become almost intolerable"); cf. Bullock, *supra* note 226, at 219-20 (noting that urbanization and industrialization shaped not only black economic realities but also their conceptions of self-worth)

sit-in movement of the early 1960s were college educated and middle class.²⁶¹

The greater prevalence of black enfranchisement in southern cities both reflected and enhanced the urban relaxation of racial norms. Even at the zenith of Jim Crow and black disfranchisement around the turn of the century, significant numbers of blacks continued to vote in some southern cities, such as Atlanta.²⁶² By the late 1930s, black enfranchisement was substantial in many southern cities, and the black urban population was continuing to grow rapidly, as roughly three quarters of a million blacks fled from southern countryside to city in the period from 1940-1955.²⁶³ After World War II there was little organized opposition to black voting in southern cities with populations of 25,000 or more; in the largest cities, such as New Orleans, Atlanta, and Memphis, blacks qualified to vote as easily as in any northern city.²⁶⁴ The Supreme Court's invalidation of the white primary in 1944,²⁶⁵ combined with the rising black militancy that accompanied World War II, produced dramatic increases in southern black voter registration in the mid-1940s.²⁶⁶ The percentage of eligible black southerners regis-

²⁶¹ See Chafe, *supra* note 3, at 113, 132, 212 (Greensboro demonstrations); Garrow, *supra* note 62, at 174-75 (Albany, Georgia, demonstrations); *id.* at 317-18 (St. Augustine, Florida, demonstrations); Walker, *supra* note 32, at 5 (Atlanta sit-ins); Eskew, *supra* note 5, at 68-69 (Birmingham demonstrations); Lawson, *supra* note 165, at 260; see also Norrell, *supra* note 12, at 61-62 (noting that the rapidly rising economic status of Tuskegee blacks in the 1940s led to a dramatic increase in voting rights activity). For further discussion of this point, see *infra* text accompanying notes 361-64.

²⁶² See Lawson, *supra* note 99, at 19-20.

²⁶³ See Goldfield, *supra* note 40, at 46-47.

²⁶⁴ See Yinger & Simpson, *supra* note 223, at 21; see also Chafe, *supra* note 3, at 32 (noting increasing registration of black voters in Greensboro during the 1920s and 1930s); Heard, *supra* note 102, at 195 (noting that blacks were voting in substantial numbers in local elections in several Texas cities well before 1944); Charles S. Johnson, *Into the Mainstream: A Survey of Best Practices in Race Relations in the South* 43 (1947) (noting that 7000 blacks were registered to vote in Raleigh, North Carolina, by the mid-1940s); Havard, *supra* note 12, at 18-19 (noting less resistance to black voting in urban areas). Birmingham was the outstanding exception to this rule. See Strong, *supra* note 12, at 443 (noting that only about 10% of blacks were registered to vote in Birmingham as late as 1960); Eskew, *supra* note 5, at 49.

²⁶⁵ *Smith v. Allwright*, 321 U.S. 649 (1944).

²⁶⁶ On the importance of *Smith*, see Hine, *supra* note 257, at 222-23; Moon, *supra* note 96, at 178; Fortenberry & Abney, *supra* note 12, at 485; Havard, *supra* note 12, at 18-19; Sullivan, *supra* note 33, at 87-88, 90-92. For statistics showing huge percentage increases in southern black voter registration between 1940 and 1947, see Hine, *supra* note 257, at 238; Sullivan, *supra* note 33, at 103 n.29.

tered to vote rose from approximately 3% in 1940 to 20% in 1952, and then to 29% in 1960.²⁶⁷ By 1948, blacks were casting 40% of the total vote in Atlanta elections.²⁶⁸ Moreover, by around 1950, black candidacies for public office, in some cases successful, had become an increasingly common phenomenon in the upper South, especially in certain Virginia and North Carolina cities.²⁶⁹

As did their brethren in the North, southern blacks successfully used the ballot to extract local government concessions.²⁷⁰ Even during the peak of the Jim Crow era, Atlanta blacks had been able to trade their decisive votes in support of a school bond issue for construction of new black schools.²⁷¹ By the late 1940s, an expanded black electorate in Atlanta was providing the margin of victory for Mayor William Hartsfield, who responded by appointing the city's first black police officers, and more generally, by charting a course for his reformist city government that emphasized continued economic progress over racial conflict.²⁷² Blacks in Raleigh, North Carolina, held the balance of power in the mid-1940s and used it to secure black police officers, a black justice of the peace, black representation on the City Recreation Commis-

²⁶⁷ See Garrow, *supra* note 12, at 7 tbl. 1-1, 11 tbl. 1-2; Lawson, Running, *supra* note 12, at 85, tbl. 1; see also Heard, *supra* note 102, at 181 (noting the increase in black voter registration between 1940 and 1950).

²⁶⁸ See Hornsby, *supra* note 173, at 123.

²⁶⁹ See Bartley, *supra* note 58, at 9; Chafe, *supra* note 3, at 35, 58; Heard, *supra* note 102, at 218; Moon, *supra* note 96, at 164, 188; see also Meier, *supra* note 251, at 231 (noting the path-breaking election of three Baltimore blacks to the Maryland state legislature in 1954). By 1964, sufficient numbers of blacks were voting in the upper South to constitute the margin of victory for President Johnson in several states. See White, *supra* note 13, at 452.

²⁷⁰ See Chafe, *supra* note 3, at 32; Goldfield, *supra* note 40, at 46; Heard, *supra* note 102, at 208-19; Lubell, *supra* note 250, at 121. For examples from the North, see Klarman, *supra* note 12, at 793-97.

²⁷¹ See Lawson, *supra* note 99, at 19-20; Edgar A. Toppin, Walter White and the Atlanta NAACP's Fight for Equal Schools, 1916-1917, 7 *Hist. Educ. Q.* 3, 15-16 (1967). For several similar examples from the 1880s, when substantial numbers of southern blacks still voted, see Howard N. Rabinowitz, *Race Relations in the Urban South, 1865-1890*, at 294-99 (1978); Toppin, *supra*, at 4.

²⁷² See Bartley, *supra* note 13, at 194-95; Hornsby, *supra* note 173, at 123. Indeed, had Atlanta's power within the state not been drastically diluted by legislative malapportionment and the county unit system for conducting statewide elections, both of which the Supreme Court invalidated in the early 1960s, one must wonder whether Jim Crow would not have died a quieter death in Georgia. See *infra* note 457 (describing the extent and effect of Georgia malapportionment).

sion, and greater access to city recreation facilities.²⁷³ Blacks in Macon County, Alabama, constituting 30% of the county electorate by 1950, quickly made their political presence felt by retiring from office a white sheriff with a reputation for brutality towards blacks.²⁷⁴ In Louisiana, black voters probably provided the margin of victory for Earl Long in the 1955-1956 gubernatorial election; Long, in the family tradition, pursued policies of economic redistribution and eschewed racial conflict.²⁷⁵ Even in Birmingham, Alabama, where fewer blacks were registered to vote than in any comparably sized southern city, black votes may have provided the margin of difference in approving a 1962 referendum proposal to alter the structure of city government (a principal purpose of which was to facilitate racial change) and in defeating Bull Connor in the mayoralty race the following year.²⁷⁶ In sum, it seems doubtful that Jim Crow could long continue to thrive in a political system characterized by growing black enfranchisement.²⁷⁷

Growing urbanization proved facilitative of racial change for other reasons as well. The transaction costs of collective action, including civil rights protest, tend to be lower in urban than rural areas, owing to better communication and transportation as well as the greater physical proximity of residents.²⁷⁸ White resistance to desegregation also tended to be somewhat less intense in the cities,

²⁷³ See Johnson, *supra* note 264, at 43.

²⁷⁴ See Norrell, *supra* note 12, at 75-76.

²⁷⁵ See Perry H. Howard, *Louisiana: Resistance and Change*, in *The Changing Politics of the South*, *supra* note 12, at 525, 546-47, 551.

²⁷⁶ See Bains, *supra* note 169, at 172-73; Strong, *supra* note 12, at 445; J. Mills Thornton III, *Municipal Politics and the Course of the Civil Rights Movement 71-72* (May 1988) (unpublished manuscript, on file with the Virginia Law Review Association).

²⁷⁷ See Klarman, *supra* note 12, at 788-814 (speculating that black voting, guaranteed at all levels of southern government, could have secured the demise of segregation without outside judicial intervention); see also Lawson, *supra* note 99, at 128 (quoting a black newspaper, the *Pittsburgh Courier*, predicting in 1946 that "once Negroes start voting in large numbers . . . the jim crow laws will be endangered and the whole elaborate pattern of segregation threatened and finally destroyed"); *id.* at 166 (quoting an Eisenhower administration official to the effect that "[w]holesale discrimination against substantial groups in a community cannot exist under our democratic system unless those groups are also deprived of an effective voice at the polls").

²⁷⁸ See Black, *supra* note 3, at 137; McAdam, *supra* note 77, at 77, 89, 97-98; Bullock, *supra* note 226, at 220-21.

for a couple of reasons.²⁷⁹ First, the prevalence of racially and economically segregated housing patterns in many southern cities meant that school desegregation would have little direct impact on the lives of some (usually more affluent) city residents.²⁸⁰ Second, wealthier whites, of whom there are more in urban areas, retained the option of exiting the public school system altogether either by educating their children privately or by fleeing to the (generally white) suburbs.²⁸¹

2. Higher Education Levels

Rising education levels, both among southern blacks and whites, was another important factor in the gradual transformation of southern racial attitudes. Southern state spending on education, as a percentage of nonsouthern state spending, rose from 41.1% in 1929-1930 to 58.1% in 1949-1950 and to 69.2% in 1968-1969.²⁸² Because higher levels of white education have tended, at least since mid-century, to correlate with greater racial tolerance, the increasing education of the southern white populace boded ill for the long-term survival of Jim Crow.²⁸³

Perhaps even more important to the prospects for racial change were rapid advances in levels of *black* education.²⁸⁴ As increasing farm mechanization reduced demand for black field labor, blacks tended to remain in school longer, acquiring more advanced educa-

²⁷⁹ See Black, *supra* note 3, at 137 (noting that, holding percentage black population constant, urban whites tend to be less segregationist than rural whites).

²⁸⁰ See Bartley, *supra* note 13, at 193; Lawson, *supra* note 165, at 274-75 (noting that Tampa accepted desegregation in 1962 knowing that residential segregation patterns would limit the scope of desegregation). Both the Little Rock and New Orleans school desegregation crises were exacerbated by the inclusion of only lower class white schools in the integration plans; those whites generally most resistant to racial change were being forced to disproportionately bear its costs. See *infra* note 435 and accompanying text.

²⁸¹ See Bartley, *supra* note 13, at 193; Ely, *supra* note 162, at 34-36.

²⁸² See McKinney & Bourque, *supra* note 54, at 408 tbl. 8.

²⁸³ See Bernard Caffrey, Simms Anderson II & Janet Garrison, *Change in Racial Attitudes of White Southerners After Exposure to the Atmosphere of a Southern University*, 25 *Psychol. Rep.* 555, 556 (1969); Hyman & Sheatsley, *supra* note 197, at 36; Matthews & Prothro, *supra* note 197, at 113-14; see also McKinney & Bourque, *supra* note 54, at 406-08 (noting the universalizing effect of education, which tends to erode regional distinctions).

²⁸⁴ See Heard, *supra* note 102, at 148 (emphasizing great educational advances of blacks as one factor in changing white attitudes).

tions.²⁸⁵ Thus, for example, black illiteracy for ages ten and over in the South fell from 76.2% in 1880 to 26% in 1920 and to somewhere between 8.9% and 12% in 1950. Meanwhile, the gap between black and white illiteracy decreased from 54.7% in 1880 to between 6.5% and 8.7% in 1950.²⁸⁶ In 1932, there were just 75 black teachers in Greensboro, 68% of whom had no college degree; twenty years later, there were 200 black teachers, all of whom had college degrees and 65% of whom had their masters'.²⁸⁷ Enrollment in black colleges, most of which are in the South, increased 100% during the 1940s, and the total income of those institutions rose from slightly over \$8 million in 1930 to more than \$38 million in 1947.²⁸⁸

Advances in black education had important ramifications for the future of Jim Crow. For many whites, the institution of segregation, fathomable in a post-slavery era when most blacks were illiterate and unskilled, became increasingly difficult to comprehend or defend once educational and skill differentials had substantially narrowed. Thus, for example, Justice Robert Jackson's draft concurrence (never published) in *Brown* observed that segregation "has outlived whatever justification it may have had."²⁸⁹ Justice Jackson noted that "[c]ertainly in the 1860's and probably throughout the Nineteenth Century the Negro population as a whole was a different people than today. Lately freed from bondage, they had little opportunity as yet to show their capacity for education or even self-support and management."²⁹⁰ However, Jackson continued, "Negro progress under segregation has been spectacular and, tested by the pace of history, his rise is one of the swiftest and most

²⁸⁵ See Yinger & Simpson, *supra* note 223, at 18; see also McAdam, *supra* note 77, at 97-98 (observing that, after 1930, as black urban migration increased, black educational advances became substantial).

²⁸⁶ See Robert A. Margo, *Race and Schooling in the South, 1880-1950: An Economic History* 7 tbl. 2.1 (1990); see also Hine, *supra* note 257, at 56 (noting that black illiteracy in Texas fell from 53.2% in 1890 to 13.4% in 1930); McMillen, *supra* note 20, at 88 tbl. 3.7 (noting that black illiteracy in Mississippi fell from 49.1% in 1900 to 23.2% in 1930).

²⁸⁷ See Chafe, *supra* note 3, at 23.

²⁸⁸ See McAdam, *supra* note 77, at 102.

²⁸⁹ Jackson Draft Opinion, *Brown v. Board of Educ.* 1 (March 15, 1954) (Library of Congress, Jackson Papers, Box 184, case file: segregation cases) (on file with the Virginia Law Review Association); see also Douglas Conference Notes, *supra* note 16 (Chief Justice Vinson doubting that "segregation can be justified in this day and age").

²⁹⁰ See Jackson Draft Opinion, *supra* note 289, at 19.

dramatic advances in the annals of man."²⁹¹ Black educational and cultural advances, the Justice concluded, deprived school segregation of that rational basis which the Equal Protection Clause requires of all state legislation.²⁹²

For blacks, meanwhile, higher education levels translated into intensified frustration and grievance against Jim Crow practices.²⁹³ The growing pool of college-educated blacks continued to find themselves relegated to menial occupations, wholly incommensurate with their skill levels, and their resentment of Jim Crow grew accordingly.²⁹⁴ The only jobs widely available to black college graduates in Atlanta, for example, were in the public schools or the post office. Eighty percent of Atlanta postal carriers in the early 1960s were black, and of that number over 60% had college degrees.²⁹⁵ Finally, advancing black education was critical to racial change because effective social protest almost inevitably requires an educated leadership.²⁹⁶

3. Southern Demographic Shifts

Demographic developments other than urban migration, involving both the southern black and white populations, also facilitated changes in southern racial attitudes around mid-century. Black out-migration reduced the South's portion of the nation's black population from roughly 90% in 1900 to 70 or 75% in 1940 and to less than 50% in 1960, with concomitant diminution of the black percentages of southern state populations.²⁹⁷ Mississippi, for

²⁹¹ *Id.* at 20.

²⁹² See *id.* at 20-21.

²⁹³ Cf. Johnson, *supra* note 97, at 405 (predicting in 1924 that as blacks become increasingly well educated, they would be less inclined to accept their present subordinate status in the South).

²⁹⁴ See Walker, *supra* note 32, at 3.

²⁹⁵ See *id.*

²⁹⁶ See *id.* at 1-2; McAdam, *supra* note 77, at 97-98.

²⁹⁷ See Wynn, *supra* note 20, at 7-8; Havard, *supra* note 12, at 16. Of course, the flip side of this decrease in the black percentage of the southern population was a tremendous increase in the black populations of particular northern and western cities. San Francisco's black population increased by 560% during the war, and Los Angeles' by 109%; the black population of Chicago increased by 200,000 during World War II, and that of Detroit increased by 60,000. See Wynn, *supra* note 20, at 61-62. One consequence of these population shifts was overcrowding in the ghettos, increasing economic competition between races, and race riots in scores of cities, the most devastating of which, in Detroit in the summer of 1943, left 34 persons dead. See *id.* at 62-71.

example, whose black percentage population had risen in the post-Civil War period to a peak of over 58% in 1900, became the last southern state to achieve majority white status in 1940; over the next thirty years, Mississippi's black percentage population fell to between 36 and 37%.²⁹⁸ The black percentage population of the five deep South states declined from approximately 47% in 1900 to 25% in 1970,²⁹⁹ and the number of southern counties with majority black populations decreased from 284 in 1900 to 180 in 1940.³⁰⁰

The principal significance of these demographic trends lies in the historically potent correlation between black percentage population and intensity of white supremacist sentiment.³⁰¹ From secession to black disfranchisement to Dixiecrat revolt to massive resistance, the southern black belt—those counties possessed of the largest percentage black populations, in many cases a majority—has occupied the driver's seat.³⁰² By mid-century, the size of the southern black belt had shrunk dramatically, and in the early 1960s the substantial bias in the southern political system towards overrepresenting black belt whites was constitutionally eradicated

²⁹⁸ See Barone, *supra* note 17, at 273; Heard, *supra* note 102, at 150; Fortenberry & Abney, *supra* note 12, at 475; Havard, *supra* note 106, at 506; see also Barone, *supra* note 17, at 273 (noting that South Carolina, with the nation's second largest black percentage population, went from 58.4% black in 1900 to 42.9% in 1940 and then to 30% in 1970); Strong, *supra* note 12, at 428 (noting fall in Alabama black population from high of 47.5% in 1870 to 34.7% in 1940 and 30% in 1960).

²⁹⁹ See Havard, *supra* note 106, at 506; Heard, *supra* note 102, at 150.

³⁰⁰ See Heard, *supra* note 102, at 149. By the 1950s, only in Mississippi did a majority of the voting population in Democratic first primaries come from counties with more than 30% black populations. See Black, *supra* note 3, at 49-50.

³⁰¹ See Black, *supra* note 3, at 57; Key, *supra* note 228, at 5, 544; McMillen, *supra* note 5, at 6; H. M. Blalock, Jr., *Per Cent Non-White and Discrimination in the South*, 22 *Am. Soc. Rev.* 677, 680 (1957); Thomas F. Pettigrew, *Desegregation and its Chances for Success: Northern and Southern Views*, 35 *Soc. Forces* 339, 342-43 (1957); Thomas F. Pettigrew & Ernest Q. Campbell, *Faubus and Segregation: An Analysis of Arkansas Voting*, 24 *Pub. Opinion Q.* 436, 443-44, 446-47 (1960). One must be careful not to overstate the likely impact of the black exodus on white racial opinion, though, as some extant evidence suggests that segregationist attitudes are better correlated with *historical*, rather than with contemporary, black percentage populations. See Black, *supra* note 3, at 138; H. D. Price, *The Negro and Southern Politics: A Chapter of Florida History* 49, 53-54 (1957).

³⁰² See Bartley, *supra* note 58, at 17, 84-85, 103; Black, *supra* note 3, at 88, 132-34; Key, *supra* note 228, at 5-10, 329, 343-44, 544; Kousser, *supra* note 96, at 16-17, 35, 90-91, 97, 99-100, 109, 142-43, 160, 166-67, 177, 191, 222, 246; McMillen, *supra* note 5, at 26-27, 43, 107; William F. Ogburn & Charles M. Grigg, *Factors Related to the Virginia Vote on Segregation*, 34 *Soc. Forces* 301, 303-04 (1956).

by the Supreme Court.³⁰³ It is no accident that during the 1950s, those southern states with the fewest black belt counties—Texas, Tennessee, and Florida—experienced massive resistance as a relatively fleeting phenomenon.³⁰⁴

Demographic shifts in the southern *white* population also contributed to the demise of Jim Crow. The middle of the twentieth century witnessed a veritable flood of Yankee migration into the region that would soon become popularly identified as the Sunbelt. Greater economic opportunity and more attractive climate, especially after the widespread introduction of air conditioning in the 1950s, paved the road southward.³⁰⁵ The failure of southern states to invest adequately in human capital through higher educational spending ensured that a disproportionate share of the new skilled positions in southern industry would be filled by northern migrants.³⁰⁶ Between 1950 and 1980, the percentage of non-native whites doubled in all southern states but two, and in some it tripled.³⁰⁷ The new migrants, disproportionately composed of highly educated whites from the New England and North Central states, brought with them different racial mores.³⁰⁸

By the 1950s, for example, the influx of northern whites had significantly affected the politics of race in Florida, as a wide chasm opened between the racially tolerant southern part of the state, where most of the transplanted northerners settled, and the more traditionally “southern” northern panhandle.³⁰⁹ The tremendous influx of out-of-staters into Florida in the postwar years—Florida’s population increased from two million in 1940 to five million in

³⁰³ On the southern political bias in favor of the black belt, see sources cited *infra* note 454. The leading Supreme Court opinions were *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964).

³⁰⁴ See Bartley, *supra* note 58, at 100; Black, *supra* note 3, at 87-88.

³⁰⁵ On the importance of air conditioning, see Raymond Arsenault, *The End of the Long Hot Summer: The Air-Conditioner and Southern Culture*, 50 *J.S. Hist.* 597 (1984).

³⁰⁶ See Schulman, *supra* note 13, at 108, 159, 177-78.

³⁰⁷ See *id.* at 159.

³⁰⁸ See *id.* at 160; see also Jacoway, *supra* note 139, at 11 (arguing that the presence of large numbers of northern migrants with different racial attitudes was an important factor distinguishing southern cities that peacefully achieved desegregation from those that encountered violent resistance).

³⁰⁹ See McMillen, *supra* note 5, at 98-99; see also Heard, *supra* note 102, at 53 (noting that Florida contained twice as many residents born outside its borders as any other southern state—48.1%—in 1940).

1960—must provide at least a partial explanation for the state's relative racial moderation in the post-*Brown* era.³¹⁰ In Virginia, the steady stream of northerners relocating to the urban belt south of Washington, D.C., accelerated the demise of the Byrd machine, which had made preservation of the racial status quo its virtual *raison d'être* in the 1950s.³¹¹ In sum, demographic shifts, in both the white and black populations, were an important force for racial change in the mid-century South.

4. *Changing Attitudes Towards Racial Difference*

A final factor contributing to the demise of Jim Crow was the rejection by increasing numbers of white southerners of segregation's basic premise—the fundamental differentness of the black and white races. Scientific theories of racial difference and white superiority, virtually unchallenged in their ascendancy around the turn of the century, came under increasing attack around World War I and had been largely repudiated among social scientists by the 1930s.³¹² The shift in social science paradigms, from one emphasizing biological explanations of racial difference to one stressing cultural accounts, gradually filtered down to popular opinion, with a substantial assist from the widespread popular revulsion against Nazi racial theories and practices.³¹³ In the

³¹⁰ See Manning J. Dauer, *Florida: The Different State*, in *The Changing Politics of the South*, *supra* note 12, at 92, 157.

³¹¹ See Wilkinson, *supra* note 170, at 157-69; Eisenberg, *supra* note 12, at 58.

³¹² See Degler, *supra* note 75, at 15-19, 147-48, 150-51, 191-92, 205; Sosna, *supra* note 17, at 40; Herbert Hovenkamp, *Social Science and Segregation Before Brown*, 1985 *Duke L.J.* 624, 629-30, 634-35, 651-57, 670-71; Weiss, *supra* note 68, at 571. Interestingly, the shift in social scientists' perspective on racial differences seems to have been more attributable to the sort of factors highlighted in this Part of the Article than to any new scientific "evidence." See Degler, *supra* note 75, at 188-92. Thus, for example, Degler emphasizes the importance of the Great Migration for affecting northern social scientists' attitudes towards blacks, and the increasing ascendancy within the social science disciplines of the very same southern and eastern European immigrants—people like Franz Boas and Otto Klineberg—of whom World War I intelligence testers had sought to establish intellectual inferiority. See *id.* at 197, 200-01. But cf. Hovenkamp, *supra*, at 627, 671-72 (treating the paradigm shift in social scientific views of race as relatively autonomous—"[t]he new science effectively transformed American ideas about the value of segregation and racial discrimination").

None of this is to deny that southern-sympathizing social scientists after *Brown* tried to reinvigorate the old theories of racial inferiority. See Oscar Handlin, *Fire-Bell in the Night: The Crisis in Civil Rights 74-75* (1964); McMillen, *supra* note 5, at 164-71.

³¹³ See Degler, *supra* note 75, at 202-03; Weiss, *supra* note 68, at 571.

South, as in the North, affirmative responses to the question whether blacks and whites were equally intelligent increased by 30% between 1944 and 1956.³¹⁴ This shift in general racial attitudes translated into more tolerant positions on specific racial policies, as the percentage of white southerners favoring integrated transportation rose from 4% to 27% during this same time period, and the number expressing no objection to interracial residential proximity rose from 12% to 38%.³¹⁵

In sum, while it would be plainly wrong to suggest that most white southerners had abandoned their commitment to racial segregation by the mid-twentieth century, the political, social, and economic forces identified in this Section were gradually undermining the strength of that commitment.

G. Conclusion

For the reasons identified in the preceding Sections of this Part, a transformation in American race relations was, by mid-century, a virtual inevitability. In the long term, with or without the *Brown* decision, deep-seated political, social, and economic forces were propelling the nation towards racial change. The potency of these forces was most apparent in the border states and the peripheral South, where considerable desegregation of public accommodations had transpired before passage of the 1964 Civil Rights Act, and a great deal of black voter registration had occurred before enactment of the 1965 Voting Rights Act.³¹⁶ The number of blacks registered to vote in the South had risen from about 3% in 1940 to over 40% in 1964—that is, *before* enactment of the 1965 Voting Rights Act—with a disproportionate share of that increase occur-

³¹⁴ See Hyman & Sheatsley, *supra* note 197, at 35 (reporting an increase from 50% to 80% in the North, and from 30% to 60% in the South); see also Hazel G. Erskine, *The Polls: Race Relations*, 26 *Pub. Opinion Q.* 137, 138, 144, 146 (1962) (reporting an opinion poll showing a substantial postwar shift in southern white views on inherent racial differences and on racial segregation).

³¹⁵ See Hyman & Sheatsley, *supra* note 197, at 37.

³¹⁶ V.O. Key, Jr., observed in 1949 that race was losing its force as the dominant political issue throughout the rim South, as evidenced by that subregion's docile response to the white primary decision of 1944. See Key, *supra* note 228, at 669.

ring in the rim South.³¹⁷ The relative ease with which the sit-in movement of 1960-1961 desegregated public accommodations in well over a hundred border and upper South cities suggests a substantial antecedent evisceration of white commitment to Jim Crow practices.³¹⁸ In numerous additional southern cities and towns, what the sit-ins failed to achieve in 1960-1961, the Birmingham demonstrations and their progeny did accomplish by the end of 1963.³¹⁹ To invoke a Civil War analogy, just as the border states' (and to a lesser degree the upper South's) commitment to slavery had slackened in the decades preceding the Civil War,³²⁰ so had the southern periphery's attachment to Jim Crow practices substantially weakened in the decades preceding the civil rights revolution.

To further pursue the analogy, however, the deep South in the early 1960s was no more prepared to relinquish Jim Crow without

³¹⁷ See Garrow, *supra* note 12, at 7 tbl. 1-1, 19 tbl. 1-3; Lawson, Running, *supra* note 12, at 85 tbl. 1. By 1964, black voter registration in Tennessee was already 69.4% and in Florida 63.8%.

³¹⁸ See Laue, *supra* note 183, at 75-76 (noting that in most cities where sit-ins took place, "some segregation customs already had been weakening for at least a decade," thus explaining the movement's success). For slightly different figures on the success of the sit-ins in desegregating border and upper South cities, see Burk, *supra* note 41, at 255; Goldfield, *supra* note 40, at 118-20; Sitkoff, *supra* note 6, at 81-82; see also Greene & Holmes, *supra* note 223, at 168 (noting that while Tennessee remained segregated in most areas of life, "localized breakdowns in this pattern were developing before federal pressure made the great break in tradition in the 1960's"); Jones, *supra* note 187 (noting the relative ease with which District of Columbia public accommodations were desegregated in 1953); Meier, *supra* note 251, at 231 (noting that in 1951 and 1952 Baltimore taxi and bus companies began hiring black drivers, the University of Maryland began admitting blacks to all graduate and professional schools, and the city theatre abolished segregated seating); Wright, *supra* note 90, at 192, 208-09 (noting that in Louisville, Kentucky, many public facilities were desegregated in the early 1950s, and that a local public accommodations law was passed in 1963).

³¹⁹ See Brauer, *supra* note 86, at 320 (noting that some voluntary desegregation of public accommodations took place in 356 of 566 cities in the southern and border states between May and December of 1963); Chafe, *supra* note 3, at ch. 5 (particularly pages 207-09) (describing desegregation resulting from post-Birmingham demonstrations in North Carolina cities); Goldfield, *supra* note 40, at 141; Sitkoff, *supra* note 6, at 148-49 (suggesting that more racial change occurred in the five months between May and December of 1963 than in the previous three-quarters of a century).

³²⁰ See 1 William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854*, at 23-24, 199-202, 207, 464, 540 (1990); William W. Freehling, *The Founding Fathers and Slavery*, 77 *Am. Hist. Rev.* 81, 90-91 (1972). Freehling emphasizes the deep South's fear that should another generation go by without any dramatic transformative event, Virginia, Kentucky, Tennessee, and Maryland would no longer be dependably southern. See Freehling, *The Road to Disunion*, *supra*, at 473-74, 481.

massive resistance than those same states in the early 1860s were prepared to tolerate the threat posed to slavery by the Republican Party without secession and civil war. To say that fundamental racial change in the United States was inevitable in the long term is not to say that it had to occur in the mid-1960s, or that the deep South would come to approximate national racial norms without federal compulsion, whether of the legislative or judicial variety. The deep South was increasingly occupying an outlier status on racial issues by the 1950s and 1960s. The sit-in movement that proved so successful in desegregating public accommodations in the border and peripheral South states scored virtually no victories in the deep South.³²¹ The violent (indeed, almost deadly) reception extended to the Freedom Riders in Anniston, Birmingham, and Montgomery, Alabama in the spring of 1961 demonstrated just how much more resistant to racial change the deep South would prove to be than the sit-ins of 1960-1961 had shown the upper South to be.³²²

While the southern periphery had recorded impressive gains in black voter registration by the early 1960s, just over 6% of Mississippi blacks and 23% of Alabama blacks were registered to vote prior to passage of the 1965 Voting Rights Act.³²³ Indeed, the post-*Brown* years saw Mississippi and Louisiana busily engaged in purg-

³²¹ See Goldfield, *supra* note 40, at 133-34; Sitkoff, *supra* note 6, at 81-82; see also Eskew, *supra* note 5, at 50-51 (noting violence perpetrated upon first Birmingham sit-in student).

³²² See Laue, *supra* note 183, at 111. The best description of the Alabama reception of the Freedom Riders is Branch, *supra* note 94, at 412-91; see also Eskew, *supra* note 5, at 32-33 (describing the violent response to Reverend Fred Shuttlesworth's efforts to desegregate Birmingham schools in 1957).

³²³ See Lawson, *Running*, *supra* note 12, at 85 tbl. 1; see also Boynton, *supra* note 246, at 141-42 (noting the existence of two heavily black Alabama counties in 1965 in which not a single black was registered to vote, as compared with over 100% of the counties' whites); Burk, *supra* note 41, at 237 (noting that a 1959 Civil Rights Commission report found that in 49 southern counties with black majority populations, fewer than 5% of blacks were registered to vote, and in 16 such counties not a single black person appeared on the rolls); Garrow, *supra* note 12, at 20-21, 29-30 (noting that intensive efforts to register black voters in the deep South, especially Louisiana, Alabama, and Mississippi, during the early 1960s, had yielded very little); McAdam, *supra* note 231, at 26 (observing that in 1962 not a single black in five majority black Mississippi counties was registered to vote); Chester W. Bain, *South Carolina: Partisan Prelude*, in *The Changing Politics of the South*, *supra* note 12, at 597 (noting that in 1958 one of South Carolina's majority black counties contained not a single registered black voter, and that in four others black registration was less than 5%).

ing those states' relatively few black voters from the registration rolls.³²⁴ The physical, legal, and economic intimidation perpetrated upon civil rights leaders in Alabama in the late 1950s and upon voting rights workers in Mississippi in the early 1960s confirms how deeply entrenched Jim Crow remained in the heart of the deep South.³²⁵ It was national civil rights legislation, not gradual pressure from the social, political, and economic forces discussed in preceding Sections of this Part, that brought transformative racial change to the deep South *in the mid-1960s*. In the next Part of this

³²⁴ See Bartley, *supra* note 58, at 200-01; Burk, *supra* note 41, at 206; Garrow, *supra* note 12, at 9-10; Whitfield, *supra* note 79, at 62; Howard, *supra* note 275, at 555; see also Eskew, *supra* note 5, at 49 (noting that Jefferson County, Alabama, was purging black voters from the rolls in 1959).

³²⁵ On Alabama's harassment of civil rights groups, see Branch, *supra* note 94, at 186-87; Bains, *supra* note 169, at 167 (describing the violence perpetrated against civil rights demonstrators in Birmingham); Eskew, *supra* note 5, at 32-35, 44-45 (same). On the reception of voting rights workers in Mississippi before and during the Freedom Summer project, see Branch, *supra* note 94, at 497-500, 503-04, 509-13, 716-17, 781; McAdam, *supra* note 231, at 26-27, 96-101; Stern, *supra* note 126, at 67-68; Neil R. McMillen, *Black Enfranchisement in Mississippi: Federal Enforcement and Black Protest in the 1960s*, 43 *J.S. Hist.* 351, 361-62 (1977); see also Garrow, *supra* note 62, at 173-230 (describing the strong commitment to segregation of whites in Albany, Georgia, in the early 1960s); Longenecker, *supra* note 157, at 79-80, 82, 115 (detailing the extraordinary resistance to racial change manifested by whites in Selma, Alabama); Colburn, *supra* note 162, at 215-16 (noting the depth of the commitment to racial segregation in St. Augustine, Florida); Hornsby, *supra* note 173, at 124 (noting the staying power of segregation even in racially progressive Atlanta).

Mississippi was the one state in the Union still lynching substantial numbers of blacks in the 1950s and 1960s. See Burk, *supra* note 41, at 207; White, *supra* note 13, at 217; Whitfield, *supra* note 79, at 60. Perhaps even more importantly, Mississippi jurors were refusing to convict the lynchers. See e.g., Whitfield, *supra* note 79, at 42 (recounting the acquittal of Emmett Till's murderers). When Clennon King, a black man, sought admission to the University of Mississippi in 1958, he was first arrested and then committed to an insane asylum, before being forced to leave the state. See Bartley, *supra* note 58, at 212; Branch, *supra* note 94, at 233, 253, 524; Robert Sherrill, *Gothic Politics in the Deep South: Stars of the New Confederacy* 181 (1968). Indicative of the extent of Mississippi's alienation from national norms was the fact that Mississippi schoolchildren cheered the announcement of President Kennedy's assassination. See Fortenberry & Abney, *supra* note 12, at 490; see also Longenecker, *supra* note 157, at 39 (noting that President Kennedy's assassination "touched off a lively celebration at the Holiday Inn" in Selma, Alabama); Norrell, *supra* note 12, at 155 (reporting a similar reaction among Tuskegee whites). For a harsh contemporaneous portrait of Mississippi, see White, *supra* note 13, at 216-22.

Article, I shall consider the extent to which *Brown* was responsible for that legislation coming to fruition when it did.³²⁶

II. THE SHORT-TERM SIGNIFICANCE OF *BROWN*

Fundamental racial change was bound to come, even to the deep South, for the reasons identified in the preceding Part of this Article. But the magic moment need not have been the mid-1960s. Deep-seated forces for social change sometimes have a certain long-range ineluctability to them, but in the short term there is no such thing as historical necessity.³²⁷

According to deeply entrenched conventional wisdom, *Brown* was directly responsible for the 1960s civil rights movement, which in turn inspired the transformative civil rights legislation of the mid-1960s.³²⁸ As one commentator has put it, “[b]ut if the Court had not taken that first giant step in 1954, does anyone think there would now be a Civil Rights Act of 1964?”³²⁹ This received wisdom has recently been subjected to a powerful critique by Profes-

³²⁶ To be absolutely clear, my position is that, regardless of *Brown*, the underlying forces for racial change discussed in this Part ultimately would have led to congressional legislation to squelch the deep South outlier states. As I hope to establish in Part II, however, this congressional intervention would not have occurred when it did had it not been for *Brown*.

³²⁷ Cf. McAdam, *supra* note 77, at 86 (noting that underlying historical forces made the time ripe for racial change, but that the federal government was not about to take the vanguard without additional pressures); Bradley C. Canon, *The Supreme Court as a Cheerleader in Politico-Moral Disputes*, 54 J. Pol. 637, 650 (1992) (“Had Linda Brown lost, public policies concerning racial equality might not be greatly different in the 1990s, but during the 1960s, such policies would have in all likelihood been considerably different.”).

³²⁸ See Jack Greenberg, *The Supreme Court, Civil Rights and Civil Dissonance*, 77 Yale L.J. 1520, 1522 (1968) (asserting that *Brown* “profoundly affected national thinking and has served as the principal ideological engine” of the civil rights movement); Canon, *supra* note 327, at 648, 649; Kenneth B. Clark, *Racial Justice in Education: Continuing Struggle in a New Era*, reprinted in 23 How. L.J. 93, 95 (1980) (noting that *Brown* “gave impetus” to the civil rights movement); Glickstein, *supra* note 2, at 51, 52; Benjamin H. Kizer, *The Impact of Brown vs. Board of Education*, 2 Gonz. L. Rev. 1, 18 (1967); Klarman, *supra* note 12, at 774 (noting “the enormous importance of *Brown* in energizing the civil rights movement of the 1960s”); Betsy Levin, Introduction, 55 U. Colo. L. Rev. 487, 488 (1984); Mark Tushnet, *What Really Happened in Brown v. Board of Education*, 91 Colum. L. Rev. 1867, 1867 (1991); Introduction, *supra* note 14, at 1.

³²⁹ C. Herman Pritchett, *Equal Protection and the Urban Majority*, 58 Am. Pol. Sci. Rev. 869, 869 (1964); see also Robert L. Gill, *The Shaping of Race Relations by the Federal Judiciary in Court Decisions*, 11 Negro Educ. Rev. 15, 15-16 (1960) (“It is clear that official action to improve the condition of the Negro minority probably would never have been taken in many instances had it not been for the Federal Courts.”).

sor Gerald Rosenberg, who denies not only that *Brown* directly desegregated the public schools, but also that it indirectly did so by invigorating a civil rights movement which successfully demanded transformative legislation.³³⁰ My objective in the remainder of this Article is to show that the conventional wisdom, linking *Brown* with the landmark civil rights legislation of the mid-1960s, is correct, but for the wrong reason: *Brown* was indispensable to the timing of this legislation, but the chain of causation is strikingly indirect, and indeed almost perverse.

Brown led to the civil rights legislation of the mid-1960s, I shall argue, through the following sequence of events. First, *Brown* crystalized southern resistance to racial change, which previously—from at least the time of the Truman civil rights proposals—had been scattered and episodic. Second, the unification of southern racial intransigence, which became the phenomenon known as “massive resistance,” propelled politics in virtually every southern state several notches to the right on racial issues; southern racial moderation was temporarily destroyed by *Brown*. Third, in such an extremist political environment, men were catapulted into public office who were unswervingly committed to preservation of the racial status quo. These massive resistance politicians were both personally and politically predisposed towards using whatever measures were necessary to maintain Jim Crow, including the brutal suppression of civil rights demonstrations. Fourth, nationally televised scenes of southern law enforcement officers using police dogs, high pressure fire hoses, tear gas, and truncheons against peaceful, prayerful black demonstrators (often children) converted millions of previously indifferent northern whites into enthusiastic proponents of civil rights legislation. Ensuing Sections of this Part seek to establish each of these linkages in the chain of events connecting *Brown* to the civil rights legislation of the mid-1960s.³³¹

³³⁰ See Rosenberg, *supra* note 6, at 107-56. Rosenberg concedes that one cannot measure indirect judicial effects with scientific precision, see *id.* at 108, but then goes on to rebut all of the conventional arguments regarding *Brown*'s indirect impact and to conclude that “there does not appear to be evidence for the influence of *Brown* on legislative action.” *Id.* at 121.

³³¹ Thus, while Rosenberg rightly notes that *Brown* “stiffen[ed] resistance” to racial change, he mistakenly draws the conclusion that *Brown* therefore “may actually have delayed the achievement of civil rights.” *Id.* at 156. He fails to observe the link between

A. *The Conventional View of Brown's Connection to the 1960s Civil Rights Legislation*

Before turning to my proffered interpretation, it is necessary to consider, and at least partially to reject, the traditional claims regarding *Brown's* responsibility for the civil rights revolution of the 1960s. Two conventional arguments are made regarding *Brown's* importance to the civil rights movement. First, it is often said that *Brown* increased the salience of the civil rights issue, pricking the conscience of northern whites and converting many of them into civil rights enthusiasts.³³² Second, and even more fundamentally, the conventional wisdom holds that *Brown* raised the hopes and expectations of (mainly southern) blacks, prodding them to adopt a more aggressive civil rights posture by rendering more realistic the possibility of genuine racial change.³³³ While neither of these traditional accounts is flatly wrong (the second, I believe, having greater merit than the first), both of them substantially overstate *Brown's* impact in certain directions, while missing one key to the decision's significance—its crystalization of southern white resistance.

Brown no doubt did focus the attention of some northern whites on civil rights issues in a novel manner. But the historical record belies the notion that *Brown* was tremendously significant in this

the stiffening of southern resistance provoked by *Brown* and the ultimate federal intervention that secured genuine racial change.

³³² See Aryeh Neier, *Only Judgment: The Limits of Litigation in Social Change* 241-42 (1982) ("*Brown* launched the public debate over racial equality. . ."); Canon, *supra* note 327, at 648 ("It [*Brown*] raised the issue [of racial equality] a few notches on the national agenda . . ."); Pritchett, *supra* note 329, at 869 (stating that the Court forced the issue of racial segregation "on the American conscience").

³³³ See Goldfield, *supra* note 40, at 91-92 (arguing that *Brown* "raised black awareness"); McAdam, *supra* note 231, at 30 (crediting *Brown* with awakening a new mood of optimism among southern blacks); McAdam, *supra* note 77, at 111 (suggesting that favorable Supreme Court decisions had the effect of increasing black support for the NAACP by leading blacks to believe that oppressive conditions were not inevitable, and could be changed through collective action); Sitkoff, *supra* note 6, at 37-38 (asserting that *Brown* "stimulated black hope"); Bains, *supra* note 169, at 159 (stating that *Brown* served as a "catalyst" for blacks); Canon, *supra* note 327, at 649; Dittmer, *supra* note 13, at 67 (contending that *Brown* "provided both a rallying cry and a focus for black men and women working for social change"); Eskew, *supra* note 5, at 11 (stating that *Brown* "awoke a new activism within the black community"); Glickstein, *supra* note 2, at 52; Norrell, *supra* note 68, at 70 ("The *Brown* decision gave a great boost to black expectations, even a sense that equality was now inevitable.").

regard. Analyses of print media coverage of civil rights "events" suggest that court decisions, including *Brown*, attracted relatively little attention as compared with demonstrations producing confrontation and violence, such as the Montgomery bus boycott of 1955-1956, which had very little connection to the *Brown* decision.³³⁴ The *New York Times* actually provided greater coverage to civil rights issues in 1952 than in 1954 or 1955 (the years of *Brown I* and *Brown II*, respectively).³³⁵ Moreover, it seems clear that *Brown* attracted considerably more attention in the South than in the North. One study found that in 1955 northerners were far less likely than southerners to have recently discussed the *Brown* decision.³³⁶ Only 6% of northerners interviewed that year, as compared with 30% of southerners, regarded segregation as an issue of equal importance with atomic bombs, crime, and high taxes.³³⁷

Even to the extent that *Brown* propelled the segregation issue into the consciousness of northerners, there is little evidence that it made them more sympathetic to the civil rights cause. One opinion poll conducted in July 1959 recorded only a five percentage point increase (to 59%) in public support for the *Brown* decision over the preceding five years.³³⁸ The number of congressional sponsors for civil rights legislation, having risen steadily through the late 1940s and peaked in 1951-1952, declined throughout the remainder of the 1950s, *Brown* notwithstanding, reaching a new low in 1959-1960.³³⁹ There is little evidence that politicians, either locally or nationally, discerned any critical awakening of civil rights consciousness among their white constituents in the post-*Brown* years. As discussed further below, the civil rights policies of the Eisenhower administration in the 1950s and the Kennedy administration in the early 1960s indicate a political perception that white racial attitudes had undergone no dramatic transformation in the wake of *Brown*, as they clearly would after Birmingham and

³³⁴ See Rosenberg, *supra* note 6, at 111, 112-13, 116. On the lack of connection between *Brown* and the Montgomery bus boycott, see *infra* note 353.

³³⁵ See Rosenberg, *supra* note 6, at 116.

³³⁶ See Pettigrew, *supra* note 301, at 341.

³³⁷ See *id.* at 341 tbl. 3.

³³⁸ See Burk, *supra* note 41, at 202.

³³⁹ See Rosenberg, *supra* note 6, at 124.

Selma.³⁴⁰ There may well have been more talk about civil rights in the wake of *Brown*, but there was very little in the way of action.³⁴¹

The second conventional claim regarding *Brown's* influence upon the civil rights movement is that the Court's decision energized (especially southern) blacks by demonstrating that at least one important governmental institution was genuinely committed to the cause of racial justice. Anecdotal evidence supports this proffered link between *Brown* and an emerging black civil rights consciousness,³⁴² and the claim does possess a certain inherent plausibility. For example, we know that *Brown*, at the very least, had a marked impact on the form, if not the existence, of civil rights activity in Birmingham, where court challenges to various aspects of public segregation were launched in the wake of *Brown*, largely owing to the fact that direct action demonstrations were too dangerous in the South's most violent city.³⁴³ In Greensboro, North Carolina, as well, *Brown* seems to have heightened black insurgency in the form of efforts to desegregate the city golf course and more insistent demands by black parents for improved educational facilities.³⁴⁴ Moreover, it seems plausible that the abysmal record of southern compliance with *Brown* crystalized black frus-

³⁴⁰ See *infra* Part II.B.4.

³⁴¹ Thus, for example, the Indiana legislature was happy to make symbolic gestures in support of civil rights through the 1950s and early 1960s, but only in the wake of Birmingham did legislators pass a civil rights law with real teeth. See Thornbrough, *supra* note 27, at 327-30, 336-39. Similarly, the national legislature was content passing mainly symbolic legislation in 1957 and 1960; nothing of real substance could be achieved until after Birmingham. See *infra* text accompanying notes 579-86.

³⁴² See Sitkoff, *supra* note 6, at 83-84 (reproducing a statement by John Lewis); Lewis W. Jones & Fred L. Shuttlesworth: Indigenous Leader, in Birmingham, Alabama, 1956-1963, *supra* note 5, at 115, 132 (regarding Fred Shuttlesworth, leader of the civil rights movement in Birmingham). A survey of civil rights leaders by James Laue in the early 1960s revealed a hefty percentage who cited *Brown* as an important factor in the movement's development. See Laue, *supra* note 183, at 62-63 fig. 1; see also McAdam, *supra* note 231, at 48 (noting that some Freedom Summer applicants cited *Brown* as an inspiration for their participation); Sitkoff, *supra* note 6, at 69-70 (noting that student sit-in leaders in Greensboro, North Carolina, cited *Brown* as an inspirational factor).

³⁴³ See Eskew, *supra* note 5, at 14-16, 21, 32-35, 43-45. Reverend Fred Shuttlesworth was nearly killed when he personally attempted to integrate Birmingham's public schools in the fall of 1957.

³⁴⁴ See Chafe, *supra* note 3, at 83-86.

tration with the racial status quo, ultimately leading to the civil rights explosion of the early 1960s.³⁴⁵

Nevertheless, while it would be mistaken to deny *Brown's* inspirational impact on American blacks, alternative factors account equally well for the emergent black civil rights consciousness. First, *Brown* obviously cannot account for the burst of civil rights activity in the middle and late 1940s. Sit-in demonstrations, Freedom Rides, and voter registration drives were not invented in the 1960s; these forms of civil rights activity flourished in the immediate postwar years.³⁴⁶ But such activity slowed to a trickle during the early 1950s, before rising dramatically in the year of the Montgomery bus boycott, and then falling precipitately again in 1957-1959.³⁴⁷

One plausible explanation for the relative quiescence in civil rights activity during the 1950s focuses on the rise of the Cold War and its domestic counterpart, McCarthyism. With the country widely perceived to be under both internal and external attack, any social, political, or cultural movement challenging the status quo

³⁴⁵ See *id.* at 58, 109-10 (suggesting that the failure to meet the initial school desegregation expectations of local blacks in Greensboro explains much of the turbulence of the 1960s); Sitkoff, *supra* note 6, at 83-84; Walker, *supra* note 32, at 3-4; Leslie W. Dunbar, Reflections on the Latest Reform of the South, 22 *Phylon* 249, 252 (1961) (arguing that "the single largest factor [behind the movement for change] . . . was disillusion and disgust over the progress of school desegregation").

³⁴⁶ See Chafe, *supra* note 3, at 35 (noting a dramatic increase in black voter registration activity between 1949 and 1951); Norrell, *supra* note 12, at 37, 44-46, 60, 73-74, 86 (noting substantial voting rights activity in Tuskegee during the war, and further acceleration in the late 1940s); Sitkoff, *supra* note 6, at 99 (describing the Congress on Racial Equality's 1947 Journey of Reconciliation Freedom Ride); August Meier & Elliott Rudwick, *The First Freedom Ride*, 30 *Phylon* 213 (1969) (same); Norrell, *supra* note 68, at 70 (noting that black wartime activism continued in the postwar period); Sullivan, *supra* note 33, at 90-92 (noting extensive voter registration campaigns in the South in 1946); Thornbrough, *supra* note 27, at 314-15 (describing sit-ins in restaurants in Indiana, St. Louis, Baltimore, and Washington, D.C., during the late 1940s); J. Mills Thornton III, *Challenge and Response in the Montgomery Bus Boycott of 1955-1956*, 33 *Ala. Rev.* 163, 172-74 (1980) (noting a significant core of black civil rights protest in Montgomery during the late 1940s and early 1950s).

³⁴⁷ See Rosenberg, *supra* note 6, at 134 *tbl.* 4.2; see also Garrow, *supra* note 62, at 93, 103-04 (noting the disappointing turnout for the third annual *Brown* commemoration at the Lincoln Memorial in 1957 as well as the lackluster response to the SCLC's voter registration drive in 1958).

was susceptible to being labeled communist-inspired.³⁴⁸ The battle against communism, in the words of one civil rights historian, “virtually commanded an unquestioning acceptance of the righteousness of the American way.”³⁴⁹ Indeed, southern traditionalists constantly charged (and seem genuinely to have believed) that the civil rights movement was communist-inspired, and many southern states launched legislative antisubversion investigations of the NAACP.³⁵⁰ By reining in the aggressive civil rights campaign of the late 1940s, the black leadership, consciously or subconsciously, avoided the tincture of communist complicity.³⁵¹ The virtual demise of domestic anticommunism as a serious concern by 1960 rendered possible the reemergence of a social movement critical of the racial status quo.³⁵² On this view, then, the civil rights revolution of the 1960s had less to do with *Brown* than with the dissipation of McCarthyism as a temporary impediment to a civil rights movement that had been spawned by World War II.

Even setting aside the question of pre-*Brown* antecedents, alternative factors account about as well as does *Brown* for the timing of the 1960s civil rights revolution. Historians frequently identify the Greensboro sit-ins of 1960 as the inaugural event of the modern civil rights revolution.³⁵³ While similar demonstrations had

³⁴⁸ See Richard M. Fried, *Nightmare in Red: The McCarthy Era in Perspective* 29-36 (1990); McAdam, *supra* note 231, at 146.

³⁴⁹ See Norrell, *supra* note 68, at 69.

³⁵⁰ See Bartley, *supra* note 58, at 185-89, 213; Fried, *supra* note 348, at 175-77; McMillen, *supra* note 5, at 195-98, 269; Norrell, *supra* note 12, at 105, 108, 142; Dudziak, *supra* note 2, at 75; see also Norrell, *supra* note 68, at 71 (noting that during the late 1950s McCarthyism retained a sufficiently strong hold on the public's thinking that, with regard to civil rights, the main focus was on whether King and his fellow activists were in fact communists).

³⁵¹ See Fried, *supra* note 348, at 164-65; Sitkoff, *supra* note 6, at 17; Wynn, *supra* note 20, at 120; Sullivan, *supra* note 33, at 98-99; cf. Norrell, *supra* note 68, at 69 (“Because anticommunism maintained primacy among American domestic issues through the 1950s, the cause of black rights could not advance far.”).

³⁵² See Fried, *supra* note 348, at 178, 193-94; McAdam, *supra* note 231, at 20-21 (describing how the civil rights movement was provided a boost by the reinvigoration of the Old Left once released from the chains of McCarthyism); cf. Laue, *supra* note 183, at 81 (noting that the sit-in movement was made possible by the absence of international or domestic crises that year; there was no Cuba, no Berlin, and no recession).

³⁵³ See Chafe, *supra* note 3, at 99 (stating that the Greensboro sit-ins “sparked the student phase of the civil rights revolution”); *id.* at 137 (asserting that the sit-ins were “the catalyst that triggered a decade of revolt”); see also Walker, *supra* note 32, at 26 (describing the Atlanta sit-ins as a “significant step forward” in the struggle against racial discrimination).

occurred before, "never in the past had they prompted such a volcanic response."³⁵⁴ The speed with which the sit-in demonstrations spread, first through Greensboro, then through North Carolina, and finally through more than fifty cities in nine southern states, makes it clear that the time was ripe for large-scale civil rights protest activity.³⁵⁵ It is not obvious that *Brown*, decided six years earlier, was a crucial factor in laying the groundwork.

Two other factors seem to explain equally well the explosion of civil rights activity in the early 1960s—the decolonization of Africa, and the rise of a well-educated, relatively prosperous black middle class. In 1957, Ghana became the first black African nation to achieve its independence from colonial rule; within roughly half a dozen years, over thirty other countries had followed suit. Many civil rights leaders identified the changing international status of blacks as an important impetus for America's civil rights move-

Even focusing instead on the Montgomery bus boycott, the other event frequently identified as seminal to the modern civil rights movement, it is difficult to trace a connection to *Brown*. (On the catalytic impact of the bus boycott, see Chafe, *supra* note 3, at 113; Garrow, *supra* note 62, at 66-67; Whitfield, *supra* note 79, at 88; Eskew, *supra* note 5, at 25-28.) Though the date of the boycott, 1955-1956, seems propitious for those seeking a connection to *Brown*, in fact the Court's ruling seems to have had little to do with the boycott. That black Montgomeries had been filing political complaints against seating practices on city buses well before 1954 argues against the causal influence of *Brown*. On the pre-1954 origins of the Montgomery bus boycott, see Garrow, *supra* note 62, at 14-15; Goldfield, *supra* note 40, at 93-95; Rosenberg, *supra* note 6, at 134-38; Thornton, *supra* note 346, at 174. Indeed, the Montgomery bus boycott was to some extent patterned after a similar undertaking in Baton Rouge that had taken place the year before *Brown*. See Branch, *supra* note 94, at 145. Perhaps most significantly, the fact that the Montgomery protesters did not initially demand an end to segregation, but only a tempering of the more insulting aspects of the city's bus seating practices, suggests that *Brown* was not their motivating force. See *id.* at 144, 151; Garrow, *supra* note 62, at 21-22, 25, 52; Rosenberg, *supra* note 6, at 137. Indeed, the national NAACP initially refused to involve itself in Rosa Parks's case on the ground that the Montgomery Improvement Association was seeking only "more polite segregation." Garrow, *supra* note 62, at 52.

That the Supreme Court's decision in *Gayle v. Browder*, 352 U.S. 903 (1956), ultimately ensured the success of the bus boycott is very different from establishing that *Brown* was responsible for energizing the protest activity itself. My thesis in this Section is not that Supreme Court decisions never make a difference, but rather that the *Brown* decision was a relatively unimportant motivating factor for the civil rights movement.

³⁵⁴ Chafe, *supra* note 3, at 99.

³⁵⁵ See *id.* at 99, 115-20; Branch, *supra* note 94, at 271-75, 283.

ment.³⁵⁶ One such leader observed that to witness black African statesmen participating in world decisionmaking processes at the United Nations "can cause you to swell with pride."³⁵⁷ The stunning successes of nonwhite independence movements around 1960 demonstrated to American blacks the feasibility of racial change.³⁵⁸ It also heightened their sense of frustration by widening the gap between black status at home and abroad. As one leading civil rights historian has observed, by 1963 thirty-four African nations had freed themselves from colonial bondage, while more than two thousand southern American school districts remained segregated.³⁵⁹ Or, as James Baldwin explained the operative psychological dynamic, American blacks observed the rapidly unfolding international events and concluded that "[a]ll of Africa will be free before we can get a lousy cup of coffee."³⁶⁰

Another explanation for the civil rights explosion of the early 1960s focuses upon the gradual emergence of a well-educated, relatively prosperous southern black middle class, many of whom had performed military service.³⁶¹ World War II had ignited economic growth which fostered the rise of a substantial southern black educational and economic elite, but postwar changes in racial practices had failed to keep pace with the underlying socioeconomic reality.³⁶² For this group, identifiably middle class according to most

³⁵⁶ See Clayborne Carson, *In Struggle: SNCC and the Black Awakening of the 1960s*, at 16 (1981); Isaacs, *supra* note 17, at 50-53, 290-93; Rosenberg, *supra* note 6, at 144-45; Sitkoff, *supra* note 6, at 83; King, *supra* note 249, at 9.

³⁵⁷ See Isaacs, *supra* note 17, at 292.

³⁵⁸ See Sitkoff, *supra* note 6, at 16, 83.

³⁵⁹ See *id.* at 128.

³⁶⁰ *Id.* at 83; Wynn, *supra* note 20, at 125.

³⁶¹ For profiles of civil rights leaders confirming the description provided in the text, see Bartley, *supra* note 13, at 197 (describing leaders in Atlanta); Walker, *supra* note 32, at 1-3 (same); Lawson, *supra* note 165, at 260-61 (describing leaders in Tampa). On the disproportionate representation of college students among civil rights leaders, see Chafe, *supra* note 3, at 212 (concerning Greensboro); Walker, *supra* note 32, at 5, 14 (concerning Atlanta); Eskew, *supra* note 5, at 68-69, 77 (concerning Birmingham).

³⁶² See Sitkoff, *supra* note 6, at 49, 84-85 ("[T]he promise of change far outran the reality."); Wynn, *supra* note 20, at 122, 127; Dunbar, *supra* note 345, at 251 ("The Negro demonstrators have been, typically, people with advantages, but with less of them than some other groups in their society."); Laue, *supra* note 183, at 75-76 (explaining sit-ins as a black response to the failure of racial norms to change as quickly as blacks' rising expectations); Searles & Williams, *supra* note 239, at 216-17 (noting that the black middle class had made dramatic occupational and educational gains in the postwar period while still encountering racial barriers preventing them from securing "a respected position in

social and economic indices, Jim Crow practices must have appeared egregiously anachronistic.³⁶³ Moreover, advances in black education had failed to produce jobs commensurate with rising skill levels. To take just one example, during a four-year period in the late 1950s, only 7 of 124 black graduates from the Atlanta University School of Social Work could find a local job in their chosen profession.³⁶⁴ On this view, then, the emergence of a well-educated, relatively prosperous black middle class rendered an explosion of civil rights protest activity inevitable, and the Greensboro sit-ins simply provided a spark to the powder.

In sum, evidence that *Brown* inspired the 1960s civil rights movement is considerably less persuasive than the conventional wisdom would have us believe. Alternative factors, having nothing to do with the Supreme Court, appear to account at least as well as *Brown* does for the timing of the civil rights revolution. Yet even if I am wrong about this, the fact remains, as I hope soon to demonstrate,³⁶⁵ that the civil rights movement achieved transformative racial change only when it intersected, at places like Birmingham and Selma, with the southern political backlash that *Brown* produced. Thus, even if *Brown* did provide (as I believe it did *not*) critical inspiration for the modern civil rights movement, the decision's most important ramification may still have been the crystallization of southern resistance to racial change and the consequent rightward lurch of southern politics. It is to a consideration of this ramification of the *Brown* decision that I shall now turn.

the community"); Wynn, *supra* note 50, at 51-52 (noting the frustration of continued delays and opposition after the hopes raised by World War II); see also Dalfiume, *supra* note 17, at 96-97 (emphasizing black optimism that World War II would produce substantial racial change).

³⁶³ See Isaacs, *supra* note 17, at 59 (noting the phenomenon of blacks beginning to experience momentous change while basic barriers remained in place); Walker, *supra* note 32, at 3; Dunbar, *supra* note 345, at 254 (noting the insult inherent in being denied a cup of coffee); cf. Chafe, *supra* note 3, at 22-23 (noting that the indignities of Jim Crow were more grating for the better educated, somewhat wealthier blacks of Greensboro, North Carolina, than for blacks elsewhere in the state).

³⁶⁴ See Walker, *supra* note 32, at 3; see also Wynn, *supra* note 20, at 114 (noting that blacks who had learned skills and trades in the military during World War II frequently found no jobs commensurate with their talents after wartime reconversion).

³⁶⁵ See *infra* Part II.B.4.

B. *The Brown Backlash Thesis*

Again, my central thesis is that *Brown* was indirectly responsible for the landmark civil rights legislation of the mid-1960s by catalyzing southern resistance to racial change.³⁶⁶ *Brown* propelled southern politics far to the right, as race was exalted over all other issues. In this political environment, men were elected to all levels of public office who were, both by personal predisposition and political calculation, prepared to use virtually any means of resisting racial change, including blatant defiance of federal authority and brutal suppression of civil rights demonstrations. The predictable consequence was a series of violent confrontations between white supremacist law enforcement officials and generally nonviolent demonstrators, which provoked an outcry from national television audiences, leading Congress and the President to intervene with landmark civil rights legislation.

1. *The Limited Nature of the pre-Brown Southern Backlash*

The first step in my argument is to establish that southern resistance to racial change prior to *Brown* was of a different order of magnitude from that following Supreme Court intervention. Plainly, there was a southern racial backlash underway well before the Supreme Court even took the grade school segregation cases onto its docket. The stress placed upon southern racial norms, first by World War II and then by President Truman's 1948 civil rights proposals, unquestionably produced a stiffening of resistance to racial change. My contention, though, is that this backlash pales in significance, both in its depth and its breadth, when compared with what transpired after *Brown*.

Racial changes inspired by World War II, discussed in Section I.A, fomented an incipient racial backlash, as white southerners sought to counteract black wartime militancy and to preempt what

³⁶⁶ Professor Rosenberg suggests that one reason that *Brown* made little difference to the civil rights movement is that most Americans are unaware of Supreme Court decisions. See Rosenberg, *supra* note 6, at 125-26, 131-32. While this observation is undoubtedly true in general, to extrapolate from it to the proposition that most Americans, and especially southerners, were not aware of a decision like *Brown* is seriously mistaken. See Pettigrew, *supra* note 301, at 341 tbl. 3 (noting that, in a 1955 poll of southerners from two randomly selected small towns with sizeable black populations, fully 60% of whites had discussed the *Brown* decision within the last week).

they anticipated would be heightened postwar demands for the dismantling of Jim Crow.³⁶⁷ The most horrific manifestation of this racial backlash took the form of heightened racial violence, including a rise in the number of lynchings, in the postwar South.³⁶⁸ When President Truman unveiled his landmark civil rights proposals in early 1948, and the Democratic convention that summer adopted a civil rights plank even more liberal than Truman desired, the most notorious manifestation of the pre-*Brown* backlash materialized: the Dixiecrat revolt.³⁶⁹ After the Mississippi and part of the Alabama delegations bolted the Democratic convention, the Dixiecrats fielded their own presidential ticket, consisting of Strom Thurmond of South Carolina and Fielding Wright of Mississippi, which went on to carry four southern states in the fall election.³⁷⁰

The other famous indicia of a pre-*Brown* southern racial backlash were the Democratic senatorial primary defeats in the spring of 1950 of Frank Porter Graham in North Carolina and Claude Pepper in Florida. Both defeated incumbents were extremely lib-

³⁶⁷ See Goldfield, *supra* note 40, at 37, 42; Heard, *supra* note 102, at 147-48; Norrell, *supra* note 12, at 56-57, 77-78; Wynn, *supra* note 20, at 109; Eskew, *supra* note 5, at 14; see also Heard, *supra* note 102, at 183-84 (attributing halving of NAACP membership between 1948 and 1950 partially to increased white intimidation); Sullivan, *supra* note 33, at 86 (suggesting that one manifestation of rising white resistance to black demands was the increasing conservatism of "so-called southern moderates," such as Virginius Dabney and Jonathan Daniels).

³⁶⁸ See Goldfield, *supra* note 40, at 53; Heard, *supra* note 102, at 147-48; Martin, *supra* note 72, at 69-70; Sosna, *supra* note 17, at 106-07; Wynn, *supra* note 20, at 116; Dudziak, *supra* note 2, at 77-78. On the notable increase in post-World War II lynchings, see McAdam, *supra* note 77, at 89 *tbl.* 5.5. For the similar rise in lynchings after World War I, see Isaacs, *supra* note 17, at 39-40 (noting 70 lynchings in 1919, 10 of which were of black soldiers still in uniform); McAdam, *supra* note 77, at 89 *tbl.* 5.5; McMillen, *supra* note 20, at 306 (noting 12 lynchings in Mississippi in 1919, at least three of which involved black veterans as victims).

³⁶⁹ See Numan V. Bartley & Hugh D. Graham, *Southern Politics and the Second Reconstruction* 51, 84-85 (1975); Goldfield, *supra* note 40, at 66-67; Heard, *supra* note 102, at 26-27; Schulman, *supra* note 13, at 121-22; Norrell, *supra* note 68, at 70; Skates, *supra* note 54, at 141. On the fight over the civil rights plank at the 1948 Democratic convention, see Berman, *supra* note 79, at 107-13; Martin, *supra* note 72, at 81-87; McCullough, *supra* note 112, at 638-40.

³⁷⁰ See Bartley & Graham, *supra* note 369, at 85; Berman, *supra* note 79, at 101-02, 112, 114-15, 125, 132-33; Heard, *supra* note 102, at 20, 25; Martin, *supra* note 72, at 87-88. The Dixiecrats won 38 electoral votes from four deep South states plus one electoral vote from an aberrant Tennessee elector.

eral, by contemporaneous southern standards, on the race issue.³⁷¹ Moreover, congressional debate that year over creation of a permanent Fair Employment Practices Commission ("FEPC") had increased the salience of the race issue in both these contests.³⁷² Finally, it is important to acknowledge the existence of other, perhaps less widely noted, pre-*Brown* southern electoral contests that were characterized by racial demagoguery. For example, Eugene Talmadge in his 1946 Democratic primary campaign for the Georgia governorship highlighted racial issues, especially black suffrage;³⁷³ two years later in another Georgia gubernatorial primary, his son, Herman, perpetuated the family tradition by appealing to states' rights and white supremacy in opposition to "Yankee meddling and a federal civil rights program."³⁷⁴

Without doubt, these events confirm the existence of growing white southern resistance to racial change prior to *Brown*. Yet, in acknowledging the existence of such a resistance movement, we must not lose sight of its relatively limited scope, especially when compared with the tidal wave of racial hysteria which swept the

³⁷¹ See Bartley, *supra* note 58, at 40 (noting that Pepper's and Graham's opponents conducted "the bitterest displays of racial antagonism seen in the peripheral South in years"); Bartley & Graham, *supra* note 369, at 25, 52 (noting the relative ease with which race baiters destroyed the candidacies of Graham and Pepper); Goldfield, *supra* note 40, at 67-70 (suggesting that the racial backlash forced many southern progressives, such as Alabamans Lister Hill and John Sparkman, to trim their sails on racial issues in the late 1940s and early 1950s, and that those southern liberals like Graham, who refused to do so, suffered defeat); Julian M. Pleasants & Augustus M. Burns III, *Frank Porter Graham and the 1950 Senate Race in North Carolina* 226 (1990) (noting that the Graham runoff primary defeat in North Carolina involved "a full-blown racial panic"); Schulman, *supra* note 13, at 132; Sherrill, *supra* note 325, at 138 (suggesting that the Pepper defeat revealed that it was no longer possible for a progressive politician to survive in the deep South).

³⁷² See Bartley & Graham, *supra* note 369, at 51; Pleasants & Burns, *supra* note 371, at 91, 93-95, 140-42, 147-48; see also Black, *supra* note 3, at 35-36 (describing the 1950 Georgia gubernatorial primary); *id.* at 37-39 (describing the 1950 Arkansas gubernatorial primary); *id.* at 39 (describing the 1951 Mississippi gubernatorial primary).

³⁷³ See Heard, *supra* note 102, at 192; Joseph L. Bernd, *White Supremacy and the Disfranchisement of Blacks in Georgia, 1946*, 66 *Ga. Hist. Q.* 492, 494-95, 498 (1982) [hereinafter Bernd, *White Supremacy*]; Sullivan, *supra* note 33, at 93-94; see also *id.* at 96-97 (noting Senator Bilbo's race-baiting 1946 campaign in Mississippi, which also focused on the voting issue).

³⁷⁴ Joseph L. Bernd, *Georgia: Static and Dynamic*, in *The Changing Politics of the South*, *supra* note 12, at 314 [hereinafter Bernd, *Georgia*]; see Bartley & Graham, *supra* note 369, at 51; Sherrill, *supra* note 325, at 48-49.

South after the *Brown* decision.³⁷⁵ There was, concededly, a Dixiecrat revolt from the Democratic Party in 1948, *but it failed*. The Dixiecrats carried only four states—those with the largest percentage black populations—Mississippi, Alabama, South Carolina, and Louisiana.³⁷⁶ The Dixiecrat appeal was essentially confined to the deep South black belt, while in metropolitan areas and throughout the peripheral South, the New Deal/Fair Deal coalition held up reasonably well for President Truman.³⁷⁷

Moreover, the Dixiecrats won only those states in which they had secured control of the Democratic Party machinery, thus enabling them to run slates of electors pledged to Thurmond and Wright under the Democratic Party label. (In Alabama, Truman was not only deprived of the Democratic Party affiliation, but was kept off the ballot entirely.) In other words, in the only four states that they won, the Dixiecrats were the beneficiaries of the intense Democratic Party loyalty that deep South voters had traditionally evinced.³⁷⁸ Thus, in the four states where Thurmond ran as the

³⁷⁵ See Bartley & Graham, *supra* note 369, at 52 (“Not until the late 1950s did a politics of race become a regional phenomenon.”).

³⁷⁶ See Bartley, *supra* note 58, at 33-36; Heard, *supra* note 102, at 27-28, 246; Emile B. Ader, *Why the Dixiecrats Failed*, 15 J. Pol. 356, 358, 366-69 (1953); Kirkendall, *supra* note 120, at 3140.

Nor is it accurate to attribute the entirety of the Dixiecrat revolt to a racial backlash. Some portion of the Dixiecrat movement was motivated by hostility towards the federal government's attempt to take over tidelands oil, pursuant to a Supreme Court decision of 1947, and also by conservative economic hostility towards New Deal/Fair Deal policies, such as national health insurance or Truman's abortive veto of the Taft-Hartley Act. See Bartley, *supra* note 58, at 34; Heard, *supra* note 102, at 29, 161, 246-47; Sherrill, *supra* note 325, at 10. Thus, the Dixiecrat movement can be seen in some (but only some) part as an extension of the conservative southern revolt against the New Deal that took place in the 1944 presidential election, and was most famously associated with the revolt of the so-called Texas Regulars, whose separate slate of electors won 11.8% of the vote. See Bartley, *supra* note 58, at 29, 34; Heard, *supra* note 102, at 158-59, 246-47. On the limitations of the overlap between the Texas Regulars and Dixiecrat constituencies, see *id.* at 258-60; Weeks, *supra* note 225, at 212.

³⁷⁷ See Bartley & Graham, *supra* note 369, at 85-86; Heard, *supra* note 102, at 27, 251-79, app. 1; Kirkendall, *supra* note 120, at 3140-41. While Thurmond's strength was directly correlated with high percentage black populations throughout the South, in the peripheral South even black belt counties rarely gave him more than 20-30% of the vote. See Heard, *supra* note 102, at 268.

³⁷⁸ See Bartley, *supra* note 58, at 35; Heard, *supra* note 102, at 22-23, 246, 278; Howard, *supra* note 275, at 548; Kirkendall, *supra* note 120, at 3140. The potency of the traditional party label is demonstrated by comparing Thurmond's showing in the fifth deep South state—Georgia—where he was kept off the Democratic ticket. Thurmond won 20.3% of

regular Democrat, he won 55.3% of the vote; in six of the other seven southern states where he appeared on an independent ticket, his vote trailed not just that of Truman, but of Dewey as well!³⁷⁹ States such as Arkansas and Virginia, which a decade later would lead the massive resistance crusade against *Brown*, gave only 16.5% and 10.3% of their vote, respectively, to Thurmond.³⁸⁰ Moreover, in 1950 the Dixiecrat Party was rocked by a series of electoral defeats across the South, the most ignominious of which was Strom Thurmond's failure to unseat Senator Olin Johnston of South Carolina, despite the latter's (technical) loyalty to President Truman in 1948.³⁸¹ As a leading contemporary political scientist concluded, "[t]he failure of the Dixiecrats in 1948 and 1950 demonstrated that great masses of southerners would no longer be bamboozled by racist appeals."³⁸²

With a few exceptions such as Graham and Pepper (and even they were at most *partial* exceptions, as we shall see in a moment), economically liberal and racially moderate southern politicians continued to thrive in the late 1940s and early 1950s—figures such as Big Jim Folsom, John Sparkman, and Lister Hill in Alabama; Lyndon Johnson in Texas; Earl Long in Louisiana; Kerr Scott in North Carolina; Sid McMath, William Fulbright, and (the early) Orval Faubus in Arkansas; and Albert Gore, Estes Kefauver, and

the vote in Georgia, as compared with 79.8% and 72.0% in neighboring Alabama and South Carolina, respectively. See Heard, *supra* note 102, at 26 tbl. 3; see also Bernd, Georgia, *supra* note 374, at 316 (noting the apparent paradox of the race-baiting Herman Talmadge sweeping to victory in the Democratic gubernatorial primary while President Truman far outdistanced Strom Thurmond in the popular presidential vote).

³⁷⁹ See Heard, *supra* note 102, at 25, 246.

³⁸⁰ See Bartley, *supra* note 58, at 34-36; Heard, *supra* note 102, at 26 tbl. 3; see also Black, *supra* note 3, at 14 (noting that, despite variations across the South, militant segregationists were elected governor of every southern state at some point after *Brown*). Or, one might consider the fact that Arkansas senator William Fulbright, who had successfully opposed the Dixiecrats and remained loyal to Truman in 1948, could no longer resist the tide of racial frenzy after *Brown*. Not only did Fulbright vote in favor of the Southern Manifesto in 1956 and against the Civil Rights Act in 1957, but he also chose to maintain virtual silence in the face of Governor Faubus's histrionics at Little Rock. See Powell, *supra* note 172, at 48-49, 54-57.

³⁸¹ See Heard, *supra* note 102, at 164.

³⁸² *Id.* at 148; Key, *supra* note 228, at 671 (speculating in 1949 that "the Dixiecrat movement may turn out to have been the dying gasp of the Old South"); see also Berman, *supra* note 79, at 133; Ader, *supra* note 376, at 366-69 (both attributing the Dixiecrat failure, in part, to growing southern liberalism).

Frank Clement in Tennessee.³⁸³ As a pair of leading modern southern historians has concluded, “[g]enerally during the postwar decade the politics of economic class made considerable headway against the inertia of the politics of race and caste.”³⁸⁴

Coalitions comprised of the relatively few enfranchised blacks and economically dispossessed whites often produced electoral victories for populist candidates supporting higher government spending on education, roads, public health, old age pensions, and other items, while eschewing racial conflict.³⁸⁵ In Louisiana, at roughly the same time that Strom Thurmond was defeating Harry Truman in the presidential contest, at the state level Earl Long, the King-Fish’s younger brother, was perpetuating the family tradition of politically allying poor whites and blacks (of whom Louisiana permitted a higher percentage to vote than any other deep South state) by highlighting economic issues and downplaying race.³⁸⁶ In Arkansas in 1948 and 1950, the progressive Sid McMath, emphasizing populist economic policies and ignoring race, defeated more overtly segregationist candidates highlighting racial issues such as the FEPC.³⁸⁷ The North Carolina statehouse in the late 1940s and early 1950s was in the hands of progressive W. Kerr Scott, who assembled a successful coalition of farmers, organized labor, and blacks behind a program of increased spending on road construction, education, and rural electrification. As late as 1954, Scott was able to win a Democratic senatorial primary, just weeks after the *Brown* decision, against opponents portraying him as soft on segre-

³⁸³ See Bartley & Graham, *supra* note 369, at 25; Black, *supra* note 3, at 41-45; Goldfield, *supra* note 40, at 48-49; Dallek, *supra* note 186, at 288-89, 368-70 (analyzing Lyndon Johnson’s 1948 election victory in Texas). But cf. Black, *supra* note 3, at 13, 29, 31, 34, 46 (arguing that the relative absence of racial rhetoric prior to *Brown* was attributable to the “settled” nature of the race issue in southern politics, rather than to white acquiescence in gradual change).

³⁸⁴ Bartley & Graham, *supra* note 369, at 25.

³⁸⁵ See *id.* at 33.

³⁸⁶ See *id.* at 35-37; Black, *supra* note 3, at 72; Howard, *supra* note 275, at 546-47. As late as the 1955-1956 Democratic gubernatorial primary, with school desegregation still not appearing imminent in Louisiana, Long was successful in emphasizing his economic redistributive programs and minimizing race. See Black, *supra* note 3, at 73.

³⁸⁷ See Bartley & Graham, *supra* note 369, at 50; Black, *supra* note 3, at 37-39; Sherrill, *supra* note 325, at 77-78.

gation.³⁸⁸ In Virginia, the Republican gubernatorial candidate in 1953, Theodore Dalton, won roughly 45% of the general election vote on a progressive platform of higher teachers' salaries, repeal of the poll tax, and increased spending on state mental institutions; neither party discussed racial segregation in the campaign.³⁸⁹

In Alabama, the most outstanding example of the phenomenon I am describing, Big Jim Folsom won resounding victories in Democratic gubernatorial primaries in 1946 and 1954 on populist platforms of higher state spending on schools, roads, and old age pensions, as well as abolition of the poll tax and reapportionment of the state legislature.³⁹⁰ Folsom's posture towards blacks was one of genuine fraternity, invoking their right to a fair share of Alabama's wealth, speaking of "fellowship and brotherly love," and disparaging racial differences on the grounds that "[a]ll men [are] just alike."³⁹¹ Folsom urged liberalization of voter qualification requirements, appointed voting registrars who administered existing requirements in a color-blind fashion, worked to equalize the salaries of white and black teachers, and supported creation of more state parks for blacks. He defeated with ease candidates who took a much harder line on segregation, while Folsom continued to stress the congruity of interests between poor whites and poor blacks.

³⁸⁸ See Bartley, *supra* note 58, at 72-73; Chafe, *supra* note 3, at 66; Pleasants & Burns, *supra* note 371, at 6; Preston W. Edsall & J. Oliver Williams, *North Carolina: Bipartisan Paradox*, in *The Changing Politics of the South*, *supra* note 12, at 370-71, 373.

³⁸⁹ See Black, *supra* note 3, at 45; Wilkinson, *supra* note 170, at 102-03, 105; Eisenberg, *supra* note 12, at 48-49.

³⁹⁰ For this paragraph, see Bartley & Graham, *supra* note 369, at 38; Frady, *supra* note 189, at 100-01, 111; Norrell, *supra* note 12, at 64, 72-74, 86, 88-89; Schulman, *supra* note 13, at 125; Sherrill, *supra* note 325, at 275; George E. Sims, *The Little Man's Big Friend: James E. Folsom in Alabama Politics, 1946-1958*, at 26, 30, 58, 154, 163-66, 168, 171 (1985); Strong, *supra* note 12, at 446-49; Sullivan, *supra* note 33, at 96. Since Folsom won a sweeping gubernatorial victory the same year that Alabamians approved the disfranchising Boswell Amendment, the lesson seems to be that the Supreme Court's white primary decision created enough of a racial backlash to repudiate black voting but not to significantly harm a racially progressive (by Alabama standards) candidate. In 1951, Alabamians were sufficiently unconcerned about school desegregation that they rejected by a two-to-one vote a proposal for school closures in case of Court invalidation of public school segregation. See Norrell, *supra* note 12, at 80-82; see also Bartley, *supra* note 58, at 56 (noting the Alabama legislature's rejection of a similar proposal in 1953).

³⁹¹ Frady, *supra* note 189, at 102.

Even the notorious 1950 Democratic senatorial primary defeats of Frank Graham in North Carolina and Claude Pepper in Florida are flimsier evidence of a sweeping pre-*Brown* racial backlash than is commonly supposed. There is no denying that both incumbents' defeats were partially attributable to their "softness" on the race issue. Yet a closer look at the elections reveals a considerably more ambiguous message regarding the southern racial climate in 1950.

First, to treat the election results as a simple referendum verdict against the candidates' relatively liberal racial views is plainly mistaken. In his senatorial primary win over Claude Pepper in Florida, George Smathers devoted greater attention to Pepper's support for New Deal/Fair Deal redistributive policies, his close labor union ties, and his moderate stance towards the Soviet Union, than to the race issue.³⁹² Similarly, in the first primary in North Carolina's 1950 Democratic senatorial contest (and to a reduced extent in the runoff primary), Willis Smith focused his attack less on Graham's relatively liberal racial record than on his past affiliations with allegedly subversive organizations ("Frank the Front") and his present association with Truman's allegedly socialist Fair Deal policies, some of which—particularly national health insurance and repeal of the Taft-Hartley Act—were distinctly unpopular in North Carolina.³⁹³ Even when Smith raised the race issue in conjunction with Graham's position on the FEPC—Graham supported the FEPC, but without compulsory enforcement powers—his attacks tended to blend the FEPC with other forms of economic "meddling" by the federal government, suggesting that Smith used the issue primarily as just another arrow in his

³⁹² See Pleasants & Burns, *supra* note 371, at 147-48 (noting that Smathers condemned Pepper's labor support and ridiculed him as "an apologist for Stalin, an associate of fellow travelers and a sponsor for Communist front organizations"); Sherrill, *supra* note 325, at 148-51; Dauer, *supra* note 310, at 133.

³⁹³ See Pleasants & Burns, *supra* note 371, at 24, 42-43, 76, 89, 91, 96-99, 122, 129-32, 171, 218-19, 263; Bartley & Graham, *supra* note 369, at 52; Chafe, *supra* note 3, at 77-78; Edsall & Williams, *supra* note 388, at 373-74. Even before the 1950 election contest, Graham had been under attack for his prior alleged affiliations with known communists. See Pleasants & Burns, *supra* note 371, at 27-30, 35-36, 38. During the campaign, Graham was attacked as "a starry-eyed idealist who had been used time and time again by Communist front organizations." *Id.* at 75. Graham had a difficult time responding to such allegations, which had a substantial basis in fact. See *id.* at 27-30, 100-03, 169-71.

antisocialism quiver.³⁹⁴ In short, the tactics of Smathers in Florida and Smith in North Carolina closely resembled those used by Republicans throughout the nation in 1950—antisocialism attacks on Truman's domestic policies, and McCarthyite challenges to the administration's alleged softness on communism, foreign and domestic.³⁹⁵ It is thus unwarranted to treat the Graham and Pepper defeats entirely, or perhaps even principally, as manifestations of a southern racial backlash, rather than as confirmation of President Truman's unpopularity in 1950 and of the potency of McCarthyism as an electoral weapon.

Second, even to the extent that race played a critical role in Frank Graham's defeat—and in the runoff primary it plainly did³⁹⁶—one must not forget that Graham was more exposed on this issue than any other southern politician of the period. Widely identified as the foremost southern liberal of his time,³⁹⁷ Graham had been a member of Truman's civil rights committee in 1946-1947, the first president of the interracial and integrationist Southern Conference on Human Welfare, and one of only three southern senators (along with Pepper and Estes Kefauver) to oppose the southern filibuster against the FEPC.³⁹⁸ Graham was, moreover, one of the only southern politicians of the period who dared to endorse the eventual abolition of racial segregation (though even he opposed federal compulsion to secure that end), in addition to favoring full equality of suffrage, abolition of the poll tax, and

³⁹⁴ See Pleasants & Burns, *supra* note 371, at 56-57, 92-96, 132, 151.

³⁹⁵ See, e.g., Stephen E. Ambrose, *Nixon: The Education of a Politician, 1913-1962*, at 213-23 (1987); Fried, *supra* note 348, at 129-30; Pleasants & Burns, *supra* note 371, at 97-98. Numerous contemporary observers predicted that the Graham and Pepper primary contests would serve as referenda on the Truman administration and as early tests of the political effectiveness of the communist issue. See *id.* at 108, 120-21, 138-39, 148, 180, 182, 255.

³⁹⁶ See Pleasants & Burns, *supra* note 371, at 226 (noting a "full-blown racial panic" in the runoff primary); *id.* at 216, 219, 221, 228, 263; Lubell, *supra* note 250, at 102-06 (providing anecdotal evidence of the racial hysteria that characterized the runoff primary); Edsall & Williams, *supra* note 388, at 375 (noting that race played an "enormously important" role in the runoff primary).

³⁹⁷ See, e.g., Bartley, *supra* note 58, at 37; Chafe, *supra* note 3, at 3; Lubell, *supra* note 250, at 101; Pleasants & Burns, *supra* note 371, at 12.

³⁹⁸ See Bartley & Graham, *supra* note 369, at 52; Pleasants & Burns, *supra* note 371, at 25-27, 56-57, 151; Edsall & Williams, *supra* note 388, at 373.

enactment of federal anti-lynching legislation.³⁹⁹ Indeed, rather than highlighting Graham's defeat as evidence of a racial backlash, one might instead find it remarkable that someone of Graham's high profile racial liberalism could come within a whisker of winning an outright majority in the first primary—leading Smith by 48.9% to 40.5%—and, after a race-baiting second primary, still poll over 47% of the vote.⁴⁰⁰ As we shall see in the next Section, it is virtually impossible to imagine Graham polling equally well in the frenzied racial politics of the post-*Brown* period.⁴⁰¹

Finally, and perhaps most significantly, the decisive factor transforming Smith's Truman-bashing, McCarthyite first primary campaign into a predominantly race-baiting runoff campaign appears to have been intervening decisions by the United States Supreme Court.⁴⁰² Willis Smith, soundly defeated in the first primary, was on the verge of withdrawing from the race, which would have averted the need for a runoff, when the Supreme Court on June 5, 1950, handed down its decisions in the graduate school and railroad segregation cases.⁴⁰³ These rulings not only persuaded Smith to

³⁹⁹ See Pleasants & Burns, *supra* note 371, at 41, 85. Graham believed that only educational and religious influences, not federal coercion, could ultimately produce southern racial progress.

⁴⁰⁰ See Pleasants & Burns, *supra* note 371, at 185-86 (noting the perception that the first primary result was a ringing endorsement of Graham); *id.* at 189 (recounting the *New York Times*' treatment of Graham's near-victory as a sign of North Carolina's growing liberalism); *id.* at 189, 244; Lubell, *supra* note 250, at 101 (noting that North Carolina's progressive reputation on racial issues appeared to have been borne out by the results of the first primary). That a second primary was even necessary can be attributed to a variety of fortuitous circumstances—Graham's inexperience at organizing a political campaign, his refusal to stoop to personal fund-raising appeals, a stunning political naivete that seemed to disable Graham from responding to political attacks in kind (or even to defend himself from such attacks), a two-week bout with pneumonia that took Graham out of the last fortnight of the first primary campaign, and his incredible refusal to publicly announce during the campaign his opposition to voting cloture on the southern filibuster against FEPC—opposition which he manifested in his vote against cloture *after* his electoral defeat. See Pleasants & Burns, *supra* note 371, at 52, 80-82, 111-12, 124-25, 149-51, 211-12, 264, 266.

⁴⁰¹ See *infra* note 426 and accompanying text (describing the post-*Brown* backlash in North Carolina).

⁴⁰² See Pleasants & Burns, *supra* note 371, at 268 (“[T]he Supreme Court rulings turned the second primary into a referendum on racial segregation.”); Lubell, *supra* note 250, at 104.

⁴⁰³ See Pleasants & Burns, *supra* note 371, at 194-95, 197. The Court decisions were *Sweatt v. Painter*, 339 U.S. 629 (1950) (ordering admission of a black student to the University of Texas Law School on the ground that the state's black law school did not

demand the runoff election to which he was entitled, but also enabled him to convert race into the dominant issue of the campaign.⁴⁰⁴ North Carolina's own university segregation case was then pending in federal district court, and state reaction to the Supreme Court decisions was "immediate and ominous."⁴⁰⁵ Smith moved quickly to take electoral advantage of the situation, blanketing the state with letters stressing the importance of the new Court decisions.⁴⁰⁶ Moreover, against the backdrop of the segregation rulings, the FEPC and the alleged racial bloc vote for Graham in the first primary assumed a new dimension in voters' minds.⁴⁰⁷ Whereas in the first primary, Smith had been unable to convince eastern North Carolina black belt whites—a core constituency in Governor Scott's populist economic coalition—to desert Graham over the race issue,⁴⁰⁸ in the runoff primary Graham was decimated in the eastern counties.⁴⁰⁹ Many contemporary observers and campaign participants identified the intervening Supreme

satisfy the equality requirement), *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) (holding unconstitutional various segregation restrictions imposed on a black student admitted to the formerly all-white University of Oklahoma Department of Education), and *Henderson v. United States*, 339 U.S. 816 (1950) (invalidating on statutory grounds a railroad company rule racially segregating its dining car with a partition).

⁴⁰⁴ See Pleasants & Burns, *supra* note 371, at 200-01.

⁴⁰⁵ *Id.* at 195, 268-69.

⁴⁰⁶ See *id.* at 227.

⁴⁰⁷ See *id.* at 216 (observing that early in the second primary campaign, it was clear "that the recent Court decisions had given racial issues a renewed urgency among white voters statewide but especially among those living in eastern North Carolina"); *id.* at 269. On Smith's skillful use of the racial bloc vote allegation, see *id.* at 190, 194, 200-01, 208, 219, 234-36; Edsall & Williams, *supra* note 388, at 375. This is a time-honored southern political tactic. See Bartley, *supra* note 58, at 8 ("[I]n the Deep South the candidate favored by Negro voters in a first primary faced the charge of being the NAACP candidate in a second primary."); Black, *supra* note 3, at 56-57 (noting that George Wallace used the racial bloc voting allegation effectively in the 1970 Alabama gubernatorial primary after placing second in the first primary); *id.* at 76 (noting that arch-segregationist Jimmie Davis used the bloc vote charge effectively against moderate segregationist deLesseps Morrison in the 1959-1960 runoff primary in Louisiana).

⁴⁰⁸ See Pleasants & Burns, *supra* note 371, at 259-60, 263 (noting that in the first primary, Graham fell just 2,000 votes short of winning an absolute majority in eastern North Carolina, and won 23 of the 45 North Carolina counties with 30% or higher black population).

⁴⁰⁹ See *id.* at 261, 263 (noting that Graham had outpolled Smith in eastern North Carolina by 16,000 votes in the first primary, but was defeated by 21,000 votes in the second primary, and won only 9 of 45 counties with black populations in excess of 30%); Lubell, *supra* note 250, at 106 (noting that in the runoff primary Graham lost 18 eastern counties with large black populations that he had won in the first primary).

Court decisions as possibly the decisive factor in the runoff primary.⁴¹⁰ Thus, the Court's 1950 graduate school and railroad segregation decisions appear to have had, on a small scale, the same sort of catalyzing effect on white racial opinion that this Article attributes to *Brown* on a more global scale.⁴¹¹

It is worth noting as well that, as with Smith's 1950 victory over Graham in North Carolina, most other contemporaneous southern election campaigns that were characterized by extreme race-baiting placed some emphasis on Supreme Court interventions in southern racial practices. Herman Talmadge's demagogic 1950 Georgia gubernatorial primary campaign invoked the same graduate and railroad desegregation decisions that played such a vital role in Graham's defeat.⁴¹² Earlier, the Court's invalidation of the white primary in *Smith v. Allwright*⁴¹³ had generated its own racial backlash across the deep South.⁴¹⁴ When 135,000 blacks registered to vote for the Georgia Democratic gubernatorial primary of 1946, after the Supreme Court refused to review a lower court decision applying *Smith* to invalidate Georgia's white primary, Eugene Talmadge converted the threat of mass black voter participation into the centerpiece of his race-baiting campaign.⁴¹⁵ Similarly, in Mississippi's 1951 Democratic gubernatorial primary, the emergence of an unusually large number of black voters (by Mississippi standards), in a delayed response to *Smith*, produced a white backlash.⁴¹⁶

⁴¹⁰ See Pleasants & Burns, *supra* note 371, at 248, 250, 254-55.

⁴¹¹ See *infra* Part II.B.2; see also Lubell, *supra* note 250, at 120 (observing in 1951 that "the immediate political effects of the High Court's decisions have been to all but throttle political 'liberalism' in the South").

⁴¹² See Bartley, *supra* note 58, at 40-41; Black, *supra* note 3, at 35-36.

⁴¹³ 321 U.S. 649 (1944).

⁴¹⁴ See Bartley, *supra* note 58, at 29-30; Hine, *supra* note 257, at 223, 225-26; Norrell, *supra* note 12, at 55; Robert J. Norrell, Labor at the Ballot Box: Alabama Politics from the New Deal to the Dixiecrat Movement, 57 J.S. Hist. 201, 228-29 (1991).

⁴¹⁵ See Heard, *supra* note 102, at 192; Bernd, White Supremacy, *supra* note 374, at 492, 494-95, 498; Sullivan, *supra* note 33, at 93-94; see also Bartley, *supra* note 58, at 31-32 (connecting Theodore Bilbo's 1946 race-baiting campaign in Mississippi to the *Smith* decision).

⁴¹⁶ See Fortenberry & Abney, *supra* note 12, at 505. It is worth noting, though, that while racial segregation received prominent attention in this campaign, the theme was far less pervasive than it would become after *Brown*. See Black, *supra* note 3, at 39.

In sum, neither the Dixiecrat revolt of 1948, the 1950 Democratic senatorial primary defeats of Frank Graham and Claude Pepper, nor the sundry other race-baiting political campaigns of the early postwar era demonstrate the existence of a powerful southern racial backlash prior to *Brown*. While southern defense of the racial status quo was unquestionably beginning to stiffen, the politics of the late 1940s and early 1950s bore little resemblance to the racial fanaticism which followed *Brown*.⁴¹⁷

2. *The post-Brown Unification of Southern Resistance Sentiment*

To invoke one final Civil War analogy, *Brown* was to President Truman's civil rights proposals, as the firing on Fort Sumter and the ensuing call-up of the militia was to President Lincoln's election. While Truman's civil rights proposals, like Lincoln's election, were sufficient to drive the *deep* South into revolt, only the reality (as opposed to the mere threat) of federal intervention in southern affairs—*Brown* and Fort Sumter, respectively—could rally the *upper* South behind regional unity.⁴¹⁸ While the timing varied across states,⁴¹⁹ throughout the South the general pattern was con-

⁴¹⁷ See Black, *supra* note 3, at 12-13 (noting that, "[w]ith respect to southern electoral politics, . . . [*Brown*] ultimately accomplished what the white primary and Fair Employment Practices Committee controversies of the 1940s failed to achieve: the revival of an extraordinarily divisive issue. . .").

⁴¹⁸ On the secession point, see, e.g., Michael F. Holt, *The Political Crisis of the 1850s*, at 219, 227, 256-57 (1978); John C. Inscoe, *Mountain Masters, Slavery, and the Sectional Crisis in Western North Carolina* 329-37 (1989); McPherson, *supra* note 19, at 234-35, 254-55, 276-79, 282-83.

⁴¹⁹ In Mississippi, the backlash against *Brown* was, in some ways, virtually immediate. By September, 1954, 17 Mississippi counties had established citizens' councils, dedicated to the preservation of segregation as a way of life. See McMillen, *supra* note 5, at 16; see also Johnston, *supra* note 138, at 64 (noting that in the 1954 senatorial primary campaign, Senator Eastland was already campaigning as the man who could best fight the *Brown* decision).

Yet in other states, the backlash against *Brown* crested much later. In Arkansas, for example, Orval Faubus was still declining to demagogue on the race issue as late as the 1956 Democratic gubernatorial primary. See Black, *supra* note 3, at 100; Sherrill, *supra* note 325, at 84-85. And in Louisiana, the citizens' council movement did not gain any significant strength until the autumn of 1955, and the racial backlash that would decimate the Long faction in 1959-1960 had yet to materialize in the Democratic gubernatorial primaries of 1955-1956, which saw Earl Long renominated for governor. See McMillen, *supra* note 5, at 62-63; Howard, *supra* note 275, at 551; see also Wilkinson, *supra* note 170, at 122 (noting an initially restrained response to *Brown* in Virginia); Strong, *supra* note 12, at 449 (noting the initially mild reaction to *Brown* in Alabama); Joseph A. Tomberlin,

sistent: *Brown* converted race into the decisive focus of southern politics, and massive resistance became its dominant theme.⁴²⁰ One historian of the civil rights movement has observed that *Brown* "unleashed a wave of racism that reached hysterical proportions,"⁴²¹ while another has stated that *Brown* produced a "quantum change literally overnight" in the southern racial climate.⁴²² Virtually no southern politician could survive in this political environment without toeing the massive resistance line, and in most states politicians struggled against one another to occupy the most extreme position on the racial spectrum.⁴²³ Almost without exception, racial moderation was, for a period, submerged beneath

Florida Whites and the *Brown* Decision of 1954, 51 Fla. Hist. Q. 22, 24-29, 32, 35 (1972) (describing the same in Florida). Apparently, the timing of the *Brown* backlash depended on the white conservatives' perception of the imminence of the desegregation threat, which turned more on events like NAACP school desegregation petitions or crises like Autherine Lucy's attempted desegregation of the University of Alabama in early 1956 than on the *Brown* decision itself. See *infra* note 430 and accompanying text.

⁴²⁰ See Bartley, *supra* note 58, at 17 ("Racial issues dominated southern politics during the 1950's as they had not done for half a century."); Bartley & Graham, *supra* note 369, at 51, 53; McMillen, *supra* note 5, at 361 (observing that in the years following *Brown*, southern whites from every station in life "pledged themselves to defend the status quo"); Bernd, Georgia, *supra* note 374, at 327 (noting that after *Brown*, "the racial question, never far from the center of the stage, became once more the dominant theme of Georgia political life"); Eisenberg, *supra* note 12, at 39-40 (noting that *Brown*, for a period of about seven years, fundamentally altered the process of political development in Virginia); Fortenberry & Abney, *supra* note 12, at 517-18 (noting "Mississippi's obsession with the idea of resistance to integration," which displaced all other political issues); Norrell, *supra* note 12, at 81-82 (noting that school desegregation proved to be "an issue around which conservatives could rally most whites against racial change").

⁴²¹ Adam Fairclough, *To Redeem the Soul of America: The Southern Christian Leadership Conference and Martin Luther King, Jr.* 21 (1987).

⁴²² Garrow, *supra* note 12, at 9; see also Black, *supra* note 3, at 31 (observing that *Brown* converted many moderate segregationists into extremists overnight); Fortenberry & Abney, *supra* note 12, at 506 (stating that the *Brown* decision "set the tone for Mississippi politics for a decade").

⁴²³ See Barone, *supra* note 17, at 275-76 (noting that *Brown* inaugurated an era in which southerners "consistently supported the most anti-civil rights candidate"); Bartley, *supra* note 58, at 68 (observing that "politicians maneuvered frantically to occupy the extreme segregationist position"); Black, *supra* note 3, at 52 (noting that from 1958 to 1970, Alabama "without exception selected as governor the most militant of the available segregationist candidates"); Fortenberry & Abney, *supra* note 12, at 506 (noting that each candidate in the Mississippi gubernatorial election of 1955 insisted that he could best defend segregation); Strong, *supra* note 12, at 446 (noting that after *Brown*, "Alabama political history has consisted of contests over who can be the toughest segregationist candidate for governor"). States such as Tennessee and Texas were partial exceptions to this general southern pattern, though even those states endured a backlash after Little

a torrent of white supremacist sentiment, as *Brown* collapsed the southern racial spectrum into two poles, integrationist and segregationist.⁴²⁴ Since no integrationist politician could survive anywhere in the South in the middle or late 1950s, moderates necessarily gravitated towards the right, as evidenced, for example, by the decision of men such as William Fulbright, Lister Hill and John Sparkman to sign the Southern Manifesto.⁴²⁵

Even in a state like North Carolina, widely regarded as the prototype of southern moderation, political opinion shifted dramatically to the right in the mid-1950s. In 1956, two congressmen who had declined to sign the Southern Manifesto were defeated for reelection in Democratic primaries, and Governor Luther Hodges,

Rock. See Bartley & Graham, *supra* note 369, at 76-79; Black, *supra* note 3, at 87, 118-19, 122, 128-29.

⁴²⁴ See Bartley, *supra* note 58, at 192 (noting statement by Roy Harris, president of the Citizens' Councils of America, that "[i]f you're a white man, then it's time to stand up with us, or black your face and get on the other side") (quoted in *Chattanooga Times*, Sept. 22, 1958); *id.* at 247 (quoting Mississippi congressman John Bell Williams to the effect that "[t]he self-styled moderates are simply saying they believe in a little bit of pregnancy") (quoted in *Delta Democrat-Times*, Feb. 29, 1956); Frady, *supra* note 189, at 207 (reporting retrospective observation by John Patterson, Alabama governor from 1959-1963, that in 1958 there was no position other than being either for whites or for blacks); Johnston, *supra* note 138, at 73 (noting a speech by a Mississippi circuit judge to his grand jury regarding the issue of segregation, in which he observed that "[t]here is no place for moderation in the matter of segregation"); McMillen, *supra* note 5, at 235 (noting that in the repressive atmosphere spawned by *Brown*, moderate racial opinion was vilified, and those thought to be "soft" on segregation were labeled traitors); Norrell, *supra* note 12, at 102 (quoting one Tuskegeean to the effect that there was no possible middle ground—one either agreed with Engelhardt [a massive resistance leader from black belt Macon County] or else one was portrayed as "a nigger-loving communist").

This ramification of *Brown* was exactly what Justice Black and other southern liberals had predicted. See Pleasants & Burns, *supra* note 371, at 96 (describing views of Frank Porter Graham); Sosna, *supra* note 17, at 158-59 (describing views of Virginius Dabney); Tushnet, *supra* note 328, at 1928 (describing views of Justice Black).

⁴²⁵ See Bartley, *supra* note 58, at 116-17; Helen L. Jacobstein, *The Segregation Factor in the Florida Democratic Gubernatorial Primary of 1956*, at 6-7 (1972); Powell, *supra* note 172, at 21-27. The Southern Manifesto condemned *Brown* as a "clear abuse of judicial power" and approved resistance to forced integration "by any lawful means." 102 Cong. Rec. 4515-16 (1956). The only three southern senators not to sign the document were Lyndon Johnson, Estes Kefauver, and Albert Gore, all of whom had ambitions for national office, and all of whom came from the southern periphery (Texas and Tennessee, respectively).

Ironically, Senator Fulbright's decision to protect his Arkansas political base by toeing the southern line on the race issue probably cost him the opportunity to become secretary of state in the Kennedy administration. See Michael R. Beschloss, *The Crisis Years: Kennedy and Khrushchev, 1960-1963*, at 75 (1991).

seeking to fend off segregationist opposition in his reelection bid, disavowed his earlier moderation and began attacking the NAACP, broaching the possibility of school closures (which he earlier had condemned), and endorsing a legislative denunciation of the *Brown* decision.⁴²⁶ Similarly in Florida, where high urbanization and relatively low black population density should have predicted a racially moderate climate, segregation became a dominant campaign theme in the post-*Brown* era. The formerly moderate LeRoy Collins was forced far to the right in the 1956 gubernatorial primary to protect his flank against a rabid segregationist. In the two succeeding Florida gubernatorial contests, the strongest segregationist candidate won by attacking his opponents for being too moderate on the race issue.⁴²⁷

Whatever remnant of moderate racial opinion that might have survived in this political atmosphere was then squelched through various forms of economic, social, and political intimidation, emanating most notably from the citizens' councils which were established in response to *Brown*.⁴²⁸ The inauguration of the citizens' council movement in Mississippi and Alabama in 1954 plainly was a response to the *Brown* decision; organized resistance to racial

⁴²⁶ See Chafe, *supra* note 3, at 66-73 & 366 n.13; Bartley, *supra* note 58, at 97 & n.48, 142-43; Powell, *supra* note 172, at 29.

⁴²⁷ See Bartley, *supra* note 58, at 142, 342; Bartley & Graham, *supra* note 369, at 63-66; Black, *supra* note 3, at 90-96; Jacobstein, *supra* note 425, at 27-40. But cf. Dauer, *supra* note 12, at 157 (emphasizing that Florida has pursued racially moderate politics since World War II and that Collins defeated a more segregationist candidate in 1956). The malapportioned Florida legislature, in which northern Florida rural counties were heavily overrepresented, was more susceptible to massive resistance mentality than the governor, and spent much of the late 1950s in special session adopting a variety of segregation programs. See McMillen, *supra* note 5, at 99-100.

⁴²⁸ See Bartley, *supra* note 58, at 190, 193 (noting that the citizens' council served as "the cutting edge of the drive for regimented orthodoxy"); Ely, *supra* note 162, at 32-33 (noting that liberal racial sentiment in Virginia was squashed in the mid-1950s); Goldfield, *supra* note 40, at 81-84 (observing that citizens' councils succeeded in entirely squelching moderate racial opinion); Howard, *supra* note 275, at 555 (noting that "federal encroachment"—that is, *Brown*—provided the impetus for the citizens' council movement, which stiffened resistance among local and state officials); Thornton, *supra* note 276, at 54-55, 110-11 (describing the devastating impact of citizens' council action on moderate white opinion in Birmingham and Selma).

The citizens' councils were reputed to consist of "respectable" white civic leaders devoted to preservation of racial segregation, while eschewing the nightriding tactics of the Klan. See McMillen, *supra* note 5, at 19, 21-22, 52, 161, 359-60. The Ku Klux Klan served as the ultimate enforcer of racial orthodoxy. See Bartley, *supra* note 58, at 208-10.

change met with an enthusiastic response only after the blow had fallen.⁴²⁹ Council membership rose and fell with the white community's perception of the imminence of racial change. The first major threat was the original *Brown* decision; the next was *Brown II*, soon followed by the Montgomery bus boycott (which led to the organization of local citizens' councils in Alabama at a "feverish rate") and Autherine Lucy's effort to desegregate the University of Alabama in early 1956.⁴³⁰ Where the citizens' councils were sufficiently strong, as in Mississippi or Alabama, virtually no deviation from official segregationist orthodoxy was tolerated.⁴³¹

Three points regarding the post-*Brown* southern political backlash deserve special emphasis. First, *Brown* elevated race over class for the relatively less affluent whites who were the backbone of the populist coalitions that had been ascendant in several southern states. Second, *Brown* led rural black belt whites to exert their disproportionate political power at the state level to exact racial conformity from other whites less preoccupied with such issues. Third, many of those whites less transfixed by race nonetheless felt obliged to rally around the white supremacist banner when the issue was drawn in the stark terms of federal compulsion versus states' rights, as it was after *Brown*, and even more compellingly, after Little Rock. I shall consider these three points in turn.

⁴²⁹ See McMillen, *supra* note 5, at 16-17, 25-27, 41-45; see also Bartley, *supra* note 58, at 55-56 (noting that the Mississippi and Alabama legislatures in 1953 both rejected school closure provisions proposed in anticipation of *Brown*).

⁴³⁰ See McMillen, *supra* note 5, at 28, 30-31, 43-44, 50; accord Bartley, *supra* note 58, at 90, 92.

⁴³¹ See McMillen, *supra* note 5, at 236, 252-53. Mississippi's citizens' council, the strongest in the South, sought to control the racial content of educational materials used in schools, and to exert pressure against the appearance of racially moderate speakers at state universities. See Bartley, *supra* note 58, at 225-29; McMillen, *supra* note 5, at 240-45. Northern reporters in Mississippi noted similarities between the totalitarian tendencies of the citizens' council and the Soviet Communist Party. See Bartley, *supra* note 58, at 86; McMillen, *supra* note 5, at 237. In New Orleans, the citizens' council tried to prevent school desegregation by circulating lists containing automobile descriptions and telephone numbers of volunteers transporting white children to desegregated schools. *Id.* at 290. And in Tuskegee, Alabama, parents willing to have their children attend desegregated schools and merchants amenable to sharing political power with blacks rather than facing economic devastation from a black consumer boycott were subjected to physical and economic threats of retaliation as well as to social ostracism. See Norrell, *supra* note 12, at 102, 152-53.

Brown elevated race over class in southern politics, just as southern conservatives had done a half century earlier when confronted with the Populist threat of interracial economic alliances.⁴³² Those lower class whites who had provided much of the support for the populist economic policies of the late 1940s and early 1950s were also the persons most likely to feel threatened by the demise of racial segregation.⁴³³ Thus, coalitions that had joined what few southern black voters there were with lower class whites, in opposition to the economic elite, were increasingly replaced, as race came to preponderate over class, by coalitions of blacks and upper class whites (whose support for segregation often was tempered by a concern for economic growth, as well as by the knowledge that residential segregation would render school desegregation largely irrelevant to their lives), in opposition to less affluent whites.⁴³⁴ Thus, for example, in Norfolk, Virginia, in 1958, lower class whites voted by a nine-to-one margin in favor of school closures over desegregation, while upper class whites divided evenly on the issue.⁴³⁵ One pair of leading southern historians has concluded that "in state after state the populist-New Deal alignments of the early postwar years broke apart, as rural and low-income whites

⁴³² See Bartley & Graham, *supra* note 369, at 187 ("[T]he heating up of the race question [in the wake of *Brown*] did fundamentally transform the evolution of the New Dealish patterns that had marked the late 1940s and the early 1950s."); Havard, *From Past to Future: An Overview of Southern Politics*, in *The Changing Politics of the South*, *supra* note 12, at 706 (observing that "the prototype of the frustrated southern Populist, Tom Watson of Georgia, has been reproduced most recently in Orval Faubus of Arkansas and George Wallace of Alabama," as populist opposition to conservative economic policies was diverted into racial politics). On black disfranchisement as a conservative response to Populist efforts to create interracial farmer alliances in the early 1890s, see Key, *supra* note 228, at 8, 541; Kousser, *supra* note 96, at 18, 36-37, 147-48, 203, 221; Lawson, *supra* note 99, at 9; Moon, *supra* note 96, at 72-73.

⁴³³ See Bartley & Graham, *supra* note 369, at 53.

⁴³⁴ See *id.*

⁴³⁵ See Abbott, *supra* note 163, at 108; see also Bartley, *supra* note 58, at 253-54, 337 (noting that one cause of the Little Rock and New Orleans school crises was that the desegregation plans called for only lower class whites to attend school with blacks); Inger, *supra* note 86, at 88-89 (describing the situation in New Orleans); McMillen, *supra* note 5, at 292-93 (same); cf. Sherrill, *supra* note 325, at 280 (noting that George Wallace made political hay of the fact that Judge Johnson ordered public school integration while sending his child to a private segregated academy, while impecunious Wallace had to send his son to a desegregated public school).

shifted from support of economic reform to defense of social conservatism."⁴³⁶

In Arkansas, the economically populist and racially moderate administrations of Governors Sid McMath and the early Orval Faubus were replaced by the latter's massive resistance administration of 1957-1958, as Faubus transformed himself from a predominantly hill country candidate who won majority black support in the cities into a delta county and urban lower class white candidate.⁴³⁷ Likewise in Louisiana, the Long coalition of blacks and poor whites collapsed under the pressure of racial politics, as the Democratic gubernatorial primary of 1959-1960 saw race replace

⁴³⁶ Bartley & Graham, *supra* note 369, at 80; see also *id.* at 186 (making a similar assertion).

Ultimately, it was the race issue as well that enabled the Republican Party to achieve majority status in the South. Ironically, while the race issue drove lower class whites towards more segregationist candidates within the Democratic Party in statewide elections, they initially continued to show the strongest allegiance of any white southerners to the national Democratic Party, undoubtedly as a result of Civil War era loyalties that did not die easily. See *id.* at 185, 187; Heard, *supra* note 102, at 242-43. This relationship was too unstable to persist for long, and by the late 1950s and early 1960s, culminating with Goldwater's sweeping deep South triumph in 1964, lower class whites flocked to the Republican Party on the basis of the race issue, joining their upper class compatriots who had already transferred their political allegiance on economic grounds. See Bartley & Graham, *supra*, at 94-95, 105-06 & tbl. 4.7, 187; see also Schulman, *supra* note 13, at 215 (noting the general movement of low income, rural whites toward the Republican Party); White, *supra* note 13, at 455-56 (noting that Goldwater, unlike Eisenhower, won the southern rural white vote); Bernd, Georgia, *supra* note 374, at 338 (noting that poor, rural whites who had supported staunch segregationist Talmadge at the state level stayed with the national Democratic Party until the 1964 presidential election); Havard, *supra* note 432, at 713-14 (noting that between 1956 and 1964 the South went from being the region most supportive of the Democratic Party to being the least supportive, a trend that became even more pronounced in 1968); Strong, *supra* note 12, at 438-40 (noting that by the time of the 1962 Alabama Senate race, Republicans were outpolling Democrats among black belt whites, and that in 1964 Goldwater ran strongest in the Alabama black belt, where traditionally the Republican Party had been weakest).

The white vote then split neatly along class lines in 1968, when George Wallace pried away the lower class whites, while Richard Nixon ran strongly among more affluent and traditional mountain county whites; Hubert Humphrey's southern support was largely limited to blacks. See Bartley & Graham, *supra* note 369, at 127-28 & fig. 5.4. Nixon then reassembled that cross-class white coalition in 1972, winning a 70.5% majority in the South. See *id.* at 189.

⁴³⁷ See Bartley & Graham, *supra* note 369, at 57 & fig. 3.1; Black, *supra* note 3, at 103; Freyer, *supra* note 176, at 23-24, 75-76, 143-44; Pettigrew & Campbell, *supra* note 301, at 437-39, 445; Richard E. Yates, Arkansas: Independent and Unpredictable, in *The Changing Politics of the South*, *supra* note 12, at 258-59, 281; see also Sherrill, *supra* note 325, at 82 (noting that Faubus carried the black vote more conclusively than the white vote in 1954).

economics as the dominant issue for the first time in a generation (since 1924). The candidates of the Long faction failed even to make the runoff primary, which turned into a contest over which candidate could adopt the most segregationist position.⁴³⁸ In Mississippi, a traditional geographic cleavage between delta conservatives and hill country populists was surmounted after *Brown* when race became the state's dominant political issue, enabling conservative forces to gain the upper hand.⁴³⁹ Similar voting patterns developed in Georgia, as rural lower status whites opposed coalitions of metropolitan blacks and more affluent whites.⁴⁴⁰

In Alabama as well, the postwar rural populism which Big Jim Folsom had ridden to political ascendancy fell victim to the race issue. Folsom's relative racial liberalism put him badly out of touch with the post-*Brown* times, as he refused to condemn the *Brown* decision, vetoed several pieces of massive resistance legislation, ridiculed the state legislature's nullification resolution as "just a bunch of hogwash," lambasted the citizens' councils as "haters and baiters," and invited Harlem congressman Adam Clayton Powell to the governor's mansion for a drink.⁴⁴¹ In 1956, Alabama voters overwhelmingly repudiated Folsom's racial progressivism, defeating him by almost a three-to-one margin in his race for Democratic national committeeman—a contest that turned into a virtual refer-

⁴³⁸ See Bartley, *supra* note 58, at 287; Bartley & Graham, *supra* note 369, at 59-60; Black, *supra* note 3, at 76; Perry H. Howard, *Political Tendencies in Louisiana* 339-45 (1971); Howard, *supra* note 275, at 555-59. Long's efforts to stem the purges of black registrants from the voter rolls in the late 1950s led to confrontation between him and the legislature, with segregationists in both houses being powerful enough to defeat him. See Bartley, *supra*, at 286-87; Black, *supra* note 3, at 76; Garrow, *supra* note 12, at 9-10; McMillen, *supra* note 5, at 227; Howard, *supra* note 275, at 555. In the 1963-1964 gubernatorial contest in Louisiana, the candidates' relative commitment to segregation remained the dominant issue. See Black, *supra* note 3, at 76-77; Howard, *supra* note 275, at 561.

⁴³⁹ See Fortenberry & Abney, *supra* note 12, at 472-75, 485, 502-04, 506. The post-*Brown* backlash in Mississippi was also manifested in an overwhelming referendum vote in favor of a 1954 constitutional amendment imposing a new voter literacy test (with the purpose of disfranchising blacks) after a similar measure had failed of enactment just two years earlier, and also by the wholesale purges of enfranchised blacks from the voter rolls. See Burk, *supra* note 41, at 206; Garrow, *supra* note 12, at 9; McMillen, *supra* note 5, at 215-16, 219, 320; Fortenberry & Abney, *supra* note 12, at 485.

⁴⁴⁰ See Bartley & Graham, *supra* note 369, at 68.

⁴⁴¹ See Bartley, *supra* note 58, at 280 n.39, 282-83; Black, *supra* note 3, at 52; Frady, *supra* note 189, at 103, 108; McMillen, *supra* note 5, at 316; Sims, *supra* note 390, at 169-70, 173-77, 183-84; Strong, *supra* note 12, at 449-50.

endum on racial issues.⁴⁴² In 1958, all candidates for the Democratic gubernatorial nomination were repudiating Folsom's racial moderation and competing to adopt the most extreme segregationist position.⁴⁴³ John Patterson, who as attorney general had shut down NAACP operations in the state and sought to enforce an anti-boycott law against Tuskegee blacks protesting a state law gerrymandering them out of the city, proved the most adept at exploiting the race issue, and rode it to an easy victory.⁴⁴⁴ In 1962, the same rural lower class whites who had supported Jim Folsom's populism in the late 1940s and early 1950s tended to support George Wallace, who had no equal in exploiting the racial hysteria of the post-Brown era.⁴⁴⁵

Brown also abruptly halted "the moderating process at work in Virginia politics."⁴⁴⁶ In the 1949 Democratic gubernatorial primary, the Byrd machine had been subjected to its first serious challenge in recent memory from within the party, and in 1954 had suffered a revolt against its leadership by young legislators favoring expanded public services.⁴⁴⁷ Most significantly, though, in 1953 a Republican gubernatorial candidate, Theodore Dalton, had won roughly 45% of the vote in the general election, running on a relatively progressive platform of increased state services and repeal of the poll tax.⁴⁴⁸ After *Brown* raised the spectre of integration, though, anti-organization leaders found it extremely difficult to arouse a popular following for progressive, nonracial causes; the Byrd machine adeptly reinvigorated race as Virginia's dominant political issue.⁴⁴⁹ In this political environment, the same Republi-

⁴⁴² See Sims, *supra* note 390, at 185-86 (calling the result "[t]he worst defeat of Folsom's political career" and "an unmistakable indication of the damage that the civil rights movement had done to his popularity").

⁴⁴³ See Bartley, *supra* note 58, at 286; Bartley & Graham, *supra* note 369, at 67; Black, *supra* note 3, at 52; Strong, *supra* note 12, at 450.

⁴⁴⁴ See Black, *supra* note 3, at 52; Norrell, *supra* note 12, at 98.

⁴⁴⁵ See Bartley & Graham, *supra* note 369, at 67-68; see also Strong, *supra* note 12, at 452 (noting that, as governor, Wallace continued to pursue the populist economic policies of Folsom); *infra* text accompanying notes 531-55 (further discussing Wallace).

⁴⁴⁶ Eisenberg, *supra* note 12, at 51; see *id.* at 39-40.

⁴⁴⁷ See Wilkinson, *supra* note 170, at 89, 92-97, 106-12; Eisenberg, *supra* note 12, at 46-47, 50.

⁴⁴⁸ See *supra* note 389.

⁴⁴⁹ See Bartley, *supra* note 58, at 270-71; Black, *supra* note 3, at 45 (noting that the Byrd organization made *Brown* the paramount issue in response to concerns of crumbling

can candidate who had come so close to winning in 1953, suffered a shattering defeat in the 1957 gubernatorial election at the hands of the Byrd machine candidate, Lindsay Almond, who ran on a strong massive resistance platform.⁴⁵⁰

Brown not only elevated race over class as the dominant issue in southern politics, but it also energized black belt whites to exert their disproportionate political power to compel white unity on racial matters. While the vast majority of southern whites in the 1950s favored racial segregation,⁴⁵¹ the depth of their commitment varied enormously, depending primarily upon their demographic situation. Even in southern states with relatively large black populations, portions of each state were populated almost entirely by whites. While such areas were generally supportive of white supremacy, residents were principally concerned with other issues that impacted their lives more directly.⁴⁵² Thus, for example, in western Texas and the hills of northwest Arkansas, areas with minuscule black populations, compliance with *Brown* was often swift and painless.⁴⁵³

One of the momentous facts of southern political history is that black belt whites have always enjoyed disproportionate political influence, owing both to the malapportionment of state legislatures

support); Wilkinson, *supra* note 170, at 112 (arguing that the Byrd organization, whose star "was at last beginning to dim" in the early 1950s, "refueled its sputtering engines" on massive resistance); Eisenberg, *supra* note 12, at 46, 51.

⁴⁵⁰ See Bartley, *supra* note 58, at 270-71; Wilkinson, *supra* note 170, at 137-38; Eisenberg, *supra* note 12, at 53; see also *infra* note 473 (further discussing Dalton's defeat).

⁴⁵¹ See Bartley, *supra* note 58, at 13-14; Ely, *supra* note 162, at 5, 34 (regarding white public opinion in Virginia); McMillen, *supra* note 5, at 309-10 (noting that even in peripheral South states, the overwhelming majority of white sentiment was unequivocally opposed to desegregation); Fortenberry & Abney, *supra* note 12, at 517-18 (regarding white public opinion in Mississippi); Yates, *supra* note 437, at 271 (regarding white public opinion in Arkansas).

⁴⁵² See Ely, *supra* note 162, at 34-36 (describing the political situation in southwest Virginia); McMillen, *supra* note 5, at 6 (noting that in areas of very small black population, white compliance with *Brown* "was very often achieved with comparative ease"); *id.* at 45-46 (noting the almost complete failure of the citizens' council movement to penetrate northern Alabama with its small black population); Pettigrew & Campbell, *supra* note 301, at 441, 443 (describing Arkansas); Weeks, *supra* note 225, at 201-02 (describing large parts of Texas); Yates, *supra* note 437, at 235-36 (describing Arkansas hill country).

⁴⁵³ See Bartley, *supra* note 58, at 138; Black, *supra* note 3, at 125 & 373 n.73 (noting that all but five of the 78 desegregated school districts in the South in the 1955-1956 schoolyear were in Texas); McMillen, *supra* note 5, at 7-9, 93-94 & n.4, 103; Yates, *supra* note 437, at 271.

in favor of rural counties and to the practice of apportioning representatives according to total (rather than voting) population, which effectively enabled black belt whites to cast votes in behalf of their disfranchised black neighbors.⁴⁵⁴ A startling blow like the *Brown* decision awakened black belt whites to the imminent threat posed to their white supremacist world view, and they moved quickly to reassert their traditional dominance over southern politics. In Virginia, the Southside black belt defeated a post-*Brown* state legislative proposal espousing local pupil allocation (the Gray Commission proposal), which would have permitted liberal northern Virginia school boards to comply with *Brown*.⁴⁵⁵ Similarly, the state legislature revoked Arlington County's right to elect school board members after the board published an outline of its desegregation plan for the 1956-1957 school year.⁴⁵⁶ In 1961, Atlanta businessmen were seeking peaceful school desegregation in compliance with a federal court order, while Governor Vandiver, elected via the county unit system which grossly exaggerated rural voting power, was still promising to preserve segregation forever.⁴⁵⁷ Flor-

⁴⁵⁴ See Bartley, *supra* note 58, at 18-19, 42, 94, 144; Frady, *supra* note 189, at 101 (regarding the black belt in Alabama); Key, *supra* note 228, at 517; *id.* at 666 (noting the "extremely disproportionate strength" of black belt whites in southern state legislatures); McMillen, *supra* note 5, at 99-101 (regarding Florida); Schulman, *supra* note 13, at 121 (noting the substantial malapportionment in favor of the black belt in southern state legislatures); Wilkinson, *supra* note 170, at 114 (noting that Virginia black belt counties "exerted a prodigious influence over state policy"); Bernd, Georgia, *supra* note 374, at 296-97 (calling the operation of Georgia's county unit system, which produced a tremendous distortion in favor of black belt counties, "an increasingly grotesque caricature of a democratic representational system," which gave some rural county residents a voting power nearly 100 times that of a Fulton County resident); Eisenberg, *supra* note 12, at 56-57 (noting that malapportionment had "profound effects" on Virginia politics, enhancing the power of the rural-based Byrd machine); Greene, *supra* note 223, at 169 (noting severe malapportionment in Tennessee).

⁴⁵⁵ See Bartley, *supra* note 58, at 109-15; Ely, *supra* note 162, at 37-39; Wilkinson, *supra* note 170, at 127, 132-33, 151-52; see also Eisenberg, *supra* note 12, at 52 (noting that "[m]assive resistance received its strongest support" in Virginia from Southside and other localities with large black populations).

⁴⁵⁶ See Howard, *supra* note 4, at 154; see also Abbott, *supra* note 163, at 114 (noting that fear of retaliation by state officials pressured Norfolk to hold to the massive resistance line, even though local businessmen's concern over school closures might otherwise have induced them to capitulate to *Brown*).

⁴⁵⁷ See Bartley, *supra* note 58, at 333-34; Hornsby, *supra* note 173, at 125; see also Bartley, *supra* note 13, at 188, 190 (noting that racial moderation in Georgia cities like Atlanta generally was overwhelmed by the distortive effects of the county unit system, which made possible the success of the Talmadge white supremacist machine); Key, *supra*

ida at mid-century had one of the most malapportioned legislatures in the country. A rapidly expanding urban majority in south Florida, whose racial views were tempered both by relocated northerners and by urban norms, was rendered "all but voiceless"⁴⁵⁸ in a rural-biased legislature dominated by northern Florida counties committed to preserving traditional racial mores. The result was a series of legislative sessions in the late 1950s focused primarily upon preservation of segregated schools.⁴⁵⁹ In Alabama, legislative proposals to convert public schools into private ones in order to avoid desegregation, introduced even before the *Brown* decision, were initiated by the representative from Macon County, which had the highest black percentage population of any county in the United States.⁴⁶⁰

Just as within a single state the black belt could pull along more moderate racial opinion, so within the South as a whole, extremist states could pressure their more moderate neighbors into conformity.⁴⁶¹ Thus, Mississippi legislators came to Selma, Alabama, in the autumn of 1954 to exhort its residents to establish the state's first citizens' council.⁴⁶² In another instance, Governor Faubus of Arkansas found himself backed into a corner over desegregation of Little Rock schools in 1957. Alabama and Texas had successfully flouted desegregation orders in 1956, and other states' politicians—most notably, Georgia's "roving ambassadors of segregation," Marvin Griffin and Roy Harris—came into Little Rock in the sum-

note 228, at 121 (same); Sherrill, *supra* note 325, at 91 (same); Black, *supra* note 3, at 37 (noting that Herman Talmadge won the Georgia gubernatorial primary in 1950 with a 49% to 48% margin in the popular vote, which translated into a county unit vote margin of 305 to 115). In the first election conducted after federal courts struck down the county unit system on one-person, one-vote principles, Georgians elected Carl Sanders as their governor, on a platform that highlighted economic progress and eschewed racial divisiveness. See Bartley, *supra* note 13, at 200; Black, *supra* note 3, at 68; Bernd, Georgia, *supra* note 374, at 331-33.

⁴⁵⁸ McMillen, *supra* note 5, at 99.

⁴⁵⁹ See *id.* at 99-101; Bartley, *supra* note 13, at 79, 144, 278-79; Jacobstein, *supra* note 425, at 15.

⁴⁶⁰ See Bartley, *supra* note 58, at 56; Norrell, *supra* note 12, at 80, 82.

⁴⁶¹ Neil McMillen notes that southern segregationists accepted the dike analogy, whereby the South could be only as "strong as its weakest component," and thus not a single state could be permitted to give way before the rising tide of desegregation. See McMillen, *supra* note 5, at 40.

⁴⁶² *Id.* at 43.

mer of 1957 to fan the segregationist fury.⁴⁶³ Faubus later reported that, after Governor Griffin of Georgia had declared at Little Rock his shock that any southern governor with troops at his disposal would allow school integration, Arkansans would come up to Faubus in the street to ask why their schools were about to be integrated when Georgia's were not.⁴⁶⁴ Southern states also freely shared with one another the results of their resistance experiences. For example, legislators from various southern states traveled to Virginia to learn about interposition and school closure techniques.⁴⁶⁵

Yet it was not simply citizen council intimidation or black belt political domination that silenced the voices of moderation in the post-*Brown* years. Rather, many racial moderates genuinely rallied around the banner of resistance to outside intervention, a cause that resonated deeply in a southern political consciousness for which the Civil War and Reconstruction remained seminal events.⁴⁶⁶ Just as southern racial progressives in the 1920s and 1930s had supported state, but not federal, anti-lynching legislation,⁴⁶⁷ so did many southern liberals in the postwar years favor

⁴⁶³ See Bartley, *supra* note 58, at 258; Freyer, *supra* note 176, at 100-01; McMillen, *supra* note 5, at 65, 271-74; Powell, *supra* note 172, at 37-39; Sherrill, *supra* note 325, at 87-89; Jacoway, *supra* note 162, at 21-22; see also Longenecker, *supra* note 157, at 170-71 (noting that former Mississippi governor Ross Barnett and former Birmingham public safety commissioner Bull Connor traveled to Selma during the height of the 1965 SCLC voting rights demonstrations to address a citizens' council rally).

⁴⁶⁴ See Bartley, *supra* note 58, at 258; McMillen, *supra* note 5, at 272-73; Sherrill, *supra* note 325, at 99. Senator Eastland of Mississippi also deserves some of the credit for spurring on Faubus, warning about "weak-kneed politicians in the border states" and predicting that Faubus would be one of those who would surrender to the demands of gradualism. See Sherrill, *supra* note 325, at 207-08.

⁴⁶⁵ See Norrell, *supra* note 12, at 150-51 (noting that segregationists from Tuskegee, Alabama, traveled to Prince Edward County, Virginia, to study use of private segregationist academies); Sherrill, *supra* note 325, at 104 (noting that Arkansas legislators traveled to Virginia to learn about interposition).

⁴⁶⁶ See Goldfield, *supra* note 40, at 22; Sosna, *supra* note 17, at 199-200; Ader, *supra* note 376, at 356, 367; see also McMillen, *supra* note 5, at 358-59 (noting fondness of citizens' council leaders for the Reconstruction analogy of federal military occupation, which they used to inflame southern white opinion); Sherrill, *supra* note 325, at 107 (noting that Governor Faubus escalated his attacks on desegregation after Little Rock, drawing parallels to British occupation of America during the Revolutionary War); Powell, *supra* note 172, at 10, 53 (noting Faubus's attempts to analogize Little Rock to Reconstruction by portraying Arkansas as once again under federal military occupation).

⁴⁶⁷ See Cortner, *supra* note 74, at 37-38; George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914*, at 293

local initiatives to ameliorate Jim Crow practices, while warning that federal intervention would cause more harm than good.⁴⁶⁸

That resistance to outside interference remained a powerful southern rallying cry is demonstrated by the virulent response to Eisenhower's dispatch of federal troops to Little Rock in the fall of 1957.⁴⁶⁹ Many Arkansas businessmen and other racial moderates, who had resented Governor Faubus's efforts to instigate racial discord in Little Rock, felt obliged to rally around him once Eisenhower had sent in the 101st Airborne.⁴⁷⁰ Faubus's confrontation with the federal government left him so popular in Arkansas that he won four additional consecutive terms as governor, for a grand total of six, in a state with a half century's tradition of limiting its chief executives to two successive terms.⁴⁷¹

Perhaps even more striking is the impact of Little Rock on the rest of the South. Faubus quickly became a regional hero, receiving standing ovations at speaking engagements throughout the deep South, and (amazingly) appearing, along with Churchill, DeGaulle, and Truman, on a national Gallup poll list of Americans' ten most admired world statesmen.⁴⁷² In Virginia, Little Rock had a devastating impact on the electoral fortunes of the Republican gubernatorial candidate in 1957; Dalton had all along favored token compliance with *Brown*, and after Little Rock the voters associated him with Eisenhower's use of military force to

(1971); Sosna, *supra* note 17, at 31; Zangrando, *supra* note 20, at 126-27; Rable, *supra* note 108, at 203, 204, 208.

⁴⁶⁸ See Goldfield, *supra* note 40, at 71 (noting that liberal Hodding Carter warned in 1950 that "any abrupt Federal effort to end segregation" would not only fail but would "dangerously impair the present progressive adjustments between the races") (quoting Hodding Carter, *Southern Legacy* (1950)); Pleasants & Burns, *supra* note 371, at 41, 85 (setting forth views of Frank Porter Graham); *id.* at 151-52 (setting forth views of Jonathan Daniels); Sosna, *supra* note 17, at 158-59 (setting forth views of Virginius Dabney); see also Brooks Hays, *A Southern Moderate Speaks* 25-26 (1959) (liberal southern congressman noting retrospectively that northern liberals urging federal intervention in southern race relations "were making more difficult the role of Southern progressives" and "were plunging us toward a crisis in the region that would create bitterness and strife").

⁴⁶⁹ On southern politicians' criticism of the President's actions, see Ambrose, *supra* note 89, at 420-23; Bartley, *supra* note 58, at 277-78.

⁴⁷⁰ See Sherrill, *supra* note 325, at 107; Jacoway, *supra* note 162, at 24-25; Powell, *supra* note 172, at 9-10.

⁴⁷¹ See Bartley & Graham, *supra* note 369, at 55; Yates, *supra* note 437, at 254, 274-75.

⁴⁷² See Sherrill, *supra* note 325, at 106; Jacoway, *supra* note 162, at 23; Powell, *supra* note 172, at 57.

coerce a southern state.⁴⁷³ Across the South, the gubernatorial success rate of militant segregationists peaked in the period after Little Rock, as Faubus's landslide 1958 victory in Arkansas rendered unmistakable the electoral advantages of overtly defying federal authority.⁴⁷⁴ Even in Tennessee, which had withstood the massive resistance frenzy better than any other southern state, the segregation issue dominated the post-Little Rock gubernatorial primary.⁴⁷⁵ Finally, when federal force was used to desegregate Ole Miss five years after Little Rock, Paul Johnson, the lieutenant governor who had joined Governor Ross Barnett in physically blocking the admission of James Meredith, successfully parlayed his defiance of federal authority into a sweeping victory in the following year's Democratic gubernatorial primary.⁴⁷⁶

⁴⁷³ See Black, *supra* note 3, at 115; Ely, *supra* note 162, at 59-61, 65; Wilkinson, *supra* note 170, at 138; Eisenberg, *supra* note 12, at 53. Dalton had won 44.3% of the vote in the 1953 gubernatorial contest—the best percentage of any Republican in a statewide race in the South between 1945 and 1960—only to see that drop to 36.4% of the vote in 1957, with massive resistance in “full flower,” and the albatross of Little Rock around his neck. See Bartley & Graham, *supra* note 369, at 84; Eisenberg, *supra* note 12, at 48-49, 53; see also Barone, *supra* note 17, at 275-76 (suggesting generally that Republican incursions into the South were probably set back by the fortuity that *Brown* and Little Rock occurred while Republicans were in control of the national government, and thus southerners held Eisenhower and his party responsible for them).

⁴⁷⁴ See Bartley, *supra* note 58, at 270 (noting that massive resistance reached its zenith in 1957 and 1958, as Little Rock checked the trend toward moderation in the upper South); Black, *supra* note 3, at 103 (noting that after Faubus's landslide victory in 1958, “politicians throughout the region sensed the political rewards of confronting a national administration over school desegregation”); Sherrill, *supra* note 325, at 108 (noting the *Arkansas Gazette's* observation after Faubus's sweeping 1958 victory that “[t]he moderate position formerly espoused by many southern political leaders . . . is now clearly untenable for any man in public life anywhere in the region”); Earl Black, *Southern Governors and Political Change: Campaign Stances on Racial Segregation and Economic Development, 1950-69*, 33 *J. Pol.* 703, 715 (1971) (noting that militant segregationists won 77% of southern gubernatorial contests from 1958-1961).

⁴⁷⁵ See Bartley, *supra* note 58, at 287; Black, *supra* note 3, at 118-22; see also *id.* at 128-29 (observing the similar impact of Little Rock upon Texas, which also had largely escaped the tribulations of massive resistance).

⁴⁷⁶ See Black, *supra* note 3, at 208-11; Fortenberry & Abney, *supra* note 12, at 508; see also Strong, *supra* note 12, at 438-39 (noting that the use of federal troops at Ole Miss in the fall of 1962 whipped up segregationist sentiment to a fever pitch for the 1962 Alabama Senate race).

Another widely noted event around the same time also illustrates the visceral southern tendency to rally in defense of traditional racial practices when confronted with outside criticism. When Emmett Till was murdered in Mississippi during the summer of 1955 for (allegedly) whistling at a white woman, the initial response, both from the Mississippi press

To fully comprehend the furor of the racial backlash produced by *Brown*, it is useful to consider some local surveys. I have chosen to take a closer look at Little Rock, Montgomery, and Birmingham, though other southern cities could equally well illustrate the point.

That massive resistance should peak in the Little Rock crisis of 1957-1958 is ironic. Arkansas, in 1954, was one of the most racially moderate southern states, as evidenced by the early steps taken there towards compliance with *Brown*.⁴⁷⁷ In the postwar years, Arkansas was under the political control of racial moderates, who sought to encourage industrial development by avoiding racial strife.⁴⁷⁸ In 1948, Arkansas became the first southern state to desegregate its state university without federal court compulsion.⁴⁷⁹ Blacks voted in large numbers in Arkansas (not just in Little Rock, but also in the eastern plantation belt), they sat on previously all-white state commissions, and educational funding disparities for black and white schools were under attack.⁴⁸⁰ Meanwhile, Little Rock had become one of the South's most racially progressive cities. Blacks served on the city police force and frequently on fed-

and politicians, was to condemn the murder and assure the rest of the nation that decent white Mississippians did not condone such activity; and, indeed, a grand jury quickly indicted the culprits. As condemnation of Mississippi from the NAACP and the northern press escalated, however, the wagons were circled, and press and popular sympathy for the defendants became widespread. Defense attorneys played to the jurors' sense of southern pride and resistance to outside pressure in appealing for an acquittal, which they ultimately won. See Whitfield, *supra* note 79, at 24-31, 41; cf. Carter, *supra* note 80, at 159-60 (noting a letter from Chief Justice Anderson of the Alabama Supreme Court to Walter White of the NAACP, confiding that communist propaganda attacking the Alabama court system possibly injured the defense of the Scottsboro Boys by causing other justices to rally in defense of their state when under external attack); Cortner, *supra* note 74, at 37, 94-96 (noting that the NAACP deliberately kept a low profile in connection with *Brown v. Mississippi* in order to avoid alienating local whites sympathetic to the defendants' cause, as the ILD had done in the Scottsboro case by vilifying the state of Alabama); Cortner, *supra* note 127, at 44-45, 49-50 (making the same point regarding NAACP strategy in connection with *Moore v. Dempsey*, the Phillips County, Arkansas, riot case).

⁴⁷⁷ See Bartley, *supra* note 58, at 260; Goldfield, *supra* note 40, at 107-08; McMillen, *supra* note 5, at 94, 274; Sherrill, *supra* note 325, at 82-83; Yates, *supra* note 437, at 271.

⁴⁷⁸ See Powell, *supra* note 172, at 5-6; see also Sherrill, *supra* note 325, at 77-78 (noting that the McMath administration focused almost entirely on economic issues to the exclusion of race); sources cited *supra* note 387 (same).

⁴⁷⁹ See Burk, *supra* note 41, at 176; Freyer, *supra* note 176, at 20; McMillen, *supra* note 5, at 94; Powell, *supra* note 172, at 12.

⁴⁸⁰ See Freyer, *supra* note 176, at 20-24; Powell, *supra* note 172, at 5-6, 12.

eral court juries as well; the city's public transport system had been integrated; and department stores had desegregated their lunch counters.⁴⁸¹

At this point, *Brown* intervened, with the consequences previously described. Eastern black belt planters reasserted their traditional political dominance, propelling state politics far to the right on racial issues, and squelching racially moderate urban sentiment. Orval Faubus had first been elected governor in 1954 on a populist economic program of higher spending on public education and old age pensions. Neither candidate in that election had highlighted the segregation issue, while candidate Faubus had promised blacks state jobs and access to the governor's office.⁴⁸² Faubus paid virtually no attention to the segregation issue during his first year in office, and indeed became the first Arkansas governor to appoint blacks to the state Democratic Central Committee; during this time, several Arkansas school districts began to desegregate in compliance with *Brown*.⁴⁸³ During his 1956 reelection campaign, Faubus's principal opposition came from Jim Johnson, one of the state's leading segregationists and the chief organizer of the Arkansas citizens' council.⁴⁸⁴ Johnson's allusions to Faubus's "softness" on the race issue, in conjunction with the release of an opinion poll indicating a rightward shift in public attitudes on the race question, induced Faubus to reconsider his previous racial moderation.⁴⁸⁵

⁴⁸¹ See Bartley, *supra* note 5, at 251; Freyer, *supra* note 176, at 20; Powell, *supra* note 172, at 97-98; see also Jacoway, *supra* note 162, at 19-20 (noting a contemporary study showing that Little Rock blacks had improved their status more between 1945 and 1954 than in the previous half century).

⁴⁸² See Bartley & Graham, *supra* note 369, at 54-55; Black, *supra* note 3, at 100; Goldfield, *supra* note 40, at 107; Sherrill, *supra* note 325, at 77-78; Yates, *supra* note 437, at 235, 264; Powell, *supra* note 172, at 8-9.

⁴⁸³ See sources cited *supra* note 453.

⁴⁸⁴ See Bartley, *supra* note 58, at 142 (noting that Johnson ran a "blisteringly racist campaign"); Black, *supra* note 3, at 100; Freyer, *supra* note 176, at 80; Sherrill, *supra* note 325, at 84-85; Yates, *supra* note 437, at 264-65.

⁴⁸⁵ See Freyer, *supra* note 176, at 78, 81; Sherrill, *supra* note 325, at 84-85; Yates, *supra* note 437, at 264-65 (noting that Faubus's hard-line segregationist opponent in the 1956 Democratic gubernatorial primary accused Faubus of supine submission to integration while other states were manfully resisting); see also Bartley, *supra* note 58, at 260-62 (describing Faubus's 1956 "shift with the political winds").

Faubus, who was not a "segregationist[] by philosophy," became one "by political necessity."⁴⁸⁶

Rather than permit implementation of the token desegregation plan produced by the racially moderate Little Rock school board, Faubus manufactured a racial crisis that was in no sense inevitable.⁴⁸⁷ The governor called out the National Guard to prevent the admission of black students to Little Rock High School; the pretext was preservation of order, but in fact it was the posting of the guardsmen outside the school that created the mob atmosphere.⁴⁸⁸ When Eisenhower finally responded by dispatching federal troops, even local white moderates rallied behind the governor.⁴⁸⁹ Faubus not only swept to a landslide victory in his gubernatorial contest the following year (with a whopping 69% of the vote in the first primary), but also was able to defeat the racially moderate congressman, Brooks Hays, with a Faubus-backed *write-in* candidate who was a militant segregationist.⁴⁹⁰ And, as noted above, Faubus became virtually unassailable in Arkansas politics for the better part of a decade.⁴⁹¹

⁴⁸⁶ Sherrill, *supra* note 325, at 102; see also Powell, *supra* note 172, at 45 (describing Faubus's strategic conversion).

⁴⁸⁷ See Manchester, *supra* note 142, at 799-804; Powell, *supra* note 172, at 42-43. But cf. Bartley, *supra* note 58, at 250-69 (arguing that Faubus did not seek out the Little Rock controversy, but instead reluctantly filled a void left by the local leadership); Freyer, *supra* note 176, at 118-19 (arguing that Faubus sought to shift the onus of desegregation to the federal government in order to protect his administration's populist economic program). Faubus later conceded privately that his obstructionism was based on the perception that to win a third consecutive term, he needed to protect his flank from segregationist opposition. See Sherrill, *supra* note 325, at 89.

⁴⁸⁸ See Sherrill, *supra* note 325, at 101 (noting an investigation by a federal district judge which "revealed that up to the moment that Faubus set the stage for violence, police had not had a single case of interracial violence reported to them"); Powell, *supra* note 172, at 42-44; see also J.W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* 164, 166-67 (1961) (discussing Faubus's decision to call out the National Guard).

⁴⁸⁹ See sources cited *supra* notes 470-71.

⁴⁹⁰ See Bartley, *supra* note 58, at 273; Freyer, *supra* note 176, at 147, 157-58; Sherrill, *supra* note 325, at 75-76 (noting the tremendous boost to Faubus's political career provided by Little Rock); *id.* at 108-09 (noting that Faubus's ability to have Hays defeated was an indication of his incredible political strength); Yates, *supra* note 437, at 273 (noting that Faubus appeared "invincible" after the 1958 election). The Hays election was marked by more than the usual number of electoral irregularities. *Id.* at 273. Indeed, Lee Powell argues that it would be a mistake to exaggerate Faubus's strength based on Hays's defeat. See Powell, *supra* note 172, at 82-84.

⁴⁹¹ See sources cited *supra* note 471.

Events in Birmingham and Montgomery, Alabama, likewise illustrate the dramatic rightward lurch in southern racial politics that followed *Brown*. In 1953, Montgomery elected as one of its three city commissioners a man, ironically named Birmingham, who held liberal racial views and was beholden to the black vote for his seat.⁴⁹² The new commissioner promised to support black aspirations to fill the next vacancy on the parks commission; black demands for new playgrounds began to receive a respectful hearing from the commission; and the first blacks were added to the city police force in early 1954. Then, in 1955, Birmingham was defeated for his commission slot by a candidate making the most racist appeals of any Montgomery politician since the heyday of the Klan in the 1920s. The other two commissioners quickly began engaging in similar tactics, and soon Montgomery politics had become so racially inflamed that white politicians could no longer make even minor concessions to black political demands, as evidenced by the refusal of city officials to acquiesce in relatively trivial changes in bus seating practices during the boycott.⁴⁹³ Black militancy manifested during the bus boycott propelled Montgomery politics even farther to the right on racial issues; all three city commissioners made a calculated decision to join the local citizens' council. It is impossible to measure precisely the extent to which this racial polarization of Montgomery politics was attributable to *Brown*. One leading historian of these events has observed, however, that the position of the city commissioners during the bus boycott was rendered more precarious by the "considerable heightening of white fears and black hopes that followed the Supreme Court's school integration decision in mid-May 1954."⁴⁹⁴

⁴⁹² The following account is based on Thornton, *supra* note 346; see also Goldfield, *supra* note 40, at 93 (noting the substantial racial change taking place in Montgomery before *Brown*); Thornton, *supra* note 276, at 18-24.

⁴⁹³ Montgomery blacks were not, initially, demanding an end to segregation on city buses, but rather new seating practices that would avoid the insult of blacks being forced to vacate their seats for whites. Thus, for example, they proposed seating whites from front to back and blacks from back to front, abandoning the notion of a "no man's land" where the bus driver was free to redesignate rows where blacks were sitting as white seats. See Thornton, *supra* note 346, at 176-77, 191, 201.

⁴⁹⁴ Thornton, *supra* note 346, at 175; see also Thornton, *supra* note 12, at 45 (noting that the integration of the Montgomery police force, coincident with the *Brown* decision, caused consternation among local segregationists). In all candor, I must note that Professor Thornton places less emphasis on *Brown* than I do. His argument is that

A similar series of events simultaneously unfolded ninety miles to the north in Birmingham. T. Eugene ("Bull") Connor had first been elected to the Birmingham City Commission in 1937, pledging to crush the "communist-integrationist" threat posed by the Congress of Industrial Organizations' ("CIO") unionization efforts.⁴⁹⁵ By the early 1950s, though, "Connor had become a genuine embarrassment to Birmingham's wealthy economic and social leaders."⁴⁹⁶ The local chamber of commerce in 1950 had formed a committee charged with encouraging industrial relocations to Birmingham, but its task had been hampered by the racial violence that plagued the city and by the reputation for racial extremism of its political leaders, most notably Bull Connor. In the spring and summer of 1951, racially moderate businessmen took an initial step towards ameliorating Birmingham's racial situation by organizing an interracial committee, consisting of twenty-five black and twenty-five white community leaders, to foster improvement in the living conditions of the city's black citizens. Over the next several years, the first hospital for blacks was established, elevators in downtown office buildings were desegregated, and a much publicized (though ultimately unsuccessful) campaign to desegregate the city's police force was launched. Then, in 1951-1952, the business progressives orchestrated the public humiliation of Connor in connection with an illicit sexual encounter, leading to his decision not to seek reelection to the city commission in 1953 and his replace-

pressure for racial change in the early 1950s produced its own backlash, and he identifies *Brown* as only an aggravating factor. The timing of the events he describes, though, meshes perfectly with my thesis that *Brown* was responsible for inciting a massive backlash against racial change. I am grateful to Professor Thornton for clarifying in a telephone conversation his views regarding *Brown*'s significance for Montgomery politics.

⁴⁹⁵ The following account is based on Thornton, *supra* note 12, at 47-48; see also William A. Nunnelle, *Bull Connor* 67 (1991) (describing Connor's experiences with the Birmingham Interracial Committee); Eskew, *supra* note 5, at 23 (describing efforts of the Interracial Committee to encourage the hiring of black police officers). In 1938, Police Chief Connor was responsible for frustrating the effort to integrate the inaugural conference of the Southern Conference on Human Welfare in Birmingham. See Nunnelle, *supra*, at 30; Pleasants & Burns, *supra* note 371, at 25; Norrell, *supra* note 414, at 206.

⁴⁹⁶ Thornton, *supra* note 12, at 48. In 1950, Connor had run sixth in Alabama's Democratic gubernatorial primary, as the voters during those less racially charged days found little appeal in Connor's race-baiting campaign, which inveighed against the increasing numbers of black voters and opposed repeal of the poll tax. See Black, *supra* note 3, at 33-34.

ment by a racial moderate. By Birmingham standards, substantial progress had been made.

Outside events, most notably the *Brown* decision (but also the Montgomery bus boycott), then intervened to produce a dramatic shift in Birmingham politics. For example, in early 1954 the city commission, eager to exploit the financial opportunities that would accompany a spring training visit by Jackie Robinson's Brooklyn Dodgers, voted to repeal the local ban on interracial sporting contests. Within two weeks of the *Brown* decision, however, a city referendum reinstated that ban by a three-to-one margin.⁴⁹⁷ Other racial progress from the early 1950s was also quickly reversed in the post-*Brown* era. Birmingham's interracial committee was forced to disband in April 1956 after an energetic campaign against it, as the formerly preponderant, racially moderate businessmen now disappeared from the political scene.⁴⁹⁸ All formal biracial consultation in Birmingham ended, not to resume again for nearly six years. The city commission refused to negotiate an end to segregation on city buses, even after the Supreme Court ruled such segregation unconstitutional in the case arising from the Montgomery bus boycott.⁴⁹⁹ Bull Connor was reelected to the city commission in 1957. And a wave of bombings and racial brutality swept through the city, as a powerful Ku Klux Klan faction made its presence felt.⁵⁰⁰

In sum, *Brown* produced a southern political climate in which racial extremism flourished. Democratic primaries frequently featured candidates vying with one another to occupy the most

⁴⁹⁷ See Tygiel, *supra* note 28, at 275-77; Thornton, *supra* note 276, at 45-46. Tygiel also suggests that one reason the integration of the minor league's Southern Association, which had seemed on the verge of fruition in 1954, never took place (the league folded in 1961) was the abrupt deterioration in southern race relations produced by *Brown*. See Tygiel, *supra* note 28, at 276-77.

⁴⁹⁸ The following account, except where noted otherwise, is based on Thornton, *supra* note 12, at 48-49; see also Nunnolley, *supra* note 495, at 67 (noting that Birmingham's racial climate worsened after *Brown*); Eskew, *supra* note 5, at 23 (observing that the interracial committee "lost what little influence it had with the rise of massive resistance following the *Brown* decision of 1954").

⁴⁹⁹ See Eskew, *supra* note 5, at 26-28. The Supreme Court decision was *Gayle v. Browder*, 352 U.S. 903 (1956).

⁵⁰⁰ See, e.g., Eskew, *supra* note 5, at 25-26 (describing the bombing of Reverend Fred Shuttlesworth's home). For further discussion of Connor and Birmingham, see *infra* text accompanying notes 514-20.

extreme segregationist position on the political spectrum. Fire-eating resistance to federal authority, as manifested most notably by Orval Faubus at Little Rock, could earn a politician landslide victories. It is small wonder that southern politicians drew the lesson that uncompromising obstruction of racial change, including the violent suppression of civil rights demonstrations, would likely win the plaudits of voters.

3. *The Politics of Civil Rights Repression*

In the following Section, I hope to show that the landmark civil rights legislation of the mid-1960s was directly attributable to the nationally televised outrages perpetrated by southerners upon generally nonviolent civil rights demonstrators. To complete my proffered chain of causation between *Brown* and this civil rights legislation, I must now establish that the post-*Brown* southern racial backlash described in the preceding Section elevated to public office politicians who were prepared to ruthlessly suppress civil rights demonstrations. It is my contention that each of the high profile civil rights conflagrations of the post-*Brown* decade featured southern politicians who had been elected to office on the strength of the post-*Brown* backlash, and who fully appreciated the political gains to be had from fostering violent clashes with federal authorities and brutally suppressing civil rights demonstrations. The relevant figures are Orval Faubus (Little Rock), Ross Barnett (Ole Miss), Bull Connor (Birmingham), Jim Clark (Selma), and George Wallace (Birmingham and Selma).

a. *Orval Faubus*

We have already seen confirmation of my thesis with regard to the first of the notorious post-*Brown* civil rights clashes—Little Rock in 1957-1958.⁵⁰¹ Orval Faubus was originally an economic populist from the Ozark hills of northwest Arkansas, who perpetuated an alliance of hill whites and city blacks in his first two gubernatorial triumphs. In search of a political issue that would enable him to transcend Arkansans' traditional reluctance to extend their governors more than two terms in office, Faubus latched onto the racial backlash that *Brown* had ignited across the South. Virtually

⁵⁰¹ For this paragraph, see *supra* text accompanying notes 477-91.

overnight, Faubus converted himself into the candidate of delta and lower class urban whites, preaching massive resistance and white supremacy. By manufacturing a racial crisis that in turn led to a confrontation with the federal military, Faubus transformed himself into a nearly invincible state politician as well as something of a regional folk hero. While Faubus tolerated, rather than perpetrated, violence against blacks asserting their constitutional rights, the lesson for other southern politicians was clear: the more extreme a politician's resistance to the objectives of the civil rights movement, the greater the political rewards he might reasonably expect at the polls.

b. *Ross Barnett*

The race riot attendant upon the admission of James Meredith to the University of Mississippi in the fall of 1962 was the next great racial conflagration of the civil rights era. The role played by Governor Ross Barnett in that episode confirms my thesis that in the political environment created by the post-*Brown* racial backlash, it was virtually impossible for a politician to use resistance tactics so extreme that his constituents would fail to reward them.

It is interesting to note that Mississippi, plainly the most racially reactionary southern state at mid-century, had under the stewardship of Governor James Coleman (1955-1959) avoided some of the post-*Brown* fanaticism which characterized the politics of other deep South states in the mid-1950s. While any serious Mississippi politician of the era was necessarily a committed segregationist, Coleman had vetoed some of the more extreme massive resistance measures presented to him by the legislature.⁵⁰² He had also resisted pressure to outlaw the NAACP⁵⁰³ (as neighboring Alabama had done), and disparaged the doctrine of nullification as "legal poppycock."⁵⁰⁴ With massive resistance cresting in the wake of Little Rock, the 1959 Mississippi Democratic gubernatorial primary featured four strong segregationists, with Ross Barnett the extremist in the field. Barnett had achieved some notoriety in 1957 when he had traveled to Tennessee to aid in the defense of fifteen

⁵⁰² See Bartley, *supra* note 58, at 211.

⁵⁰³ See McMillen, *supra* note 5, at 323; Sherrill, *supra* note 325, at 178.

⁵⁰⁴ Bartley, *supra* note 58, at 136; see Black, *supra* note 3, at 60; McMillen, *supra* note 5, at 322-23; Sherrill, *supra* note 325, at 176-78.

men charged with responsibility for fomenting school desegregation riots in Clinton the previous fall.⁵⁰⁵ In the runoff campaign, the dominant issue was the candidates' relative devotion to segregation, and Barnett sought to tie his opponent, Lieutenant Governor Gartin, to the relatively moderate racial policies of the Coleman administration. Barnett also accused Gartin of being a puppet of the integrationist CIO, while portraying himself as a "one hundred percent" segregationist. At campaign speeches Barnett spoke openly and proudly of his citizens' council membership. He promised that there would be no integrated schools in Mississippi so long as he was governor, and attributed the downfall of Egyptian culture to mongrelization of the races. Barnett won in a landslide.⁵⁰⁶

In this racial climate, Barnett stood to gain politically by obstructing implementation of the Fifth Circuit's order desegregating Ole Miss and mandating the admission of James Meredith.⁵⁰⁷ Not only the Governor, but local public officials as well, found it politically advantageous to declare their willingness to go to jail rather than comply with the desegregation order.⁵⁰⁸ When Governor Barnett announced on Mississippi television that he would interpose the state's rights against the federal court order and willingly be imprisoned rather than permit integration of Ole Miss, virtually the entire white polity and the state political hierarchy lined up solidly behind him.⁵⁰⁹ Barnett then proceeded twice to block the entrance of Meredith into Ole Miss. Eventually, however, when faced with the threat of imprisonment for contempt of court, Barnett arranged a charade with the Kennedy administration, by which he would surrender to explicit threats of superior federal force.⁵¹⁰ But when events spun out of Barnett's control,

⁵⁰⁵ See McMillen, *supra* note 5, at 326.

⁵⁰⁶ See Bartley & Graham, *supra* note 369, at 74; Black, *supra* note 3, at 63; Johnston, *supra* note 138, at 78, 82-83; McMillen, *supra* note 5, at 326-28; Fortenberry & Abney, *supra* note 12, at 506-07.

⁵⁰⁷ For full accounts of the desegregation of Ole Miss, see Branch, *supra* note 94, at 633-72; Brauer, *supra* note 86, at 180-204.

⁵⁰⁸ See Johnston, *supra* note 138, at 91-92.

⁵⁰⁹ See *id.* at 95, 97-98.

⁵¹⁰ See Branch, *supra* note 94, at 647-53; Brauer, *supra* note 86, at 183-87; Johnston, *supra* note 138, at 102-03; Sherrill, *supra* note 325, at 185-86. Barnett specifically requested that federal marshals draw their guns, thus enabling him to stand down with honor. See *id.*

two were killed and hundreds more wounded in a full scale race riot.⁵¹¹

Ole Miss had roughly the same political consequences for Ross Barnett that Little Rock had for Orval Faubus. Barnett became, in the words of one journalist, “the dominant political figure in Mississippi as long as he lives.”⁵¹² The political benefits of condoning violent resistance to desegregation were evident in the 1963 Mississippi gubernatorial election. With Barnett ineligible to succeed himself, the leading segregationist candidate was his lieutenant governor, Paul Johnson, who highlighted his physical obstruction of James Meredith’s admission to Ole Miss the preceding year. Johnson, a devoted adherent of massive resistance, also portrayed his opponent, former governor James Coleman, as racially moderate and pro-black. The major issue in the campaign was which candidate could better defend segregation. Coleman argued for circumvention, rather than blatant defiance, of federal authority, while Johnson embraced the view that “we must fight fire with fire.” Mississippi voters sided decisively with the racial extremist.⁵¹³ The lesson of Ole Miss was that it was virtually impossible for a Mississippi politician in the post-*Brown* period to espouse a racial position too extreme for his white constituents.

c. *Bull Connor*

The Birmingham political career of Bull Connor had, as we have seen, been disrupted by the pre-*Brown* period of relative racial quiescence, only to be resurrected in the tide of racial venom that swept over the city during massive resistance. After being evicted from Birmingham politics in the early 1950s as a “genuine embarrassment” to civic leaders trying to cultivate a local reputation for racial moderation, Connor regained his seat on the city commission in 1957, exploiting the post-*Brown* backlash with a race-baiting

⁵¹¹ For a vivid recounting of the events, see Branch, *supra* note 94, at 659-70; Brauer, *supra* note 86, at 192-96 (describing the same).

⁵¹² Sherrill, *supra* note 325, at 186 (quoting Hodding Carter).

⁵¹³ See Bartley & Graham, *supra* note 369, at 75; Black, *supra* note 3, at 63, 208-11; Johnston, *supra* note 138, at 102; McMillen, *supra* note 5, at 348; Fortenberry & Abney, *supra* note 12, at 508-09.

campaign.⁵¹⁴ Once again ensconced in office, Connor astutely perceived that racial extremism enhanced his political popularity. Through the late 1950s, Birmingham race relations rapidly deteriorated, as a powerful Klan element turned increasingly to bombings and brutality, while the police, under Connor's control, declined to clamp down against such outrages.⁵¹⁵

Standing for reelection, Connor sought to consolidate his position among racial extremists by offering the Ku Klux Klan a fifteen-to-twenty minute "open season" on the Freedom Riders, free from police intervention, when they rolled into Birmingham in May 1961.⁵¹⁶ Connor won reelection in a landslide, and later that month, a citizens' council activist was elected mayor; for the first time since the late 1930s, all three Birmingham city commissioners were racial intransigents, elected on strict segregationist platforms.⁵¹⁷ The post-*Brown* racial backlash had created a political climate in Birmingham that rewarded racial extremism almost without limit—a situation that proved to have momentous implications for racial change when the Southern Christian Leadership Conference commenced demonstrations there in the spring of 1963.⁵¹⁸ One of Martin Luther King, Jr.'s principal lieutenants, Wyatt Walker, speculated that Connor's use of violent tactics on that occasion was intentionally calculated "to bolster his reputation with segregationist voters in preparation for a statewide political race."⁵¹⁹ Indeed, Connor's victory in his 1964 race for state public

⁵¹⁴ See *supra* note 496 and accompanying text; Nunnelley, *supra* note 495, at 4, 184; Thornton, *supra* note 12, at 48-49 ("[T]he recrudescence of vigorous segregationist sentiment allowed Bull Connor to regain a substantial part of his popularity with the electorate."); Bains, *supra* note 169, at 188.

⁵¹⁵ See Nunnelley, *supra* note 495, at 74-75; Eskew, *supra* note 5, at 35-36; Thornton, *supra* note 12, at 49; see also Bains, *supra* note 169, at 167 (noting that there were 17 unsolved bombings of black churches and homes in the Birmingham area between 1957 and 1962); *id.* at 188 (noting that Connor received open support from the Klan in his 1960 statewide campaign for Democratic National Committeeman).

⁵¹⁶ See Curt Gentry, *J. Edgar Hoover: The Man and the Secrets* 483 (1991); Nunnelley, *supra* note 495, at 98-99, 107-09; Stern, *supra* note 126, at 58; Thornton, *supra* note 12, at 49; see also Branch, *supra* note 94, at 420-21 (describing Connor's role in the Klan's attack on the Freedom Riders).

⁵¹⁷ See Nunnelley, *supra* note 495, at 92, 110-11; Bains, *supra* note 169, at 168, 187-88; Thornton, *supra* note 12, at 49.

⁵¹⁸ See *infra* text accompanying notes 612-21 (describing the link between the Birmingham demonstrations and passage of the 1964 Civil Rights Act).

⁵¹⁹ Garrow, *supra* note 62, at 251.

service commissioner probably was attributable to his staunch segregationist stand at Birmingham the preceding year, which successfully linked him in the public mind with Alabama's immensely popular governor, George Wallace.⁵²⁰

d. Jim Clark

Selma, located in the heart of the Alabama black belt, was home to the state's first local citizens' council, founded in November 1954, which by its first anniversary had enrolled as members roughly one-fourth of Dallas County's adult white males.⁵²¹ This citizens' council branch maintained close ties with the Selma city government, as well as with the Dallas County Democratic Party. Such close linkages between public and private authority both reflected and reinforced the "unusually aggressive and unanimous commitment of the white community of Dallas County to an extremist racial position."⁵²² Open dissent from white supremacist orthodoxy simply was not tolerated in Selma.⁵²³

In 1958, Dallas County voters returned Jim Clark to the sheriff's office—he had initially been appointed to fill a vacancy in that position in 1955—in a race against a senior Selma police officer, Wilson Baker. While it would be inaccurate to suggest that Clark outmaneuvered his opponent in terms of relative commitment to maintaining the racial status quo, he did highlight his cooperation with the local citizens' council and promise that no racial integration would come to Dallas County under his watch.⁵²⁴ And while

⁵²⁰ Nunnelle, *supra* note 495, at 169-70.

⁵²¹ For the rest of this paragraph see Thornton, *supra* note 12, at 55; accord McMillen, *supra* note 5, at 43; Sims, *supra* note 390, at 174.

⁵²² Thornton, *supra* note 12, at 55; see also Longenecker, *supra* note 157, at 35 (noting that the citizens' council was "the predominant force in Selma's white community"). On the merging of public and private authority in the citizens' councils generally, see Bartley, *supra* note 58, at 90, 181, 199; McMillen, *supra* note 5, at 313-14, 319, 336.

⁵²³ Thus, for example, of the 29 blacks who signed a school desegregation petition in Selma, 16 were dismissed from their jobs within a couple of weeks. See McMillen, *supra* note 5, at 210; Thornton, *supra* note 276, at 94-95.

⁵²⁴ One cannot say that Clark outmaneuvered Baker on the race issue, given that the latter actually appeared before a Klan rally, though he later insisted that he did not endorse that group's positions. See Fager, *supra* note 199, at 17; Longenecker, *supra* note 157, at 18; Telephone Interview with J. Mills Thornton III, Professor of History, University of Michigan (Oct. 9, 1992). I am grateful to Professor Thornton for clarifying for me the racial aspects of the 1958 election contest between Baker and Clark.

racial issues were not an express point of difference between the two candidates, the contest did turn on the polarization of the electorate between city and county, with Wilson Baker representing both increased professionalization of law enforcement activities and the Selma business elite's preoccupation with cultivating industrial relocations by preserving social order. As time passed, Clark, more than any other individual in Selma, came to represent the views of the die-hard segregationists.⁵²⁵

In the post-*Brown* racial hysteria which characterized Alabama politics, Clark had every incentive to behave in Dallas County as Bull Connor had in Birmingham. Indeed, in 1963 Clark had, at Governor Wallace's request, traveled to Birmingham to assist Bull Connor in the suppression of the Southern Christian Leadership Conference's spring demonstrations.⁵²⁶ That the extremist Clark, rather than the more professional and racially restrained Baker, occupied the Dallas County sheriff's office in 1965 proved momentous for the history of the civil rights movement.⁵²⁷ While Baker responded to voting rights demonstrations with courteous arrests, Clark demonstrated his characteristic lack of restraint, wielding violent suppression tactics which sickened national television audiences and prompted immediate congressional and presidential response in the form of the 1965 Voting Rights Act.⁵²⁸ The racially charged nature of Alabama politics was such that Clark apparently calculated that his brutal suppression of voting rights demonstrations would translate into a viable gubernatorial candidacy in 1966. Clark, along with several other aspirants, withdrew from the governor's race only when George Wallace announced the candidacy of

⁵²⁵ See Longenecker, *supra* note 157, at 36.

⁵²⁶ See Bains, *supra* note 169, at 199; see also Longenecker, *supra* note 157, at 36 (noting that Clark and his posse traveled around Alabama to offer "help" when civil rights demonstrators challenged the racial status quo).

⁵²⁷ On Baker's restrained approach to law enforcement, see Garrow, *supra* note 12, at 72-73, 76; Longenecker, *supra* note 157, at 112-13, 123-24, 129-30.

⁵²⁸ See *infra* text accompanying notes 623-35.

his wife, Lurleen;⁵²⁹ it was widely appreciated that nobody could outflank Wallace as a symbol of resistance to racial change.⁵³⁰

e. *George Wallace*

George Wallace, much like Orval Faubus, was not by nature a fire-eating white supremacist. Indeed, Wallace had been a little “soft” on segregation in his early political career, and, unlike Bull Connor, had not been in the half of the Alabama delegation that walked out of the Democratic national convention in 1948 after adoption of the liberal civil rights plank.⁵³¹ Wallace had been a strong supporter of Governor Folsom’s populist economic platform, and even had acquired a reputation in the state legislature as a leading liberal or, in some quarters, a dangerous left-winger.⁵³² Yet by the mid-1950s, especially after the Adam Clayton Powell incident,⁵³³ Wallace perceived the political imperative of breaking with Folsom on the race issue.⁵³⁴ And by 1956, when federal officials investigating charges of race discrimination in jury selection sought access to grand jury selection records in Cobb County, Georgia, Barbour County Circuit Judge Wallace threatened to arrest any FBI agent entering his county with similar objectives.⁵³⁵

Yet Wallace’s incipient moves to the right on the race issue were insufficient to win him the Democratic gubernatorial nomination in 1958. His opponent in the runoff primary that year was Attorney

⁵²⁹ Governor Wallace, unable to convince the Alabama legislature to acquiesce in his plan to remove the state constitutional bar on successive gubernatorial terms, decided to have his wife run in his place; everyone understood that she was to be a mere figurehead, and that Wallace himself would continue to run the government. See Frady, *supra* note 189, at 179-202.

⁵³⁰ See Fager, *supra* note 199, at 208-09; Longenecker, *supra* note 157, at 217.

⁵³¹ See Strong, *supra* note 12, at 451-52; see also Frady, *supra* note 189, at 106 (noting that Wallace had asked Governor Folsom in the early 1950s to appoint him to the Board of Trustees at Tuskegee Institute, and generally that Wallace had been regarded as relatively liberal on race issues early in his career).

⁵³² See Frady, *supra* note 189, at 97-98, 106. Wallace had served as Folsom’s campaign manager for southern Alabama in 1954. See *id.* at 107; Strong, *supra* note 12, at 448-49. On Folsom’s economic populism, see *supra* note 390 and accompanying text.

⁵³³ See *supra* text accompanying note 441.

⁵³⁴ See Frady, *supra* note 189, at 108; see also *id.* at 116 (quoting retrospective Folsom observation that Wallace had not been a race baiter in his early years, and that he became one only upon appreciating the political advantages of doing so); *id.* at 141 (quoting a Wallace associate to the same effect).

⁵³⁵ See Frady, *supra* note 189, at 121-22.

General John Patterson, who had achieved statewide prominence by banning the NAACP from Alabama, and now received the endorsement of the Ku Klux Klan, whom Wallace gently repudiated. Patterson played the racial theme so heavily in the campaign that Wallace unwittingly became the candidate of moderation, and ironically, won heavy black support in the cities. Patterson easily won the contest, leaving Wallace to ruminate that "they out-niggered me that time, but they'll never do it again."⁵³⁶

Soon after losing this gubernatorial contest, Wallace was reminded of the political advantages of federal defiance. The conflict came when Wallace's old law school classmate, United States District Court Judge Frank Johnson, ordered him, in his capacity as Barbour County circuit judge, to release county registrar voting records to the United States Civil Rights Commission, which was conducting investigations in Montgomery into alleged denials of black voting rights in Alabama. Wallace seized custody of the records and announced that he would arrest any federal agent seeking to obtain them. Facing a possible contempt citation for defying a federal court order, Wallace chose privately to surrender, returning the records to the grand juries in his circuit, while publicly continuing his bluster—a political tactic he was to repeat several years later while standing in the schoolhouse door at Tuscaloosa.⁵³⁷

During his 1962 campaign for the Democratic gubernatorial nomination, Wallace made political hay of this episode, bragging of his defiance of Johnson's orders and calling the federal judge "a low-down, carpetbaggin', scalawaggin', race-mixin' liar."⁵³⁸ Wallace also made his dramatic pledge to block any attempt at school desegregation in Alabama, "even to the point of standing in the schoolhouse door."⁵³⁹ His opponent in the run-off primary was a moderate segregationist, who promised to resist the federal gov-

⁵³⁶ Bartley & Graham, *supra* note 369, at 67; see Black, *supra* note 3, at 52-55; Frady, *supra* note 189, at 124-26; Sherrill, *supra* note 325, at 267; Strong, *supra* note 12, at 450-51. The Wallace quote is variously phrased in the secondary sources, but the gist is everywhere the same.

⁵³⁷ See Frady, *supra* note 189, at 127-29; Norrell, *supra* note 12, at 114-17; Sherrill, *supra* note 325, at 278-79.

⁵³⁸ Frady, *supra* note 189, at 129; see Sherrill, *supra* note 325, at 279-80 (reporting a slightly different quotation).

⁵³⁹ Norrell, *supra* note 12, at 138.

ernment in a responsible manner. But times in Alabama were such "that to be moderate was to be demolished."⁵⁴⁰ Wallace swept to victory with the largest number of votes of any gubernatorial candidate in Alabama history.⁵⁴¹ Then, in his inaugural address, Wallace spoke his famous words of defiance:

In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny. And I say, Segregation now! Segregation tomorrow! Segregation forever!⁵⁴²

Once ensconced in the statehouse, Wallace affirmatively sought out confrontation with the federal government, most famously with his "stand in the schoolhouse door" at Tuscaloosa. Wallace endeavored to entrap the Kennedy administration into using federal troops in Alabama, as it had at Ole Miss, fully appreciating the political gains that would accrue from his playing to the southern tradition of "foreseeable defeat before overwhelming odds."⁵⁴³ Resistance to federal authority at Tuscaloosa gave Wallace the opportunity "of becoming the apotheosis of the will of his people."⁵⁴⁴ In the now-famous charade, Wallace first physically blocked the entrance to the university and then, as planned in advance, stepped aside before a show of superior federal force.⁵⁴⁵ From the moment of his stand in the schoolhouse door, Wallace entered a new political dimension, both at the state and national levels.⁵⁴⁶

⁵⁴⁰ Frady, *supra* note 189, at 133.

⁵⁴¹ See *id.* at 135.

⁵⁴² Brauer, *supra* note 86, at 253; see Bains, *supra* note 169, at 195; Black, *supra* note 3, at 55; Frady, *supra* note 189, at 142; Norrell, *supra* note 12, at 138.

⁵⁴³ Strong, *supra* note 12, at 452; see Brauer, *supra* note 86, at 253; Frady, *supra* note 189, at 141, 150; see also Norrell, *supra* note 12, at 144, 146-48 (noting Wallace's obstruction of a federal court order for the desegregation of schools in Tuskegee and other Alabama cities in the fall of 1963). Frady relates a fantastic meeting between Wallace and Attorney General Robert Kennedy in Montgomery in April 1963, during which Wallace continually sought to elicit, on tape, an admission from Kennedy that he planned to use federal troops to desegregate the University of Alabama; Kennedy, with equal guile, avoided making such a threat explicit. See Frady, *supra* note 189, at 159-61, 164-68; see also Brauer, *supra* note 86, at 254 (describing the encounter).

⁵⁴⁴ Frady, *supra* note 189, at 149.

⁵⁴⁵ See Branch, *supra* note 94, at 821-22; Brauer, *supra* note 86, at 257-59; Frady, *supra* note 189, at 170; Sherrill, *supra* note 325, at 282.

⁵⁴⁶ See Frady, *supra* note 189, at 170-71.

Yet, for Wallace, the prospects for political advantage were not limited to *nonviolent* resistance to federal authority. During the Birmingham demonstrations of April-May 1963, Wallace, who had covertly supported Bull Connor in the recent mayoral race, increased the firepower at Connor's disposal by dispatching Colonel Al Lingo with several hundred of his Alabama state troopers. Lingo proceeded to supplement Connor's brutality with some of his own in quelling the Birmingham demonstrations.⁵⁴⁷ Wallace also invited intervention by another racial hothead, asking Sheriff Jim Clark of Dallas County to provide additional assistance for Connor; Clark readily acquiesced.⁵⁴⁸ After Connor had ruthlessly suppressed the Birmingham demonstrations, Wallace saw fit to praise his handling of the situation.⁵⁴⁹

Soon thereafter, Wallace dispatched state troopers to Tuskegee to close down schools that a federal court had ordered integrated in the fall of 1963.⁵⁵⁰ And, while we may never know Wallace's precise role in the violence at Selma on Bloody Sunday, his chief law enforcement lieutenant, Colonel Al Lingo, insists that it was Wallace himself who gave the order to initiate the horse-mounted troopers' attack on the demonstrators at Edmund Pettus Bridge.⁵⁵¹ Even after Bloody Sunday and President Johnson's ensuing "We Shall Overcome" speech to the nation,⁵⁵² Wallace saw political advantages to continued resistance. He criticized Judge Johnson's injunction against state interference with the rescheduled voting rights march, and warned the President that if he wanted the dem-

⁵⁴⁷ See Bains, *supra* note 169, at 192, 199; see also Frady, *supra* note 189, at 147 (discussing Wallace's dispatch of the state troopers to Birmingham to quell the demonstrations).

⁵⁴⁸ See Bains, *supra* note 169, at 199.

⁵⁴⁹ See Black, *supra* note 3, at 55.

⁵⁵⁰ See Frady, *supra* note 189, at 147-48. Wallace also ordered state troopers to provide transportation to white students wishing to attend neighboring, still-segregated high schools.

⁵⁵¹ See Sherrill, *supra* note 325, at 266. I am indebted to Dan Carter, author of a forthcoming Wallace biography, and to J. Mills Thornton III, one of the leading historians of the Alabama civil rights movement, for confirming for me the uncertainty of the historical record regarding Wallace's role at Selma. Stephen Longenecker, while noting that the historical record provides no definitive answer as to who was responsible for initiating the violence of Bloody Sunday, emphasizes that Governor Wallace had declared that the march would be broken up by "whatever measures are necessary." See Longenecker, *supra* note 157, at 176.

⁵⁵² See *infra* text accompanying notes 627, 633.

onstrators protected he had better perform the task himself.⁵⁵³ Wallace's continual posturing against the federal government, in conjunction with his unyielding resistance to local civil rights initiatives, converted him into a political hero in Alabama, where the white populace seemed to care little that his efforts failed, so long as he had fought the "good fight."⁵⁵⁴ Although Wallace failed to secure a state constitutional amendment that would have enabled him to succeed himself in office in 1966, his tremendous popularity was evidenced by the success of his ruse to have his wife elected governor in his stead—the election being seen as a referendum on his first term in office—and by the overwhelming political defeat of those state senators who had blocked his efforts to amend the constitution.⁵⁵⁵

In sum, the post-*Brown* racial backlash created a political environment in which southern elected officials stood to benefit at the polls by boldly defying federal authority and brutally suppressing civil rights demonstrations. As we shall see in the next Section, had *Brown* not elicited and put on prominent display the full venom of southern Jim Crow, it is unlikely that the dramatic transformation of northern public opinion that followed Birmingham and Selma would have taken place in the mid-1960s.

4. Civil Rights Legislation

The final link in my proffered chain of causation connects the violent civil rights confrontations of 1962-1965 with the civil rights legislation of the mid-1960s. To establish this linkage convincingly, I must first show that the deep-seated social, political, and economic forces identified in Part I were not in themselves sufficient to account for the enactment of transformative civil rights legislation in 1964 and 1965. Next, I shall demonstrate the specific linkages between Birmingham and the 1964 Civil Rights Act, and Selma and the 1965 Voting Rights Act.

⁵⁵³ See Garrow, *supra* note 12, at 114.

⁵⁵⁴ See Frady, *supra* note 189, at 149-50.

⁵⁵⁵ See *id.* at 203; Black, *supra* note 3, at 56.

a. *The Short-Term Contingency of the mid-1960s Civil Rights Legislation*

To claim, as I have, that the sort of racial transformation effected by the civil rights laws of the mid-1960s was inevitable in the long term is not, of course, to assert that such changes were bound to occur when they did. While the forces identified in Part I were propelling racial attitudes in a progressive direction throughout the 1950s and early 1960s, a close look at the national political scene reveals the continued existence of a wide chasm separating public opinion from the sort of transformative racial change ultimately embodied in the mid-1960s legislation. Not until the Birmingham demonstrations of 1963 did northern white opinion shift markedly in favor of immediate and substantial racial change.

We saw in Section D of Part I that around mid-century, the northern black vote increasingly became a precious gem to be fought over by the two political parties. Yet after the Dixiecrat revolt of 1948, the need to appeal to northern blacks was counterbalanced by the increasing marginality of the southern electoral vote. So long as both parties sought to balance these competing considerations, the need to avoid unduly antagonizing the South rendered landmark civil rights legislation a distant prospect.⁵⁵⁶

The civil rights records of the Eisenhower and (pre-Birmingham) Kennedy administrations illustrate this point. Eisenhower's civil rights posture during his eight years as president is fairly characterized as hesitant, cautious, and perhaps even timorous. The administration did act with reasonable dispatch to fulfill the candidate's 1952 campaign pledge to eliminate segregation in all aspects of federal military life and in the District of Columbia. Moreover, Eisenhower appointed a committee to monitor employment discrimination by government contractors (though the committee lacked sufficient funding and possessed no enforcement authority), and he named some blacks to high government positions, including E. Frederic Morrow to the White House staff (though often these appointments smacked of tokenism).⁵⁵⁷

⁵⁵⁶ See McAdam, *supra* note 77, at 169-70.

⁵⁵⁷ See Ambrose, *supra* note 89, at 126; Burk, *supra* note 41, at 5, 23-67, 69-70, 93-104; Stern, *supra* note 117, at 781-82.

On most important civil rights matters, though, Eisenhower evinced a marked disinclination to become involved. With regard to the dominant civil rights issue of his presidency—*Brown*—Eisenhower would have preferred that his Justice Department not intervene in the case at all, but the Truman administration's participation in the initial series of arguments effectively removed that option. Eisenhower did seek, however, to disassociate himself from the administration's participation.⁵⁵⁸ After the Court issued its ruling, Eisenhower repeatedly refused to publicly endorse it, observing that the president's role extended only to enforcing, not to approving or disapproving, Supreme Court decisions. Simultaneously, he expressed repeated doubts as to the capacity of law to alter people's attitudes on deeply felt subjects such as race relations. Privately, Eisenhower criticized the *Brown* decision in strong terms on numerous occasions.⁵⁵⁹ The President then personally intervened in the Justice Department's drafting of the government's brief in *Brown II*, urging the Court to show understanding for, and good will towards, the southern position.⁵⁶⁰ Moreover, in 1956 Eisenhower on more than one occasion refused to involve the federal government when mob protests and state obstructionism blocked the implementation of school desegregation orders.⁵⁶¹ Indeed, in the summer of 1957 (just months before Little Rock), Eisenhower was quoted as saying that "I can't imagine any set of circumstances that would ever induce me to send federal troops into . . . any area to enforce the orders of a federal court."⁵⁶² Eisenhower intervened at Little Rock only when

⁵⁵⁸ See Ambrose, *supra* note 89, at 124-25, 142-43; Bartley, *supra* note 58, at 61; Burk, *supra* note 41, at 134-35; Stern, *supra* note 117, at 783.

⁵⁵⁹ See Ambrose, *supra* note 89, at 190-91; Burk, *supra* note 41, at 144, 192; Stern, *supra* note 117, at 787.

⁵⁶⁰ See Burk, *supra* note 41, at 148-49; Stern, *supra* note 117, at 786; Victor H. Kramer, President Eisenhower's Handwritten Changes in the Brief on Relief in the School Segregation Cases: Minding the Whys and Wherefores, 9 Const. Commentary 223, 228-29 (1992).

⁵⁶¹ See Burk, *supra* note 41, at 159 (regarding the University of Alabama); *id.* at 167 (regarding Texarkana Junior College and Mansfield High School in Texas); Ambrose, *supra* note 89, at 336-37; Bartley, *supra* note 58, at 64, 146-47; McMillen, *supra* note 5, at 104; Sherrill, *supra* note 325, at 87-89. On such occasions, Eisenhower had the annoying (to civil rights leaders) tendency of condemning extremism on both sides, implicitly equating civil rights activists with the white supremacist citizens' councils. See Ambrose, *supra* note 89, at 306, 337; Burk, *supra* note 41, at 163.

⁵⁶² Ambrose, *supra* note 89, at 410; see Burk, *supra* note 41, at 173.

backed to the wall by a governor whom he believed had acted duplicitously in personal dealings with the president, and, significantly, only after the 1956 elections had safely passed.⁵⁶³

Eisenhower's hesitancy on the civil rights issue was partially attributable to his personal conservatism on matters of federal government authority and his genuine ambivalence regarding racial equality.⁵⁶⁴ Yet it would be a mistake to minimize the political explanation for Eisenhower's tepid commitment to civil rights.⁵⁶⁵ Eisenhower had consciously embraced a "southern strategy" in 1952, and it worked.⁵⁶⁶ His opposition to a permanent FEPC (contrasted with Stevenson's mild support), in conjunction with his support of the southern state position on the tidelands oil dispute (contrasted with Stevenson's opposition), made Eisenhower the first national Republican candidate attractive to the South since Democrat Al Smith's urban, ethnic Catholicism had propelled several southern states into Herbert Hoover's column in 1928.⁵⁶⁷ Eisenhower's civil rights conservatism enabled him to win four southern states in 1952 (Texas, Florida, Virginia, and Tennessee) and a fifth as well (Louisiana) in 1956.⁵⁶⁸ It is difficult, moreover,

⁵⁶³ See Ambrose, *supra* note 89, at 416-18, 421; Burk, *supra* note 41, at 185-86. Moreover, even when he did finally intervene at Little Rock, Eisenhower continued to insist that he was taking no position on integration, but rather was simply filling a vacuum created by the breakdown of local law enforcement. See Bartley, *supra* note 58, at 64-65.

⁵⁶⁴ See Ambrose, *supra* note 89, at 125 (noting that Eisenhower had spent most of his life in places where racism was strong, and that he shared most of the racial prejudices of his many southern friends); Barone, *supra* note 17, at 275; Bartley, *supra* note 58, at 62; Burk, *supra* note 41, at 16, 23, 28.

⁵⁶⁵ See Ambrose, *supra* note 89, at 125 (suggesting that Eisenhower's opposition to the FEPC partially a bid for southern votes); Burk, *supra* note 41, at 152-53 (noting both Eisenhower's personal philosophical objections to the use of federal force and his political sensitivity to southern attitudes); *id.* at 137 (explicitly tying Eisenhower's concerns about submitting a government brief in *Brown* to the southern political prospects of the Republican Party); Whitfield, *supra* note 79, at 72-73.

⁵⁶⁶ See Burk, *supra* note 41, at 17; Bernstein, *supra* note 186, at 3247; Stern, *supra* note 117, at 774-75.

⁵⁶⁷ See Ambrose, *supra* note 39, at 531, 567; Bartley, *supra* note 58, at 50-51; Burk, *supra* note 41, at 15-17; Stern, *supra* note 117, at 774; Howard, *supra* note 275, at 550.

⁵⁶⁸ See Bartley & Graham, *supra* note 369, at 86; Barone, *supra* note 17, at 275; Schulman, *supra* note 13, at 123. In 1952, Eisenhower won 48.1% of the southern vote, and in 1956, 48.9%. See Bartley & Graham, *supra* note 369, at 90. Moreover, Eisenhower, though failing to win deep South states such as South Carolina and Mississippi, ran very respectably there, securing in his first presidential victory 49.3% of the popular vote in the former and 39.6% in the latter. See Bartley, *supra* note 58, at 50; Schulman, *supra* note 13, at 123.

to comprehend his stunning refusal to publicly condemn the Southern Manifesto in 1956 as anything other than a play for southern white votes.⁵⁶⁹

Eisenhower's political calculations in support of civil rights conservatism illustrate the counterbalancing of northern black political power by the increasing marginality of the southern electoral vote.⁵⁷⁰ Through the Roosevelt years, the Democratic Party had run up totals of 70% to 80% in presidential contests in the South.⁵⁷¹ From the end of Reconstruction through World War II, the Republican Party had performed dismally in southern elections, both at the national and local levels. Yet these failures had not prevented the Republicans from being the dominant national party for much of that period. The Republican Party might, in short, plausibly have concluded that the South was both unobtainable and dispensable.⁵⁷²

But after Roosevelt assembled the New Deal coalition, Republicans no longer could safely depend upon their traditional strongholds in the industrial Northeast and upper Midwest. The Dixiecrat revolt of 1948, moreover, plainly demonstrated that southern whites would not go on blindly supporting the national Democratic Party, regardless of its leftward tilt on civil rights. That both parties appreciated this lesson of the Dixiecrat revolt partially explains the clear step backwards each took on civil rights in 1952.⁵⁷³ And the 1952 election results confirmed the increasing

⁵⁶⁹ Eisenhower chose instead to emphasize that the Manifesto eschewed talk of nullification (as its first draft had not), and vowed to use only *legal* means of resistance. See Ambrose, *supra* note 89, at 306; Burk, *supra* note 41, at 161-62; see also Ambrose, *supra*, at 305-06 (noting Eisenhower's refusal to condemn southern legislatures' resolutions of interposition); Whitfield, *supra* note 79, at 74-75 (noting Eisenhower's refusal to condemn the lynching of Emmett Till).

⁵⁷⁰ Many southern leaders plainly appreciated this development. See Bartley, *supra* note 58, at 50, 289-90; Heard, *supra* note 102, at 19. As early as 1938, Virginia senator Carter Glass had asked whether the South should go on blindly casting its 152 electoral votes for the Democratic Party based solely on Reconstruction-era memories. See Martin, *supra* note 72, at 58; Schulman, *supra* note 13, at 47.

⁵⁷¹ See Bartley & Graham, *supra* note 369, at 12 fig. 1.3; see also Strong, *supra* note 12, at 432 (noting that the Republican percentage of the vote in Alabama in FDR's four presidential victories ranged from 12.8% to 18.2%).

⁵⁷² See Heard, *supra* note 102, at 7 tbl. 1, 116, 117 tbl. 14.

⁵⁷³ See Barone, *supra* note 17, at 275 (noting that "by personal conviction and political calculation" both Eisenhower and Stevenson were far less pro-civil rights than Dewey or Truman); *id.* at 288; Bartley, *supra* note 58, at 52 (noting that the Democrats in 1952 plainly

marginality of the South, as the region "voted far less distinctly from the rest of the country than in any presidential election since Reconstruction."⁵⁷⁴ Affluent southern metropolitan whites had begun voting predominantly Republican just like their northern counterparts.⁵⁷⁵

This pattern was partially replicated in 1956, as the Democrats, conscious of having lost four southern states to Eisenhower in 1952, renominated Adlai Stevenson, who enjoyed the support of many southern segregationists owing to a civil rights stance that was markedly to the right of competitors for the nomination such as Estes Kefauver and Averell Harriman. The Democratic Party, moreover, pointedly refused to endorse *Brown* in its convention platform.⁵⁷⁶ On the Republican side, Eisenhower intervened in the

sought to conciliate the South, nominating Stevenson and Sparkman, and toning down the civil rights plank); Berman, *supra* note 79, at 201-10, 217; Bernstein, *supra* note 186, at 3238 (calling the Democrats' 1952 civil rights plank "a surrender to the southern wing of the party"); *id.* at 3247 (noting that in 1952, "unlike 1948, civil rights was not a popular issue, and the GOP would not invest much capital in a cause that did not enlist their sympathy or concern"); Burk, *supra* note 41, at 15; Martin, *supra* note 72, at 94-97 (noting Stevenson's personal conservatism on civil rights issues); *id.* at 105-13 (noting that at the 1952 Democratic convention, southerners scored clear victories on the vice-presidential nomination (Senator Sparkman of Alabama), the civil rights plank, the "party loyalty" issue, and arguably on the presidential nomination as well); Stern, *supra* note 117, at 774. Other factors no doubt also explain this backsliding on civil rights—for example, the rise of McCarthyism and the general tide of conservatism sweeping the nation. That both major parties went fishing for southern white votes in 1952 should not obscure the basic fact that, by this time, national racial attitudes had evolved to a point where neither party could even approach endorsing a Dixiecrat agenda. See Heard, *supra* note 102, at 246.

⁵⁷⁴ Barone, *supra* note 17, at 275.

⁵⁷⁵ See Bartley & Graham, *supra* note 369, at 86; see also Lubell, *supra* note 250, at 112-14 (noting in 1951 that the steady growth of a southern urban middle class was making the Republican Party increasingly competitive in the rim South); Bernd, Georgia, *supra* note 374, at 331 (noting that, although Democrats easily carried Georgia, Eisenhower and Nixon in the 1952-1960 presidential elections were entirely competitive in that state's cities); Havard, *supra* note 432, at 726 (noting the forces of urban industrial capitalism that were pushing the peripheral South states of Virginia, Florida, and Texas towards the Republican column, and simultaneously making them relatively immune from racial politics, as practiced by Thurmond, Goldwater, and Wallace in 1948, 1964, and 1968, respectively); Strong, *supra* note 12, at 436 (noting a strong correlation between white income levels and percentage of votes cast for Eisenhower in the 1952 presidential election in Alabama cities).

⁵⁷⁶ The civil rights plank of the platform can be found in Malcolm Moos, Election of 1956, in 4 *History of American Presidential Elections*, *supra* note 112, at 3384-85. In 1956 Stevenson opposed the Powell amendment, which conditioned federal educational spending upon compliance with desegregation, as well as federal intervention in local

drafting of his party's 1956 civil rights plank to ensure that *Brown* was "accepted" rather than "supported," and that no link was drawn between his administration and the decision. The President also successfully resisted pressure from party liberals for a strong general civil rights plank, preferring instead to rely on the ambiguous program he had presented to Congress (ambiguous because of uncertainty regarding the extent to which the President had endorsed his own administration's proposals).⁵⁷⁷ Moreover, during the campaign, Eisenhower continued his refusal to be drawn on whether he supported or merely accepted *Brown*, and he dismissed the possibility of federal military intervention to compel school desegregation pursuant to court order—an issue that arose during the campaign because of school desegregation riots in Texas and in Clinton, Tennessee.⁵⁷⁸ In sum, the presidential politics of the 1950s reveals that, while the underlying forces identified in Part I were continuing to provide a gentle push towards greater racial equality, the immediate political imperative of balancing appeals to northern blacks and liberals against those to southern white racial con-

school desegregation disputes. See Anderson, *supra* note 105, at 22-23, 49-51, 112-18; Barone, *supra* note 17, at 288; Martin, *supra* note 72, at 139; see also Barone, *supra* note 17, at 288 (noting both Stevenson's personal conservatism on the civil rights issues and his dependency on southern electoral support, both for the Democratic nomination and in the general election); Martin, *supra* note 72, at 94-97, 124-25, 141-44 (same).

⁵⁷⁷ See Ambrose, *supra* note 89, at 327-28; Anderson, *supra* note 105, at 120-22; Burk, *supra* note 41, at 162, 165-66. The civil rights plank of the Republican Party platform is reproduced in Moos, *supra* note 576, at 3399-400.

⁵⁷⁸ See Ambrose, *supra* note 89, at 336-37; Anderson, *supra* note 105, at 130-31; see also Burk, *supra* note 41, at 168-69 (noting that in the 1956 campaign Eisenhower appeared to place greater emphasis on winning support of southern whites than northern blacks).

Of the four men on the two national tickets in 1956, only Vice President Nixon adopted a strong stand in favor of civil rights, a position he seemed to back away from when he was the Republican standard-bearer in 1960. See Anderson, *supra* note 105, at 133-34; Burk, *supra* note 41, at 168-69, 257-59; *infra* note 590 and accompanying text. That Eisenhower, notwithstanding his conservative civil rights posture, won a significantly greater percentage of the black vote in 1956 than in 1952—perhaps as much as 20% greater—reveals a great deal about the civil rights image of the Democratic Party and its presidential candidate. Many black voters seem to have rewarded Eisenhower for a Supreme Court decision that he publicly refused to endorse and privately criticized. See Anderson, *supra* note 105, at 134-35 (suggesting that black voters may have accepted the Republican charge that a vote for the Democrats was a vote to keep Senator Eastland in charge of the Judiciary Committee); Bartley & Graham, *supra* note 369, at 87 (attributing the large shift of black voters to the GOP in 1956 to the fact that Chief Justice Warren was a Republican); Burk, *supra* note 41, at 169 (suggesting that black voters may have given Eisenhower some credit for *Brown* as well as rewarding the President for economic prosperity).

servatives deterred either party from charting bold new paths on civil rights.

The story of the 1957 Civil Rights Act exemplifies this precarious balancing act, from both parties' perspective. It seems quite possible that, had President Eisenhower not suffered his severe heart attack in the fall of 1955, thus throwing the 1956 presidential contest into disarray, his administration would not have introduced a major civil rights bill.⁵⁷⁹ Only with Eisenhower absent from the Cabinet, and liberal northern Republicans anxious about securing their black constituents' votes in 1956, were proposals for civil rights legislation initiated in late 1955.⁵⁸⁰ Eisenhower never was enthusiastic about the proposed legislation, and indeed subsequently appeared to publicly repudiate the core provisions in his own administration's civil rights package.⁵⁸¹

On the other side of the lobby, Democratic Majority Leader Lyndon Johnson had his own balancing act to consider. Johnson appreciated the importance of keeping the 1956 bill off the Senate floor where it potentially would tear his party asunder in an election year, setting southern white supremacists like James Eastland and Richard Russell against northern liberals such as Hubert Humphrey and Paul Douglas. Indeed, many contemporary observers and some subsequent historians have concluded that the Eisen-

⁵⁷⁹ See Anderson, *supra* note 105, at 3-5, 28; Burk, *supra* note 41, at 208.

⁵⁸⁰ See Anderson, *supra* note 105, at 3-4; Burk, *supra* note 41, at 155-57; Garrow, *supra* note 12, at 12.

⁵⁸¹ See Ambrose, *supra* note 89, at 326-27, 406-07; Anderson, *supra* note 105, at 28, 39-41, 43, 85-89; Burk, *supra* note 41, at 171, 222-23.

From the outset, there was intense disagreement within Eisenhower's Cabinet over the desirability of the civil rights bill drafted by the Justice Department, and indeed, over the desirability of any civil rights legislation at all. Eventually, the White House approved the establishment of a civil rights division within the Justice Department and the appointment of a civil rights commission, but it refused to accede to Justice Department proposals granting the attorney general authority to seek injunctions in voting cases, as well as, more broadly, in all civil rights cases (the much-heralded Title III authority). Attorney General Herbert Brownell, however, gave testimony on the Hill that strongly implied White House endorsement of the entire package. The President himself made it clear in 1956 that he had little interest in securing the more substantive provisions in the bill. Then, in 1957, after the bill was reintroduced, Eisenhower publicly confessed (in response to criticisms of the bill by Senator Richard Russell) that he did not understand his own administration's proposals, before jettisoning the broad Title III grant of injunctive authority to the attorney general, in favor of a pure voting rights emphasis. See Ambrose, *supra* note 89, at 326-27, 406-07; Anderson, *supra* note 105, at 3-4, 28-29, 39-43, 88-89; Burk, *supra* note 41, at 171.

hower administration introduced the civil rights bill in a presidential election year precisely for the purpose of sowing dissension in the Democratic Party.⁵⁸² Yet Johnson had to weigh another factor in the balance, for he had presidential ambitions, and he recognized that a southerner could hope to win national office only by demonstrating his firm disavowal of southern racial norms. For Johnson's presidential ambitions to flourish, he needed both to secure the first civil rights bill since Reconstruction (to placate northern liberals), and to ensure that the bill was largely a symbolic, rather than a substantive, triumph (to placate southern conservatives).⁵⁸³ Through his brilliant legislative leadership, Johnson accomplished precisely this.

While the simple fact that Congress enacted the 1957 Civil Rights Act corroborates the continuing progressive evolution of national racial norms, the statute's limited practical significance highlights the broad chasm still separating the country in 1957 from the transformative racial change of the mid-1960s. First, the Senate rejected the original administration proposal, which Eisenhower himself had since repudiated, to extend the Attorney General's injunctive authority to civil rights matters beyond voting.⁵⁸⁴ Second, even on the voting issue, the Act's practical import was largely nullified by the Senate amendment guaranteeing jury trials in contempt cases, given the demonstrated propensities of southern white juries to acquit white malefactors obstructing black voter registration.⁵⁸⁵ While one should not minimize the symbolic impact of the 1957 Civil Rights Act as the first national civil rights statute enacted since 1875, the Act's substantive hollowness, together with the Eisenhower Justice Department's decision to leave it effec-

⁵⁸² See Anderson, *supra* note 105, at 45-46; Burk, *supra* note 41, at 209, 217-18 (noting that Vice President Nixon made precisely this argument about dividing Democrats to the cabinet meeting at which the bill was first discussed, and suggesting that this was the principal motivation of the Republicans); Martin, *supra* note 72, at 160.

⁵⁸³ See Barone, *supra* note 17, at 295; Burk, *supra* note 41, at 225; Dallek, *supra* note 186, at 517-27; Stern, *supra* note 126, at 133; see also Dallek, *supra* note 186, at 496 (noting that Johnson's refusal to sign the Southern Manifesto was likewise attributable to political calculations).

⁵⁸⁴ See Burk, *supra* note 41, at 223-24; Dallek, *supra* note 186, at 522-24; Martin, *supra* note 72, at 162-63; Stern, *supra* note 126, at 136; C. Vann Woodward, *The Great Civil Rights Debate*, 24 *Commentary* 283, 286-89 (1957).

⁵⁸⁵ See Barone, *supra* note 17, at 295-96; Burk, *supra* note 41, at 224; Dallek, *supra* note 186, at 524-26; Martin, *supra* note 72, at 162; Stern, *supra* note 126, at 137.

tively unenforced,⁵⁸⁶ demonstrates how far the country remained from transformative racial change in the late 1950s.

The basic conundrum of how to appeal simultaneously for southern white and northern black votes remained central to both the Kennedy and Nixon campaigns in 1960.⁵⁸⁷ That Eisenhower had already begun to carry many deep South black belt counties—those counties historically most hostile towards the Republican party⁵⁸⁸—must have confirmed for careful observers that the South would be even more up for grabs in 1960. Neither Kennedy nor Nixon was an unambiguous civil rights enthusiast in 1960. Of the five principal contenders for the Democratic nomination, Kennedy had been the least attractive (Texan Lyndon Johnson notwithstanding) to at least some civil rights leaders.⁵⁸⁹ Nixon, meanwhile, spent the general election campaign running away from the liberal civil rights plank that the Rockefeller camp had forced upon him at the Chicago convention.⁵⁹⁰ When Kennedy won the election in a squeaker, no reasonably astute observer could help but note that his victory had depended upon a shaky coalition of northeastern and southern states; it was difficult to see how Kennedy could be reelected in 1964 without strong southern support.⁵⁹¹ Nixon had scored well in the South—winning three of the same southern states that Eisenhower had twice won (Virginia, Tennessee, and

⁵⁸⁶ See Burk, *supra* note 41, at 238-39; Garrow, *supra* note 12, at 13.

⁵⁸⁷ See Brauer, *supra* note 86, at 32-42; Stern, *supra* note 126, at 9-39; White, *supra* note 107, at 272.

⁵⁸⁸ See Bartley, *supra* note 58, at 47-49 (noting that of counties with 60% or higher black population (almost all of which was nonvoting), Eisenhower in 1952 won 8 of 11 in South Carolina and 9 of 20 in Mississippi); Bartley & Graham, *supra* note 369, at 90; Whitfield, *supra* note 79, at 72-73.

⁵⁸⁹ See White, *supra* note 107, at 354. Correspondingly, Kennedy had been a candidate acceptable to the South. In 1956, southerners had preferred him over "turncoat" Estes Kefauver, who had refused to sign the Southern Manifesto, and Kennedy had further established his southern credentials with his vote in favor of the jury trial amendment in 1957. See Brauer, *supra* note 86, at 18-22; Martin, *supra* note 72, at 153; Stern, *supra* note 126, at 13-16. Kennedy's courting of southern Democrats went so far that in 1958 the NAACP felt compelled to criticize him during his senatorial reelection campaign. See Stern, *supra* note 126, at 9-10.

⁵⁹⁰ See Brauer, *supra* note 86, at 41; Stern, *supra* note 126, at 35-36; White, *supra* note 107, at 203-04, 272, 315.

⁵⁹¹ See Barone, *supra* note 17, at 350; White, *supra* note 107, at 360 (observing in 1961 that Kennedy "cannot, in any of the accepted ways, meet the pressure of Northern Negroes for government intervention in the South without losing the marginal but essential victory he won in the Old Confederacy in 1960").

Florida), and narrowly losing the fourth (Texas), probably owing to Johnson's residency—thus proving that presidential Republicanism was not simply a product of Eisenhower's southern appeal, but rather was there to stay.⁵⁹² The increasing marginality of the South would have been further confirmed for Kennedy and the Democrats by John Tower's Republican senatorial victory in Texas in 1961 (the first in that state since Reconstruction) and Republican near-misses in Senate races in Alabama and South Carolina in 1962.⁵⁹³

Thus, civil rights policy during the early years of the Kennedy presidency was bound to be influenced by the perceived imperative of recarrying the South in 1964; a quick survey of the scene again confirms that the transformative legislation of 1964 and 1965 was anything but inevitable from the vantage point of the early 1960s. Kennedy had promised during the 1960 campaign to eliminate race discrimination in federally assisted housing with the "stroke of a pen," through an executive order; yet, for more than two years, he declined to execute that pledge, and when he finally did so, the order was of limited scope and only prospective in application.⁵⁹⁴ Kennedy placated conservative southern Democrats in the Senate with a series of atrocious judicial appointments, including William Harold Cox, Senator Eastland's close friend and former college roommate, who referred to blacks from the bench as "niggers" and "chimpanzees."⁵⁹⁵ Rather than supporting the Freedom Riders in their efforts to exercise federally guaranteed rights recently articulated by the Supreme Court, the Kennedy administration privately negotiated a deal with Mississippi public officials, according to

⁵⁹² See White, *supra* note 107, at 359. Nixon actually outran Eisenhower in several deep South states, though still narrowly failing to carry them. See *id.* at 359; see also Strong, *supra* note 12, at 432 (noting that Nixon improved on Eisenhower's percentages in Alabama).

⁵⁹³ See Bartley & Graham, *supra* note 369, at 95-99; Strong, *supra* note 12, at 438-39.

⁵⁹⁴ See Branch, *supra* note 94, at 586-87; Brauer, *supra* note 86, at 43, 84-85, 205-09; Stern, *supra* note 126, at 51-52; Bains, *supra* note 169, at 237. Kennedy's delay was so flagrant in light of his campaign promise that frustrated civil rights activists commenced an "ink for Jack" campaign, deluging the White House with ball point pens. See *id.*

⁵⁹⁵ See Garrow, *supra* note 12, at 22-24; Sherrill, *supra* note 325, at 195; Stern, *supra* note 126, at 46-48; Bains, *supra* note 169, at 238; McMillen, *supra* note 325, at 357-58. As of the spring of 1963, Kennedy had not appointed a single southern black federal court judge, U.S. commissioner, jury commissioner, or federal marshal. See Bains, *supra* note 169, at 238.

which the latter were permitted to (illegally) jail the civil rights demonstrators in exchange for preventing the sort of mob violence which had befallen them in Alabama.⁵⁹⁶ The administration also declined to intervene on behalf of civil rights demonstrators in Albany, Georgia, who likewise were exercising federally protected rights, and apparently broke its promise to protect civil rights workers in Mississippi if they channeled their energies into voter registration.⁵⁹⁷ In early 1963, the President rejected the request of civil rights leaders to sponsor an event commemorating the hundredth anniversary of the Emancipation Proclamation, in its stead offering a Lincoln birthday social at the White House, which some black leaders regarded as an insult and boycotted.⁵⁹⁸ In the first two years of his presidency, Kennedy publicly declared that he would not seek civil rights legislation because Congress would not pass it (which was true); yet plainly his priorities lay with foreign policy matters involving the Cold War, as well as with other domestic issues such as tax cuts and Medicare.⁵⁹⁹ As of early 1963, then, with the Birmingham demonstrations just months away, nobody could have confidently predicted that the nation was about to undergo transformative racial change.⁶⁰⁰

⁵⁹⁶ See Branch, *supra* note 94, at 469-70; Brauer, *supra* note 86, at 105-06, 110; Stern, *supra* note 126, at 60; Dittmer, *supra* note 13, at 76-77.

⁵⁹⁷ See Branch, *supra* note 94, at 383, 405-06, 480, 682-83, 693-95; Garrow, *supra* note 62, at 161-62, 179-80, 182-83, 187-88, 190, 192, 201, 216; Sitkoff, *supra* note 6, at 124-25; Stern, *supra* note 126, at 66-69; McMillen, *supra* note 325, at 359-60. Voting rights activist Robert Moses was so frustrated by the dearth of federal protection for voting rights workers in Mississippi that he filed suit against Attorney General Robert Kennedy and FBI Director J. Edgar Hoover seeking to compel them to perform their duties. See *id.* at 363.

⁵⁹⁸ See Branch, *supra* note 94, at 640-43, 685-87; Garrow, *supra* note 62, at 199.

⁵⁹⁹ See Brauer, *supra* note 86, at 61-64; Garrow, *supra* note 62, at 169-70; Stern, *supra* note 126, at 40-44. On Kennedy's preoccupation with Cold War crises such as Berlin, Cuba, and Laos, see generally Beschloss, *supra* note 425.

⁶⁰⁰ Cf. William D. Barnard, Introduction, in *Birmingham, Alabama, 1956-1963: The Black Struggle for Civil Rights*, *supra* note 5, at xii-xiii (noting a wrong-headed general tendency to assume that the course of history was predestined, and cautioning that the history of civil rights legislation would have been very different had it not been for Birmingham); Bains, *supra* note 169, at 237 (noting that until the spring of 1963, the Kennedy administration "had at best a mixed record on civil rights").

It is also worth noting that President Kennedy managed to maintain an extraordinary level of support among the black masses, even while black leaders attacked him for his passivity on civil rights. See Brauer, *supra* note 86, at 220-21. So long as Kennedy's symbolic gestures—typified by the famous phone call to Coretta Scott King while her husband was in a Georgia prison late in the 1960 campaign—earned him support among

b. *The Link Between Violent Confrontation and Civil Rights Legislation*

While underlying social, political, and economic forces were continuing to nudge the nation towards racial change, in 1962 it was still possible for a Democratic administration to refuse even to consider introducing civil rights legislation, to renege on a promise of federal protection to voter registration workers, to reject any significant commemoration for the one hundredth anniversary of the Emancipation Proclamation, to appoint unreconstructed white supremacists to the federal bench, and so on. What happened in the ensuing three years to ignite transformative racial change through civil rights legislation? The answer, in brief, is that the Kennedy and Johnson administrations were spurred into action when the nation—including, most significantly, northern whites—was appalled to witness the spectacle of southern law enforcement officials brutally suppressing generally nonviolent civil rights demonstrations. The nation was made painfully aware, through the immediacy of television coverage, of the cruel excesses of Jim Crow; the response was a wave of indignation that such behavior could be tolerated in mid-twentieth-century America.⁶⁰¹

By the early 1960s, King and his colleagues had basically given up on convincing southern whites of the wrongness of racial segregation, and had redirected their energies towards converting northern whites to the civil rights cause by exposing the true evils of the

black Americans, he had little political incentive to implement substantive measures that would alienate southern whites. On the famous phone call and its political impact, see Branch, *supra* note 94, at 360-62; Brauer, *supra* note 86, at 46-50; Garrow, *supra* note 62, at 144-47; White, *supra* note 107, at 322-23; cf. Klarman, *supra* note 12, at 799 n.228 (collecting sources noting Franklin Roosevelt's similar adroitness at winning support from the black masses through symbolic gestures while frustrating the black leadership with his unwillingness to endorse any significant civil rights legislation).

⁶⁰¹ Generally describing this phenomenon are Barone, *supra* note 17, at 354 (noting that King "had discovered how to use television to make the protests of blacks irresistibly appealing to the large majority of the American people who were mostly indifferent to segregation when it remained distant but disliked it when forced to face the unpleasant measures needed to maintain it"); Garrow, *supra* note 12, at 220-22; Longenecker, *supra* note 157, at 156-57; Norrell, *supra* note 68, at 72 (noting that television "communicated white violence against civil rights workers with horrifying reality" and "caused a mass revulsion from racial violence that aided the civil rights cause immeasurably"); Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* 33 (1969); Sitkoff, *supra* note 6, at 125; Stephen B. Oates, *The Week the World Watched Selma*, 33 *Am. Heritage* 48, 50-51, 57 (1982).

Jim Crow system. Their strategy, in essence, had changed from one of "nonviolent persuasion" to one of "nonviolent provocation."⁶⁰² Yet events quickly demonstrated that even blatantly illegal southern responses to civil rights demonstrations were *not*, in and of themselves, sufficient to arouse national outrage or evoke a presidential response. Public opinion polls from the early 1960s show that the public began to rank civil rights as the nation's most important issue only when demonstrations produced violence and social disorder, not when they simply led to mass arrests of peaceful participants.⁶⁰³ Likewise, as noted above, the Kennedy administration in the early 1960s acquiesced in the illegal imprisonment of Freedom Riders in Mississippi during 1961, and declined to intervene on behalf of civil rights demonstrators in Albany, Georgia, who were illegally impeded in their exercise of federal rights.⁶⁰⁴ Only when confronted with widespread violence and the collapse of social order, as with Alabama's violent reception of the Freedom Riders in the spring of 1961 or the race riot accompanying James Meredith's admission to Ole Miss in the fall of 1962, could

⁶⁰² See Garrow, *supra* note 12, at 220-21, 225; Garrow, *supra* note 62, at 171-72. This explains the SNCC's somewhat reluctant decision to invite hundreds of northern white college students to participate in Freedom Summer in Mississippi in 1964. After years of voter registration effort had produced few concrete results, much violent resistance, and little national interest, it was decided that the best way to secure the attention of northern whites was to enroll their sons and daughters in civil rights protest activity that would put their lives at risk. See McAdam, *supra* note 231, at 32-33, 36, 39; Dittmer, *supra* note 13, at 81; McMillen, *supra* note 325, at 364. The strategy worked brilliantly (albeit tragically), as the murder of three civil rights workers near Philadelphia, Mississippi, led to intensive media coverage for the remainder of the summer. See McAdam, *supra* note 231, at 103, 116, 150-52; McMillen, *supra* note 325, at 367.

⁶⁰³ See McAdam, *supra* note 77, at 160 fig. 7.2; Rosenberg, *supra* note 6, at 130 fig. 4.2. Similarly, *New York Times* coverage of the civil rights issue nearly tripled between 1962 and 1963, in response to the Birmingham demonstrations and their spinoff successors. See Rosenberg, *supra* note 6, at 114-15 tbl. 4.1; see also Orfield, *supra* note 601, at 36 (noting that polls taken two months before and two months after Birmingham showed a 1200% increase in the number of Americans regarding civil rights as the nation's most urgent issue).

⁶⁰⁴ See *supra* notes 596-97 and accompanying text; see also Laue, *supra* note 183, at 91 (noting that a Columbia, South Carolina, demonstration resulted in the arrest of 187 marching students, but attracted barely any national attention, owing to the lack of violence). The only significant Kennedy administration interventions in Albany were behind-the-scenes efforts to get Martin Luther King, Jr., out of jail, steps taken out of concern that consequences deleterious for social order would follow should King suffer injury or death while in prison. See Branch, *supra* note 94, at 554-55, 603-06; Brauer, *supra* note 86, at 168-69.

the Kennedy administration be prompted to intervene with federal force.⁶⁰⁵

To be successful, then, King's strategy required the unwitting assistance of southern police chiefs in creating, or at least tolerating, racial conflagrations of sizeable proportions. To the extent that southern law enforcement officials acted like Laurie Pritchett had in Albany—illegally but peacefully arresting civil rights demonstrators—neither the country nor the administration would pay much heed.⁶⁰⁶ Moreover, because the public evidently tends to condemn even nonviolent direct action tactics,⁶⁰⁷ for the civil rights demonstrations to succeed it was essential that the public's negative attitude towards the civil rights "provokers" be outweighed by its condemnation of their violent repressors.⁶⁰⁸ Appreciating this fact, King and his lieutenants devised the strategy of "creative tension," pursuant to which peaceful civil rights demonstrators would provoke, and then passively endure, violent assaults from southern law enforcement officers and unofficial mobs, with the hope of reaping a public opinion windfall from a horrified viewing audience.⁶⁰⁹ The success of this strategy required both that the demon-

⁶⁰⁵ See Brauer, *supra* note 86, at 98-103, 109-10; Garrow, *supra* note 12, at 2-3, 221; McAdam, *supra* note 77, at 170-71, 176; Sitkoff, *supra* note 6, at 124-26; Stern, *supra* note 126, at 58-59; Bains, *supra* note 169, at 238; Laue, *supra* note 183, at 127-28; McMillen, *supra* note 325, at 359. In Montgomery, the Kennedy administration had been forced to send in federal marshals and call up the National Guard to prevent a race riot after the Freedom Riders were brutally assaulted with the complicity of local police. The administration then negotiated through Senator Eastland for the peaceful conveyance of the Freedom Ride buses to Jackson, Mississippi, with state police protection, where the demonstrators would be (illegally) arrested and imprisoned. See Branch, *supra* note 94, at 469-70; Brauer, *supra* note 86, at 105-07; Garrow, *supra* note 62, at 157-59.

⁶⁰⁶ See Branch, *supra* note 94, at 631; Fager, *supra* note 199, at 19; Garrow, *supra* note 62, at 187-88, 209, 216-17; Garrow, *supra* note 12, at 221; McAdam, *supra* note 77, at 176; Eskew, *supra* note 5, at 73-74. Perhaps most importantly, television would pay no attention either; there is no escaping the fact that violent confrontation makes for dramatic television watching. See Garrow, *supra* note 12, at 164; Norrell, *supra* note 68, at 72.

⁶⁰⁷ See Garrow, *supra* note 12, at 155 (noting that only 31% of those polled approved of Mississippi Freedom Summer, 24% of the Freedom Rides, and 22% of the March on Washington); Laue, *supra* note 183, at 107 (noting public opinion poll data from June 1961 showing an almost three-to-one margin of disapproval for the Freedom Rides); see also Branch, *supra* note 94, at 725-26 (noting substantial disapproval of King's Birmingham campaign among local *black* community leadership).

⁶⁰⁸ See Garrow, *supra* note 12, at 159-60.

⁶⁰⁹ See *id.* at 2, 221, 225; Sitkoff, *supra* note 6, at 29; Bains, *supra* note 169, at 220; Oates, *supra* note 601, at 50-51; Thornton, *supra* note 346, at 234.

strators remain nonviolent, thus identifying their adversaries as the indisputable initiators of any violence, and that their objectives be regarded as entirely legitimate—e.g., equal access to the ballot or to public accommodations, rather than large-scale redistribution of wealth or employment preferences.⁶¹⁰ But the success of “creative tension” equally depended upon the “cooperation” of public officials such as Bull Connor in Birmingham and Jim Clark in Selma, who could propel the civil rights movement forward by so brutalizing peaceful demonstrators as to mobilize national opinion behind a legislative assault upon Jim Crow.⁶¹¹

⁶¹⁰ See Garrow, *supra* note 12, at 160.

Once the “relative justification” of the demonstrators’ position shifted, as when they became the perpetrators rather than the victims of violence, public opinion tended to react adversely; thus, even those northern whites sympathetic towards the civil rights movement tended to condemn the urban race riots of the middle and late 1960s. See Garrow, *supra*, at 164-65; McAdam, *supra* note 77, at 193-94, 208. It is worth emphasizing as well that since many of these northern whites were converted to the civil rights cause only out of revulsion against the brutality of southern Jim Crow, they never saw themselves as committed to eradicating *northern* practices of racial exclusion, and thus often voted against measures such as fair housing laws, desegregation plans aimed at remedying de facto segregation, and so forth. See *id.* at 214 (noting that the southern civil rights movement called for little more than dismantling of an anachronistic caste system that few people outside the South had much of a vested interest in maintaining); Sitkoff, *supra* note 6, at 208. Thus, it is understandable that the same year that the 1964 Civil Rights Act passed Congress with overwhelming support from northern public opinion, fair housing and school integration ordinances were being rejected in countless northern locales. See White, *supra* note 13, at 362-63 & n.4; Horowitz, *supra* note 162, at 197-98; see also McAdam, *supra* note 77, at 190 (noting that 71% of the nation’s civil rights demonstrations between 1960 and 1965 took place in the South, but that the comparable figure for the next half-decade was just 34%); *id.* at 214 (“[W]ith the advent of riots, open-housing marches, and court-ordered busing, the comfortable illusion that the racial problem was a distinctly southern dilemma was shattered.”). Moreover, so long as the civil rights movement was concentrated principally on the desegregation issue, rather than questions of economic redistribution, it posed little threat to existing economic arrangements, and thus was less threatening to many whites. See *id.* at 164, 206-07; Norrell, *supra* note 68, at 75; J. Mills Thornton III, Commentary, *in* *The Civil Rights Movement in America*, *supra* note 12, at 149-51.

⁶¹¹ See Frady, *supra* note 189, at 147 (calling Wallace one of the “catalysts of the Negro revolution”); McAdam, *supra* note 77, at 174 (“[S]upremacists were as responsible for the full flowering of black insurgency as any other party to the conflict, save the insurgents themselves.”); Nunnolley, *supra* note 495, at 186 (calling Connor “the perfect adversary” for the civil rights movement); Sherrill, *supra* note 325, at 280-81 (noting that Governor Wallace’s actions at Birmingham and Selma inadvertently advanced the cause of integration more than those of almost any other southern politician); Sitkoff, *supra* note 6, at 98 (quoting James Farmer regarding the Freedom Rides: “We were counting on the bigots in the South to do our work for us.”); Bains, *supra* note 169, at 239 (noting President

Indeed King and his colleagues chose Birmingham as the successor site to the failed Albany demonstrations on the explicit assumption that Bull Connor was constitutionally incapable of duplicating Laurie Pritchett's restraint in dealing with civil rights demonstrators.⁶¹² While King was widely criticized for refusing to defer demonstrations until first attempting negotiations with the new mayor, Albert Boutwell, who had recently defeated Connor at the polls—Connor refused to relinquish his position as police chief while the election results were being challenged in court—his strategy of confrontation actually required that the demonstrations take place before Connor was evicted from office.⁶¹³ And the strategy proved brilliantly successful. After relatively lackluster initial marches that Connor met with uncharacteristic restraint, the dam soon burst, as Connor's men deployed vicious police dogs and high pressure water hoses against the demonstrators, many of whom by this time were children.⁶¹⁴ Television and front page national newspaper coverage immediately followed, with photographs of police dogs attacking demonstrators, and editorials condemning the violence as "a national disgrace." President Kennedy reported

Kennedy's remark that "[t]he civil rights movement should thank God for Bull Connor. He's helped it as much as Abraham Lincoln."); Barnard, *supra* note 600, at xiii (noting that King's success depended on finding someone to play "the role of villain," somebody "who could personify the rigidity and evil inherent in the system of segregation").

⁶¹² See Garrow, *supra* note 62, at 227; Garrow, *supra* note 12, at 221; McAdam, *supra* note 77, at 177-78; Bains, *supra* note 169, at 219; Eskew, *supra* note 5, at 73-74; Richard Lentz, *The Prophet and the Citadel: News Magazine Coverage of the 1963 Birmingham Civil Rights Crisis*, 10 *Comm. 5*, 7-8 (1987). On Connor's violent propensities and racial extremism, see *supra* text accompanying notes 515-20.

⁶¹³ See Garrow, *supra* note 62, at 228 (quoting King lieutenant Wyatt Walker to the effect that "[w]e didn't want to march after Bull was gone"); Bains, *supra* note 169, at 219 (noting that King was not seeking simply to desegregate Birmingham, but rather to "nationalize" a local racial conflict, thus impelling the Kennedy administration to take national action on civil rights); Eskew, *supra* note 5, at 74. On contemporaneous criticism of King for not allowing the new administration time to organize itself and negotiate over the amelioration of Jim Crow practices, see Branch, *supra* note 94, at 710, 725-26; Bains, *supra* note 169, at 217; Eskew, *supra* note 5, at 77-78; Lentz, *supra* note 612, at 9; Thornton, *supra* note 12, at 52. On the imbroglio over the shift to a new government structure in Birmingham and Connor's subsequent defeat in the mayoralty race, see Branch, *supra* note 94, at 643-44, 674, 703, 709; Thornton, *supra* note 12, at 50-51.

⁶¹⁴ The fullest accounts are Branch, *supra* note 94, at 758-65; Fairclough, *supra* note 421, at 111-39; Garrow, *supra* note 62, at 231-64; see also Brauer, *supra* note 86, at 232-37; Nunnally, *supra* note 495, at 129-64; Sitkoff, *supra* note 6, at 137; Bains, *supra* note 169, at 175-83, 189-90, 222; Eskew, *supra* note 5, at 80-83; Lentz, *supra* note 612, at 16 (all describing the confrontation in Birmingham).

that the famous photograph of a police dog lunging at a nonresisting demonstrator made him "sick."⁶¹⁵

Media reports of violent scenes from Birmingham elicited the first congressional response to the demonstrations, as several congressmen rose to denounce the use of police dogs and fire hoses against peaceful demonstrators, and others introduced a variety of bills to end federal complicity in the operation of racially segregated schools.⁶¹⁶ Public opinion surveys conducted during the summer of 1963, in the wake of Birmingham and its spin-off successors in scores of additional southern cities,⁶¹⁷ revealed substantial majorities in favor of laws guaranteeing black voting rights, equal employment opportunities, and desegregated schools and public accommodations.⁶¹⁸ The conclusion seems inescapable that the Birmingham demonstrations were primarily responsible for the Kennedy administration's reversal on civil rights legislation.⁶¹⁹

⁶¹⁵ Garrow, *supra* note 62, at 250; Garrow, *supra* note 12, at 138-41, 166-69; Brauer, *supra* note 86, at 234, 238; Nunnelley, *supra* note 495, at 152; White, *supra* note 13, at 205-06.

⁶¹⁶ See Garrow, *supra* note 12, at 141-42; Orfield, *supra* note 601, at 33-34; Stern, *supra* note 126, at 86; see also Bains, *supra* note 169, at 222-23 ("It was the particular brutality of Birmingham that pushed the general situation of Southern blacks onto the previously indifferent whites throughout the country.").

⁶¹⁷ See Fairclough, *supra* note 421, at 135; Goldfield, *supra* note 40, at 141; Sitkoff, *supra* note 6, at 148-49 (noting that after Birmingham, there were nearly 800 marches, boycotts, and sit-ins in 200 cities and towns across the South within three months); White, *supra* note 13, at 207 (providing slightly different figures); see also Chafe, *supra* note 3, at 166-214 (providing a detailed description of a Birmingham spin-off demonstration in Greensboro, North Carolina).

⁶¹⁸ See Sitkoff, *supra* note 6, at 151-52; Stern, *supra* note 126, at 86-87; Horowitz, *supra* note 162, at 182 (noting that a Gallup poll taken in early 1965 showed 61% of national respondents in favor of public accommodations law).

I do not mean to suggest that President Kennedy acted exclusively for political reasons. It seems likely that Kennedy, who unlike Eisenhower had never shown any personal affinity for Jim Crow practices, developed an increasing empathy with the civil rights movement as he witnessed the same southern outrages that moved the nation. See Brauer, *supra* note 86, at 239-40, 247. In other words, to some extent the personal and political explanations collapse into one, as both Kennedy and the northern whites whose votes he sought shared the experience of witnessing southern outrages that they would not have dreamed possible in 1960s America. For an account that awards Kennedy more "credit" for humanitarian motivations than the one I have provided here, see *id.* *passim* (especially at 316-20).

⁶¹⁹ See Branch, *supra* note 94, at 808-09; Brauer, *supra* note 86, at 246-47; Fairclough, *supra* note 421, at 134-35; Garrow, *supra* note 12, at 135 & n.7 (collecting additional sources); Garrow, *supra* note 62, at 267-69; Goldfield, *supra* note 40, at 141; Orfield, *supra* note 601, at 33-34; Sherrill, *supra* note 325, at 280-81; Sitkoff, *supra* note 6, at 124-25, 127,

After two years in office, the administration had finally introduced its own civil rights package in February 1963—perhaps influenced by the events at Ole Miss in the fall of 1962—but it bore scant resemblance to the landmark legislation that eventually was enacted in the summer of 1964.⁶²⁰ Only after Birmingham, with the conscience of white America aroused, did Kennedy propose civil rights legislation of a transformative nature, after declaring on national television that civil rights was a moral issue “‘as old as the scriptures and . . . as clear as the American Constitution.’”⁶²¹

The Birmingham success of 1963 was duplicated two years later at Selma. The groundwork for Selma had been laid in 1964 during Freedom Summer in Mississippi, as a national audience witnessed the horrifying brutality, including several murders, inflicted upon civil rights workers—many of whom were, for strategic reasons, relatively affluent whites attending the nation’s most prestigious universities—endeavoring to assist Mississippi blacks in exercising the most elemental rights of citizenship.⁶²² At Selma the following year, King and the Southern Christian Leadership Conference further refined the tactics that had succeeded so handsomely at Birmingham. Once again, the situs for the demonstrations was chosen with an eye towards ensuring the presence of a law enforcement officer of Bull Connor-like proclivities. Selma was famous within the civil rights community for the violent propensities of the county sheriff, Jim Clark, which he had put on display in response to local civil rights demonstrations in 1963-1964.⁶²³ In contrast with Bir-

151, 156; Bains, *supra* note 169, at 239; Barnard, *supra* note 600, at xii; Lentz, *supra* note 612, at 18-19.

⁶²⁰ See Brauer, *supra* note 86, at 221-24; Stern, *supra* note 126, at 79; Bains, *supra* note 169, at 195 (noting that prior to the spring of 1963, President Kennedy had neither proposed nor advocated strong civil rights legislation). The Kennedy proposals were, in essence, limited to voting guarantees.

⁶²¹ Brauer, *supra* note 86, at 260; see *id.* at 259-62; Garrow, *supra* note 12, at 144; Orfield, *supra* note 601, at 34; Stern, *supra* note 126, at 88; Bains, *supra* note 169, at 238-39; Norrell, *supra* note 68, at 73.

⁶²² See McAdam, *supra* note 231, at 39, 96-101, 103, 116, 118, 150-52.

⁶²³ See Boynton, *supra* note 246, at 146-47; Fager, *supra* note 199, at 18; Garrow, *supra* note 12, at 2-3, 32-34, 42, 221, 223; Longenecker, *supra* note 157, at 23-24, 127; McAdam, *supra* note 77, at 178; Sitkoff, *supra* note 6, at 187; Thornton, *supra* note 12, at 60 (observing that the decision to come to Selma was influenced by “the presence of the bellicose Sheriff Clark, whose hot temper could be counted on to provide vivid proof of the violent sentiments that formed white supremacy’s core”); see also Norrell, *supra* note 12, at 161 (noting other violent displays by Sheriff Clark elsewhere in Alabama).

mingham, though, the Selma demonstrators' objective was more precisely defined—voting rights—and additional efforts were made to ensure that the demonstrators remained entirely nonviolent, as they had *not* at Birmingham.⁶²⁴

The result was another resounding success. Sheriff Clark, after initially displaying uncharacteristic restraint, ultimately obliged with several stunning displays of brutality against nonresisting demonstrators.⁶²⁵ Once again, the national print and television media were there to record the scene for the nation.⁶²⁶ And on Bloody Sunday (March 7, 1965), when the county posse and state troopers went on a rampage against the marchers as they crossed the Edmund Pettus bridge heading towards Montgomery, ABC television interrupted its evening broadcast of *Judgment at Nuremberg* for a long film report of the gruesome scenes from Selma of peaceful demonstrators being assailed by stampeding horses, flailing clubs, tear gas, and other officially sanctioned violence.⁶²⁷ Popular revulsion was heartfelt and nearly universal.⁶²⁸ Public opinion polls showed that, except in the South, large pluralities or majorities from throughout the nation sided with civil rights groups over the state of Alabama with regard to their conflict at Selma.⁶²⁹

⁶²⁴ See Branch, *supra* note 94, at 779-80, 794-96; Garrow, *supra* note 62, at 250-52; Garrow, *supra* note 12, at 135, 146-49, 230; Bains, *supra* note 169, at 228-29. Black civil rights leaders in Birmingham had become more willing to compromise in their negotiations with city businessmen when the demonstrations escalated beyond their control and the possibility arose of a full-scale riot. See Eskew, *supra* note 5, at 88; Thornton, *supra* note 12, at 53.

⁶²⁵ See Garrow, *supra* note 12, at 42-45, 60-61, 73-76; Longenecker, *supra* note 157, at 139-42, 162-64; Oates, *supra* note 601, at 56. For a day-to-day chronicling of events in Selma, see Garrow, *supra* note 12, at 31-77; Fager, *supra* note 199, at 22-165. During Clark's initial phase of restraint, the SCLC apparently contemplated moving the campaign into the countryside, where a more violent white response would be assured. See *id.* at 31; Garrow, *supra* note 12, at 60-61; Longenecker, *supra* note 157, at 141.

⁶²⁶ See Garrow, *supra* note 12, at 43-45, 61, 78-80.

⁶²⁷ See *id.* at 73-78; Longenecker, *supra* note 157, at 174-77; Stern, *supra* note 126, at 224.

⁶²⁸ Even Governor Wallace publicly criticized Sheriff Clark for the violence, though it seems likely that Wallace had played a role in its inception. See Garrow, *supra* note 12, at 82; *supra* note 551 and accompanying text.

⁶²⁹ See Garrow, *supra* note 12, at 159 tbl. 4-1. It is worth emphasizing that successful civil rights demonstrations converted northern *white* opinion; support for the brutalized Selma demonstrators did *not* come disproportionately from those northern districts or states with large black populations. See *id.* at 172, 174.

Across the country, public demonstrations were held in support of the Selma marchers in the week after Bloody Sunday, and constituents began to press their congressmen for remedial action.⁶³⁰ Within days of the event, scores of congressmen had risen to condemn the violence and to call for voting rights legislation.⁶³¹ The White House came under tremendous pressure from legislators on both sides of the aisle, who threatened to introduce their own voting rights bills unless the President's proposal was quickly forthcoming.⁶³² Then, on March 15, President Johnson went before a joint session of Congress to deliver his speech in support of voting rights legislation—the first special presidential message on a piece of domestic legislation in nineteen years—while seventy million Americans watched on television.⁶³³ For the second time in less than two years, northern revulsion at southern brutalization of peaceful demonstrators had prompted a national administration to introduce civil rights legislation that had not theretofore been on its immediate agenda.⁶³⁴ Prior to Selma, the general sentiment in the Johnson camp had been to allow the 1964 Civil Rights Act some time to work before introducing additional civil rights legislation.⁶³⁵

CONCLUSION

In sum, it is possible to agree with President Eisenhower's privately stated judgment that *Brown* set back the cause of racial progress in the South⁶³⁶ (at least in the short term) and with Justice Black's prediction that *Brown* would destroy racial liberalism in the South⁶³⁷ (again, in the short term), while continuing to believe

⁶³⁰ See *id.* at 91, 99, 102-03, 176-77; Boynton, *supra* note 246, at 172.

⁶³¹ See Garrow, *supra* note 12, at 81-82, 88, 91.

⁶³² See *id.* at 92-98.

⁶³³ See *id.* at 106-07; Stern, *supra* note 126, at 226.

⁶³⁴ See Sitkoff, *supra* note 6, at 186-87. David Garrow argues that the Johnson administration was planning to introduce voting rights legislation even before the Selma demonstrations took place, but he does not deny that Selma influenced and accelerated the administration's proposals or that it paved the way for a receptive congressional response. See Garrow, *supra* note 12, at 36, 40, 92-93, 133-34.

⁶³⁵ See Garrow, *supra* note 12, at 36; Stern, *supra* note 126, at 215-17.

⁶³⁶ See Burk, *supra* note 41, at 192; Whitfield, *supra* note 79, at 72; Stern, *supra* note 117, at 787; see also Rosenberg, *supra* note 6, at 156 (suggesting that *Brown* may have set back the cause of civil rights).

⁶³⁷ See Tushnet, *supra* note 328, at 1928.

that *Brown* was indirectly responsible for the transformative racial change effected by the civil rights legislation of the mid-1960s. *Brown* did temporarily destroy racial moderation in the South, and it did bring to a grinding halt the incipient amelioration of Jim Crow practices that had been occurring through much of the South in the late 1940s and early 1950s. But in the course of doing so, *Brown* produced a southern political environment that encouraged public officials to use violent tactics to put down civil rights demonstrations, to the horror of northern television audiences, who in turn mobilized in support of national legislation to eradicate Jim Crow. Transformative racial change would have taken place in the South over the long haul regardless of *Brown*; the underlying forces in that direction were too powerful to resist.⁶³⁸ But nothing dictated that those changes take place in the mid-1960s. And without the bizarre sequence of events that *Brown* ignited, it seems unlikely that the changes would have taken place as soon as they did.

⁶³⁸ Interestingly, even most southerners seemed to appreciate the inevitability of racial change; but they nonetheless chose to resist it. See Matthews & Prothro, *supra* note 197, at 120; Pettigrew, *supra* note 301, at 342 (noting that 55% of southerners, as compared with 57% of northerners, expressed the view in 1955 that the South eventually would have to accept integrated schools).