

The
Myth of
Southern Exceptionalism

Eds.

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& Joseph

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DE JURE/DE FACTO SEGREGATION

The Long Shadow of a National Myth

Matthew D. Lassiter

Two months before Martin Luther King Jr.'s famous "I Have a Dream" address at the 1963 March on Washington, he delivered an early version of the speech in downtown Detroit. In the wake of the epic street demonstrations in Birmingham, only twelve days after President John F. Kennedy finally endorsed a civil rights bill, King arrived in Michigan to support local groups that were organizing marches into the city's overwhelmingly white suburbs to protest housing segregation (figure 1.1). "We've got to come to see that the problem of racial injustice is a national problem," King told a crowd of at least 125,000 people. "I have a dream this afternoon that one day right here in Detroit, Negroes will be able to buy a house or rent a house anywhere that their money will carry them." The nation's preeminent civil rights leader then addressed the matter of de facto vs. de jure segregation, drawing the familiar constitutional contrast and collapsing the prevailing regional distinction at the same time. "Now in the North it's different in that it doesn't have the legal sanction that it has in the South. But it has its subtle and hidden forms, and it exists in three areas: in the area of employment discrimination, in the area of housing discrimination, and in the area of de facto segregation in the public schools. And we must come to see that de facto segregation in the North is just as injurious as the actual segregation in the South."¹

The narrative of the civil rights era turns out to be much different, and much less triumphant, if we remember Martin Luther King in 1963 in downtown Detroit looking out at the all-white suburbs—not just imprisoned down in Alabama, standing in front of the Lincoln Memorial before

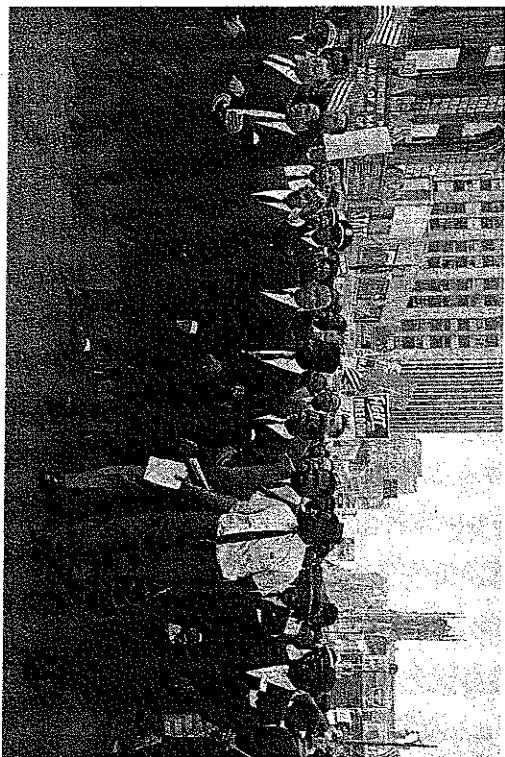


FIGURE 1.1. Martin Luther King, Jr., marches with local civil rights leaders at the front of the "Walk to Freedom" on Woodward Avenue in downtown Detroit, June 23, 1963. King, the head of the Southern Christian Leadership Conference, denounced "de facto segregation in the North" in a speech to 125,000 people, one of the largest civil rights protests in American history. © Bethmann/CORBIS.

heading back to the South, mobilizing a liberal nation to bring a recalcitrant region into compliance with the American Creed. Viewing the civil rights movement before the mid-1960s in its full national context disrupts the linear two-stage story of victory against Jim Crow in the South followed by urban race riots, Black Power, and the rise of white backlash in the North and West. At the same time, King's comparison of "de facto segregation" in the North to "the actual segregation" in the South revolved around an ethical equation rather than a legal argument, more concerned with the effects of racial inequality than the causes. The civil rights movement itself was largely responsible for creating and popularizing the concept of de facto segregation, a strategy designed to appeal to the collective conscience of white liberals and public policymakers, building on the Supreme Court's ruling in *Brown* that "separate educational facilities are inherently unequal."² In the long run, this approach proved to be a tactical error because equal protection claims before the federal courts still required evidence of discriminatory state action to trigger legal remedies. According to the established regional dichotomy, enshrined in constitutional law and pervasive in public discourse by the mid-1960s, racial discrimination in the Jim Crow South represented segregation in

law (de jure), while residential and educational patterns in the North and West reflected segregation in fact but not enforced by law (de facto). The constitutional opposition of de jure/de facto effectively insulated most northern and western communities from civil rights litigation for nearly two decades after *Brown*, despite ample historical evidence of comprehensive state action in producing deeply entrenched patterns of residential and educational segregation.

The artificial dichotomy between de jure and de facto segregation decisively shaped the trajectory and limited the reach of the civil rights movement between the 1950s and the 1970s. The so-called liberal consensus—the political coalition that produced the landmark civil rights and voting rights legislation of 1964–1965—depended upon the racial construction of an exceptional South and the widespread public denial of the government policies that shaped housing and school segregation in metropolitan regions throughout the United States. Significant popular support for meaningful levels of racial integration never existed at the local level in the urban North or West, but white backlash did not emerge full-blown in national politics until the mid-1960s, primarily because federal civil rights policies until then focused almost exclusively on the South. Federal court decisions during the 1960s also rested on a false binary between de jure school segregation that resulted from deliberate actions by government officials and de facto school segregation caused by housing patterns allegedly beyond their control. When the civil rights movement launched a direct assault on the interlocking patterns of educational inequality and residential exclusion in cities and suburbs across the nation, the tenuous liberal coalition for racial integration disintegrated. A broad spectrum of white actors seized upon the "de facto" rationale through a "color-blind" discourse that defended neighborhood schools and segregated housing as the products of private action and free-market forces alone, a sphere in which government had not caused, and therefore had no right or obligation to remedy, racial inequality. These voices eventually included many northern liberals and intellectuals, the moderate leaders of Sunbelt cities, segregationist politicians from the Deep South, policymakers in the Nixon administration, grassroots organizations that claimed membership in the Silent Majority, and local elected officials in almost every jurisdiction in the country that faced a civil rights lawsuit.³

Although the framework of southern exceptionalism leads to distorted interpretations of the past, it is important to historicize the idea of southern distinctiveness as a cultural, political, and legal construction that has been very real in its consequences. The de jure/de facto dichotomy trapped the black freedom struggle within a discourse of regional difference, even as civil rights groups repeatedly emphasized the moral equivalence and challenged the constitutional boundaries between "southern-style" and "northern-style" segregation. National policymakers and liberals in the

North and West generally defined "American-style" segregation through an evasive negation, as the intangible opposite of the Jim Crow system in the South, even as white southerners increasingly depicted their own neighborhoods as de facto landscapes of modernity and progress in synchronicity with the American Dream. Scholars also have played a role in keeping the mythology of de facto segregation alive by failing to confront directly the problem of southern exceptionalism, despite the wealth of recent studies that have explored the government policies that produced racial inequality in the postwar metropolis.⁴ The label of de facto segregation is so historically loaded—so wrapped up in artificial binaries between South and North, between the educational and residential arenas, between deliberate state action and private market forces, between white culpability and white innocence—that historians should discard it as an analytical and descriptive category and evaluate it instead as a cultural and political construct. As a constitutional matter, "de facto segregation" does not mean "segregation in the North and West" or "segregation caused by housing patterns" or "institutional racism" or "segregation in areas without Jim Crow laws" or "subtle segregation" or other commonly deployed synonyms. As a legal doctrine, "de facto segregation" means "innocent segregation"—spatial landscapes and racial arrangements that exist beyond the scope of judicial remedy, attributable solely to private market forces in the absence of any historical or contemporary government responsibility.

The NAACP's challenge to state-sanctioned residential segregation predated its much more celebrated campaign against Jim Crow segregation in public schools. Civil rights litigants faced a difficult burden of proof in the area of housing because the Supreme Court's state action doctrine (derived from the *Civil Rights Cases* of 1883) drew a sharp distinction between unconstitutional racial inequality enforced by government policy and permissible acts of racial discrimination undertaken by private individuals. In *Buchanan v. Warley* (1917), the Supreme Court invalidated a Louisville ordinance that mandated housing segregation, holding that "a colored person has the right to acquire property without state legislation discriminating against him solely because of color." Nine years later, in *Corrigan v. Buckley* (1926), the Court dismissed litigation to outlaw restrictive covenants that banned the sale or rental of property to racial and ethnic minorities as "entirely lacking in substance," since nothing in the Constitution "prohibited private individuals from entering into contracts respecting the control and disposition of their own property." Racial covenants proliferated in American cities and suburbs between the 1920s and the 1940s, with deed restrictions enforced by the courts under the doctrine of contract law and simultaneously immunized from challenge under the guise of private property rights. The Federal

Housing Administration (FHA) also encouraged restrictive covenants in residential developments financed by government mortgage programs, with the injunction that "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." In 1950, the U.S. Supreme Court reaffirmed the public/private dichotomy in a case involving the all-white and federally subsidized Stuyvesant Town development, refusing to consider an appeal of a New York Supreme Court ruling that distinguished between illegal racial discrimination by government fiat and permissible racial discrimination in "private enterprise aided by government."⁵

The U.S. Supreme Court expanded the scope of the state action doctrine in *Shelley v. Kraemer* (1948), which overturned two decades of precedent in order to bar the judicial enforcement of private racial covenants as a discriminatory exercise of government power. The justices simultaneously reaffirmed the constitutional principle that the Fourteenth Amendment's equal protection clause applied only to "such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." Although an important breakthrough in the NAACP's postwar fair-housing campaign, *Shelley v. Kraemer* had a negligible impact on metropolitan patterns of residential segregation, which intensified between the 1940s and the 1960s. A wide array of government policies from the local to the federal levels—exclusionary municipal zoning, pervasive discrimination in mortgage lending programs, public-private collaboration in redlining neighborhoods, open Jim Crow practices in public housing projects, demolition of nonwhite districts through highway construction and urban renewal programs—subsidized the development of segregated suburbs and concentrated minority residents in urban ghettos. These state-based and publicly subsidized pillars of residential segregation, which came to be clustered under the "de facto" umbrella, shaped the postwar development of cities and suburbs across the nation, resulting in remarkably similar built environments whether metropolitan regions were located inside or outside the South. "What the Ku Klux Klan has not been able to accomplish by intimidation and violence," Clarence Mitchell of the NAACP charged in 1951, "the present federal housing policy is accomplishing through a monumental program of segregation in all aspects of housing which receive government aid."⁶

The postwar tendency to view race relations across a regional chasm obscured the national growth policies that were remaking the metropolitan South, as well as the prominence of modern forms of state-sponsored segregation in every other part of the nation. Gunnar Myrdal's *An American Dilemma*, the influential account of race relations published during World War II, presented a "Negro problem" that was geographically based in the nation's tolerance of the Jim Crow South and psychologically situated

within the white liberal conscience and its responsibility to redeem the American Creed of equal opportunity. In 1947, the President's Committee on Civil Rights found that "legally-enforced segregation has been largely limited to the South. But segregation is also widely prevalent in the North... [where] segregation in education is not formal, and... discrimination in housing results primarily from business practices." With few exceptions, mainstream political discourse during the postwar decades simply did not address the question of government culpability in the housing market and instead focused almost exclusively on individual prejudice and private forms of discrimination. "Many Negroes and some whites feel that resistance to real integration in private housing in the North is as stubbornly rooted as the resistance to integrated schooling in the South," an exposé in the *New York Times* charged in 1956. "The final solution of the problem of segregation in the North... lies in the hearts and minds of people." The white southern defense of Jim Crow represented a "mass commitment to evil," the prominent intellectual Nathan Glazer declared eight years later. "The Southern kind of position just can't be found in the North... The American Creed does prevail in the North."⁷

During the 1950s and early 1960s, the southern drama of massive resistance served to obscure the civil rights movement's extensive challenge to Jim Crow housing policies in the metropolitan North and West. "When you get the school cases under control," Los Angeles attorney Loren Miller wrote to NAACP chief counsel Thurgood Marshall in 1952, "we ought to call a meeting of lawyers to consider the increasingly important housing matters to see if we can't fashion some kind of an all out attack on the Levittowns." One year before *Brown*, the NAACP announced that "the eradication of any type of segregated housing that has any form of public financial support must be our first goal." In 1955, however, the federal courts rejected the NAACP's contention that government financing of the all-white Levittown suburb in Pennsylvania constituted official racial discrimination in violation of the state action doctrine. If the FHA did not quickly reverse course, Miller warned, then "the Supreme Court decision on schools will become a dead letter and we will have segregated schools, North and South." The National Committee against Discrimination in Housing likewise denounced "FHA-aided jincrow Levittowns" and charged that the federal government "has become both the architect and builder of segregated communities." FHA officials responded by pledging to work with the private sector to expand "the market for minority housing," which Miller labeled an official endorsement of a "separate but equal doctrine" on an even greater scale than the Jim Crow system in the South—a "special market in which the Negro must buy housing." "The pattern is the same everywhere," Miller explained. "Residential segregation as we know it today is the end product of more than a half century of intensive government

sanction.... What is needed is an affirmative government policy deliberately designed to undo past discrimination."⁸

During the decade after World War II, the NAACP also launched a multifaceted campaign against officially authorized school segregation in northern localities, with special attention to Ohio, New Jersey, and Pennsylvania. According to a survey by legal scholar Davison Douglas, "government sponsored school segregation—such as the assignment of black children to separate 'colored' schools or classrooms—persisted in open defiance of state law in many northern communities until the late 1940s, and early 1950s." In the Southwest, the de jure segregation of Latino students remained widespread until the *Mendez* litigation of 1946–1947, when state and federal courts overturned the policies of multiple school districts in Orange County, California. As the Supreme Court justices contemplated the *Brown* cases, twenty-one states and the nation's capital still required or permitted formal segregation in public education. By 1954, most urban and suburban districts outside the southern and border states operated nominally "color-blind" neighborhood schools systems anchored in racially segregated housing patterns and gerrymandered attendance zones, often combined with "freedom of choice" transfer policies that allowed white students to escape majority-black or majority-Latino facilities. In 1956, as southern states fought against the *Brown* decision, the *New York Times* acknowledged that "a Georgian or a Mississippian visiting one of these 'all-Negro' schools... could laugh cynically at the idea that northern schools are desegregated." This special report on "the status of the Negro in the North" explained how official integration and accidental segregation co-existed in the absence of Jim Crow: "Because of the segregation in housing, Negro slums tend to limit Negro children in slum areas to the neighborhood school. A public school may thus become 'segregated' in spite of itself, and in spite of the integrated system of which it is a part."⁹

The case of New York City illustrates the rhetorical commitment to racial integration by liberal northern policymakers, combined with their insistence on drawing a clear line between government policies that affected public schools and market forces that shaped urban neighborhoods. Kenneth Clark, the NAACP consultant whose psychological arguments had informed the reasoning in *Brown*, observed that the New York City Board of Education "did not look seriously at the problems of its ghetto schools until the school segregation cases in the South forced its attention upon them." In April 1954, a civil rights coalition led by the NAACP and the Urban League called for an investigation into the "segregation" and "racial exclusion" of minority students, which the petition attributed to housing patterns and discussed in the language of psychological damage. Dr. Clark pointed out that the Supreme Court had not stated that "only legal segregation is detrimental to the human personality," and then he

levelled the explosive accusation that "Jim Crow" practices existed in the New York City system. School board president Arthur Levitt vehemently denied the southern-style slander of "segregation willfully and designedly imposed," but he also promised to "leave nothing undone to mitigate the evils of school segregation imposed by residential segregation." In December 1954, the board of education passed a resolution pledging to comply with *Brown*, which it characterized as a "challenge to... Northern as well as Southern communities."¹⁰

The discursive framework of *de facto* segregation first emerged in the context of New York City's response to the *Brown* decision, at a moment when civil rights activists believed that constitutional law was more concerned with the effects of racial segregation than with the causes, and therefore that politicians and policymakers rather than judges represented the most critical audience. In the public sphere, the earliest mention of "de facto segregation" appears to be a 1955 statement by the Urban League of Greater New York, which demanded "an emergency program to desegregate New York City's public schools" and accused education officials of culpability in the "presently *de facto* segregated Negro and Puerto Rican schools." Under pressure from local civil rights groups, the New York City Board of Education commissioned a report that proposed modest desegregation techniques, such as the reassignment of teachers to assist "underperforming" (Harlem) schools, the redrawing of a few attendance zones, and "freedom-of-choice" transfers for minority students to attend more integrated facilities. The *New York Times* portrayed these proposals as a reflection of enlightened municipal leadership, because "there is, of course, no official segregation in the city... There is a *de facto* form of segregation... caused by the residential pattern. Children go to their neighborhood schools." Unless New York took decisive action, the newspaper explained, "how could we have answered our conscience? What could we have said to our friends in the South?" But the board of education retreated after white neighborhood groups attacked the commission's proposals, and city officials in the decade after *Brown* consistently refused to consider any steps that subverted the educational philosophy of neighborhood schools.¹¹

The *de facto* designation, by defining African-American segregation outside the South as a problem of ethics (the collective white conscience) and a product of markets (economic forces combined with the private right to discriminate), helped to naturalize "neighborhood schools" as a race-neutral policy requiring a political rather than a judicial solution. "The trend of Negro migration to the nation's largest metropolitan areas is bringing about new patterns of segregation of residential areas," the U.S. Commission on Civil Rights concluded in its inaugural 1959 report. "One result, of course, is the *de facto* segregation of many schools. The residential areas, and the one-race schools that result, arise without the

force of any legal compulsion." "In the great metropolitan centers of the North," the American Jewish Congress declared, "*de facto* segregation has blighted our communities with a malignancy that is evil and menacing." Instead of being content to "express shock and indignation" about the South, public officials must "take affirmative action" to achieve integration whether northern schools "are segregated by law or in fact." By 1963, civil rights activists had pressured education officials in three states—New York, New Jersey, and California—to announce limited measures to address the problem of "racial imbalance," which the Civil Rights Commission defined as the existence of segregated neighborhood schools, "however innocently caused." Robert Carter, the general counsel of the NAACP, expressed high hopes for "the method of securing state policy decisions outlawing *de facto* segregation... Where that fails, we should seek redress in the courts."¹²

In the early 1960s, the NAACP orchestrated a legal and political campaign against public school segregation in dozens of northern and western communities, part of what the organization called an "all-out attack... against Jim Crow schools northern style." An early victory came in *Taylor v. New Rochelle* (1961), a Westchester County suburb of New York City, after civil rights plaintiffs demonstrated that the school board had purposefully gerrymandered (and repeatedly re-gerrymandered) the attendance zone of an overwhelmingly black elementary school. The school district claimed that such "de facto" segregation resulted solely from residential forces beyond its control, but the federal judge ruled that "compliance with the Supreme Court's edict was not to be less forthright in the North than in the South... It is of no moment whether the segregation is labeled by the defendant as 'de jure' or 'de facto,' as long as the Board, by its conduct, is responsible for its maintenance." The American Jewish Congress labeled *Taylor v. New Rochelle* a "landmark decision in the history of American race relations" and pronounced northern school districts that practiced "unofficial segregation" through administrative devices to "share the same burden of guilt as those in the South." The U.S. Civil Rights Commission concluded that the *Brown* mandate encompassed "racial segregation in the North and West resulting from official action... [but] *de facto* segregation that results from free private choice, or from residential patterns based on purely private discrimination, is apparently not forbidden."¹³

Civil rights litigation succeeded in proving official culpability in a small number of northern and western suburbs, but the NAACP's pledge to "insure the end of all segregated public education in fact or by law" depended upon the unlikely proposition that federal courts would abandon the longstanding state action doctrine in favor of the abstract "inherently unequal" language of *Brown*. The 1961 report by the Civil Rights Commission did suggest that illegal racial gerrymandering might be far more

pervasive in northern and western school districts than the popularity of the de facto designation would indicate. The commission's investigations of northern and western cities also uncovered many of the same freedom-of-choice plans, racially suspect transfer policies, and segregated school construction schemes that were simultaneously marking the era of "token desegregation" in the South. In a 1963 decision, the California Supreme Court found the suburban city of Pasadena guilty of deliberate racial gerrymandering, but then declared housing segregation to be "itself an evil" and charged school boards with the responsibility "to alleviate racial imbalance in schools regardless of its cause." In a 1964 case involving the Long Island suburb of Manhasset, a federal district court labeled as "segregation by law" a neighborhood schools plan that assigned every black student to a single elementary school while 99.2 percent of their white counterparts attended two all-white facilities. The *Manhasset* decision embraced the NAACP's broad interpretation that "segregated schools, be they segregated de jure or 'de facto,' are inferior per se and deprive children of minority groups of equal educational opportunities." The district judge then posed the critical question that remained unresolved a decade after *Brown*: "Can it be said that one type of segregation, having its basis in state law or evasive schemes to defeat desegregation, is to be proscribed, while another, having the same effect but another cause, is to be condoned?"¹⁴

During 1963–1964, as the nonviolent direct-action movement reached a climax in the Deep South, local affiliates of the NAACP and CORE organized frequent marches and boycotts to protest "de facto segregation" in dozens of northern and western cities, including Boston, New York, Cleveland, Chicago, Denver, and Los Angeles. This chapter of history—before passage of the Civil Rights Act, before the riots in Watts and Detroit, before the media discovery of Black Power—has all but disappeared from the popular memory of the civil rights era. In Chicago, black parents conducted sit-ins and boycotts while charging the district with deliberate gerrymandering, transfer policies permitting white students to avoid majority-black neighborhood schools, and implementation of a token "open enrollment" plan that covered only thirty-four minority students. In Los Angeles, protests by the NAACP and Mexican-American groups resulted in a 1963 commission report that endorsed a race-neutral ideal in educational policy but concluded that "there are no easy answers and no speedy solutions to... de facto segregation in our schools, the present segregated housing patterns of the community." In New York City, a series of protests demanding school integration culminated in the largest civil rights demonstration in American history, a one-day boycott in early 1964 by more than 300,000 African-American and Puerto Rican students (figure 1.2). The liberal editorial page of the *New York Times* admonished local activists to remember that "de facto segregation... is entirely different from that in the South.... The root is not in any systematic policy of racial

exclusion fostered by law or administrative policy but in neighborhood population patterns." A few months later, a state commission endorsed some modest reforms but asserted bluntly that "total desegregation of all schools... is simply not attainable in the foreseeable future and neither planning nor pressure can change that fact."¹⁵

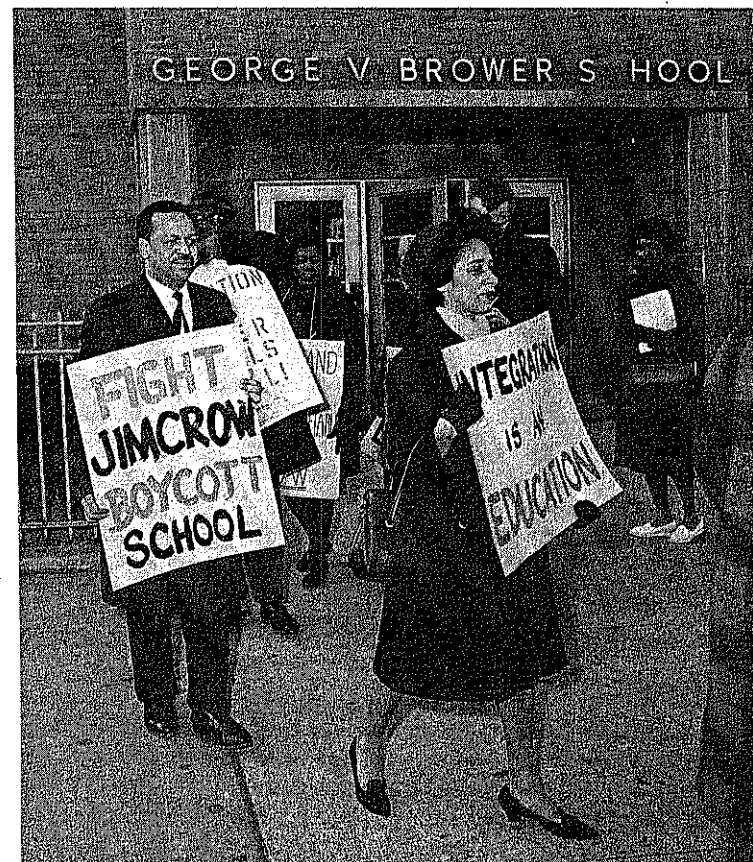


FIGURE 1.2. "Fight Jim Crow." The Reverend Milton Galamison walks a picket line in front of a Brooklyn public school on February 3, 1964. Galamison, a longtime leader of the grassroots campaign to integrate the New York City schools, helped organize a massive one-day boycott by African-American and Puerto Rican students to protest racial segregation in the nation's largest school system. © Bettmann/CORBIS.

As the civil rights movement pressed for affirmative action to address the interlinked dilemma of educational and residential segregation, local school boards routinely displaced legal responsibility onto the housing market through the de facto rationale, and federal judges consistently refused to apply the *Brown* mandate to large urban districts outside the South. In the pivotal *Bell* case of 1963, the federal courts accepted the Gary (Indiana) school district's "color blind" defense of its neighborhood schools plan and concluded that "the problem... is not one of segregated schools but rather of segregated housing, either by choice or by design." The reasoning in this highly anticipated ruling reinforced the sharp divide between the housing and educational spheres, with even evidence of state action in the area of residential segregation ("by design") presumed irrelevant to the constitutionality of the neighborhood schools that resulted. The Supreme Court declined to hear the NAACP's appeal that "regardless of the motive or the intent, ... there is an affirmative duty on the part of the defendant to integrate the races so as to bring about ... a racial balance in each of the various schools." A few months later, in *Webb v. Board of Education*, a federal district court dismissed a similar challenge to Chicago's neighborhood schools plan. The decision recognized the "irreparable harm which could result from segregation under the sanction of law" but concluded that "there is no Constitutional right to be integrated with persons of other Races. . . . De facto segregation resulting from the implementation of a neighborhood school policy, or residential segregation is not enough." A decade after *Brown*, the federal judiciary had reformulated the South-North binary with a second constitutional distinction between illegal "de jure" school segregation resulting from deliberate action by educational officials and permissible "de facto" segregation that encompassed everything else.¹⁶

On September 14, 1964, Mississippi became the last southern state to begin the process of compliance with the *Brown* decision, when thirty-nine black students entered formerly all-white elementary schools in the capital city of Jackson. The story did not make the front page of the next day's *New York Times*, which instead highlighted a local protest organized by a white group called Parents and Taxpayers: "275,638 PUPILS STAY HOME IN INTEGRATION BOYCOTT." This massive grassroots backlash in New York City came in response to a limited desegregation plan that transferred about 13,000 minority students to identifiably white schools and reassigned about 1,000 white students from Queens and Brooklyn to facilities in adjacent black and Puerto Rican neighborhoods. Civil rights leaders criticized the formula as southern-style gradualism and tokenism, while white parents leveled charges of reverse discrimination with slogans such as "Give us back our neighborhood school" and "Our children also have civil rights." *The New Republic* portrayed the racial attitudes of

these working-class white families as a regional inversion of the American Dilemma: "They live in a society accustomed to thinking of itself better than the South, and yet they have feelings not unlike those of white Alabamans." A *U.S. News and World Report* investigation of the resistance to "forced integration" in New York City instead found a genuine attempt to defend the American ideal of color-blind individualism. "Now this is a liberal neighborhood," a white mother from Jackson Heights explained. "We don't object to Negroes or to integration. We believe in civil rights. But we have rights, too, and we will not allow them to steal our rights or to destroy our neighborhood school." Black residents of a segregated enclave nearby believed that the Mason-Dixon line ran right through Queens, the *Times* reported. "It's just as bad here" as in the South, remarked a black parent whose children attended a "de facto segregated" school.¹⁷

In the summer of 1964, the U.S. Congress finally broke the southern filibuster and passed the Civil Rights Act, but only after liberal sponsors deliberately sought to exempt northern and western communities with the provision that "'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." Along with furious charges of northern hypocrisy and a regional double standard, politicians in the South immediately began demanding that school districts operating under freedom-of-choice desegregation plans in their states be reclassified as "de facto." In the North and West, many public officials began adopting the label of "racial imbalance," a less pejorative description that took advantage of the escape clause in the Civil Rights Act, to describe neighborhood school systems once conceded to be "de facto" segregated. Although the concepts were synonymous, the NAACP's Robert Carter declared in 1965, "neither usage is satisfactory. *De facto* segregation fosters the misconception that the racial separation it describes is purely accidental, not the responsibility of government and, therefore, outside the reach of the fourteenth amendment." That same year, the Massachusetts legislature passed the Racial Imbalance Act, which cut off funding for urban school districts that did not dismantle majority-black facilities, and *Time* predicted that the evolution of national policy would bring "an all-out Government attack on the racial imbalance of the nation's schools." In 1967, the Department of Health, Education, and Welfare announced that federal oversight of racial patterns in public education, previously restricted to seventeen southern and border states, would henceforth encompass the entire nation. But the Johnson administration promised that northern and western communities would face no penalties for constitutional forms of racial segregation "arising solely from fair and reasonable application of neighborhood school attendance zoning to segregated housing patterns."¹⁸

The race-neutral defense of segregated neighborhood schools, in combination with the political backlash against the open-housing movement,

exposed the hard truth that a national consensus for substantial racial integration had never existed, beyond the difficult enough struggle to intervene against the worst excesses of Jim Crow in the South. The accompanying wave of urban race riots reproduced the rituals of white liberal shock and American innocence lost, the latest nationalization of the regional race problem. "Los Angeles: Why?" asked the cover of *Newsweek* after the explosion of Watts in 1965, one year after three-fourths of white Californians voted to repeal the state's fair-housing law. "Why?" wondered *Time* a year later, following the eruption of violence on Chicago's West Side. Mayor Richard Daley answered the question by blaming the outside agitators in the Southern Christian Leadership Conference, following Martin Luther King's relocation to an inner-city Chicago neighborhood in order to dramatize the issue of residential segregation and pressure Congress to pass a federal open-housing law. "Just as Mississippi stands as the largest bastion of crippling de jure segregation in the South," King responded, "Chicago holds equal status as the most hostile bastion of de facto segregation in the North." During the summer of 1966, the Chicago Freedom Movement conducted marches against housing segregation in several all-white city neighborhoods and in the blue-collar suburb of Cicero, described by *Time* as "Selma without the Southern drawl." But the televised scenes of mob violence that greeted open-housing demonstrations in Chicago did not elicit the same national response as the previous year's voting-rights campaign in Alabama, and a cross-regional alliance in the U.S. Senate killed the fair-housing bill that now represented the top legislative priority of the civil rights movement.¹⁹

The Johnson administration did endorse federal open-housing legislation as a key pillar in the struggle for racial equality, but public debate about residential segregation continued to focus primarily on private property rights and individual acts of racism rather than the structural role of government programs in shaping the postwar metropolitan landscape. In a 1964 exposé of "Segregation, Northern-Style," CBS television portrayed the barriers to residential integration in the New York suburbs as a hearts-and-minds problem caused exclusively by private market forces, especially the discriminatory practices of the real estate industry and the racial prejudices of white homeowners. At the same time, a secondary strain in liberal discourse did reflect a growing acknowledgment of the role of government policies in structuring the segregated housing market—which civil rights activists had been pointing out for more than two decades. In a 1967 report, the U.S. Civil Rights Commission pinpointed the underpinnings of the national urban crisis: "Negroes who live in slum ghettos... have been unable to move to suburban communities and other exclusively white areas." While racial discrimination by the real estate industry played a central role, "an important contributing factor to exclusion of Negroes from such areas... has been the policies

and practices of agencies of government at all levels." A year later, the Kerner Commission reformulated this assessment into a frontal assault on the intertwined myths of de facto segregation and national "color-blind" innocence: "What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it."²⁰

The evolution of civil rights into a full-blown national dilemma corresponded with the southward migration of the de facto/de jure debate. "De facto segregation is not yet a major issue in the South," Robert Carter warned in 1965, "but in the urban areas it can be expected to replace formal segregation.... The result could be more racial segregation North and South than existed before 1954 if the Northern pattern of *de facto* segregation becomes the model of school organization." This was already happening in the metropolitan South, in the sense that national rather than regionally distinctive patterns of residential segregation informed school desegregation techniques in the aftermath of *Brown*. By the mid-1960s, most urban districts across the South had adopted "freedom of choice" desegregation formulas and "race-neutral" neighborhood schools plans modeled on techniques that federal judges had explicitly approved as constitutional in response to NAACP litigation in the North and West. The de facto framework, originally devised by civil rights leaders as a strategy to extend the *Brown* mandate beyond the South, turned out to be a road map for southern cities seeking to escape meaningful integration through "northern-style" approaches. In 1966, the Fourth Circuit Court of Appeals cited the Gary, Indiana, precedent in denying the NAACP's challenge to a neighborhood schools assignment plan in Charlotte, North Carolina. "So long as the boundaries are not drawn for the conscious purpose of maintaining segregation," the appellate ruling maintained, "the School Board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns." But the legal climate shifted again with the Virginia case of *Green v. New Kent County* (1968), when the Supreme Court charged southern districts that had operated dual school systems with an "affirmative duty to take whatever steps might be necessary" to eradicate the vestiges of de jure segregation.²¹

In *Swann v. Charlotte-Mecklenburg* (1969), the NAACP achieved a significant victory by convincing a district court to order busing to overcome state-sponsored patterns of housing segregation, a novel and far-reaching extension of the state action doctrine. "The neighborhood school theory has no standing to override the Constitution," stated the opinion by Judge James McMillan, when "superimposed on an urban population pattern where Negro residents have become concentrated almost entirely in one quadrant of a city of 270,000." The *Swann* decision found that school segregation in Charlotte's consolidated city-suburban district resulted

from discriminatory housing policies such as municipal planning and zoning, federally funded urban renewal programs, the site selection for low-income projects, and the legacy of restrictive racial covenants. "There is so much state action embedded in and shaping these events," Judge McMillan concluded, "that the resulting segregation is not innocent or *de facto*." In response, white families in suburban Charlotte launched a grassroots revolt that denounced busing for "racial balance" as a violation of the 1964 Civil Rights Act and the constitutional imperative of color-blind nondiscrimination. Under the banner of the Silent Majority, anti-busing movements in Charlotte and other southern cities also established a regional alliance that demanded "the same treatment as northern cities" because neighborhood schools and housing patterns in all metropolitan areas resulted from "de facto as opposed to de jure segregation."²²

The *Swann* verdict disrupted both the North/South binary and the housing/schools dichotomy by requiring education officials in a southern city to remedy the effects of "northern-style" residential segregation. In January 1970, *Time* attempted to clarify the de jure/de facto question that the Supreme Court had never resolved: "Unlike Southern school segregation, which is the result of official policy, segregation in the North is less purposeful and harder to correct. In most cities, segregation came about accidentally, only to be perpetuated deliberately." This tortured logic highlighted a distinction without a difference to white southern politicians who called for regional fairness and believed, in the words of Senator John Stennis of Mississippi, that "when the North feels the pinch as it has been felt in the South, the harsh regulations and demands will be moderated." In February, Stennis introduced an amendment to establish a uniform school desegregation policy throughout the nation, along with a federal antibusing standard that replicated a law recently signed by Governor Nelson Rockefeller of New York. "Northern liberals were in total confusion," reported *Time*, especially after Senator Abraham Ribicoff of Connecticut endorsed the Stennis measure and accused his home region of "monumental hypocrisy.... We're just as racist in the North as they are in the South." In Richmond, Virginia, the leader of the local anti-busing movement drew the obvious conclusion: "If the Supreme Court distinguishes between de jure and de facto segregation, we would like to be placed in the latter category and treated like... the major cities in the North and Midwest."²³

As the NAACP reopened litigation against neighborhood-schools formulas in urban districts across the nation, the political backlash against court-ordered busing spread from the grassroots to Washington. In the spring of 1970, the Nixon administration released a major policy statement on school desegregation that reinterpreted the de jure/de facto dichotomy by announcing a national standard that treated all regions the same while drawing an explicit line between educational policy and

housing markets. "There is a fundamental distinction between so-called '*de jure*' and '*de facto*' segregation: *de jure* segregation arises by law or by the deliberate act of school officials and is unconstitutional; *de facto* segregation results from residential housing patterns and does not violate the Constitution." The White House then extended the latter category to the residentially segregated landscapes of the metropolitan South: "*De facto* racial separation, resulting genuinely from housing patterns, exists in the South as well as the North; in neither area should this condition by itself be cause for Federal enforcement actions." Although Nixon promised that his administration would pursue desegregation remedies in cases of deliberate racial gerrymandering, he also insisted that federal courts could not order "compulsory busing of pupils beyond normal geographic school zones for the purpose of achieving racial balance.... In the case of genuine *de facto* segregation, ... school authorities are not constitutionally required to take any positive steps to correct the imbalance." The rejoinder by the U.S. Civil Rights Commission emphasized that "government at all levels invariably is implicated" in patterns of housing segregation, and so there was "little legal substance to the concept of de facto school segregation," which had become an artificial political device masquerading as a legitimate constitutional standard. As if to prove the point, President Nixon personally instructed federal enforcement officials: "When in doubt, call segregation *de facto*, not *de jure*."²⁴

In 1971, a unanimous Supreme Court affirmed the *Swann* decree in an ambiguous decision that approved cross-town busing as a remedy for de jure school segregation and jeopardized the de facto defense across the nation without clarifying the housing/education nexus. The justices declined to settle the question of "whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action." *Time* argued that an exemption for neighborhood schools resulting from housing segregation would mean "the nation was following a racial double standard: nonaction in the North, stern demands for integration in the South." The Civil Rights Commission posed the unresolved question: "What if school segregation results not from administrative decisions of school officials, but from residential segregation for which other State or local government bodies, such as local public housing authorities, urban renewal agencies, zoning boards, and city councils, are responsible?" The commission explained that in the North and West, "it is doubtful that there are many cases in which school segregation actually has resulted solely from accidental factors in which government is not involved.... In such cases, despite the absence of laws expressly requiring or sanctioning it, ... school segregation is not *de facto*, but *de jure*." The Supreme Court did abandon the jurisprudence of southern exceptionalism in *Keyes v. Denver* (1973), which found de jure

segregation ("intent to segregate") in a large urban district with no statutory history of Jim Crow, but the rationale revolved around racial gerrymandering and other deliberate actions by school officials rather than scrutiny of state-sponsored residential segregation.²⁵

Two pivotal cases brought by the NAACP in the early 1970s, one in Michigan and the other in Virginia, produced the most expansive state-action interpretations in the history of school desegregation case law. In *Bradley v. Milliken* (1971), District Judge Stephen Roth labeled Detroit a "de jure segregated public school system" and ordered a metropolitan busing plan through the consolidation of city and suburban districts. The ruling found that "governmental actions and inaction at all levels, federal, state, and local, have combined with those of private organizations... to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area." At the same time, Roth dissented from the entire state action exercise with the view that "if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto." In *Bradley v. Richmond* (1972), the NAACP secured another city-suburban busing decree after Judge Robert Merhige found that the "present pattern of residential housing... is a reflection of past racial discrimination contributed in part by local, state and federal government.... Negroes in Richmond live where they do because they have no choice." Each lower court decision placed the blame for residential and school segregation on a broad constellation of public and private forces, from the Federal Housing Administration and the real estate industry to municipal agencies inside the cities and exclusionary zoning in the suburbs. Taken together, the two cases represented the culmination of the NAACP's decades-long campaign to puncture the de facto mystique of white innocence by holding both the state and the suburbs responsible for housing and school segregation in the modern metropolis.²⁶

But the breakthrough did not last, because the appellate courts soon acted to restore the de facto mythology and reinstate the powerful national narrative that free-market forces alone produced housing segregation. In the summer of 1972, the Fourth Circuit Court of Appeals reversed the Richmond consolidation order, holding that "the last vestiges of state-imposed segregation have been wiped out" and concluding with a remarkable assertion that the "root causes of the concentration of blacks in the inner cities of America are simply not known." In this highly politicized legal climate, the U.S. Supreme Court solidified the de jure/de facto demarcation between educational policies and residential markets by exempting most American suburbs from urban desegregation remedies. In *Milliken v. Bradley* (1974), a narrow majority on the Supreme Court reversed the Detroit consolidation decree but upheld busing within the city limits, a crushing defeat for the NAACP's metropolitan integration strategy. The legal rationale in *Milliken* emphasized the absence of proof that suburban

policies had caused urban segregation, but the majority opinion evaded rather than refuted the trial court's substantial evidentiary record that a long history of government programs had shaped residential segregation and therefore neighborhood school segregation throughout metropolitan Detroit. *Milliken* collapsed the regional divide that had pervaded desegregation case law for two decades since *Brown*, but only by erecting a new and equally artificial dichotomy between unconstitutional (de jure) school segregation inside the city and constitutional (de facto) housing segregation in the suburbs.²⁷

In political culture and in constitutional law, the reinvigoration of de facto segregation as a description of the metropolitan housing market accompanied a sweeping reclassification of residential segregation as the product of economic rather than racial discrimination. Civil rights litigants secured an important de jure victory in the 1969 *Guthrieux* case, which found the Chicago Housing Authority guilty of a "governmentally established policy of racial segregation" in public housing projects and provided vouchers for seven thousand black families to move into suburban neighborhoods. Responding that "forced integration of the suburbs is not in the national interest," Richard Nixon released a major 1971 statement on "equal housing opportunity" that distinguished between illegal racial discrimination in violation of the Fair Housing Act and legitimate efforts to maintain economic segregation by banning low-income projects and defending property values through exclusionary zoning. The president promised that the federal government would prosecute individual acts of racial discrimination but would "not seek to impose economic integration... [or] federally assisted housing upon any community." Civil rights organizations attacked these "artificial distinctions between racial and economic discrimination" as the latest incarnation of the de jure/de facto fiction, a transparent scheme to recast structural racism in the suburban housing market as a benign form of segregation based solely on class. In a series of cases during the 1970s, the Supreme Court upheld the Nixon administration's position that exclusionary zoning in the suburbs rested on constitutionally permissible economic segregation rather than illegal racial discrimination. In historical context, Nixon's arguments against "forced busing" and "forced housing" revolved around a repudiation of the civil rights agenda of affirmative action that owed as much to the de facto legacies of race-blind liberalism as they did to the "backlash" of color-blind conservatism.²⁸

The mythology of de facto segregation began as a regional binary, separating the South from the nation and statutory discrimination from the free market, and eventually evolved into a deeply politicized method of drawing legal distinctions between schools and housing, cities and suburbs, racism and economics. The consistent thread in this convoluted saga has

been the effort to preserve white racial innocence and white spatial privilege by shielding a liberal national narrative, an ideology of American exceptionalism that can survive only through the constant renewal of southern exceptionalism, an American Creed of equal opportunity that requires an oppositional region to remain intact, an American national identity that is still discovering itself down in the Jim Crow South. "Suddenly," claimed *Time* magazine during the antihousing backlash of the early 1970s, "the nation has faltered in its determination to grapple with the toughest moral and political dilemma of the postwar era: how to ensure justice for its blacks." By "heading north" (once again), the civil rights movement's demand for comprehensive integration on a national scale had disrupted (once again) the storyline of the American Creed. "It was not hard to distinguish hero from villain when President Eisenhower dispatched Screaming Eagle paratroopers to keep Arkansas Governor Orval Faubus' National Guardsmen from blocking the admittance of nine black children to Little Rock's Central High School in 1957." A quarter century after *Time's* nostalgic lament for the moral clarity of the southern civil rights era, Kenneth Clark reflected on his own role in pioneering the "de facto" critique of northern school segregation in the mid-1950s: "I thought the problem of segregation essentially was a southern problem," Clark explained. "At that time, the North rationalized its racism by contending that racially segregated schools were a manifestation of a larger pattern of our racial culture. . . . I did not understand, however, that the maintenance of segregated housing not only excused persistent patterns of school segregation, but that segregated housing itself represented a form of deeply imbedded racism that resisted all attempts at desegregation."²⁹

NOTES

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2

HIDDEN IN PLAIN SIGHT

The Civil Rights Movement outside the South

Jeanne Theoharis

In the spring of 1963 in Birmingham, Alabama, after months of nonviolent demonstrations met with fire hoses, police dogs, and hundreds of arrests, civil rights activists reached an agreement with business and city leaders to desegregate the downtown facilities. Then, on the evening of May 11, 1963, a group of white segregationists angered by the agreement threw a bomb into the house of Rev. A. D. King and another bomb into the Gaston Motel, where Rev. Martin Luther King Jr. and other members of the Southern Christian Leadership Conference had been staying during the Birmingham campaign. Upon hearing of the attacks, more than two thousand African Americans gathered outside the damaged motel, throwing rocks and bricks, looting commodities, and setting a nearby grocery store on fire. Police began to assault the angry crowd, beating people fiercely. By the end of the night, seventy people had been hospitalized and a number of businesses had been looted and burned down.¹

Three thousand miles away, from 1962 to 1964, black Angelinos also took to the streets to protest racial inequality. They held regular demonstrations demanding desegregation and equity in Los Angeles's public schools, protested the police murder of the unarmed Nation of Islam secretary Ronald Stokes, and fought to oppose racially exclusive housing developments and the segregationist state ballot initiative Proposition 14 (which sought to repeal the hard-won 1963 Fair Housing Act). They were met with city intransigence around school inequality, no reform of police practices or charges brought against the officers who killed Stokes, and the decisive victory of Proposition 14 in November 1964. Then, on August 11,