

EDUCATION AS ECONOMIC JUSTICE: Where is the Love ¹

[A Work-in-Progress]

Throughout the recent U.S. Senate hearings on the confirmation of John Roberts and Samuel Alito for, respectively, Chief Justice and Associate Justice of the U.S. Supreme Court, we often heard of the need for judges who would be "strict constructionists" – a term Roberts suggested was not very useful for him.

Beginning with Richard Nixon's presidency, the term has become a mantra for every Republican president and a variety of members of the U.S. Congress. Although the term has undergone what one might call scholastic refinements since Nixon¹ its fundamental appeal is to the avoidance of something called "judicial activism."

Historically, this desire for avoidance of "judicial activism" was whetted, for blacks, by objections to the Supreme Court's decisions in *United States v. Cruikshank* of 1875 and the Civil Rights cases of 1883,² which dismantled the rights accorded Negroes by the Thirteenth and Fourteenth Amendments to the U.S. Constitution – rulings which were to "pave the way for an extralegal reign of terror designed to restore white supremacy with the aid of private violence." Did it arise from aversion to the Supreme Court's decision in *Plessy v. Ferguson*, which empowered the state to enforce white supremacy through the caste system self-contradictorily described as "separate but equal" – and soon to be mockingly called "Jim Crow?" A system in which I grew up in Baltimore, Maryland as a child and teen-ager.

No, "judicial activism" became a pejorative term in public discourse with the Supreme Court's decision of 1954 in *Brown v. Board of Education* which ostensibly kicked out the legal underpinnings of a civil society ordered by white supremacy.

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Those who have decried judicial activism since *Brown* –however much they may have contributed to dismantling desegregation over the past fifty years-- would not likely lay claim to an interest in "redeeming" *Brown* as the South, with the North's complicity, redeemed its defeat in the Civil War through the accreting mists of a mythology of valor. Instead, many of them are enveloped in a similar surrounding mist of seeking "jurisprudence of original intention."³ Little does it matter to most of these seekers that among the "original" intentions of the Constitution were the legitimation and perpetuation of both slavery and white supremacy. Or perhaps the latter is the matter entirely. To make the tax cuts of Bush 43's presidency permanent could well assure such continued economic supremacy for the overwhelmingly white, nine million millionaires –not to mention the billionaires– who are its primary beneficiaries for much of this 21st century.

In fairness we could grant the initial uneasiness of Thomas Jefferson, James Madison, George Mason, George Washington and Benjamin Franklin with slavery, their sense that it was not in keeping with this emerging nation's ideals; their hope that it might end some day.⁴ So a strict construction of the Constitution's words on the subject would be open to interpretation, given the context of these founders reservations upon signing it.

Washington's will provided for all of his slaves not only to be freed but educated upon the death of his wife, Martha. Martha Washington freed all 123 of them one year after her husband's death in 1799, fearful that they might kill her. This number did not include 40 rented slaves or the 153 slaves that were owned by Martha as her Custis dowry estate. At her own death in 1802 all of these slaves were passed on to her heirs. Her antipathy to manumission is particularly ironic given the presence in her Mount Vernon family of Ann Dandridge, a half sister whose mother was of mixed Indian and black birth and whose father was none other than the father of that same Martha Dandridge Custis Washington –widow of Daniel Custis, whose mulatto brother, Jack, favored by his father, John, died at the age of twelve from meningococcal meningitis. Martha also had brought into the Mount Vernon household her son and daughter by

Custis, Jacky and Patsy. Profoundly disturbing is the recent revelation that Martha's son Jacky deliberately engaged in an incestuous relationship with Martha's half sister Ann Dandridge. This made Martha both the aunt and grandmother of the child named William Costin. Little wonder that during the last years of their marriage George and Martha could not speak to one another about slavery.⁵

Jefferson, characteristic of his ambivalence toward blacks, was equivocal in his behavior but not in his words. Young Sally Hemmings was suitable as a companion in Paris and as mother of offspring, yet he declared, "To give liberty, or rather, to abandon persons whose habits have been formed in slavery is like abandoning children."

Madison was to lead the House of Representatives to enact a resolution extending protection of the slave trade beyond 1808 –a date previously set by planters to prevent a surplus of imported slaves among the naturally increasing numbers domestically. His resolution said, "The Congress have no authority to interfere in the emancipation of slaves or in the treatment of them within any state." He said it would be unconstitutional "to attempt to manumit them at any time." Unlike Washington, he thought slavery should be permanent.

It was Washington's Virginia friend and neighbor, George Mason, who called slavery an "infernal Traffic." Disputing the notion that slavery was waning he said, "The Western people are already calling out for slaves for their new lands, and will fill that country with slaves if they can be got through South Carolina and Georgia.... Slavery discourages arts and manufactures. The poor despise labor performed by slaves. They prevent the immigration of whites, who really enrich and strengthen a country. They produce the most pernicious effects on manners. Every master of slaves is born a petty tyrant."⁶

And it was Benjamin Franklin who, in what was to become his final public act two months before his death in 1790 at the age of 84, sponsored a petition for the gradual abolition of slavery to the new Congress. A former slave holder himself, Franklin had freed his slaves earlier in 1781.⁷

Once you begin to accommodate such considerations of *context and conditions at the time* of these men's deliberations over and signing of the Constitution (it should be noted that George Mason, author of Virginia's pioneering Bill of Rights, did not sign the Constitution) you will have established a reasonable precedent for the relevance of subsequent applications of the Constitution's provisions to the evolving conditions of our civil society. And this has surprising implications for the three-fifths clause of the Constitution.

Jack N. Rakove informs us of a deep irony in this clause:

Because its advocates repeatedly held that "numbers of inhabitant; though not always a precise standard of wealth was sufficiently so for every purpose" a proviso nominally advanced to protect property had the effect of legitimating the principle that representation actually followed population.... The three-fifths clause, then...was rather the closest approximation in the Constitution to the principle of one person, one vote—even if in its origins it was a formula for apportioning representation *among*, as opposed to *within* states, and even if it violated the principle of equality by overvaluing the suffrage of the free male population of the slave states.

This could offer a stronger historical context for the arguments being made in support of extending the Voting Rights Act which comes up for renewal this year. It has already been weakened by the Supreme Court's 1999 Bossier decision. Conservative Republican Representative Lynn Westmoreland of Georgia is already courting the media with arguments for why it is no longer needed. And it would seem, as well, that Rakove's insight could give added context to the on-going assessment of the present outcomes of the Brown decision with its outlawing of exclusion from equal access to education based on caste or race and its ruling that segregation was unconstitutional. It did not, however, address the legacy of centuries of active government economic and social promotion of white affirmative action that embedded a segregationist socioeconomical stratification in our society. This reality of such historically racist social stratification continues to thwart equal access not only to education but to other valued positions, goods and services in our society

I choose to focus on the continuing lack of equality in education and its relationship to a similar lack of equality in workplace access. A number of recent publications have addressed these issues and I will be referring to some of them. I will also engage an unfortunately well-publicized, opportunistic, eminent critic of some of these same studies.

During the 1990s decisions handed down by the Supreme Court had the effect of resegregating neighborhood schools. School that were desegregated in Southern and Border states are becoming increasingly resegregated. Those Southern states are the eleven of what were the Confederate states: Alabama, Arkansas, Florida, Georgia, Louisiana,

Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia. The Border states are Delaware, Kentucky, Maryland, Missouri, Oklahoma, West Virginia and Washington, D.C. These were also slave states, but as part of the Union, not of the Confederacy. But in both Southern and Border states there was legally mandated segregation until months, years in many places, after the *Brown* decision in 1954. Segregation in the Northeast, Midwest and West was ignored by the Supreme Court for nineteen years after *Brown*.

In places that were never desegregated, especially metropolitan areas of the Northeast, Midwest and West, segregation has not only increased but become more complex, given growing multiracial communities. The impact has been felt greatest, for blacks, in Southern and Border state schools. Yet these Southern and Border state schools are the least segregated for blacks. This makes it clear, as Gary Orfield has pointed out, "that desegregation orders in the past have been effective, and that segregation is not an intractable issue."⁸

It is also important that although desegregation came about significantly because of the psychological damage to blacks, it simply is not merely about ethnicity or race. "It is almost always double or triple segregation." Orfield says. And it involves not only multiple dimensions of inequality in

education, but concentrations of poverty and, more and more these days, linguistic segregation.⁹

Even in these areas where there was sustained resistance to desegregation both minority and white parents have viewed it as a positive experience, mainly. An *Education Week* poll in 2004 indicated a general belief by Americans that racially integrated education is important. A poll taken a year earlier showed that 57 percent of adults believed integrated schools are better for children, while only seven percent did not. Why, then, is there so little discussion of these perceived benefits of integration by both educators and politicians?

Clearly it is not because desegregation has failed, given the public's response just mentioned. And it certainly isn't because the issue has been "settled" in the eyes of most of us. It is due to a lack of will to engage what might create controversy. The benefits of integration and the costs of segregation need sustained discussion if our most segregated population today is to benefit from integration. And our most segregated population today is white students, who, on the average, attend schools where 78 percent of students are white. I find a number of them in my college classroom, where they confess to the "culture shock" [their words] of adapting to a diverse student body, each semester. Without intervention now these white segregated students will lack the experiences of cultural interaction that will fit them to compete effectively in our fast-growing diverse population. Black students, are in schools that average 30 percent white students; Latino students, 28 percent. While Asian and American Indian students go to schools with a larger proportion of white students, that is due to the smaller size of their populations as well as the lower degree of residential racial segregation where they live. But our nation's changing population over the next decade will produce public schools serving nine out of ten students overall, of whom fewer than half will be white, given our population shift –not because of "white flight" to private schools but because of a combination of a lower birth rate and the flow of incoming millions of immigrants. The result will be a nation with schools where no one major ethnic or racial group is in the majority.

The future of our young people is at risk not only from a failure to address this issue, but from the unraveling of our public education system with the new one-size-fits-all No Child Left Behind (NCLB) underfunded federal government mandate. Teaching reading and math to the exclusion -- because of classroom time constraints if one is to teach to the tests that have become a yoke to public education-- of the sciences, geography, the arts and athletics is to prepare a nation of culturally uncompetitive dummies. Where is there a hunger among our public officials, our education spokespersons for a different future for our children and grandchildren? A decent future! Where is **that** love?

The future of young black students is even more perilous: fewer than ever of them are being taught at all. And those who drop out from frustration or because they are forced to, are being arrested gratuitously to feed the newest major entrepreneurial for-profit institutions across these United States: the state and federal prison systems. More of that in some detail on another occasion. But I would like to address here some misguided characterizations of young black men.

The noted Pulitzer Prize winning Harvard University Professor, Orlando Patterson, in his New York Times OP-ED entitled "A Poverty of Mind"¹⁰ airily dismisses three recent studies of "the tragic disconnection of millions of black youth from the American mainstream" because they focus on structural factors such as low incomes, joblessness, poor schools and bad housing. He regards these palpable impediments as "standard explanatory fare" reflecting the shortcomings of what he describes as the shortcomings of "a deep-seated dogma that has prevailed in social science and policy circles since the mid 1960s." That dogma, according to him, is "the rejection of any explanation that involves *a group's cultural attributes* [Italics mine.] --its distinctive attitudes, values and predispositions, and the resulting behavior of its members." He goes on to say that "people use their culture as a frame for understanding their world, and as a resource to do much of what they want. The same cultural patterns can frame different kinds of behavior, and by failing to explore culture at any depth, analysts miss a great opportunity to re-frame

attitudes in a way that encourages desirable behavior and outcomes."

He then grants that "the cultural factors that explain the sorry state of young black men ... aren't always obvious." Fortunately he is aware of the falsity of the popularly essentializing depiction of black students –not just males-- who do well in school being derided by fellow blacks for "acting white." This is true on in the instance of a small number of schools that are racially mixed.

Nonetheless Patterson then proffers a similar essentialization – based on one anecdote from "several years ago" by one of his former female students. It seems she returned to her high school to find out why almost all the girls graduated and went to college but nearly all the black boys either failed to graduate or didn't go on to college when they did graduate. This was not because they were stupid, she learns. Patterson explains this conundrum by attributing the black young men's behavior as an addiction, in essence, to something he describes as a "'cool pose culture' –as sociologists are said to call it." What is that, you say?

He describes it as a "Dionysian trap for young black men" who think that is all there is. He collapses this frenzied, orgiastic culture into the personifications, as he labels them, of "Hip-Hop, professional basketball and homeboy clothes." Slipping between calling it a culture and a sub-culture, he says that this "cool pose culture" of "hanging out on the street after school, shopping and dressing sharply, sexual conquests, party drugs, hip-hop music and culture, the fact that almost all the superstar athletes and a great many of the nation's entertainers were black" is "a major factor in their disconnection from the socioeconomic mainstream." Aren't entertainment –including the news– fashion and sports major mainstream currents? Like too many others of his generation, white and black, who are made uneasy, if not totally baffled, by what is called hip-hop culture, Patterson fails to see the range of this phenomenon. Its articulations range from the evangelical, the passionately longing, the intricate metrics of tasteful rap improvisation in music to what is clearly an inversion of these dispositions. It is the latter that offends Patterson, as it does many of us. But that is not all there is. And one would scarcely demean that creative variety of fashions

flourishing in all of this international milieu as one style – homeboy or not. Even basketball players are not only of different sizes, but of different character.

It is the failure to distinguish among these articulations that leads Patterson to these simplistic characterizations which he ascribes without differentiation to black young men.

In the end Patterson's explanation is rather impressionistic and superficial is comparison to those social science and policy-makers –Gary Orfield among them– whose empiricism in cultural studies he derides.

Perhaps that is why his castigation of black youth fizzles when he finally says "of course such attitudes explain only part of the problem.... We need a new, multidisciplinary approach toward understanding what makes young black men behave so self-destructively. He then descends into rather murky rhetoric about "the tragedy unfolding in our inner cities is a time-slice of a deep historical process that runs far back through the cataracts and deluge of our racist past. How's that for romancing a deep-seated dogma of a different kind. And in one last howler he announces that except for a disconnected fifth languishing in the ghetto, "most black Americans have miraculously escaped" the consequences of our racist past. You don't even need to be black to know better than that. We see it in the current scholarship of Harry Holzer of Georgetown University, Ronald Mincy of Columbia University as well as Gary Orfield, who is also of Harvard. It is their work of which Patterson is dismissive. We also saw it in *The Ordeal of Integration: Progress and Resentment in America's "Racial" Crisis* (1997) by Orlando Patterson.

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