BOOK REVIEW

INTEGRATING INTO A BURNING HOUSE: RACE- AND IDENTITY-CONSCIOUS VISIONS IN *BROWN'S* INNER CITY

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"I went to school. Most of the time we didn't have any books. When we got books they were old books, but I went to school."[1]

TABLE OF CONTENTS

I. INTRODUCTION

On March 27, 1968, Reverend Martin Luther King, Jr., exhausted by a
day of antipoverty rallies in New Jersey, and frustrated by the Southern
Christian Leadership Conference's poverty campaign in Washington, D.C.
and Memphis, Tennessee declared: "We may be integrating into a burning
house."[2] The story of the failed integration of America's "burning

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2.   TAYLOR BRANCH, AT CANAAN'S EDGE: AMERICA IN THE KING YEARS 1965–68, at 730
(2006) (quoting Martin Luther King, Jr.). *See generally* DAVID J. GARROW, BEARING THE CROSS:
MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1986)

house"—its schools, neighborhoods, and workplaces—begins for many
with the U.S. Supreme Court's 1954 decision in *Brown v. Board of
Education*.[3] Fifty-six years later, on March 8, 2010, at the Edmund Pettus
Bridge in Selma, Alabama, U.S. Department of Education Secretary Arne
Duncan invoked both King and *Brown* in announcing the renewed
commitment of the department to civil rights enforcement in schools across
America.[4] Standing at the historic site of Bloody Sunday in Selma, a
critical battle ground in the civil rights movement, Duncan outlined a series
of new enforcement initiatives—guidance letters, compliance reviews, data
collection, and monitoring—intended to redress school-based inequities in
urban communities of color.[5] Espousing "the cause of equal educational
opportunity," he asked: "How do we maximize freedom and opportunity in
schools and communities where low-income black and brown children, and
students with disabilities, still are treated unequally?"[6]

Duncan's modern invocation of *Brown*, his commitment to
educational opportunity and racial justice in new contexts of inequality, and
his search for alternative pathways to ensure community equity invites a
contemporary reassessment of *Brown* in America's inner-city public
schools and impoverished neighborhoods. Martha Minow's superb new
book, *In* Brown*'s Wake: Legacies of America's Educational Landmark*,
presents a sweeping appraisal of the landmark status and mixed legacy of
Brown in the field of public education, here and abroad.[7] The dean of
Harvard Law School and an international leader in law reform and

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(chronicling King's life and work); MICHAEL K. HONEY, GOING DOWN JERICHO ROAD: THE MEMPHIS
STRIKE, MARTIN LUTHER KING'S LAST CAMPAIGN 171–331 (2007) (providing a historical account of
the Poor People's Campaign); GERALD D. MCKNIGHT, THE LAST CRUSADE: MARTIN LUTHER KING,
JR., THE FBI, AND THE POOR PEOPLE'S CAMPAIGN (1998) (describing and analyzing the reasons for the
failure of King's Poor People's Campaign); JAMES R. RALPH, JR., NORTHERN PROTEST: MARTIN
LUTHER KING, JR., CHICAGO, AND THE CIVIL RIGHTS MOVEMENT (1993) (describing the Chicago
Freedom Movement and providing a detailed portrait of Martin Luther King and the Southern Christian
Leadership Conference).

    3.   Brown v. Bd. of Educ., 347 U.S. 483 (1954).

    4.   Arne Duncan, Sec'y, U.S. Dep't of Educ., Crossing the Next Bridge: Secretary Arne
Duncan's Remarks on the 45th Anniversary of "Bloody Sunday" at the Edmund Pettus Bridge, Selma,
Alabama (Mar. 8, 2010), *available at* http://www2.ed.gov/news/speeches/2010/03/03082010.html.

    5.   *Id.*

    6.   *Id.*

    7.   MARTHA MINOW, IN *BROWN*'S WAKE: LEGACIES OF AMERICA'S EDUCATIONAL LANDMARK
(2010). *See generally* DERRICK BELL, SILENT COVENANTS: *BROWN V. BOARD OF EDUCATION* AND THE
UNFULFILLED HOPES FOR RACIAL REFORM (2004) (reflecting on the *Brown* decision); MICHAEL J.
KLARMAN, *BROWN V. BOARD OF EDUCATION* AND THE CIVIL RIGHTS MOVEMENT (2007) (same); JAMES
T. PATTERSON, *BROWN V. BOARD OF EDUCATION*: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED
LEGACY (2001) (same).

educational policy, Minow embraces *Brown* as an enduring, fruitful resource for civic reformers engaged in law, social science, and social justice movements. Her purpose in revisiting *Brown* stems from an academic and activist sense of dismay over the bleak tenor of the fiftieth anniversary celebration of that ground-breaking decision in public and scholarly discourse, a widely circulated discourse that "stressed the failures of the decision."[8] To her credit, Minow offers *In* Brown*'s Wake* as a useful corrective, duly acknowledging her own "disappointments" in *Brown* and its legal-political progeny while exploring its "unexpected legacies" for the nation and the international community.[9]

To Minow, *Brown* provides not only an ideal of equal opportunity and a critique of separate-but-equal segregation, but also a promise of transformative treatment in the education of immigrants, students learning English, girls, students with disabilities, and poor students in American schools. Despite continuing public policy debates over separate-versus-mixed instruction in schools and ongoing legal-political challenges to the viability of racial equality and integration in courts, Minow uncovers the enormous normative influence of *Brown* in schools beyond matters of race, and in communities outside of the United States. Indeed, Minow discerns in *Brown* more influence on American racial justice outside the context of schooling, more impact on schooling outside the context of racial integration, and more significance to law, equality, and justice outside of both race and schooling.

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8.   *A Life's Project and a Project's Life: What* Brown v. Board of Education *Awakened—In a Future Dean, in This Country and Abroad*, HARV. L. BULL., Winter 2011, at 13, 13 [hereinafter *A Life's Project*] (interviewing Martha Minow). *See also* RISA L. GOLUBOFF, THE LOST PROMISE OF CIVIL RIGHTS 269 (2007) (noting that *Brown*'s constitutional "framework left the material, private-labor-market side of Jim Crow not only unredressed but alo unaddressed"); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 71 (1991) (claiming that by a "judicial effects" yardstick, "*Brown* and its progeny stand for the proposition that courts are impotent to produce significant social reform"). *See generally* ROBERT J. COTTROL, RAYMOND T. DIAMOND & LELAND B. WARE, *BROWN V. BOARD OF EDUCATION*: CASTE, CULTURE, AND THE CONSTITUTION 234–43 (2003) (contemplating the "divided legacy" of *Brown*); DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* (Gary Orfield, Susan E. Eaton & Harvard Project on Sch. Desegregation eds., 1996) [hereinafter DISMANTLING DESEGREGATION] (providing case studies on desegregation efforts and illustrating their failure); THE UNFINISHED AGENDA OF *BROWN V. BOARD OF EDUCATION* (The Editors of Black Issues in Higher Educ., James Anderson & Dara N. Byrne eds., 2004) (commenting on *Brown*'s unrealized goals of equal education and equal opportunity).

9.   *A Life's Project*, *supra* note 8, at 13. *See also* Laughlin McDonald, *Beyond School Desegregation: The Impact of* Brown, *in* REMEMBERING *BROWN* AT FIFTY: THE UNIVERSITY OF ILLINOIS COMMEMORATES *BROWN V. BOARD OF EDUCATION* 88 (Orville Vernon Burton & David O'Brien eds., 2009) (lauding *Brown* for its "instrumental" legacy "in transforming American society and significantly expanding the concept and reality of equal treatment under the law").

This review of *In* Brown*'s Wake*, fashioned as a sympathetic critique and as a summons to faith-based, community practice, proceeds in four parts. Part I introduces the contemporary backdrop for Minow's impressive new work. Part II considers Minow's expansive analysis of *Brown*, particularly her understanding of *Brown*'s ambiguous legacy, its disputed vision, and its "common school" ideology. It also examines Minow's claim of wide-ranging beneficial repercussions attributable to *Brown* in civil rights, public education, and international human rights. Part III explores the equalization ideals embedded in an inner-city vision of *Brown*, delineating the core concepts—social integration, civic equality, and economic justice—and alternative pathways—race- and identity-conscious accommodation and resistance—implied by those ideals. It also addresses difficult questions left unresolved by Minow, evaluating race- and identity-conscious approaches to difference, equal educational opportunity, and integration employed by current antipoverty and civil rights advocates in communities of color, especially in partnership with faith-based, race-conscious institutions such as local black churches. An accompanying case study drawn from the student-initiated work of the Historic Black Church Program at the University of Miami School of Law's Center for Ethics and Public Service illustrates the potential community benefits of such faith-based partnerships. Part IV concludes by seeking to channel Minow's work in a more experimental, activist direction specific to the contexts of inner-city schools segregated by race, class, and ethnicity through adoption of a race- and identity-conscious vision of community-based empowerment in education.

II. INTEGRATIONIST IDEALS: A "COMMON SCHOOL" VISION OF *BROWN*

The starting point for Minow's appraisal of *Brown* is the substantive content of the Supreme Court's decision, its remedial implementation by federal courts, and the gradual judicial and societal retreat from its goal of integration. This multifaceted assessment considers *Brown*'s legacy in context and in the retrospective light of subsequent desegregation and integration efforts. Those efforts involve considerations of inclusion and exclusion, group identity, and school choice. Taken together, they mold *Brown*'s "common school" ideology[10] of diversity, integration, community, and democracy, an ideology that pervades Minow's descriptive analysis

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10.   MINOW, *supra* note 7, at 147. *See also infra* note 142.

and prescriptive aspiration.

A. *BROWN*'S LEGACY

In mapping the complex socio-legal dynamic of *Brown*'s legacy, Minow moves forward carefully to document the contributions of lawyers and social activists, the logic of their litigation and political strategies, the place of larger social movements, and the role of social science research in advancing the cause of racial equality. Minow seeks to understand *Brown*'s accomplishments and to assess its limitations in school-based racial equality by "locating what the Court's decision did and did not do, what the plaintiffs and their lawyers did and did not seek, and how the case has played out in law and educational practice."[11] This opening inquiry, backed by her thorough parsing of historical materials, tracks "how the legal ideal of equal educational opportunity and status in common schools changed over time" from a broad commitment to integration and racial mixing to a narrow emphasis on "parity in test score results" and the avoidance of "racial classifications."[12] Pressed at national and state levels, the unremitting pursuit of test score parity diverts schools from the goal of integration-defined equal educational opportunity. At the same time, fortified by U.S. Supreme Court decisions, federal and state authorities increasingly eschew the use of racial classifications in organizing and funding local school districts.[13] For many, the shift to neutral, quantitative metrics in educational policy seems anathema to *Brown*'s legacy. At the outset, consider *Brown* in context.

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11.   MINOW, *supra* note 7, at 6.

12.   *Id.*

13.   For evidence of the mounting judicial repudiation of racial classifications in state and local school policy and the corresponding federal court retreat from racial equality and integration in schools, see *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007). Invoking *Brown*, the Court in *Parents Involved* announced:

> Before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin. The school districts in these cases have not carried the heavy burden of demonstrating that we should allow this once again—even for very different reasons. For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past segregation, such as Jefferson County, the way "to achieve a system of determining admission to the public schools on a nonracial basis," . . . is to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.

Id. at 747–48 (plurality opinion) (quoting Brown v. Bd. of Educ. (*Brown II*), 349 U. S. 294, 300–01 (1955)).

1. *Brown* in Context

To Minow, *Brown* "established equality as a central commitment of American schools."[14] As a first step toward school equality, she asserts, *Brown* "rejected state-ordered racial segregation."[15] In doing so, Minow contends that *Brown* "launched more than a half century of debate over whether students from different racial, religious, gender, and ethnic backgrounds, and other lines of difference must be taught in the same classrooms."[16] To her dismay, more than a half century after *Brown*, "neither law nor practice" successfully "produced a norm of racially integrated classrooms."[17] Paradoxically, for Minow and other advocates of educational equality, school classrooms across the nation now tilt "more racially segregated than they were at the height of the desegregation effort."[18] In an attempt to resolve this enduring paradox, Minow recasts *Brown* as a catalyst for "social movements to pursue equal schooling beyond racial differences"[19] and as a vehicle or medium for "successful legal and policy changes addressing the treatment of students' language, gender, disability, immigration status, socioeconomic status, religion, and sexual orientation."[20] For Minow, *Brown* "stands both as the landmark of social justice embraced by law and the symbol of limits on social reform led by courts."[21]

Concretely, from a doctrinal stance, *Brown* subjected public schools to critical scrutiny under the Equal Protection Clause of the U.S. Constitution, holding that official, state-mandated "racial segregation inherently violates that equality requirement."[22] Nonetheless, for Minow and others, it remains unclear whether equal protection dictates "racial mixing," defined by the "side-by-side instruction of students of different races in the same school and classrooms," or "integration," characterized by "a shared community of mutual respect, common goals, and joint

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14. MINOW, *supra* note 7, at 5.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 5–6.
21. *Id.* at 6. *See also* Michael Heise, *Litigated Learning, Law's Limits, and Urban School Reform Challenges*, 85 N.C. L. REV. 1419, 1419 (2006) ("[L]itigation, as an instrument of social change, is not without its structural and institutional limits.").
22. MINOW, *supra* note 7, at 6.

ownership of education within a multiracial student body."[23] Equally important, it remains unclear whether the racial mixing of side-by-side classroom instruction or the joint ownership of community-shared integration offers the only available means to satisfy *Brown*'s constitutional requirement of educational equality. Put differently, Minow's account raises the question of whether *Brown*, in its current diminished jurisprudential state, and the equal protection doctrine in the domain of public education, requires any more than official state neutrality in administering schools for purposes of curricular development, faculty staffing, or district funding. If neutrality controls and state-sponsored racial classifications presumptively fail, then the segregation and resegregation of inner-city schools persists without end.

Although Minow points out that *Brown*, under the constitutional force of the equal protection clause, "eliminated racial segregation as an acceptable practice in schools,"[24] she observes that "the Court-supervised remedial process produced protracted and sometimes violent conflicts over the succeeding decades" and registered "decreasing success in advancing either the ideal or the reality of the integration or even simply racially mixed schools."[25] In distinguishing racial mixing from integration, Minow explains that decades of "judicial withdrawal from school desegregation suits and patterns of residential segregation" causally contributed to the "increasing racial 'resegregation' in public schools" and, perhaps more vexing, "cast doubt on whether mixing students of different races is feasible, much less required by the commitment to equality."[26] She links the "informally or indirectly produced patterns" of resegregation and "the resurgence of racially identified schools" to the "complex patterns of private choices and biases of whites" coupled with "racialized housing patterns" and "economic disadvantages disproportionately affecting students of color," all infected by "the residues of past official segregation."[27] Resegregation, across the local neighborhoods and urban-suburban boundaries of cities like Miami, Florida in turn "dramatically decreases the likelihood that students from different races will spend much school time with students from other backgrounds."[28] In this way, *Brown* symbolizes "an emblem both of

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23.   *Id.*

24.   *Id.*

25.   *Id.* at 7.

26.   *Id.*

27.   *Id.*

28.   *Id. See also* Caroline Emmons, *A State Divided: Implementation of the* Brown *Decision in*

social change and obdurate racialized divisions."[29]

Minow traces this double legacy of social change and racialized division to the *Brown* Court's emphasis on "the crucial importance of racial integration of students" and its simultaneous failure to "mandate mixing students of different races in the same school and same classrooms" or seriously to "address governance and control of schools."[30] Under *Brown*'s mandate, Minow remarks, lower courts may "overturn explicit racially segregative laws without producing racial mixing in schools."[31] In this manner, desegregation bears no necessary correlation to racial mixing or integration. Against the changing backdrop of America's inner cities, Minow discloses, desegregation may "mean simply the elimination of segregative laws and practices, leaving schools racially separate due to the private choices of families and residential patterns of racial separation."[32] Similarly, she reveals, courts may implement *Brown*'s mandate by abolishing "historically black schools without demanding that black parents and teachers share in governing the desegregated schools and without attacking practices that replicate racial prejudice and distrust."[33] Practically then, *Brown*-mandated school desegregation may have little or no bearing on racial mixing, integration, governance, or the invidious social and economic practices of racial prejudice.

To Minow, by contrast, integration itself "takes more than ending segregation and more than putting students of different identities in the same school."[34] Integration in her view "requires effective efforts to dismantle prejudices, to build common experiences around shared goals, and to assess success in terms of social ties across groups" and differences.[35] Yet, she underlines that lower courts in the post-*Brown* era increasingly "declare that enough time has passed since the elimination of intentional and explicit segregation to stop using judicial measures to remedy patterns of racial separation within public schools."[36] Undaunted,

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Florida, 1954–1970, *in* WITH ALL DELIBERATE SPEED: IMPLEMENTING *BROWN V. BOARD OF EDUCATION* 139, 154 (Brian J. Daugherity & Charles C. Bolton eds., 2008) ("In Florida, as in other states, whites continue to disproportionately attend well-funded suburban schools while blacks and other minorities are far more likely to be relegated to impoverished urban schools.").

29.   MINOW, *supra* note 7, at 7.
30.   *Id.*
31.   *Id.*
32.   *Id.* at 8.
33.   *Id.*
34.   *Id.*
35.   *Id.*
36.   *Id.*

Minow points to the decades comprising this era for evidence of direct and indirect action by schools and parents to halt state-sponsored forms of segregation. Schools during this period, she notes, "stopped explicitly assigning students to schools that separate them by race."[37] Likewise, parents and communities obtained "similar results indirectly through housing patterns, district lines, and even some forms of school choice."[38] These well-intentioned results enable contemporary students of different races to enroll in the same school but attend different classes, producing "separate and incomparable educational experiences."[39] Such divergent experiences, according to Minow, demonstrate that racially mixed enrollments, standing alone, fail to reach the step toward integration set out by Martin Luther King in defining a "constructive equality of oneness"[40] within "a community of love, justice, and brotherhood," an interwoven notion of integration and equality predicated on "recognizing the human dignity, individual rights, and interdependence of each person."[41]

For Minow, the "racial gap in American educational achievement and the increasingly racially separate schools raise unavoidable questions about *Brown*'s effects."[42] Minow admits that public school resegregation "makes it tempting to argue that integration was never the goal but merely a means toward the still viable end of equal opportunity."[43] She traces this argument to the early legal-political strategy of the National Association for the Advancement of Colored People ("NAACP") "to

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37. *Id.*

38. *Id. See also* NAACP LEGAL DEF. & EDUC. FUND, INC. & THE CIVIL RIGHTS PROJECT, STILL LOOKING TO THE FUTURE: VOLUNTARY K-12 INTEGRATION: A MANUAL FOR PARENTS, EDUCATORS, & ADVOCATES (2008), *available at* http://naacpldf.org/files/publications/Still_Looking_to_the_Future_Voluntary_K-12_School_Integration;_A_Manual_for_Parents,_Educators_and_Advocates.pdf (providing a comprehensive manual on district assignment plans and school policies of inclusion for parents, educators, and advocates).

39. MINOW, *supra* note 7, at 8.

40. *Id.* (quoting Kenneth L. Smith & Ira G. Zepp, Jr., *Martin Luther King's Vision of the Beloved Community*, CHRISTIAN CENTURY, Apr. 3, 1974, at 361).

41. *Id.* (citing Smith & Zepp, *supra* note 40, at 361); Martha Minow, *After* Brown*: What Would Martin Luther King Say?*, 12 LEWIS & CLARK L. REV. 599, 601 (2008).

42. MINOW, *supra* note 7, at 9. *See also* RICHARD ROTHSTEIN, CLASS AND SCHOOLS: USING SOCIAL, ECONOMIC, AND EDUCATIONAL REFORM TO CLOSE THE BLACK-WHITE ACHIEVEMENT GAP 14 (2004) (linking socioeconomic differences to "an achievement gap between students from different social classes"); Molly S. McUsic, *The Future of* Brown v. Board of Education*: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1342 (2004) ("By 2003, racial desegregation in all regions of the country had begun to return to a pre-*Brown* configuration . . . .").

43. MINOW, *supra* note 7, at 9 ("[T]he civil rights movement initially pursued economic equality through jobs and equal treatment in commercial and criminal law.").

press for equal expenditures for racially separate schools"[44] in practical extension of the Supreme Court's "separate but equal" doctrine once enshrined under *Plessy v. Ferguson*.[45]

Despite the initial logic of pursuing a *Plessy*-decreed equal resources legal-political strategy, Minow contends that "it would be wrong to deny the long-standing importance of integration as a goal in the civil rights struggles for advocates of racial equality."[46] She reasons that dismantling Jim Crow forms of racial hierarchy and race-based exclusion necessarily demanded "the creation of a shared community of equals and an end to both the segregation and the race-based domination it reflected."[47] As others have documented elsewhere,[48] that demand, coupled with the entrenched segregation of separate and inferior schools for African Americans in the early twentieth century, "gave rise to tactical debates over the relative priority of desegregation and equalization of resources."[49]

44.   *Id.* (mentioning that the application of the NAACP litigation strategy to graduate and professional schools "meant exposing the states' failures to provide *any* program for black students . . . . [I]n this arena, combining black and white students seemed far more feasible and cost-effective than building entirely separate campuses").

45.   *See* Plessy v. Ferguson, 163 U.S. 537 (1896). *See generally* HARVEY FIRESIDE, SEPARATE AND UNEQUAL: HOMER PLESSY AND THE SUPREME COURT DECISION THAT LEGALIZED RACISM (2004) (exploring the history behind *Plessy v. Ferguson* and the separate-but-equal doctrine). Minow adds, "The NAACP lawyers contended that even adhering to the separate-but-equal formula, equality was obstructed when segregation in the Kansas schools curbed the motivation of black students to learn and segregation in the Virginia schools produced long-term education deprivations for black students." MINOW, *supra* note 7, at 18.

46.   MINOW, *supra* note 7, at 10.

47.   *Id.* at 11. *See also id.* at 12 ("Civil rights advocates at both the NAACP and the Department of Justice wanted to tackle the Jim Crow system of segregation and discrimination throughout public and private institutions."). *See generally* MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004) (suggesting that the civil rights movement ultimately would have exerted the same impact as *Brown*); LEON F. LITWACK, TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW (1998) (documenting the Jim Crow era); C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (3rd rev. ed. 1974) (same).

48.   *See generally* JACK GREENBERG, CRUSADERS IN THE COURTS: LEGAL BATTLES OF THE CIVIL RIGHTS MOVEMENT (2004) (documenting in a memoir the litigation history of the civil rights movement); CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF *BROWN V. BOARD OF EDUCATION* 120–23 (2004) (commenting on the abandonment of equalization cases in favor of a direct attack on segregation); MARK V. TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950 (1987) (reviewing the NAACP's legal strategy for attacking segregation).

49.   MINOW, *supra* note 7, at 13 ("Southern states could not afford to support the dual school systems mandated by their segregation laws, and the contrast between schools for white and for black students manifested white supremacy and concretely subordinated blacks and their chances for any advancement.").

In weighing the relative priority of desegregation and equalization tactics in the context of education, Minow mentions that a school and its stakeholders—parents, teachers, and community institutions—often confront stark choices: they may craft "role models, reinforce values, and build in social supports for student aspirations and achievement" or they may "produce alienation, cultural collision, self-doubt, or hostility."[50] Skeptical of segregated education, she concedes that "even racially separate schooling would be better than schools that undermine the aspirations, confidence, and achievement of students of color."[51] To this concession she adds, "truly integrated education" denoted by "access to students from different backgrounds and walks of life," and imbued by an "atmosphere of mutual respect and commitment to advancing the dignity and rights of each, would be better still."[52] On Minow's view of integration, "diverse people do and should become resources for each other."[53]

In support of this aspirational view, Minow points to three core ideas in *Brown*: equal opportunity, status inferiority, and segregation-induced inequality.[54] On equal opportunity, Minow reads *Brown* broadly in its declaration that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."[55] Moreover, she underscores *Brown*'s command that "where the state has undertaken to provide [an opportunity for an education], [it] is a right which must be made available to all on equal terms."[56] On status inferiority, Minow interprets *Brown* expansively in its finding that "[t]o separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community."[57] By comparison, on segregation-induced inequality, Minow construes *Brown* strictly in its pronouncement that "in the field of public education, the doctrine of 'separate but equal' has no place."[58] Necessarily, for *Brown* and for Minow, "[s]eparate educational facilities are inherently unequal."[59]

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50. *Id.* at 14.
51. *Id.*
52. *Id.*
53. *Id.* at 15.
54. *See id.* at 19.
55. Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).
56. *Id.*
57. *Id.* at 494.
58. *Id.* at 495.
59. *Id.*

Reasoning from these three ideas, Minow deduces a compelling unified proposition correlating "equal opportunity in education" with the end of "racial segregation."[60] Put simply "if separation is inherently unequal, then equality requires its ending."[61] Notwithstanding the laudable impulse to end racial segregation and separation, Minow demonstrates that neither this proposition nor its underlying ideas and derivative principles "seem to point in the same direction."[62] Citing continuing court retrenchment, shifting residential patterns, and increasingly racially separate schools, she opines that "equal opportunity to gain an education and succeed in life no longer seems to require mixing students of different backgrounds."[63] In this respect, equal opportunity "no longer" compels "bringing students with different racial and ethnic identities together in the same school and in the same classrooms."[64]

Minow attributes this doctrinal erosion in part to *Brown*'s unresolved evidentiary foundation. Even on close textual reading, she demonstrates, it remains uncertain whether *Brown* found "racially separate education inherently unequal because it tended to be educationally inferior or because segregated education communicated and reinforced racial hierarchy."[65] Currently, numerous inner-city schools in Miami and elsewhere suffer from both infirmities: their facilities, curricular resources, and faculty assets fall educationally inferior, and their segregated conditions instill racial hierarchy.[66] As Minow divulges, however, the *Brown* Court declined to "clarify how racially separate instruction could avoid the stamp of hierarchy, eliminate the disparities in educational resources, or overcome the deprivation of vital social interactions across group identities."[67] Taken narrowly, she

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60.   MINOW, *supra* note 7, at 19.

61.   *Id*.

62.   *Id.*

63.   *Id.*

64.   *Id.*

65.   *Id.* at 20.

66.   *See generally* MARVIN DUNN, BLACK MIAMI IN THE TWENTIETH CENTURY 224–41 (1997) (surveying the history of public school desegregation in Florida).

67.   MINOW, *supra* note 7, at 20. Minow adds that in *Brown v. Board of Education* (*Brown II*), 349 U.S. 294 (1955), the successor remedial decision, the Court "delegated to local district courts the task of designing the remedy for officially segregated schools." MINOW, *supra* note 7, at 20. Delegation required "the defendant school districts make a 'prompt and reasonable start' toward compliance" and "introduced the incongruous notion of 'all deliberate speed' as the guide for the timing of desegregation plans." *Id.* (quoting *Brown II*, 349 U.S. at 300–01). *See also* John A. Powell, *Why All Deliberate Speed? Using* Brown *to Understand* Brown, *in* THE PROMISE OF JUSTICE: ESSAYS ON *BROWN V. BOARD OF EDUCATION* 121–27 (Mac A. Stewart ed., 2008) (connecting the remedial vision

acknowledges, desegregation "could be equated . . . with simply dissolving officially segregated schools,"[68] rather than "real integration" designated by educational contexts "in which students from different backgrounds and colors would find common goals in communities committed to mutual success and well-being."[69] To clarify the distinction between formal desegregation and substantive integration, turn to Minow's account of post-*Brown* legal, political, and socioeconomic developments in education.

2. Post-*Brown* Desegregation and Integration

Minow's analysis of post-*Brown* desegregation and integration maps "the confluence of public actions and private decisions" that continue to undercut "the goal of making schools places where students from different races and backgrounds learned together."[70] Situated by courts in a protected arena of personal liberty "beyond the reach of public policy," such "private choices," Minow shows, combine with residential patterns, racially restrictive covenants, race and economic class, and government fiscal policies to produce "marginalized ghetto neighborhoods" abandoned by white flight to private and suburban schools.[71] This convergence, accompanied by federal court retreat from school district–wide desegregation orders and supervision, and a local return to neighborhood school student assignment practices, results in schools "growing more separated by race and ethnicity at the same time that the school population grows more diverse."[72] Hispanics and new immigrants in particular, Minow remarks, "face increasingly diminishing chances to attend school with middle-class whites."[73]

Minow connects the rise of school resegregation and the decline of the integrationist ideal to the collapse of "racial mixing" and to the reproduction of "racial hierarchy and subordination" in schools.[74] That

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of *Brown II* to the notions of whiteness and white space).

68. MINOW, *supra* note 7, at 20.

69. *Id.* at 20–21.

70. *Id.* at 24.

71. *Id. See also* KEVIN M. KRUSE, WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM (2005) (documenting the "white flight" response to desegregation in Atlanta, Georgia); SEAN F. REARDON & JOHN T. YUN, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., PRIVATE SCHOOL RACIAL ENROLLMENTS AND SEGREGATION (2002), http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/private-school-racial-enrollments-and-segregation/Private_Schools.pdf (describing racial enrollment patterns in private schools).

72. MINOW, *supra* note 7, at 25.

73. *Id.* at 26.

74. *Id.*

collapse and the resurgence of racial hierarchy blunt the integrationist ideal. This connection and the coalescence of antecedent decades of resistance[75] with "new patterns of public and private actions" help explain the emergence of "racially identifiable schools that in turn mirror the economic and social disparities between whites and members of other races."[76] For Minow, "mixing students of different backgrounds by itself does not produce equality" when the affected parents and students actively "replicate stereotypes and stratification based on race."[77] To illustrate the prevalence of race-infected stereotypes and stratification, she adverts to the "overrepresentation of minority students in special education classes for students with learning or emotional disabilities," the "disproportionately high disciplinary actions" affecting minority students, and the high rates of minority student exclusion from mainstream classes and their "pushout" into "separate programs that often involve lockup, searches, and little educational value."[78]

Minow painstakingly identifies the stereotypes and stratification practices of segregation-based racial hierarchy afflicting African-American[79] and Hispanic[80] students within schools located in areas of

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75. On Southern resistance to desegregation, see NUMAN V. BARTLEY, THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950'S (1999), and JOHN P. JACKSON, JR., SCIENCE FOR SEGREGATION: RACE, LAW, AND THE CASE AGAINST *BROWN V. BOARD OF EDUCATION* 93–147 (2005).

76. MINOW, *supra* note 7, at 26.

77. *Id.* at 28. *See also* Roslyn Arlin Mickelson, *Subverting Swann: First- and Second-Generation Segregation in the Charlotte-Mecklenburg Schools*, 38 AM. EDUC. RES. J. 215, 242–43 (2001) (documenting the joint effects of first- and second-generation segregation on academic outcomes for black and white students); Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. REV. 1513, 1560 (2003) (evaluating black children's prospects for equal educational opportunities and outcomes).

78. MINOW, *supra* note 7, at 28. *See also* AUGUSTUS CORBETT, HOW PUBLIC SCHOOLS FAIL BLACK BOYS: AND WHAT THEIR PARENTS MUST DO TO HELP THEM (2006) (reporting on the inequities that minority children face in public schools and advising parents how to deal with such obstacles); DROPOUTS IN AMERICA: CONFRONTING THE GRADUATION RATE CRISIS (Gary Orfield ed., 2004) (documenting the drop-out problem and noting that it disproportionately affects minority students); Pamela Fenning & Jennifer Rose, *Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy*, 42 URB. EDUC. 536 (2007) (commenting on the overrepresentation of minority students in exclusionary school discipline); BETSY GOTBAUM & ADVOCATES FOR CHILDREN, PUSHING OUT AT-RISK STUDENTS: AN ANALYSIS OF HIGH SCHOOL DISCHARGE FIGURES (2002), http://www.advocatesforchildren.org/pubs/2005/discharge.pdf (summarizing rates of student discharges from schools in New York City and remarking on the Department of Education's failure to collect demographic data on discharged students).

79. *See* MINOW, *supra* note 7, at 27; John Brittain et al., Lawyers' Comm. for Civil Rights Under Law, *Racial Disparities in Educational Opportunities in the United States: Violations of the International Convention on the Elimination of All Forms of Racial Discrimination: A Response to the 2007 Periodic Report of the United States of America*, 6 SEATTLE J. SOC. JUST. 591, 605–07 (2008)

SOUTHERN CALIFORNIA LAW REVIEW   [Vol. 84:541

concentrated poverty like Miami. Minority students "consigned to disproportionately inadequate and poorly performing public schools," Minow observes, "lose access to other social networks"[81] and forego "the benefits of working with diverse groups and building a sense of 'we' through common goals and experiences."[82] As a consequence, she finds that "poor children of color remain far less likely to find teachers and schools able to launch them into lives of economic success" or to reach "social and political equality with middle-class white peers."[83] On the strength of these findings, Minow concludes that access by minority students to equal educational opportunities "remains remote for countless children in America."[84] Minow tempers her own disappointment in the decline of equal educational opportunities for inner-city children by taking up subsequent *Brown*-inspired movements for equal schooling related to

(citing the relationship among three phenomena: the segregation of poor and minority students, educational disparities for minority youth, and entry into the juvenile justice system).

    80.   *See* MINOW, *supra* note 7, at 27. *See generally* PATRICIA GÁNDARA & FRANCES CONTRERAS, THE LATINO EDUCATION CRISIS: THE CONSEQUENCES OF FAILED SOCIAL POLICIES (2009) (detailing the challenges faced by Latino students); Beatriz Arias, *School Desegregation, Linguistic Segregation and Access to English for Latino Students*, J. EDUC. CONTROVERSY (Winter 2007), http://www.wce.wwu.edu/Resources/CEP/eJournal/v002n001/ (discussing the topic of school desegregation with regard to the Latino population); PATRICIA GÁNDARA & GARY ORFIELD, THE CIVIL RIGHTS PROJECT, UCLA, A RETURN TO THE "MEXICAN ROOM": THE SEGREGATION OF ARIZONA'S ENGLISH LEARNERS (2010), http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/a-return-to-the-mexican-room-the-segregation-of-arizonas-english-learners-1/gandara-return-mexican-room-2010.pdf (reviewing the impact of segregation on Latino students); EUGENE E. GARCIA, KERRY LAWTON & EDUARDO H. DINIZ DE FIGUEIREDO, THE CIVIL RIGHTS PROJECT, ARIZ. STATE UNIV., THE EDUCATION OF ENGLISH LANGUAGE LEARNERS IN ARIZONA: A LEGACY OF PERSISTING ACHIEVEMENT GAPS IN A RESTRICTIVE LANGUAGE POLICY CLIMATE (2010), http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/the-education-of-english-language-learners-in-arizona-a-legacy-of-persisting-achievement-gaps-in-a-restrictive-language-policy-climate/garcia-az-ell-gaps-2010.pdf (reviewing achievement gaps between English-speaking and non-English-speaking students in Arizona); CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., DENVER PUBLIC SCHOOLS: RESEGREGATION, LATINO STYLE (2006), http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/denver-public-schools-resegregation-latino-style/lee-denver-public-school-resegregation-2006.pdf (analyzing the desegregation efforts in Denver, Colorado); Margaret E. Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 BERKLEY LA RAZA L.J. 159 (2001) (advocating the need for affirmative action practices for the Latino population).

    81.   MINOW, *supra* note 7, at 28.

    82.   *Id.* at 28–29.

    83.   *Id.* at 31.

    84.   *Id.* ("[T]oo many poor children, disproportionately of color, have no access to the kind of educational opportunities available in most suburban high schools, in many parochial schools, and in schools run by the U.S. military where teachers, parents, and larger community values converge in matching high expectations, emotional and pedagogical support, and role models devoted to children's educational success.").

alternate dimensions of diversity, such as gender, disability, language, immigration, class, religion, and sexual orientation.[85] This alternative and expansive vision of *Brown* permits her to redefine equal educational opportunity and to recast the mixing of diversity in identity-based school programs.

B. *BROWN*'S VISION

Through a searching analysis of alternative dimensions and visions of diversity, Minow reveals the direct and indirect uses of *Brown* by lawyers and policymakers in advocating for the education of immigrants, students learning English, girls, and students with disabilities. Consistent with the ideal of equal educational opportunity, Minow shows that such advocacy efforts link education to other facets of student identity apart from race, and in doing so, borrow the language of inclusion and the aspiration of civic equality realized through equal participation in local, state, and national governance. That showing revives *Brown*'s instrumental utility as an advocacy tool on behalf of difference-based identity groups and revitalizes *Brown*'s rhetoric as an egalitarian discourse for civic pluralism and participation in the public and private spheres of culture, politics, and society. Civic pluralism and participation hinge on inclusion.

1. Inclusion and Exclusion

Minow explores inclusion and exclusion in the post-*Brown* era by charting equal schooling initiatives pursued by parents and advocates alike. The initiatives challenge exclusion and differential treatment through law reform and litigation under the banner of equality and rights-based entitlement for all students.[86] In mounting these challenges, Minow explains, parents and advocates sometimes clash in a "struggle over whether equality is to be realized through integrated or separate settings" and over "what kinds of instruction actually promote equal opportunities for all children."[87] These continuing clashes over relief—integration versus separation—and pedagogy—mainstreaming versus stratification—originate in *Brown*'s litigation history and the unresolved internal contest among NAACP lawyers, clients, and affected school communities.

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85. *Id.* at 31–32.

86. *See* Dean Hill Rivkin, *Legal Advocacy and Education Reform: Litigating School Exclusion*, 75 TENN. L. REV. 265, 280–84 (2008) (outlining antiexclusion litigation strategies to promote educational equity).

87. MINOW, *supra* note 7, at 33.

Minow maintains that diverse groups, for example, immigrants, the children of immigrants, and students learning English, all suffer the risk of discriminatory treatment for familiar reasons including status, citizenship, language, and culture.[88] For each of these groups, she notes, education acquires the "same practical importance," chiefly "as the key entry point for jobs and civic participation."[89] Beyond this common entry point, Minow contends, "shifting population patterns and contrasting desires" lead individual immigrants and immigrant groups to seek out not only "mixed, integrated schools," but also "separate programs or schools" and "distinctive instruction in the language and culture of their parents or ancestors."[90] Such immigrant-spurred shifts in population and in curricular accommodation operate to refocus Minow's analysis as well as larger equal educational opportunity debates on transitional bilingual and maintenance bilingual programs, especially their capacity to "afford real access to the curriculum for students learning English."[91]

Minow cautions that special bilingual schools in immigrant communities "risk segregating students learning English from other students" and thereby "undermining racial desegregation plans" applicable to the larger community.[92] When poorly planned, she adds, special bilingual schools and programs also "increase the risks of alienation" and with it the likelihood of "rising dropout rates among students who are immigrants or children of immigrants."[93] This risk lessens, evidence suggests, when ethnic-themed schools effectively combine academic quality with cultural preservation and frame their mission in "transitional" terms of "equal respect for distinctive groups and opportunities for groups of parents to pass on their own traditions."[94] Nonetheless, Minow emphasizes, insofar as transitional, "newcomer schools" furnishing separate school facilities and bilingual or bicultural literacy programs depart from the ideal of integration, they "reopen the debate over whether separate schools are

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88.   *Id.* at 34.

89.   *Id.* at 35.

90.   *Id.* Minow remarks that Latinos as a group "fare worse on measures of educational disadvantage, including separation from students of other backgrounds, concentration in schools with high rates of poverty, dropout rates, and educational attainment." *Id.*

91.   *Id.* at 42. Minow claims that "the quality of the teachers is a more significant factor in student achievement than the choice between bilingual instruction and English immersion." *Id.* at 43. To Minow, "both options may remain inadequate due to other factors—such as the economic class of the affected students and neighborhoods and limited parental educational backgrounds." *Id.*

92.   *Id.* at 42.

93.   *Id.* at 48.

94.   *Id.* at 46.

inherently unequal."[95] On this score, inequality may be calculated by multiple metrics, including student performance, funding, and curricular content.[96]

For purposes of gender inclusion and exclusion as well, equality stands out as Minow's touchstone while "separation and mixing different students remain topics for experiment and debate" in policy circles and in neighborhood schools.[97] Minow asserts that *Brown* produced "swift and extensive repercussions for the treatment of gender in schools," enabling civil rights advocates to "address disadvantages to girls and to boys from public school practices and to support specific educational programming."[98] Equal education advocates, Minow mentions, "pushed initially for parallel but single-sex programs, then for integration, and more recently for revival of single-sex instruction," particularly for poor African-American children.[99]

Although equal opportunity remains the consensus ideal for Minow, she admits that single-sex instruction and separate schooling may be the best avenue "to overcome legacies of discrimination,"[100] in spite of historic practices of exclusion and the unreliability of social science data accurately gauging the impact of public school gender separation.[101] That acknowledgement stems from her recognition of "[t]he intersection between gender and other social markers," for example, when single-sex education initiatives address "inadequate educational options for poor students of color."[102] Minow documents both the "woefully inadequate educational opportunities for poor children of color" and the "unreflective uses of old gender stereotypes" in confirming the danger of "obscuring the continuing significance of race" for equality in schooling.[103] To better

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95.   *Id.* at 47 (noting that "newcomer programs aim to boost graduation rates and prepare students for the mainstream" through "tailored instruction, bilingual teachers, and supportive environments").

96.   *Id.* at 48–49.

97.   *Id.* at 49.

98.   *Id.*

99.   *Id.* ("[S]ingle-sex initiatives for girls had an easier time bridging an older sex-segregated practice with newer ideas of equalizing options because of the continuing popularity and apparent success of elite private and parochial schools for girls.").

100.   *Id.* at 50.

101.   *Id.* at 66 (arguing that the "focus on social attitudes constraining gender roles supports single-sex education not by pointing to inevitable inherent differences between boys and girls but by seeking to revise attitudes held by teachers, by parents, and by the children themselves that artificially limit children's efforts, learning, and behavior").

102.   *Id.* at 67.

103.   *Id.* at 68.

assess school equality, she moves outside racial integration to civic engagement, evaluating "students' capacities to take the perspective of another," as well as the pursuit of individual character development and community service.[104] This turn to civic equality, defined by "the perceptions and treatment of individuals as equal participants in local, state, and national governance," shifts her attention to the group identities of disability, sexual orientation, race, class, and religion.[105]

2. Group Identity

Minow's account of post-*Brown* advocacy for students with disabilities and lesbian, gay, bisexual, and transgendered ("LGBT") students, as well as her related analysis of religion and socioeconomic class in education, demonstrates the normative and functional linkages connecting litigation, legislation, and new social movements championing difference-based identity in schools.[106] Through deft synthesis of still-evolving policies and practices, the account demarcates *Brown*'s influence on educational equality debates over the appropriate treatment of students with disabilities, LGBT students, and students attending religious schools. This "complicated" influence, Minow confides, carries serious consequences for both "social integration and intergroup relations" in education.[107] By "social integration," Minow means racial mixing inside and outside the classroom in extracurricular and after-school activities. By "intergroup relations," she means cultural and social interchanges between and among difference-based identity groups, for example in the case of disabled and nondisabled students.

In her analysis of advocacy on behalf of students with disabilities, Minow describes post-*Brown* civil rights challenges to practices of segregation, institutionalization, and sterilization, as well as remedial demands for more funding and educational integration or "mainstreaming."[108] Segregation in particular, she complains, inflicts "stigma and isolation" on students with disabilities, generates "stereotyping and discomfort" among nondisabled students, and distorts the proper identification and placement of disabled and nondisabled

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104.   *Id.*

105.   *Id.*

106.   *See id.* at 69–95.

107.   *Id.* at 69.

108.   *See id.* at 70–72; Dean Hill Rivkin, *Decriminalizing Students with Disabilities*, 54 N.Y.L. SCH. L. REV. 909, 945–48 (2009–2010) (surveying new litigation opportunities in the field of special education).

students in educational settings.[109] Like many legal and policy advocates, Minow cites the "potential benefits" of mainstreaming through inclusive classrooms which "enlarge the circle of concern and capacities for empathy among those without disabilities."[110] Both inclusive classrooms and instructional styles, she explains, provide "social connections, collaborative learning, and a sense of membership to students with disabilities," funnel "more resources into the mainstream classroom," and encourage "the development of classroom and school-wide approaches that offer more individualized and collaborative learning."[111] Classroom and instructional inclusion programs tailored to the diverse "range of individual strengths and challenges experienced by all students," she adds, not only brings "real academic and nonacademic benefits to students with disabilities," but also works to "benefit nondisabled students by enhancing their understanding and appreciation of the struggles and talents of others and their ability to see their classmates as individuals rather than embodiments of stigmatized categories."[112] Here, as elsewhere, the success of such *Brown*-motivated programs for equal opportunity and integration depends on mandatory statewide assessments of students and their schools.[113]

Minow's post-*Brown* framing of educational equality claims on behalf of LGBT, religious, and impoverished students recapitulates her analysis of accommodation and integration in the setting of disability.[114] For Minow, even the hospitable accommodation and integration of difference-based identity groups in public schools under *Brown*'s equal treatment approach risks "new kinds of school segregation" through "forms of peer exclusion and hierarchies," especially when religious activities and affiliations prove

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109.   MINOW, *supra* note 7, at 76–77.

110.   *Id.* at 75.

111.   *Id.* at 75–76. Minow cites "examples of inclusive instruction" to "show what can be accomplished by teachers with flexible teaching styles, opportunities to collaborate or team-teach with others with specialized training, and use of effective techniques such as positive behavioral supports rewarding constructive behaviors and involvement of the class in identifying and valuing good conduct." *Id.* at 78.

112.   *Id.* at 76. Minow enumerates several factors which militate against the integration norm of classroom inclusion. For example, she contends that "placement in the mainstream classroom would not be the ideal setting for many disabled students" at risk of "becoming the objects of bullying, harassment, or exclusion by other students" who, while free of the disability label, may "suffer under a policy of inclusive classrooms." *Id.* at 77.

113.   *Id.* at 80.

114.   *Id.* at 83 ("The legal protections for students on the basis of sexual orientation remain ambiguous and subject to local rules, although federal courts have read Title IX of the federal Education Amendments of 1972 to encompass harassment on the basis of sexual orientation.").

"divisive."[115] Both exclusion and hierarchy, she remarks, survive reformist efforts to equalize economic resources, to treat religion evenhandedly, and to protect LGBT students from discrimination and harassment.

To augment her analysis, Minow investigates the tension between social hierarchy and group identity in the struggle over equal educational opportunities for American Indians, Native Hawai'ians, and other students disadvantaged by school treatment under conditions of conquest and colonialism. This tension and the disputed socio-legal concepts of neutrality and educational opportunity that Minow extracts from the historical treatment of American Indian and Native Hawai'ian students poses the dilemma of "promoting individual development and liberty, regardless of race, culture, religion, gender, or other group-based characteristic,"[116] and safeguarding adequate "protection for groups that afford their members meaning and identity."[117] To resolve that dilemma in schooling, a context where socialization operates to "direct each individual to a common world focused on the academic and social mobility of distinct individuals" and, moreover, to "inculcate traditions and values associated with particular groups," Minow enlists *Brown*'s twin constitutional axioms of freedom and equality.[118]

Staked to these axioms, Minow reads *Brown*'s constitutional text to harbor "competing claims over individual and group rights," and to proclaim "freedom from governmental sorting of individuals into schools by identity at the same time that it offers a model of group mobilization to demand equal treatment of individuals who identify with particular religious, cultural, ethnic, or racial groups."[119] On this enlarged reading, group remedies for group degradation based on language, skin color, religion, or sexual orientation become pivotal to "honor" difference-based identities.[120] Minow endorses that key association and the centrality of group identity inherent in the language of *Brown* even when her concern for individual educational opportunity strains against it. To illustrate the importance of remedying the cultural degradation of group membership and to move toward an equality regime of "inclusive schools that center on the diverse life histories and experiences of all students—both as unique

115.   *Id.* at 90.
116.   *Id.* at 96.
117.   *Id.* at 96–97.
118.   *Id.* at 97.
119.   *Id.*
120.   *Id.*

persons and as members of various groups,"[121] she examines the education-related civil rights struggle of American Indians, Native Hawai'ians, and other minority groups "battling cultural domination."[122]

Minow appreciates that the "self-segregation" of American Indian and Native Hawai'ian schools may enhance group "political control" of education, elevate the curricular attention given to "traditional culture and language," and improve the likelihood that American Indian and Native Hawai'ian "children will attend schools run by teachers committed to the students' success and well-being."[123] Still she worries whether the self-segregation of minority groups in separate schooling, even when concordant with collective civic equality, effectively "overcomes the historical inequalities in educational opportunity" or, more distressing, "perpetuates separation in schools, society, and politics."[124] Minow's conflicted endorsement of minority group power and self-determination in the contexts of American Indian and Native Hawai'ian schooling derives from *Brown*'s espousal of equal educational opportunity and its condemnation of separate educational facilities as "inherently unequal."[125]

Unsurprisingly, by Minow's own admission, the endorsement of "education organized around students' group-based identities" and the separate instruction of identity-based schools falters "against the backdrop of historic exclusion or subordination of individuals on the basis of a group trait," particularly when "the resulting classrooms look like the racially segregated classrooms before *Brown*."[126] This policy stance founders because the emergence of school choice initiatives in the guise of public magnet schools, charter schools, and vouchers that allow for "voluntary" separation of students by identity may not only deprive individual students of an equal educational opportunity, but "also contribute to misunderstandings about different identities" and "fail to develop students' abilities to navigate and thrive in more diverse settings."[127] These adverse outcomes illustrate the uses and limitations of

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121.   *Id.* at 98.

122.   *Id.* at 104.

123.   *Id. See also id.* at 108 (conceding that "[s]pecial-identity schools—organized by gender, disability, immigrant status, cultural heritage, sexual orientation, or religion—may well invite highly motivated students, teachers, and parents and help attract this kind of committed teachers and public and private resources that build successful schools").

124.   *Id.* at 104.

125.   *Id.* at 105.

126.   *Id.*

127.   *Id.* at 108 ("Special-identity schools may also provide an environment where the students feel cared for, believed in, and safe from the harms of either low expectations or harassment."). *See*

Brown for group rights advocacy in courts, legislatures, and politics within the contexts of disability, sexuality, culture, and religion.[128] Such group-based outcomes also highlight the tension between the protection of individual development or liberty, and the preservation of group meaning or identity.[129] The next section surveys the promise of equality and integration under school choice initiatives animated by students' difference-based identities and histories.

3. School Choice

The limitations and tensions engendered by *Brown* in the context of difference-based identity and community and the resurgent landscape of economic subordination and geographic resegregation in inner-city neighborhoods[130] frames the rise of school choice initiatives and programs in the form of vouchers, tax credits, magnet schools, and charter schools.[131] The evolution of these new forms of student self-segregation into special-identity or "mission" schools divided by identity and affiliation, Minow remarks, present challenges to and opportunities for equality and education. Properly framed in definition and scope, she argues, school choice and special-identity schools contain the potential to promote integration across race, class, gender, immigrant status, language, and disability, and more generally, to cultivate pluralism in culture and society.

Minow chronicles the history of school choice programs from their initial obstructionist deployment as a tactic to preserve school segregation,

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generally James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131 (2007) (documenting the shift in the meaning of equal educational opportunity for minority students from integration to academic achievement); James E. Ryan, *Voluntary Integration: Asking the Right Questions*, 67 OHIO ST. L.J. 327 (2006) (defending school district voluntary integration plans).

128. *See, e.g.*, Bd. of Edu. of Kiryas Joel Vill. Sch. Dist. v. Grument, 512 U.S. 687 (1994) (addressing children with special needs living in religious communities).

129. MINOW, *supra* note 7, at 105 ("Protecting individuals as individuals but also ensuring freedom of individuals and groups to affiliate around a shared identity, culture, or tradition are simultaneously important values.").

130. On the double subordination of race and class in Miami, see ALEJANDRO PORTES & ALEX STEPICK, CITY ON THE EDGE: THE TRANSFORMATION OF MIAMI 176–202 (1993).

131. *See* Margaret C. Hobday, Geneva Finn & Myron Orfield, *A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration*, 35 WM. MITCHELL L. REV. 936 (2009) (commenting on the failure of a choice-based school integration initiative); Christopher Lubienski & Peter Weitzel, *Choice, Integration, and Educational Opportunity: Evidence on Competitive Incentives for Student Sorting in Charter Schools*, 12 J. GENDER RACE & JUST. 351 (2009) (discussing student enrollment patterns in charter schools); Stephen D. Sugarman, *The Promise of School Choice for Improving the Education of Low-Income Minority Children*, 19 BERKELEY WOMEN'S L.J. 403 (2004) (remarking on the efficacy of school choice initiatives).

to their later implementation as a school desegregation remedy, and finally to their more recent adoption as a reform mechanism conducive to both self-segregation and student mixing in schools. This openness or plasticity creates manifold integrationist options and fuels major separatist risks. The options flow from the breadth of school choice initiatives. The risks spring from the societal tendency to favor exclusion. By school choice, Minow means to include "initiatives authorizing the use of government resources to enable parents and school-aged children to select a school rather than simply be assigned to one by the government."[132] The programs, she notes, vary widely encompassing magnet and pilot schools,[133] private school vouchers,[134] and charter schools.[135]

Minow questions whether special-identity schools created through school choice initiatives will undermine *Brown*'s central "goal of mixing different kinds of students in the same schools to overcome prejudices and to prevent inequitably allocated educational resources."[136] Deeply committed to equality and integration, she looks with disquiet upon the pernicious effects of school choice in blocking equitable access, facilitating self-segregation, and reinforcing "structures and attitudes of exclusion and hierarchy"[137] among student bodies. Only by enlarging *Brown*'s aspiration to include "ending public and private oppression based on individuals' group traits and enabling individuals to achieve

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132.   MINOW, *supra* note 7, at 112. *See generally* James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043 (2002) (reviewing school choice plans and commenting on ways to improve them in order to better serve poor students).

133.   Magnet schools "offer[] a specialized curriculum or program and admit[] students through a lottery . . . among all of the public schools in the district where a student resides." MINOW, *supra* note 7, at 112.

134.   Vouchers serve as "transfer payments that enable parents to select a private school and pay its tuition with public dollars." *Id.* at 114.

135.   Local charter laws in effect "authorize public funds to be distributed to groups of teachers, parents, or other community members who propose and develop school subjects and allow a degree of ongoing public monitoring." *Id.* at 113–14. *See also* James Forman, Jr., *Do Charter Schools Threaten Public Education? Emerging Evidence from Fifteen Years of a Quasi-Market for Schooling*, 2007 U. ILL. L. REV. 839 (examining the effect of charter schools on educational reform); Wendy Parker, *The Color Of Choice: Race and Charter Schools*, 75 TUL. L. REV. 563 (2001) (critiquing the use of charter schools on equal protection grounds); James E. Ryan, *Charter Schools and Public Education*, 4 STAN. J. C.R. & C.L. 393 (2008) (discussing the goals of charter schools); Leland Ware & Cara Robinson, *Charters, Choice, and Resegregation*, 11 DEL. L. REV. 1 (2009) (assessing the impact of charter schools on school desegregation).

136.   MINOW, *supra* note 7, at 135–36.

137.   *Id.* at 135. Minow warns that "[s]chool choice initiatives can increase racial and ethnic mixing in schools, but they can also produce schools that are more racially imbalanced than the existing public schools in the same community." *Id.* at 125. *See also id.* at 109–11, 125–26, 131–33.

academically and succeed in society" can she allay this well-founded concern.[138]

To implement these overlapping goals, Minow emphasizes, "increasing the number and effectiveness of schools that teach respect and tolerance is crucial," as "is building schools with a strong sense of community and a mission to inculcate the values of equal respect."[139] She finds partial evidence of such integration and pluralism in *Brown*'s influence globally in Northern Ireland, South Africa, India, the Middle East, and Eastern Europe.[140] Engrafted onto international settings marred by historic social division, Minow discovers in *Brown* an expressive and practical resource for advocates in diverse situations where conflict involves evolving claims of equality, access, and opportunity.[141] Undergirding that legacy and Minow's extension of its central precepts is an abiding vision of a "common school."

C. *BROWN*'S "COMMON SCHOOL"

Minow locates *Brown*'s "common school"[142] vision in the advocacy, policy, and social science of racial equality. Well versed in social psychology, she understands the strengths and limitations of social science research applied to institutions and practices, especially in detecting individual psychological damage and larger structures of social oppression manifested in bias, discrimination, and harassment. Minow endorses the deployment of social science research to assess the benefits of social integration in schools, workplaces, and even national and military service.

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138. *Id.* at 136. *See generally* James Forman, Jr., *The Secret History of School Choice: How Progressives Got There First*, 93 GEO. L.J. 1287 (2005) (recounting the complex ideological history of the school choice movement).

139. MINOW, *supra* note 7, at 136.

140. *See id.* at 169–89. Minow astutely observes the following:

Communities struggling with the issues of equal schooling outside the United States have encountered problems familiar to Americans since *Brown,* such as overrepresentation of disadvantaged minority groups in separate schooling for students with disabilities, barriers to social integration posed by separate classrooms for immigrants or subgroups without fluency in the nation's dominant language, and flight of dominant or privileged groups from schools undergoing integration efforts.

Id. at 172. *See generally* JUST SCHOOLS: PURSUING EQUALITY IN SOCIETIES OF DIFFERENCE (Martha Minow, Richard A. Shweder & Hazel Rose Markus eds., 2008) (researching school initiatives across the nation to explore ways to achieve equal opportunity in schools).

141. *See* MINOW, *supra* note 7, at 169–89; *id.* at 171 (asserting that "*Brown* offers a hopeful symbol" to activists challenging "traditions of legally imposed or socially maintained hierarchy, exclusion, or degradation based on group membership").

142. *Id.* at 147 (describing a "common school" as a school "where students of all backgrounds would join together in shared preparation for the tasks of citizenship").

That assessment, she insists, must investigate how social integration affects individual academic achievement and development, social cohesion, socioeconomic opportunities, civic engagement, and democracy as a whole. The vision of a common school education embedded in *Brown*'s history informs her assessment and investigation of social integration.

1. Common Schools

Minow's belief in common school education infuses her commitment to integration and equality. To Minow, common school education requires more than postsegregation racial mixing. Far-reaching in scope, it "requires effective efforts to dismantle prejudices, to build common experiences around shared goals, and to assess success in terms of social ties across groups."[143] These efforts evoke the moral ambition sounded by Martin Luther King and echoed by Minow in defining integration as a "constructive equality of oneness"[144] experienced within "a community of love, justice, and brotherhood."[145] Like King, Minow imagines a common school community "where students of all backgrounds would join together in shared preparation for the tasks of citizenship."[146]

For Minow, common school education works in consonance with the goal of integration in the civil rights struggle for racial equality.[147] In advocacy, it supplies a means to overturn racial hierarchy, to eradicate race-based exclusion, and to create "a shared community of equals"[148] by ensuring equal opportunities and treatment for nonwhite and white students, and moreover, by motivating black students to learn and reverse "long-term education deprivations."[149] Advocacy of this kind, Minow explains, seeks not only to situate "students with different racial and ethnic identities together in the same school and in the same classrooms,"[150] but also to dismantle racial hierarchy in order to "avoid the stamp of hierarchy, eliminate the disparities in educational resources, [and to] overcome the deprivation of vital social interactions across group identities."[151] Those universal goals, shared among students from

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143.   *Id.* at 8.
144.   *Id.* (quoting Smith & Zepp, *supra* note 40, at 361).
145.   *Id.*; Minow, *supra* note 41, at 601.
146.   MINOW, *supra* note 7, at 147.
147.   *See id.* at 10.
148.   *Id.* at 11.
149.   *Id.* at 18.
150.   *Id.* at 19.
151.   *Id.* at 20.

diverse backgrounds and different colors, flourish, according to Minow, "in communities committed to mutual success and well-being."[152] In this way, a common school vision reflects the integrationist ideal of "interracial contact" and advances educational opportunities for blacks, whites, Hispanics, and immigrants.[153]

Under the ideology of the common school, "public schools . . . serve as the meeting place for all students" seeking equal treatment and equal opportunity.[154] Envisioned by Minow as common school laboratories, public school classrooms work both to encourage individual development and to protect group identity.[155] This dual function advances "the goal of mixing different kinds of students in the same schools to overcome prejudices and to prevent inequitably allocated educational resources."[156] To build schools with a "strong sense of community and a mission to inculcate the values of equal respect,"[157] Minow contends, demands the simultaneous consideration of "individual opportunity, inclusion, and commonality and . . . group rights, group autonomy, and multiculturalism."[158] That joint focus facilitates the treatment of "each child as a distinct individual, entitled to social mobility and full inclusion in the larger society,"[159] and respects families "who wish to pass on their own traditions and perhaps even separate their children from others and foreclose social mobility."[160]

To summon and sustain these competing aims, Minow calls upon social science research on social integration, psychological damage, and racial oppression in communities of color.[161] In particular, she investigates

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152. *Id.* at 21. *See also id.* at 19–20.

153. *Id.* at 26.

154. *Id.* at 90. *See also id.* at 91–94.

155. *See id.* at 96–97.

156. *Id.* at 135–36.

157. *Id.* at 136.

158. *Id.* at 171.

159. *Id.* at 171–72.

160. *Id.* at 172 ("[D]ifficulties achieving this ideal of integration, premised on mutual respect, may lead some to prefer separate schools, where teachers and parents imbue the students with pride and avoid day-to-day chafing against social attitudes that do not welcome the minority identity.").

161. *See id.* at 138–68. *See generally* Michael Heise, *Equal Educational Opportunity by the Numbers: The Warren Court's Empirical Legacy*, 59 WASH. & LEE L. REV. 1309 (2002) (remarking on the use of empirical evidence in equal opportunity doctrine); Gary Orfield, Erica Frankenberg & Liliana M. Garces, *Statement of American Social Scientists of Research on School Desegregation to the U.S. Supreme Court in* Parents v. Seattle School District *and* Meredith v. Jefferson County, 40 URB. REV. 96 (2008) (reprinting a statement by social scientists submitted to the Supreme Court with regard to two cases involving voluntary integration plans). *But cf.* James E. Ryan, *The Limited Influence of Social*

social integration across the intersecting planes of individual and group achievement, group-to-group social cohesion, and individual-and-group civic engagement. Broadly targeted, the investigation seeks out additional institutional pathways and practices of social integration, such as after-school and summer educational programs, military and national service, and integrated workplaces.[162] Minow inspects these alternative settings to grasp the "processes of internalized prejudice," including their "unconscious dimensions" and "group-based" variations.[163] To the extent that those processes shape social categorization and group identity, they illuminate how multicultural education, diversity training, intergroup dialogue, and cooperative learning may help to reduce prejudice and, further, to recast the "life chances of individuals and the character of the society and the polity."[164]

Intensely civic minded, Minow fastens the mission of the common school to the promotion of diverse citizenship in education, work, and society.[165] Schools tailored to a diverse citizenship, Minow claims, "draw in diverse student bodies and promote mutual appreciation and cultural competence" in an effort to cross "lines of difference" and to forge a sense of shared purpose and experience.[166] For Minow, participating in a "shared community of mutual respect" and establishing "common goals within a diverse student body" militates against stereotyping and in favor of "mutual engagement, mutual appreciation, and the ability to take the perspective of another."[167] Mutuality of this sort, she maintains, "assists individuals in relating well to diverse others," and "assists individuals in . . . working together in mixed groups to solve problems and perform other tasks."[168] In that way, the relationship of mutuality builds social capital and crosscutting group networks, and nurtures solidarity and civic membership.[169] Basic to social integration, and distributed throughout after-school, summer, military, and national youth service programs, these social resources support Minow's common school model of public education in "preparing individuals for successful and productive lives as

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Science Evidence in Modern Desegregation Cases, 81 N.C. L. REV. 1659 (2003) (suggesting that social science evidence may not have an influential role in desegregation cases).

162. MINOW, *supra* note 7, at 162, 164–66.
163. *Id.* at 145.
164. *Id.* at 147.
165. *Id.* at 147–48.
166. *Id.* at 150.
167. *Id.*
168. *Id.*
169. *Id.*

workers, parents, and civic participants in a pluralistic, democratic society."[170]

The civic predicates of participation, pluralism, and democracy embedded in *Brown* lead Minow to focus on socioeconomic integration as a strategy of racial and redistributive justice. Carved as a path to school equality, the focus on socioeconomic disadvantage allows her to attack legacies of racialized exclusion in moving "from mixing to integration: from sharing the same space to sharing the same communal dreams, respect, friendship, and sense of membership."[171] This shift toward a school-based "collective identity"[172] wisely combines economic mixing and social integration, a fusion pushed by Minow and informed by culturally relevant pedagogies that incorporate "the critical perspectives and experiences of children of color and poor families" to counter racial and ethnic stigma and to "ensure[] equal chances for all students."[173]

Minow well understands that the post-*Brown* struggle to foster racial integration and to advance equal educational opportunities risks perpetuating cultural stereotypes and socioeconomic disadvantages, and diminishing cross-racial and ethnic mixing.[174] Entangled in social division and separation, that struggle also risks social stigma and economic hierarchy. For Minow, however, the racially diverse classrooms of school integration, when "organized into cooperative learning groups tend to increase friendships, empathy, and liking for others of different races."[175] On this analysis, student empathy and proximity both serve to cultivate cross-racial friendship and to alleviate racial prejudice in the form of harassment and victimization.[176] Friendship in turn imbues schools with "a sense of safety and inclusion" that "enhances academic achievement and personal well-being."[177] The ensuing diversity and teamwork, Minow asserts, join to "produce different perspectives, different knowledge, and different inferences about cause and effect," each over time

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170. *Id.*

171. *Id.* at 152.

172. *Id.*

173. *Id.* at 153. *See also* Sabrina Zirkel, *Ongoing Issues of Racial and Ethnic Stigma in Education 50 Years After* Brown v. Board, 37 URB. REV. 107, 115–17 (2005) (discussing culturally relevant pedagogy in the classroom).

174. *See* MINOW, *supra* note 7, at 156.

175. *Id.*

176. *Id.* at 157.

177. *Id.* at 158 ("[S]tudies from both natural experiments and laboratory exercises indicate the power of diverse groups of people to work together, generate new solutions to problems, and exhibit other forms of creativity.").

"contributing to improvement in teams' understanding, efforts, and results."[178]

The strength of Minow's common school model in "boosting creativity, friendships, social and political equality, and real opportunities for academic excellence," and in enlarging social capital displays itself in school retention and academic success rates as well as in civic norms and democratic virtues.[179] By design, the common school ideal she puts forward aims to "nurture a shared morality as a means of cultivating a nonpartisan understanding of civic duties and a common culture and set of virtues to equip people to engage in self-government."[180] That understanding, Minow argues, encourages shared experiences and mutual ties, which together "can foster identification with others and offer ingredients for the complex sense of self that all people use in creating their futures."[181] Civic awareness, sensitivity to prejudice, a sense of common purpose, and mutual respect all contribute to this understanding in classrooms marked by diversity and social integration, she remarks, and in schools organized "to enhance students' learning and achievement in conventional academic terms, in the development of problem-solving abilities, and in intergroup relations and social skills."[182] Minow's commitment to classroom and school-wide diversity calls for more than tolerance and mutual engagement. In addition, it calls for the reallocation of socioeconomic resources and the renovation of social attitudes and hierarchies.[183] Claims for reallocation and renovation depend in part on the efficacy of diversity and integration arguments from the social sciences.

2. Diversity and Integration

Minow draws on the social sciences to support her argument for racial and economic diversity and integration in school systems. Here, as elsewhere, she turns to *Brown* for guidance in devising the logic of social integration and the justification for educational reform.[184] To Minow, *Brown* in effect launched "social science research on social

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178.   *Id.* at 159.
179.   *Id.*
180.   *Id.* at 160.
181.   *Id.* at 161.
182.   *Id.* at 167.
183.   *See id.* at 168, 185.
184.   *Id.* at 137.

integration,"[185] linking "social psychology to the cause of racial justice" and to assessments of racial integration in school and society measured by individual and institutional achievement, collective solidarity, community socioeconomic development, and civic improvement.[186] That linkage, she shows, generates wide applications to social relations across differences of race, language, culture, gender, and disability.[187] Essential to these applications and their practical engagement, *Brown* grappled with the variables of conscious and unconscious prejudice, group and subgroup membership, and individual and collective identity without full clarity or resolution.[188]

For Minow, the transformation of social scientific research into "a central medium for evaluating desegregation and other equality initiatives" streams out of *Brown*'s legacy.[189] The repercussions of that legacy, she points out, emerge in "the pervasiveness of social science data in legal and public policy discussions" about social integration and racial equality.[190] Notwithstanding her acknowledgement of continuing debates over the meaning and interpretation of social science research in the field of education and race, Minow avers that such research carries crucial importance for diversity, community, and democracy.[191]

3. Community and Democracy

Minow views *Brown* in terms of community and democracy. From the outset, her analysis of *Brown*'s legacy addresses considerations of social capital, networking, and shared cultural and economic resources. These considerations extend the range of her analysis to intergroup relationships in other service contexts and in workplaces.[192] Social bonds, and their ties to civic duty, self-government, and common identity, stand paramount among such considerations, connecting social solidarity and equal opportunity.[193] To Minow, solidarity and opportunity may be realized through social integration inside and outside schools in spite of the identity

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185.   *Id.* at 138.
186.   *Id.* at 139.
187.   *Id.* at 144.
188.   *Id.* at 145.
189.   *Id.* at 146.
190.   *Id.*
191.   *See id.* at 146, 153–58.
192.   *Id.* at 158–59.
193.   *See id.* at 161.

distinctions of race, gender, class, and disability.[194] Solidarity builds from day-to-day contact and social networks.[195] Democracy arises from civic awareness and common purpose.[196] Minow's reliance on these vital norms to promote diversity and social integration within schools lays the groundwork for the equalization ideals embedded in an inner-city vision of *Brown*.[197]

III. EQUALIZATION IDEALS: AN INNER-CITY VISION OF *BROWN*

Minow's deep-rooted appreciation for the cultural, social, and political import of *Brown* in American history and across international terrain leaves many difficult questions unresolved and many pathways unexplored in the pursuit of equalization ideals within the nation's inner cities. The questions go most urgently to resegregation and the school-to-prison pipeline, and the separation and disadvantage of racialized education more generally. Indispensable to equality and integration, those questions raise issues of exclusion and social hierarchy, prejudice and power, individual and group treatment, and integration goals and achievement gaps in the inner city. The pathways point to inquiries about *Brown*'s influence on American racial justice within the context of schooling and its impact on schooling within the context of racial integration.

The post-*Brown* search for justice and integration plow race- and identity-conscious pathways to community resistance that traverse history, politics, and sociology. The case study below, culled from the student-led outreach work of the Historic Black Church Program at the University of Miami School of Law's Center for Ethics and Public Service, illustrates the potential reach and recurrent limits of such faith-driven pathways to educational equality. Neither Minow nor America's communities of color, and their struggling faith-based institutions, stand content to "wait for racial integration to be achieved."[198] Like Minow, these communities steadfastly pursue equal educational opportunities in their church ministries for the parents and children of their own congregations. And like her, they fear that their communities' children will be entrapped by resegregation and the school-to-prison pipeline.

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194.   *See id.* at 163–65.
195.   *Id.* at 156–58, 166.
196.   *Id.* at 139, 167.
197.   *Id.* at 167.
198.   *Id.* at 156.

A. RESEGREGATION AND THE SCHOOL-TO-PRISON PIPELINE

Minow treats resegregation and the school-to-prison pipeline as part of the legacy of *Brown*. To Minow and other antipoverty and civil rights advocates, that legacy reflects social hierarchy, separation and exclusion, and prejudice in American school systems. Hierarchy in law, culture, and society impedes racial integration both in the narrow sense of "racial mixing" and in the broader sense of "multiracial community."[199] Individuals and groups experience hierarchy not only through exclusion, but also through subordination, a relationship of unequal power marked by inferior status, scarce opportunity, and socioeconomic disadvantage. As the Historic Black Church Program case study demonstrates, racial mixing and multiracial community seem necessary to realize Minow's faith-inspired vision of racial justice, yet neither seems feasible in the context of inner-city concentrated poverty.

1. Racialized Education: Separation and Disadvantage

Minow expresses disappointment in the prevalent separation and disadvantage characterizing the racialized education of poor students of color in inner-city schools. She laments not only *Brown*'s failure to "eradicate" race-based educational separation and disadvantage, but also the judicial and legislative "abandonment" of the goal of racial integration.[200] Doubly vexing for Minow, the retreat from integration continues in the face of social science research verifying "the benefits of . . . integration to individuals and to society in terms of academic achievement, social capital, creative problem solving, and reduction of negative stereotyping."[201] To halt this retreat and to redirect society toward the goals of equality and social integration, Minow turns to the school choice movement.[202] Viewed as a mechanism for concurrently "improving the quality of schooling" and enhancing "the sense of school mission," school choice, Minow explains, presents a "key site of reform and hope for equal opportunity" that "can draw new teacher talent and engage parents and communities in the tasks of education" in spite of the admitted "risks of separatism" and "increased fears" about the ascendance of "different social groups."[203]

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199.   *Id.* at 10.
200.   *Id.* at 185.
201.   *Id.*
202.   *See id.* at 116–18.
203.   *Id.* at 186.

For Minow, appropriately designed school choice initiatives afford "new possibilities" both "for societal-level appreciation of differences" and "for drawing together students from different backgrounds in schools where all of them can thrive and succeed."[204] When devised correctly, for example with "special focus" on curricular design, civic leadership, and internship placement, she asserts, school choice initiatives "can attract students of different races, ethnicities, religions, genders, abilities, and social classes."[205] In this way, charter and magnet schools "can yield racial, ethnic, and religious diversity," and can mix "students with and without disabilities."[206] According to Minow, special-identity schools, commonly associated with language programs, ethnic and cultural traditions, immigrant status, disability, and other identity traits, "may come to cultivate respect and appreciation for differences"[207] even when "social divisions and the sheer lack of shared experiences" risk "stereotyping and distrust."[208] To mitigate social divisions, Minow recommends regulatory frameworks coupled with curricular and extracurricular opportunities for civic education and the cultivation of other-regarding respect essential for democracy.[209] Tempered by such *Brown*-embroidered normative prescriptions, special-identity schools may "advance individual equal opportunity" for students while beneficially "overcoming group-based hierarchy," and, Minow adds, "promoting a strong sense of 'we' that can be owned by people of different backgrounds and identities," even when such advancement results in "muting the goals of social integration."[210]

Minow's logical extension of *Brown* to monitor separation and disadvantage in school choice initiatives installs an important check on

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204.   *Id.*

205.   *Id.* ("Even schools focused on particular identity-linked traits, such as the Arabic language, new immigrant status, autism, or girls' leadership, could promote mixing different kinds of students if the individual schools are developed to have broad appeal and if student enrollment policies can take diversity into account.").

206.   *Id. See also* Philip Tegeler, Susan Eaton & Westra Miller, Charles Hamilton Houston Inst. for Race & Justice & Poverty & Race Research Action Council, *Bringing Children Together: Magnet Schools and Public Housing Redevelopment* (2009), http://www.charleshamiltonhouston.org/assets/documents/publications/BringingChildrenTogether.pdf (reporting on the feasibility of linking housing and school policy by using magnet schools); Anita Wadhwa, Charles Hamilton Houston Inst. for Race & Justice, *Crossing the Line and Closing the Gap: Interdistrict Magnet Schools as Remedies for Segregation, Concentrated Poverty and Inequality* (2009), http://www.charleshamiltonhouston.org/assets/documents/publications/Wadhwa_CrossingtheLine.pdf (discussing a magnet school initiative designed to increase diversity).

207.   Minow, *supra* note 7, at 186–87.

208.   *Id.* at 187.

209.   *Id.*

210.   *Id.*

the "abusive use" of political and socioeconomic power by public and private entities likely "to confine educational and life opportunities."[211] Under this enlarged analysis, *Brown* may be deployed in advocacy or in institution building for the purposes of combating forced assimilation, expanding intergroup contact, and ensuring high academic quality and access to broad social networks. This dual function, simultaneously to advance educational equality and racial justice, and to challenge government-sanctioned status hierarchies and allied prejudices and stereotypes, for Minow highlights *Brown*'s centrality to the norms of social inclusion, solidarity, and struggle.[212] Collective struggle against hierarchical status and separation, Minow asserts, constitutes a requisite step "for people from different backgrounds to forge a common world, respectful of individuals and of group differences."[213] By entrenching social hierarchies and political divisions in the inner city, resegregation and the school-to-prison pipeline violate the norms of social inclusion, solidarity, and commonality.[214] They also damage the psychological experiences of disadvantaged individuals and reinforce structural inequality.[215]

2. Resegregation

Minow finds students of color "living in areas of concentrated poverty" to be "most hurt by the decline of desegregation efforts."[216] Isolated in the inner city, these students, she notes, languish in "disproportionately inadequate and poorly performing public schools."[217] Thus confined, the students "lose access to other social networks."[218] The right to access, encompassing entrance to and inclusion in social networks and institutions, Minow explains, derives from the very principle of equal protection long advanced by the NAACP's litigation efforts to attack

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211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.* at 188.
216. *Id.* at 28.
217. *Id.*
218. *Id.* The NAACP Legal Defense and Educational Fund, Inc. ("Legal Defense Fund" or "LDF") reports: "Black and Latino students attend schools where more than half of their peers are black and Latino." NAACP LEGAL DEF. & EDUC. FUND, INC., ANNUAL REPORT OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (2007–2009) 40 (2009) [hereinafter LEGAL DEFENSE FUND], *available at* http://naacpldf.org/files/publications/NAACPLDF_2007-2009_Annual_Report.pdf.

racial discrimination.[219] By now well documented,[220] the NAACP litigation strategy targeted school segregation and school inequality, framing "each suit as its own educational and organizing effort" aimed at integration and municipal equity.[221] Principles of community education and organization guided the NAACP throughout its litigation campaign and through much of the civil rights movement.[222] In the rapidly resegregating communities of color seen in Miami and other devastated inner cities, those basic principles of legal-political mobilization acquire renewed strategic import, particularly where government actors, nonprofit entities, and federal courts retreat from school remedial intervention.[223]

For Minow, the goal of abolishing official, state-sanctioned segregation powerfully steered the NAACP legal-political campaign in *Brown.* In carrying out that campaign, the *Brown* lawyers, she concedes, "faced real risks of undermining efforts to equalize resources" in pursuing desegregation.[224] To the extent that the NAACP's parallel strategy of "exposing the material inadequacy of the schools allotted to blacks and attacking separate facilities as inevitably unequal," skirted those immediate remedial risks, Minow suggests that it underestimated the post-remedial risks of resegregation.[225] In fairness, during the prolonged post-*Brown* era of formal and informal resistance,

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219.   *See* MINOW, *supra* note 7, at 16; Peggy Cooper Davis, *Performing Interpretation: A Legacy of Civil Rights Lawyering in* Brown v. Board of Education, *in* RACE, LAW, AND CULTURE: REFLECTIONS ON *BROWN V. BOARD OF EDUCATION* 23, 44 (Austin Sarat ed., 1997) ("Civil rights lawyers saw the Fourteenth Amendment as a polyvalent text—a text born of neglected history, expressive of indistinct aspirations, and in need of interpretation in an open political process.").

220.   *See generally* JACK GREENBERG, *BROWN V. BOARD OF EDUCATION*: WITNESS TO A LANDMARK DECISION (2004) (providing an account of the *Brown* advocacy campaign by a member of the litigation team); RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1977) (providing a thorough historical account of the *Brown* litigation).

221.   MINOW, *supra* note 7, at 17.

222.   On community education and organization in the civil rights movement, see ALDON D. MORRIS, THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE 77–138 (1984), and Kenneth W. Mack, *Law and Mass Politics in the Making of the Civil Rights Lawyer, 1931–1941*, 93 J. AM. HIST. 37 (2006).

223.   *See generally* SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? (John Charles Boger & Gary Orfield eds., 2005) (documenting the trend toward racial and socioeconomic resegregation in the south).

224.   MINOW, *supra* note 7, at 17. Minow notes that the South Carolina suit consolidated in *Brown* "initially sought buses and more resources for the black schools, but the plaintiffs' lawyers reframed the suit to include the claim that separate schools could never be fully equal." *Id.*

225.   *Id.*

neither civil rights advocates nor courts nor policymakers garnered the foresight to estimate such risks, much less to anticipate the myriad obstacles to remedial implementation or the changing permutations of popular defiance. Applied to contemporary circumstances, Minow's analysis of growing resegregation in impoverished inner-city schools similarly underestimates the intractable barriers to social integration and civic equality confronting students of color, their parents, and civil rights advocates.

The legal-political campaign of the post-*Brown* era offers little contemporary guidance to advocates, parents, or students struggling to resist the ongoing resegregation of inner-city neighborhood schools. Similarly, the campaign supplies meager direction on how to alter the social hierarchy produced by resegregation or how to mitigate the harmful exclusion inflicted by the difference-based separation of students in schools. Moreover, it furnishes no clear baseline or metric to measure the impact of student side-by-side learning or to determine the extent to which side-by-side learning effectively reduces prejudices and power differentials accompanying difference. Further, it gives no sense of how school systems can pursue individual equality of educational opportunity and the equal treatment of groups simultaneously under conditions of school resegregation. Additionally, that historic campaign provides no estimate of "the prospects for social integration" or the chances "for reducing achievement gaps"[226] in resegregated inner-city schools plagued by concentrated poverty.[227] Finally, and most noteworthy, it furnishes no litigation or legislative strategy to ameliorate the profound social hierarchy and economic inequality affecting immigrant students, girls, students with disabilities, LGBT students, and poor students of color in resegregated public schools throughout the nation. The latter group, beset by widespread separation and an ever-expanding school-to-prison pipeline, confronts

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226.   *Id.* at 4.

227.   *See* SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM (2004) (arguing that racial and socioeconomic integration offers the only solution to educational inequality and suggesting that public and private choices foster continued segregation); ERICA FRANKENBERG, CHUNGMEI LEE & GARY ORFIELD, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM? (2003) (examining trends in desegregation and resegregation), http://www.eric.ed.gov/PDFS/ED472347.pdf; ERICA FRANKENBERG & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., RACE IN AMERICAN PUBLIC SCHOOLS: RAPIDLY RESEGREGATING SCHOOL DISTRICTS (2002), http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/race-in-american-public-schools-rapidly-resegregating-school-districts/frankenberg-rapidly-resegregating-2002.pdf (reporting on the progress of desegregation policies).

seemingly insurmountable barriers to social integration and civic equality.

3. School-to-Prison Pipeline

For Minow and other advocates, the school-to-prison pipeline exposes students of color to three intertwined, racialized systems involving education,[228] juvenile justice,[229] and disability.[230] The NAACP Legal Defense and Educational Fund, Inc. ("Legal Defense Fund" or "LDF") reports that "there were 3,328,750 school suspensions nationwide and 102,080 expulsions" in 2006.[231] In the same year, according to the Legal Defense Fund, African-American students representing only 17.1 percent of public school students "accounted for 37.4 percent of total suspensions and 37.9 percent of total expulsions nationwide."[232] LDF also reports, in a survey of 21 states, that "the number of black students suspended is more than double their percentage of the student body."[233] School discipline rates of this magnitude display a disconcerting correlation to racialized disability determinations.

228.   *See generally* Tona M. Boyd, *Confronting Racial Disparity: Legislative Responses to the School-to-Prison Pipeline*, 44 HARV. C.R.-C.L. L. REV. 571 (2009) (commenting on racially disparate school discipline practices); Catherine Y. Kim, *Procedures for Public Law Remediation in School-To-Prison Pipeline Litigation: Lessons Learned From* Antoine v. Winner School District, 54 N.Y.L. SCH. L. REV. 955 (2009–2010) (reviewing a case study of the efficacy of public law remediation in school-to-prison pipeline litigation); JUDITA A. BROWNE, ADVANCEMENT PROJECT, DERAILED! THE SCHOOLHOUSE TO JAILHOUSE TRACK 7 (May 2003), http://www.advancementproject.org/sites/default/ files/publications/Derailerepcor_0.pdf (reporting on the use of law enforcement agencies and the criminal justice system as a "double jeopardy mechanism" for disciplining students); ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK Mar. 2005), http://www.advancementproject.org/sites/default/files/publications/FINALEOLrep.pdf (same).

229.   *See generally* Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV. C.R.-C.L. L. REV. 581 (2009) (commenting on the racially disproportionate presence of African-American juveniles in the adult prison system); *Zero Tolerance Policy: Report*, ABA JUVENILE JUSTICE COMMITTEE, (Feb. 2001), http://www.abanet.org/crimjust/ juvjus/zerotolreport.html.

230.   Since launching the Dismantling the School to Prison Pipeline initiative in 2001, the Legal Defense Fund has investigated "the intersection of the education system with the juvenile and criminal justice systems." LEGAL DEFENSE FUND, *supra* note 218, at 43. *See also* NAACP LEGAL DEF. & EDUC. FUND, INC., DISMANTLING THE SCHOOL-TO-PRISON PIPELINE (2005), http://naacpldf.org/files/ publications/Dismantling_the_School_to_Prison_Pipeline.pdf (proposing alternatives to school exclusion and incarceration).

231.   LEGAL DEFENSE FUND, *supra* note 218, at 43. The LDF also reports: "In eight states—South Carolina, Alabama, Delaware, Florida, Louisiana, Mississippi, North Carolina, and West Virginia—the percentage of students suspended exceeded 10 percent of the total student body." *Id.*

232.   *Id.* ("Overall, 15 percent of African-American students were suspended in 2006, in comparison to 4.8 percent of white students and 6.8 percent of Latino students.").

233.   *Id.*

Troubled especially by systemic racial bias in the determination of disability, Minow argues that the "faulty classifications of students of color as disabled" results in "an overrepresentation of students of color in special education settings often remote from the mainstream classroom."[234] She also maintains that schools regularly fail in their obligations to provide "adequate services and programming" for students of color with disabilities.[235] Nonetheless, she continues to rely on *Brown*'s civil rights paradigm in litigation and legislative reform to ensure equal educational opportunity to students with disabilities through the provision of "specialized instruction and related social and health services."[236] Specific to disability, that opportunity includes "protection against misidentification of students as disabled and development of appropriate placements of and services to those rightly identified."[237] *Brown*-oriented litigation and legislative battles to obtain such protection, she remarks, once again draw parents, teachers, and entire school districts into remedial "conflicts over whether equality in the context of students with disabilities demands integration or separate instruction."[238]

Minow documents the pervasive "overidentification of disabling conditions by race," highlighting its impact in "removing black students from the mainstream classroom."[239] Removal, she explains, produces a "racially disproportionate pattern in special education" corresponding to a higher "incidence of disabilities" among black students.[240] This disturbing correlation, she adds, signals "a new form of segregation" emerging at "the intersection of poverty and race."[241] Alert to this intersection, Minow cites the alarming overrepresentation of black students in the categories of mental retardation and severe emotional disturbance, and their "disproportionate placement" in special education

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234. MINOW, *supra* note 7, at 70. *See generally* Daniel J. Losen & Kevin G. Welner, *Disabling Discrimination in Our Public Schools: Comprehensive Legal Challenges to Inappropriate and Inadequate Special Education Services for Minority Children*, 36 HARV. C.R.-C.L. L. REV. 407 (2001) (noting the use of special education as a vehicle for the segregation of minority children); David Osher, Darren Woodruff & Anthony E. Sims, *Schools Make a Difference: The Overrepresentation of African American Youth in Special Education and the Juvenile Justice System*, *in* RACIAL INEQUITY IN SPECIAL EDUCATION 93 (Daniel J. Losen & Gary Orfield eds., 2002) (construing data on the overrepresentation of African American youth in programs addressing emotional and behavioral disorders).

235. MINOW, *supra* note 7, at 70.

236. *Id.*

237. *Id.*

238. *Id.* at 70. *See also id.* at 70–72.

239. *Id.* at 81.

240. *Id.*

241. *Id.*

programs, noting that such categories of identification and placement lie susceptible to the "individual biases" of inadequately trained teachers and evaluators,[242] as well as the "institutional bias" of system-wide "language barriers" and "cultural miscommunication."[243] The resulting "stigma," she mentions, "itself reflects racial and class dimensions of the special education population."[244]

Minow's demonstration of the prejudicial outcomes of individual and institutional racial bias in federal-state disability and special education systems further underscores the debilitating individual and community-wide consequences of the school-to-prison pipeline. Yet, many academics, advocates, and policymakers decline to follow the racial justice implications of the roiling national crisis in school discipline, incarceration, and reentry, especially for young inner-city black men.[245] To be sure, like Minow, many note increasing patterns of resegregation in education and housing;[246] however, too many avoid wrestling with the changing justifications of, and strategies for, racial integration in communities ravaged by the school-to-prison pipeline. Likewise, whether in the academy, advocacy, or public policy, too many lack a fully satisfactory explanation for *Brown*'s limited influence on American racial justice within the context of schooling or *Brown*'s modest impact on schooling within the context of racial integration. In the same way, too many lack an explanation for *Brown*'s waning symbolic and substantive authority in the law of racial equality and justice, inside and outside the context of inner-city schools in Miami, Boston, New York, or elsewhere. Indeed, too many balk when confronting larger cultural and structural matters of racial equality and economic justice, rejecting opportunities to put forward a more comprehensive socio-legal analysis and a more sustained race- or identity-conscious vision of equality.

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242. *Id. See also* LEGAL DEFENSE FUND, *supra* note 218, at 40 (citing the absence of proportionate representation of people of color "at staff, student, faculty or administrative levels in primary, secondary or higher education institutions").

243. MINOW, *supra* note 7, at 81. *See also id.* at 81–82 ("Black students may face disproportionate placement in special education programs because they disproportionately receive low-quality education before referrals.").

244. *Id.* at 82.

245. *See* Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 489–94, 511–17 (2010) (discussing race and the collateral consequences of criminal convictions).

246. For further discussion of the relationship between housing segregation and school resegregation, see Gary Orfield, *Segregated Housing and School Resegregation*, *in* DISMANTLING DESEGREGATION, *supra* note 8, at 291.

B. RACE- AND IDENTITY-CONSCIOUS COMMUNITY RESISTANCE

The reluctance among many academics, advocates, and policymakers to engage these difficult questions and pursue these complex pathways dampens Minow's celebration of *Brown*'s legacy and weakens its claims upon the social ideals of justice, liberty, and equality in public education and civil rights more generally. That legacy, battered by historical debates over competing norms of educational equity and integrated idealism, and now driven by tensions between the goals of equal access or opportunity and difference-based identity pluralism will not be saved by an equalization of school financial resources, proportional representation on district school boards and other policymaking bodies, or judicial oversight of long-forgotten desegregation decrees.[247] Instead, the legacy of *Brown* turns on the collective race- and identity-conscious work of students, parents, teachers, academics, and advocates to redefine in theory and in practice the meaning of difference-based identity, equal educational opportunity, and integration in America's public schools.[248]

This ongoing collective work, local in focus but national in reach, rests on an alternative set of historical, political, and sociological premises and goals. Together, those empirical premises and normative goals steer *Brown*'s legacy beyond Minow's springboard notions of equal opportunity and equal treatment toward a more race- and identity-conscious vision of community-based public schools. When suited to the empowerment needs of diverse populations separated by physical geography, social division, and economic hierarchy, that vision both accommodates and resists the resegregation of inner-city communities of color. For its content, the vision draws on the teachings of civic equality and economic justice promoted by Martin Luther King during the Southern Christian Leadership Conference's antipoverty campaigns of the late 1960s, substantially the same teachings adopted by Minow in sketching an aspirational, though unlikely, vision of

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247. For policy recommendations on voluntary public school integration, see *Reaffirming the Role of School Integration in K-12 Education Policy: Post-Conference Statement: An Urgent Need for Federal Support*, POVERTY & RACE, January/February 2010, at 1, 1, 4–5 (summarizing the statement of principles from the November 13, 2009 Conference of the National Coalition on School Diversity at Howard University School of Law, cosponsored by fourteen national civil rights and research organizations).

248. *See* Charles R. Lawrence III, *Forbidden Conversations: On Race, Privacy, and Community (A Continuing Conversation with John Ely on Racism and Democracy)*, 114 YALE L.J. 1353, 1400 (2005) (urging inclusive, normative constitutional conversation about race and democracy in cross-racial communities).

cross-racial community.[249] Consider historical predicates first.

1. History

The alternative historical predicate for a race- and identity-conscious vision of community-based empowerment in education stems from Derrick Bell's early interest-convergence thesis.[250] Under this thesis, *Brown* and its promise of equal educational opportunity depend on the shifting convergence and divergence of white and black racial interests in law, culture, and society. To the extent that interest convergence framed the *Brown* decision in 1954 and its subsequent remedial implementation, however limited, interest divergence now animates the post-*Brown* decisions of the U.S. Supreme Court and federal-state legislative mandates regulating school composition, discipline, and performance, as demonstrated in part by the 2010 widely reported public school closing in Rhode Island.[251] For advocates and activists, the rise of white-black or white-brown racial interest divergence requires a greater commitment to difference-based community empowerment and institution-building strategies of self-sufficiency independent of dominant white interests, and an openness to opportunities for cross-racial coalitions and partnerships around community improvement and preservation in confronting the forces of displacement and resegregation.

Minow echoes the call for a greater commitment to difference-based community empowerment and institution-building strategies of self-sufficiency in remarking that "many African Americans have started to give up on the hard work that the effort to achieve integration has required of them."[252] Her observation that "communities have failed to sustain desegregation efforts that worked"[253] and that "the ideal of integration no longer motivates many people of any race,"[254] however, overlooks the frequent receptivity to opportunities for cross-racial coalitions and

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249.   *See* Minow, *supra* note 41, at 641–42.

250.   *See* Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); Lani Guinier, *From Racial Liberalism to Racial Literacy:* Brown v. Board of Education *and the Interest-Divergence Dilemma*, 91 J. AM. HIST. 92 (2004) (assessing Bell's interest-convergence thesis).

251.   *See* Joan Vennochi, Op.-Ed., *The Fallout from Teacher Firings*, BOS. GLOBE, Mar. 11, 2010, at A5 (reporting on the mass teacher firings at a Rhode Island school); Jeff Zeleny, *Obama Backs Rewarding Districts That Police Failing Schools*, N.Y. TIMES, Mar. 1, 2010, at A14 (commenting on President Barack Obama's support of the mass teacher firings at a Rhode Island school).

252.   MINOW, *supra* note 7, at 26.

253.   *Id.*

254.   *Id.* at 27.

partnerships around community improvement across the nation. Doubtless Minow is correct to point out that educators and parents, constrained by time, energy, and resources, "increasingly confront a choice" in backing school initiatives "between renewed efforts for integration and redoubled initiatives in predominantly minority schools for quality instruction with high expectations."[255] Yet, as she rightly notes, race consciousness, rather than race neutrality, "is an indispensable dimension of either avenue."[256] In fact, given the well-known "persistent racial gap in achievement [and] the risks of misidentification of students of color in the context of special education," Minow confirms that "race remains indispensable" to social scientists in assessing "children's educational and life chances," to policymakers in gauging "progress toward the integration ideal," and to advocates in defending the provisional necessity of "separate instruction."[257] Consider the political predicates for these various appraisals.

2. Politics

The alternative political predicate for a race- and identity-conscious vision of community-based empowerment in education also comes from Bell's previous work, specifically his endorsement of "educational improvement"[258] as the necessary goal for civil rights advocacy on behalf of "urban black children locked in all-black schools."[259] Citing "black parental priorities," Bell long ago urged "civil rights lawyers to end their single-minded commitment to racial balance" for purposes of achieving racial mixing or integration.[260] Without more, he argued, that goal proved to be "increasingly inaccessible and all too often educationally impotent."[261] At Selma's Edmund Pettus Bridge in March 2010, Secretary Duncan adverted to the same conditions, commenting that "many schools are still effectively segregated in America."[262] The conditions of de facto segregation demand both accommodation and resistance strategies by lawyers and community advocates, whether parents, children, teachers or

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255.   *Id.* at 29.

256.   *Id.*

257.   *Id.*

258.   Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L. J. 470, 471 (1976).

259.   *Id.* at 515–16.

260.   *Id.* at 516.

261.   *Id.*

262.   Duncan, *supra* note 4.

faith-based activists.

Accommodation strategies seek to procure public resources and private investment sufficient to affect race- or identity-conscious educational improvement among segregated schools and communities. Local examples of accommodation strategies in Miami include individual mentoring programs spearheaded by Breakthrough Miami,[263] after-school and special needs programs sponsored by The Children's Trust,[264] and academic support and literacy programs subsidized by the United Way of Miami-Dade.[265] Such strategies mark a turn away from *Brown*'s ideals of racial mixing and integration in part out of the realization that, as Minow mentions, "poor children of color remain far less likely to find teachers and schools able to launch them into lives of economic success or social and political equality with middle-class white peers."[266] For Minow and other advocates and their nonprofit allies, common access to integrated schools and to equal educational opportunities remains stubbornly "remote for countless children in America," so much so that "the experiences of true integration across the color line is the exception, not the rule."[267]

Indeed, Minow emphasizes, "too many poor children, disproportionately of color, have no access to the kind of educational opportunities" routinely made available to students by "most suburban high

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263. *See Who We Are: Our Core Values*, BREAKTHROUGH MIAMI, http://www.breakthroughmiami.org/wwa_corevalues.shtml (last visited Feb. 15, 2011). Like many accommodation strategies elsewhere, Breakthrough Miami's mission "is to inspire and encourage talented, motivated middle school students to enter and thrive in top college preparatory high school programs and graduate from college." *Id.* Breakthrough Miami's programs include a six-week Summer Institute at which students ages ten to fifteen years "spend their day alternating between academic classes, extracurricular activities, and all-school events," a School Year Program serving middle school students year-round through "Saturday academic classes, tutorials, enrichment, mentoring, and advocacy," and a College Bound Program for high school students that continues year-round "to mentor and guide students by offering support and intervention throughout high school to assure on-time graduation and admission to a top four-year university." *Who We Are: Our Model*, BREAKTHROUGH MIAMI, http://www.breakthroughmiami.org/wwa_model.shtml (last visited Feb. 15, 2011).

264. The Children's Trust observes the following: "Children who are connected to after-school, extracurricular, enrichment and structured summer activities are less likely to engage in violent or risky behavior." THE CHILDREN'S TRUST, 2010 ANNUAL REPORT: ACHIEVING RESULTS . . . 10 (2010).

265. United Way of Miami-Dade concentrates on "investing in programs that provide support services for students, preparing them for standardized tests . . . , and helping improve their math, science and literacy skills." *Our Work: Education*, UNITED WAY OF MIAMI-DADE, http://www.unitedwaymiami.org/education.asp (last visited Feb. 15, 2011) ("In one program focused on literacy, 85% of students improved their reading skills and in another centered on FCAT, 81% moved up half a level in math and 89% moved up half a level in reading.").

266. MINOW, *supra* note 7, at 31.

267. *Id.*

schools" and "many parochial schools," and even by schools administered by the U.S. military.[268] In contrast to public schools in communities of color, numerous suburban, parochial, and military-affiliated schools create spaces where Minow finds "teachers, parents, and larger community values converge in matching high expectations, emotional and pedagogical support, and role models devoted to children's educational success."[269] Accommodation strategies exploit that convergence to enhance the individual educational opportunities available to students of color even when such opportunities occur in the context of exclusion and separation. In this respect, accommodation strategies typically elevate individual academic achievement over group mixing or community integration.

Resistance strategies, in comparison, work to promote the individual academic achievement of students of color in segregated schools *and* to foster the racial mixing or integration of communities of color in Minow's richly imagined common schools. These multipronged strategies contemplate expanding magnet schools, supporting interdistrict transfer programs, incorporating civil rights requirements in charter school systems, coordinating housing and school policies in high-poverty urban districts, enlarging civil rights–related research, and increasing civil rights monitoring and enforcement in combating school-to-prison policies and practices. Many of these strategies entail community-based collaboration among parents, students, educators, and advocates in schools, churches, and neighborhood nonprofit groups.[270] Local examples of street-level resistance strategies taken from Miami include the Human Services Coalition's Parent Leadership Training Institute[271] and the Power U Center for Social Change's Restorative Justice in Schools Campaign.[272] Their strategies extend to both parents and students.

With respect to parents, consider the Parent Leadership Training Institute. Founded by the Human Services Coalition "to improve the

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268. *Id.*

269. *Id.*

270. For historical examples of resistance in multicultural communities, see Vicki L. Ruiz, *Tapestries of Resistance: Episodes of School Segregation and Desegregation in the Western United States*, *in* FROM THE GRASSROOTS TO THE SUPREME COURT: *BROWN V. BOARD OF EDUCATION* AND AMERICAN DEMOCRACY 44 (Peter F. Lau ed., 2004).

271. *See Parent Leadership Training Institute*, HUMAN SERVICES COALITION, http://www.hscdade.org/index.php?src=gendocs&ref=what_plti&category=WhatWeDo&su (last visited Feb. 15, 2011) [hereinafter *Parent Leadership Training Institute*].

272. *Restorative Justice in Schools Campaign*, POWER U CENTER FOR SOCIAL CHANGE, http://www.poweru.org/keeping-youth-in-school.htm (last visited Feb. 15, 2011) [hereinafter *Restorative Justice in Schools Campaign*].

lifelong health, safety and learning of Miami-Dade County's children by helping [parents] learn the leadership skills to make real change—in schools, communities and state and local governments," the Institute seeks to "empower[] adults to become effective advocates for children."[273] In fashioning a community-based context for "adult learning," the Coalition strives to develop parent interpersonal and public communications skills for advocacy and outreach.[274] It also seeks to prepare parents to attain civic leadership roles in local schools and school districts, such as "Parent Teacher Organizations, parent involvement committees, boards of education, advisory boards and nonprofit boards."[275]

With regard to students, consider the Restorative Justice in Schools Campaign. Initiated by the Power U Center for Social Change, the Campaign puts stress on "training youth to organize fellow students around the issue of criminalization of students and its impact on education and learning in minority communities."[276] These organizing efforts seek "to collect data and raise awareness about the harmful effects of zero tolerance" policies and to end or modify their application in Miami public schools.[277] Additionally, the Campaign seeks out remedial alternatives to the criminalization of student behavior, "demanding the institution of the restorative justice model as policy in all Miami public schools," rather than "transfering [sic] the problem to the criminal justice system."[278] For Power U, "restorative justice requires those affected by the behavior or incident to discuss what happened, seek ways to make amends and repair any harm, and to reintegrate the offender back into the population."[279] On this model of restorative justice, schools may "reduce suspensions and arrests and

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273. *Parent Leadership Training Institute*, *supra* note 271. *See also* Jennifer de Forest, *The 1958 Harlem School Boycott: Parental Activism and the Struggle for Educational Equity in New York City*, 40 URB. REV. 21, 23–29 (2008) (describing the mobilization of Harlem parent activists to improve educational opportunities for their children).

274. *Parent Leadership Training Institute*, *supra* note 271.

275. *Id.*

276. *Restorative Justice in Schools Campaign*, *supra* note 272.

277. *Id. See also* Ruth Zweifler & Julia De Beers, *The Children Left Behind: How Zero Tolerance Impacts Our Most Vulnerable Youth*, 8 MICH. J. RACE & L. 191, 204–06 (2002) (documenting the impact of zero-tolerance policies on minority students).

278. *Restorative Justice in Schools Campaign*, *supra* note 272. *See also* Maureen Carroll, *Educating Expelled Students After No Child Left Behind: Mending an Incentive Structure That Discourages Alternative Education and Reinstatement*, 55 UCLA L. REV. 1909 (2008) (advocating expanding expelled students' access to education); Cara Suvall, *Restorative Justice in Schools: Learning From Jena High School*, 44 HAR. C.R.-C.L. L. REV. 547 (2009) (arguing for restorative justice rather than punitive disciplinary policies in schools).

279. *Restorative Justice in Schools Campaign*, *supra* note 272.

increase graduation rates" and give "young people important negotiation and conflict resolution skills that can be applied outside the school environment and into adulthood."[280]

Like the Human Services Coalition's Parent Leadership Training Institute, the key to the Power U Center for Social Change's Restorative Justice in Schools Campaign rests on the participation and leadership of parents and students in school-specific and district-wide governance. Under Power U's related Leadership Training program, students gain "the opportunity to participate in peer exchanges and present at national forums," while "conducting interviews and focus groups, analyzing their findings, and developing conclusions," and, ultimately, "presenting findings, recommendations, and demands to school boards [and] administrators."[281] Resistance strategies tailored to individual academic achievement, intergroup mixing, and community integration all may be built on the foundation of similar grassroots training initiatives and organizing campaigns that seek to empower parents and students alike. Consider the sociological predicates for mobilizing such legal-political campaigns.

3. Sociology

The alternative sociological predicate for a race- and identity-conscious vision of community-based parent and student empowerment in education arises from the necessity and legitimacy of collaboratively uncovering difference and the contingencies of identity. The contingencies of difference-based identity for students of color encompass race, class, ethnicity, gender, sexuality, language, and disability. Aggregated across neighborhoods, those same contingencies give rise to marginalized groups (young black male students) or hypermarginalized subgroups (young black male students with disabilities). To enhance learning opportunities and academic outcomes for students relegated to such highly racialized spaces without inflicting stereotype or stigma requires experiments in alternative forms of community advocacy and outreach.

Elsewhere I have argued that the experiment of uncovering difference-based identities in civil rights and poverty law may serve larger group and societal interests by affording clients a potentially beneficial opportunity to

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280.   *Id.* The Legal Defense Fund reports that the national rate of public school suspension "among black students is almost three times that of whites." LEGAL DEFENSE FUND, *supra* note 218, at 40.

281.   *Restorative Justice in Schools Campaign*, *supra* note 272.

engage in authentic self-elaboration, to obtain equal treatment, to exercise the liberty of full participation in cultural and social environments, and to collaborate in grassroots, interest group mobilization in support of economic justice.[282] These transformative opportunities, illustrated by the ongoing work of the Legal Defense Fund and the Southern Poverty Law Center ("SPLC"), arise when advocates reach out creatively to support public school students through innovative litigation, law reform, and community education tactics. Outreach opportunities of this kind also open up roads for social science research studying the psychological costs and benefits of difference-based social integration and segregation.

Consider in this vein the work of the SPLC.[283] The SPLC currently operates juvenile justice and education reform projects in Alabama, Florida, Louisiana, and Mississippi.[284] The projects focus on "children at risk," particularly disproportionately impoverished African American and Latino children "languishing in abusive prisons and jails."[285] Having canvassed the socioeconomic and educational status of children of color in these four states, the SPLC reports that many are "often unfairly targeted for arrest and confinement" and "needlessly pushed out of school and into the juvenile justice system," while others are "criminalized because of their experiences with failing foster care and mental health systems."[286] As a consequence, the SPLC notes, children and teens of color "are imprisoned at almost three times the rate of their white counterparts."[287]

Intent upon "reforming the juvenile justice system," the SPLC employs "legal action, community education and mobilization, and media and legislative advocacy" to secure appropriate "educational services," to

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282. *See* Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805 (2008).

283. For earlier applications of the work of the SPLC, see Anthony V. Alfieri, *Post-Racialism in the Inner City: Structure and Culture in Lawyering*, 98 GEO. L.J. 921, 960–65 (2010).

284. *Children at Risk*, SOUTHERN POVERTY LAW CENTER, http://www.splcenter.org/what-we-do/children-at-risk (last visited Feb. 16, 2011) [hereinafter *Children at Risk*] (counting Alabama, Florida, Louisiana, and Mississippi among "the states where children are most at risk of ending up in the juvenile justice system or dropping out of school").

285. *Id.* On juvenile detention conditions, the SPLC explains:
> Once arrested, children can stay in detention facilities for weeks or months before a judge hears their case. They often encounter abuse and neglect in overcrowded, squalid facilities – some operated for profit by private corporations. Few local juvenile detention centers have the resources to meet their educational, medical and mental health needs.

Id.

286. *Id.* (the SPLC estimates that "100,000 children and teens are locked up in juvenile facilities across the country, and thousands more are incarcerated in adult prisons").

287. *Id.*

ameliorate "school discipline practices," and "to replace unnecessary juvenile detention with proven, community-based alternatives."[288] Adapted specifically to reform school discipline policies, especially "zero-tolerance" policies, the SPLC's advocacy strategies assail "racial disparities in school discipline practices" and "the use of alternative schools to warehouse students."[289] Instead, the SPLC calls for "individualized" student support, and "increase[d] parental engagement in the formation of school discipline policies and practices."[290] Its Mississippi Youth Justice Project, for example, seeks institutional reform by "making juvenile justice and education systems more responsive to the needs of children, families and the communities" through multidimensional strategies of "public education, community organizing, litigation, legislative advocacy, training and technical assistance."[291] The Project elicits family and community-wide participation in the support of children by means of "individual advocacy, know-your-rights training, support groups and direct actions," as well as by means of state and municipal legislative advocacy and public education via briefing books and educational materials.[292]

The Legal Defense Fund's Education Practice Group similarly pursues local legislative advocacy to rectify the "criminalizing" effects of the school-to-prison pipeline in municipalities where children and youth of color lack "meaningful opportunities for education, future employment, and participation" in civic life and democracy.[293] In New York City for example, LDF's Education Practice Group recently charged that the "over-zealous disciplinary policies and the disproportionate response of police

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288. *Id.*

289. *Id.*

290. *Id.*

291. *Children at Risk: Mississippi Youth Justice Project*, SOUTHERN POVERTY LAW CENTER, http://www.splcenter.org/what-we-do/children-at-risk/mississippi-youth-justice-project (last visited Feb. 16, 2011). In Mississippi, the SPLC reports,

almost 40 percent of public school children drop out of school – frequently because ineffective discipline practices push them out of the classroom, schools fail to provide appropriate special-education services to meet their individual needs, and alternative education programs do little more than warehouse children. . . . When children leave juvenile justice facilities, they often return to schools that are ill-equipped to meet their needs. Too often, these children then cycle back into the juvenile justice system.

Id.

292. *Id.*

293. *Education: School to Prison Pipeline*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., http://naacpldf.org/case/school-prison-pipeline (last visited Feb. 16, 2011); *Congressional Briefing on Zero Tolerance Discipline Policies in Schools*, YOUTUBE (July 29, 2010), http://www.youtube.com/watch?v=CRLlmc0YJnw&feature=player_embedded (statement of LDF's Education Practice Group Director Damon Hewitt before the House Education and Labor Committee).

and school safety officers [in public schools] were endangering the ability of many students to pursue an education."[294] As a result of this law reform effort, in December 2010 the New York City Council voted "to require the New York City police and public school departments to issue periodic reports on the arrests, summonses and suspensions of public school students."[295] The reports will provide vital information to parents, educators, and advocates working to transform the school-to-prison pipeline in New York City by way of community education and mobilization.

Like Minow, both the Legal Defense Fund and the SPLC look beyond narrow law reform calibrations to broader considerations of democratic culture and society in their advocacy campaigns. The SPLC's School-to-Prison Reform Project, for example, strives to enact individual, group, and school-wide culture change through the implementation of an alternative Positive Behavioral Interventions and Supports ("PBIS") program.[296] The School-to-Prison Reform Project's recent settlement of a class action administrative complaint against the Louisiana Department of Education requires that the Jefferson Parish School System "implement PBIS in every school throughout the district and provide individualized support to students with special needs."[297] Successor class-wide administrative

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294. *NYC To Require Police and Schools to Report on School Arrests and Suspensions, Case and Policy Updates*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., http://naacpldf.org/update/nyc-require-police-and-schools-report-school-arrests-and-suspensions (last visited Feb. 16, 2011) [hereinafter *NYC Police and Schools*]. *See also* ELORA MUKHERJEE, N.Y. CIVIL LIBERTIES UNION, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS (2007), *available at* http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf (reporting on the excesses of the New York City policing program).

295. Noah Rosenberg, *In Victory for Civil Liberties Groups, City Votes to Require Reports on School Arrests*, N.Y. TIMES, Dec. 21, 2010, at A30; *NYC Police and Schools*, *supra* note 294 ("Under the guidelines, unanimously approved by the Council, the police department will produce quarterly reports for the Council on arrests and summonses issued to students, and the city's education department will issue reports twice a year on suspensions and annually on all other forms of student discipline.").

296. *Children at Risk*, *supra* note 284. The SPLC comments that PBIS "is gaining momentum among educators as a way to improve overall school climates, as well as academic performance, while keeping children in the classroom. PBIS has been successful in both urban and rural school districts and in districts with high and low concentrations of poverty." *Id. See also Children at Risk: School-to-Prison Pipeline*, SOUTHERN POVERTY LAW CENTER, http://www.splcenter.org/what-we-do/children-at-risk/school-to-prison-pipeline (last visited Feb. 16, 2011) [hereinafter *School-to-Prison Pipeline*] ("Schools that have implemented PBIS have reduced expulsion and suspension rates by up to 50 percent, improved students' academic achievement, provided individualized support to students who need it, reduced drop-out rates, increased attendance and school engagement, and reduced the chances that students will later engage in delinquent activities and substance abuse.").

297. *School-to-Prison Pipeline*, *supra* note 296.

complaints by the Project against school districts in Louisiana, Mississippi, and Florida also decree adoption of PBIS programs accompanied by expanded social work, psychological, and counseling services, curtailed segregation of special needs students, and broadened vocational training.[298]

Further enlarging Minow's spotlight on culture and society in education reform, the SPLC's Youth Voices Music Project actively collaborates with children and youth of color in linking advocacy with musical composition and performance.[299] In early 2010, the Youth Voices Music Project enlisted musicians to help give "voice" to the "realities, hopes and dreams" of children from the Gulf Coast Region.[300] Under the auspices of the Project and local musicians, the children from regional communities "wrote, sang and recorded seven original songs."[301] Moreover, in New Orleans, the Project assembled both public school children, in grades five through twelve, and community leaders and residents in "an inter-generational dialogue circle" to discuss "the deterioration of public schools, the disintegration of community, and the need for people to unite to support and care for each other."[302] During this two day dialogue, participants "created three original songs, which included writing lyrics, developing melodies and recording live performances."[303] To build upon such innovative, multidisciplinary collaborations consistent with Minow's civic-minded educational reform goals, consider the potential for school-oriented public-private partnerships between university-affiliated and faith-based institutions in communities of color, for example, in the Historic Black Church Program at the University of Miami School of Law.

C. THE HISTORIC BLACK CHURCH PROGRAM

In winnowing out the principal lessons of *Brown* accrued over more than half a century of civil rights struggle, Minow emphasizes that "the civil rights movement grew through networks of black churches, the organizational and mobilization gifts of ministers, and the courage and strength of the many ordinary people of many races who forged this mass

298. *See id.*
299. *See Children at Risk: Youth Voices*, SOUTHERN POVERTY LAW CENTER, http://www.splcenter.org/voices (last visited Feb. 16, 2011).
300. *Id.*
301. *Id.*
302. *Id.*
303. *Id.*

movement."[304] The Historic Black Church Program at the University of Miami Law School builds on the practical framework of the civil rights movement in reaching out to collaborate with black churches, their ministers, and their congregations for the purposes of community organization and legal rights mobilization.[305] The Program evolved from the outreach efforts of law student fellows and interns enrolled in the Community Economic Development and Design Clinic at the Center for Ethics and Public Service.[306] Initially directed at serving community-based nonprofit organizations located in Miami's impoverished Coconut Grove Village West neighborhood by supplying technical assistance and training on housing and economic development, the Program gradually expanded to provide multidisciplinary resources in education, law, and social services to underserved, predominantly low-income residents through partnerships with the Coconut Grove Ministerial Alliance, a nonprofit association of sixteen Historic Black Churches.[307] The Program operates jointly with the University of Miami's College of Arts and Sciences and Schools of Architecture, Communication, and Education, offering "students and faculty opportunities for civic engagement, service-learning, and community-based research" in alliance with an array of local faith-based and nonprofit entities, including health clinics, tenants and homeowners associations, and preschool and after-school programs.[308] The Program also

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304.   MINOW, *supra* note 7, at 22.

305.   On the challenges of church-led community building, see SUDHIR ALLADI VENKATESH, OFF THE BOOKS: THE UNDERGROUND ECONOMY OF THE URBAN POOR 214–77 (2006).

306*.   See Partners from the Pulpit: The Center for Ethics and Public Service Forms an Alliance with Black Churches in West Coconut Grove*, VERITAS, June 2008, http://www6.miami.edu/veritas/summer2008/nb/nbstory3.html (describing the genesis of the program). In 2010, the Community Economic Development and Design Clinic evolved into the Community Lawyering Clinic under the auspices of the Community Justice Project ("CJP") of Florida Legal Services, Inc. in order to better "provide legal assistance to community organizations fighting for racial and economic justice in Miami's low-income communities of color." *Community Lawyering Clinic*, UNIVERSITY OF MIAMI SCHOOL OF LAW, http://www.law.miami.edu/clinics/community_lawyering_clinic.php?op=4 (last visited Feb. 16, 2011) [hereinafter *Community Lawyering Clinic*]. Consonant with a "community lawyering" model of advocacy, CJP works "to support the campaigns of local community organizations" in areas spanning "housing justice, workers' rights, and civil rights." *Id.*

307.   On the history and structure of the Historic Black Church Program, see Alfieri, *supra* note 283, at 927–28, and Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1090–92 (2009); CTR. FOR ETHICS & PUB. SERV., UNIV. OF MIAMI SCH. OF LAW, HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS (2010) (on file with author) [hereinafter HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS] (discussing current projects and participants); *About Us*, BLACK MINISTERIAL ALLIANCE OF GREATER BOSTON, http://www.bmaboston.org/node/2 (last visited Feb. 16, 2011) (describing a Boston-based Black church alliance).

308.   HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 1. *See also* Jeanne Charn & Jeffrey Selbin, The Clinic Lab Office 3–13 (2010) (unpublished manuscript) (on file

cooperates with South Florida bar associations, law firms, and nonprofit legal services organizations, in particular Florida Legal Services, Inc. and Legal Services of Greater Miami, Inc.[309]

Minow uncovers the roots of the Historic Black Church Program in examining the form and substance of the NAACP's litigation attack on segregated universities and unequal salaries for schoolteachers between 1935 and 1950.[310] The NAACP attack, she notes, proceeded "alongside growing community-based activism and protests against Jim Crow and racial discrimination."[311] For Minow, the local intersection of national movements for school desegregation, economic equality, and racial justice during the long arc of the *Brown* litigation holds profound importance for legal-political advocacy. According to Minow, that intersection, when galvanized by grassroots activism, enabled the NAACP to develop chapters across the South, "affiliat[ing] strongly with black churches."[312] Each of the Historic Black Church Program's main projects—oral history, rights education and capacity-building, and campus-community engagement—seeks to forge strong ties to the ministries and congregations of local black churches to advance campaigns for school reform, racial equality, and community justice.[313]

1. Oral History Project

The Historic Black Church Program's Oral History Project compiles oral history archives in the form of film documentaries for church congregations and ministries in partnership with the University of Miami's School of Communication and a local high school with well-established

with the Southern California Law Review) (describing new law school and university initiatives in teaching, service, and research to address civic needs).

309.   *See* HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 2.

310.   MINOW, *supra* note 7, at 15.

311.   *Id.*

312*.   Id.*

313.   *See* HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307. The Historic Black Church Program also coordinates a Lawyer Referral Project to furnish legal assistance referrals for eligible individuals and qualified nonprofit groups in conjunction with the Wilkie D. Ferguson, Jr. Bar Association, the School of Law's in-house clinics, and South Florida law firms and nonprofit legal services organizations. *Id.* at 2. *See also* Desiree Pedescleaux, *African American Clergy and Urban School Reform*, *in* LONG MARCH AHEAD: AFRICAN AMERICAN CHURCHES AND PUBLIC POLICY IN POST–CIVIL RIGHTS AMERICA 144–70 (R. Drew Smith ed., 2004) (describing the leadership of African American clergy in education reform in Atlanta, Baltimore, Detroit, and Washington, D.C.).

philanthropic and public service ties to Coconut Grove Village West.[314] Together, high school and graduate students conduct and videotape interviews with congregants and ministers, edit film, and organize church- and university-based panel discussions.[315] Additional collaborating faculty volunteer from the University's Department of History and the Special Collections division of the University's Richter Library.[316]

The historical narratives of Miami's Jim Crow schools culled by Project teams from extensive interviews with long-time Coconut Grove clergy and congregation members resonate in Minow's account of the cultural and social stature of segregated all-black schools during the *Brown* era. Strikingly, many of the Miami school narratives make direct reference to segregated all-black schools, describing teachers, students, families, and even extracurricular activities. Attuned to these narratives and well versed in the literature of Jim Crow education,[317] Minow notes both "the accomplishments of all-black schools during segregation" and the renewed interest in "the commitment that teachers and communities had to these schools and their students."[318] Minow attributes this reemerging interest to the Jim Crow era's institutional "emphasis on individual academic success rather than remedying group-based oppression" and the subsequent loss of "segregated all-black institutions that offered role models and a sense of communal commitment to the success of their members."[319] That success, she acknowledges, demonstrates that historic paths to individual and collective academic achievement exist, albeit with limits, "outside the integrationist ideal."[320]

In defending the integrationist ideal and cataloguing additional institutional sites for social integration, such as after-school programs and workplaces, Minow plots new territory for oral history study projects that

314.   *See* HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 1–2. *See also* Arva Moore Parks, *History of Coconut Grove*, *in* REIMAGINING WEST COCONUT GROVE 20 (Samina Quraeshi ed., 2005) (offering historical background on the origins of West Coconut Grove).

315.   HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 1 ("Students also participate in related multimedia projects documenting the cultural and social history of the Coconut Grove Ministerial Alliance churches.").

316.   *Id.* at 1–2.

317.   For histories of Jim Crow education, see ADAM FAIRCLOUGH, TEACHING EQUALITY: BLACK SCHOOLS IN THE AGE OF JIM CROW (2001); Adam Fairclough, *"Being in the Field of Education and Also Being a Negro . . . Seems . . . Tragic": Black Teachers in the Jim Crow South*, 87 J. AM. HIST. 65 (2000).

318.   MINOW, *supra* note 7, at 28.

319.   *Id.* at 28.

320.   *Id.*

may not only glean the intricate meaning of difference-based identity, but also cross the lines of difference to sort out the complex ramifications of immigrant status, gender, religion, ethnicity, sexual orientation, and disability. Like many segregated all-black educational institutions of the Jim Crow and *Brown* periods, many contemporary integrated school sites, and perhaps some charter or magnet schools, illustrate for Minow "the power of high expectations" and "flexible pedagogical approaches," as well as the importance of "parental involvement" and "community support" in effectively "closing the racial gap in academic performance."[321] Antithetical to the institutionalized "attitudes and social structures" that function to "exclude and subordinate along lines of difference," the culture of the black churches and inner-city school programs allied with the Oral History Project offers educators and advocates precisely the kind of "shared goals and rewards" and "surrounding context of leaders" that Minow seeks but little of the "co-existence" and "solidarity" required to fulfill her vision of "true integration."[322] The Pro Bono Project fares no better in fulfilling her spiritually inspired vision of racial justice.

2. Pro Bono Project

The Historic Black Church Program's Pro Bono Project provides rights education seminars, capacity building workshops, and community-based research support to the churches of the Coconut Grove Ministerial Alliance and to local nonprofit organizations.[323] The seminars address the rights and entitlements of children, tenants, homeowners, and at-risk families.[324] The workshops focus on crime prevention, financial literacy, nonprofit governance, rights restoration, and other antipoverty initiatives.[325] Student-led, community-based research pinpoints public policy ills afflicting residents and produces "working papers" discussing possible solutions for posting on the Law School's website.[326] Collaborating faculty in these efforts come from the College of Arts and Sciences, and the Schools of Architecture, Communication, and Education.[327]

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321.   *Id.* at 185.
322.   *Id.* at 186.
323.   HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 2.
324.   *Id.*
325.   *Id.*
326.   *Id.*
327.   *Id.*

Predicated on experimental models of community lawyering,[328] and united with community-oriented initiatives recently introduced by Florida Legal Services and Legal Services of Greater Miami in Miami's inner-city neighborhoods,[329] the Pro Bono Project centers on individual rights education and community empowerment. The Project defines rights education in terms of constitutional, statutory, regulatory, and common law entitlements to federal, state, and local benefits or services.[330] Applied to inner-city schools, rights education targets both general civil rights and school-specific student rights, especially regarding zero-tolerance disciplinary and special education policies. The Project delineates community empowerment in terms of the development of individual leadership skills and the formation of neighborhood groups equipped with the knowledge and proficiency to configure new cultural and social structures,[331] to exercise economic power,[332] and to participate in the

328. On community lawyering models, see Anthony V. Alfieri, *Faith in Community: Representing "Colored Town*,*"* 95 CAL. L. REV. 1829 (2007).

329. CJP, for example, "provide[s] legal assistance to community organizations fighting for racial and economic justice in Miami's low-income communities." *Community Lawyering Clinic*, *supra* note 306. *See also Community Justice Project*, FLORIDA LEGAL SERVICES, http://www.floridalegal.org/cjp/ (last visited Feb. 17, 2011). CJP maintains that "lawyers are most effective when they support community organizations directed by and accountable to the persons most affected by social injustice." *Community Justice Project: About Us*, FLORIDA LEGAL SERVICES, http://www.floridalegal.org/cjp/ index.php?option=com_content&view=category&layout=blog&id=44&Itemid=69 (last visited Mar. 9, 2011). Thus, CJP lawyers "work hand-in-hand with community organizers and community organizations." *Id.* The purpose of such coalitions and community-based partnerships is to "help residents and workers to develop leadership skills and to form organizations in their communities to fight for justice." *Id.*

330. On rights education, see Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (reviewing GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992)), and Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987–1988). *See also* PETER J. PARIS, THE SOCIAL TEACHING OF THE BLACK CHURCHES 72 (1985) ("[T]he moral leadership of the black churches has focused principally on the task of creating a sociopsychological support system for all endeavors of the race aimed at mutual aid, self-help programs, commercial enterprises, civil rights, race pride, education, and lawful protests against racism.").

331. On capacity building, see M. Elena Lopez, Holly Krieder & Julia Coffman, *Intermediary Organizations as Capacity Builders in Family Educational Involvement*, 40 URB. EDUC. 78 (2005).

332. On economic education and empowerment, see MICHAEL LEO OWENS, GOD AND GOVERNMENT IN THE GHETTO: THE POLITICS OF CHURCH-STATE COLLABORATIONS IN BLACK AMERICA 173–202 (2007); John Gaventa, Barbara Ellen Smith & Alex Willingham, *Toward a New Debate: Development, Democracy, and Dignity*, *in* COMMUNITIES IN ECONOMIC CRISIS: APPALACHIA AND THE SOUTH 279 (John Gaventa, Barbara E. Smith & Alex Willingham eds., 1990); and Michael Leo Owens, *Doing Something in Jesus' Name: Black Churches and Community Development Corporations*, *in* NEW DAY BEGUN: AFRICAN AMERICAN CHURCHES AND CIVIC CULTURE IN POST–CIVIL RIGHTS AMERICA 215 (R. Drew Smith ed., 2003).

political process.[333] Extended to schools, community empowerment entails the organization of parent, student, and educator support groups and the mobilization of preschool, after-school, and faith-based projects.

Although race conscious in pedagogy, neither rights-education seminars nor capacity-building workshops resolve the dilemma posed by all-black, resegregated inner-city schools in Miami or elsewhere. Like the educators and parents Minow has come to know in her extensive research, the educators and parents participating in the outreach activities of the Pro Bono Project "increasingly confront a choice between renewed efforts for integration and redoubled initiatives in predominantly minority schools for quality instruction with high expectations."[334] For Minow and others, the issue in making this choice is not whether to abandon race consciousness, but rather how to address "the persistent racial gap in achievement" and, moreover, the corollary "risks of misidentification of students of color in the context of special education."[335] Race, Minow properly asserts, "remains indispensable whether used in assessment of children's educational and life chances, progress toward the integration ideal, or defenses of separate instruction."[336]

A partial answer to the challenges of assessment, integration, and separate instruction in inner-city schools may come from the Youth Ministries of the Coconut Grove Ministerial Alliance and other consortiums of black churches.[337] Specifically tied to the customs and traditions of each church, Youth Ministries offer advocacy organizations, educational groups, and faith-based institutions multiple contexts and wide-ranging opportunities for race-conscious assessment and instruction, and for skill development in the arts of civic engagement and democratic participation.[338] Secular youth programs afford the same opportunities.[339]

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333.   On community empowerment and political struggle, see Alex Willingham, *Voting Rights and Community Empowerment: Political Struggle in the Georgia Black Belt*, *in* COMMUNITIES IN ECONOMIC CRISIS: APPALACHIA AND THE SOUTH, *supra* note 332, at 123.

334.   MINOW, *supra* note 7, at 29.

335.   *Id.*

336.   *Id.*

337.   On youth organizing, see Douglas A. Guiffrida, *African American Student Organizations as Agents of Social Integration*, 44 J. C. STUDENT DEV. 304 (2003); Julie Quiroz-Martinez, *Youth Organizing Tackles the "Racism You Can't Name,"* POVERTY & RACE, November/December 2006, at 9; and Roderick J. Watts & Constance Flanagan, *Pushing the Envelope on Youth Civic Engagement: A Developmental and Liberation Psychology Perspective*, 35 J. COMMUNITY PSYCHOL. 779 (2007).

338.   For a discussion of the Black Church and young people, see C. ERIC LINCOLN & LAWRENCE H. MAMIYA, THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE 309–45 (1990), and Yves Labissiere, Ann Reeder Goraczko & Alex Stepick, *Religious Practice and Civic Social Capital Among*

In Philadelphia for example, the Juvenile Law Center's innovative youth engagement programs, including Juveniles for Justice and Youth Fostering Change, work to "create opportunities for youth to advocate for policy change in the juvenile justice and child welfare systems."[340] Structurally ambitious, the Juvenile Law Center's "programs seek to make systemic change through conversations with legislators, media outreach and public education."[341] At the same time, the programs address individual and collective engagement, "simultaneously helping youth develop leadership skills, political knowledge and a sense of community."[342] Additionally, lawyers from the Juvenile Law Center conduct more conventional "Know Your Rights trainings for youth currently involved in the juvenile justice and child welfare systems."[343] The Campus-Community Engagement Project further enlarges this rights-based dialogue.

3. Campus-Community Engagement Project

The Historic Black Church Program's Campus-Community Engagement Project sponsors interdisciplinary colloquia on law, culture, and society within communities of color to foster opportunities for civic engagement, service-learning, and community-based research in collaboration with faith-based organizations and other street-level nonprofit entities.[344] Here again, collaborating faculty draw from the Schools of

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Miami Youth, *in* CHURCHES AND CHARITY IN THE IMMIGRANT CITY: RELIGION, IMMIGRATION, AND CIVIC ENGAGEMENT IN MIAMI 231 (Alex Stepick, Terry Rey & Sarah J. Mahler eds., 2009).

339.   *See* PETER EDELMAN, HARRY J. HOLZER & PAUL OFFNER, RECONNECTING DISADVANTAGED YOUNG MEN (2006) (discussing strategies to enhance education and employment opportunities for disadvantaged youth); CATHERINE PRENDERGAST, LITERACY AND RACIAL JUSTICE: THE POLITICS OF LEARNING AFTER *BROWN V. BOARD OF EDUCATION* 120–63 (2003) (discussing literacy and racial justice in high school education); Anand R. Marri & Erica N. Walker, *"Our Leaders Are Us": Youth Activism in Social Movements Project*, 40 URB. REV. 5 (2008) (reviewing the "Our Leaders Are Us" program implemented in New York City schools).

340.   *Projects: Youth Engagement Programs*, JUVENILE LAW CENTER, http://www.jlc.org/projects/youth_engagement/ (last visited Feb. 17, 2011) [hereinafter *Youth Engagement Programs*]. The Juvenile Law Center, founded in 1975, is a multi-issue public interest law firm for children that "promotes juvenile justice and child welfare reform in Pennsylvania and nationwide through policy initiatives and public education forums." *About Us*, JUVENILE LAW CENTER, http://www.jlc.org/about/ (last visited Feb. 17, 2011).

341.   *Youth Engagement Programs*, *supra* note 340.

342.   *Id.* ("Participating in these programs allow young people to overcome extraordinary obstacles to civic engagement and to lend their optimism, creativity and insights to the advocacy field.").

343.   *Id.*

344.   HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 2–3. *See also* Su Oltman Fink, *Politics and Prayer in West Perrine: Civic Engagement in the Black Church*, *in* CHURCHES AND CHARITY IN THE IMMIGRANT CITY: RELIGION, IMMIGRATION, AND CIVIC ENGAGEMENT IN MIAMI, *supra* note 338, at 92.

Communication and Education, and the undergraduate departments of History and Religious Studies, all with the support of the Senior Vice Provost and Dean of Undergraduate Education, and the Assistant Dean of Undergraduate Education.[345] Colloquia include subjects spawned by *Brown*-incited educational and social service initiatives here and abroad, such as internal and external group communication, parent mentoring and student tutoring, and city-wide coalition building. Convened in church meeting rooms, the colloquia enhance the skills of church, community, and nonprofit leaders, increase the service capacity of organizations, generate research networks for university faculty, and open up service-learning gateways for students.

Minow points to *Brown* as a "vital example and touchstone" for advocates, educators, parents, and students in organizing groups and mobilizing communities around the pursuit of "equal schooling" not simply along the specific lines of race, gender, disability, language, immigration, religion, and sexual orientation,[346] but also along the general lines of socioeconomic justice. Initiatives like the Campus-Community Engagement Project provide a safe, even therapeutic, space for university faculty and students, school parents and children, neighborhood leaders and nonprofit groups, and educators and advocates to explore visions of difference-based identity, racial equality, and social justice.[347] Engagement in the pursuit of equal schooling, Minow shows, engenders continuing controversies in education over integration-driven classroom mixing and the effective instruction of heterogeneous and homogeneous student groups, and in society over the parameters of equal opportunity.[348] To Minow, entwining controversies about equality of educational and economic opportunity invite comprehensive social reform by linking the construction of "classrooms that transcend patterns of social exclusion or prejudice" to "larger social

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345. HISTORIC BLACK CHURCH PROGRAM: 2010–2011 PROJECTS, *supra* note 307, at 2–3. *See also* Rudolph S. Jackson & Bobbie Reddick, *The African American Church and University Partnerships: Establishing Lasting Collaborations*, 26 HEALTH EDUC. & BEHAV. 663, 668–72 (1999) (describing the development of a health-related, church-based university partnership); ROBERT FRANKLIN, S. EDUC. FOUND., WHY THE BLACK CHURCH? THE CASE FOR PARTNERSHIP BETWEEN BLACK CHURCHES & ORGANIZED PHILANTHROPY (Oct. 2005), *available at* http://www.southerneducation.org/pdf/Why _Black_Church _Rpt-Final.pdf.

346. MINOW, *supra* note 7, at 184.

347. *See* Mary B. McRae, Delores A. Thompson & Sharon Cooper, *Black Churches as Therapeutic Groups*, 27 J. MULTICULTURAL COUNSELING & DEV. 207 (1999) (examining how black churches serve as therapeutic groups).

348. MINOW, *supra* note 7, at 184.

change."[349] For her, that reformist impulse and invitation stems from *Brown*'s "promise of equal opportunity," a promise that provokes fierce legal and policy debates about immigrant newcomer schools, separate bilingual classes, minority assignment programs for students with disabilities, public school accommodation of religious minorities, and private religious school gender equality.[350]

Still embroiled by clashes over individual and group difference and social stigma, the *Brown* historical debates for Minow turn significantly on "whether instruction separating students inevitably communicates inequality or instead can be used to remedy disadvantage and social attitudes assigning inferior status."[351] For like-minded antipoverty and civil rights advocates, that separation, a byproduct of decades of resegregation, already constructs the daily social reality of inner-city education. Formulating and implementing educational models that "enhance opportunities for and achievement of varied kinds of students while renovating social hierarchies" in a context of daily inner-city subordination will take more than social science research, civil rights litigation, and social reform,[352] it will take the renewed spirit of the church congregations and grassroots coalitions that animated *Brown* more than a half century ago.

IV. CONCLUSION

We can't go back.

–Pastor Jessie Harvin, Jr.[353]

For academics and advocates alike, the task in reading *In* Brown*'s Wake* is to channel Minow's work in a more experimental, activist direction specific to the contexts of inner-city schools historically segregated or now resegregated by race, class, and ethnicity. New directions in advocacy may come through the adoption of a flexible, race- and identity-conscious vision of community-based empowerment that looks to ally with faith-based institutions and diverse nonprofit groups surrounding neighborhood schools.[354] Diverse neighborhoods warrant a

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349. *Id.*

350. *Id.*

351. *Id.* at 185.

352. *Id.*

353. Interview with Jessie Harvin, Jr., Pastor, New Bethel A.M.E. Church, in Lakeland, Fla. (Dec. 31, 2010).

354. On the preservation of neighborhood schools, see Dionne Danns, *Racial Ideology and the Sanctity of the Neighborhood School in Chicago*, 40 URB. REV. 64 (2008).

plasticity of vision in order to encompass the contingencies of immigrant and disability status, language, gender, sexuality, and other categories of group difference-based identity,[355] as well as the stratifications of class and socioeconomic status.[356]

The alternative historical, political, and sociological predicates of equalization set forth earlier help shape and reshape that vision. From history, the vision draws difference-based community empowerment and institution-building strategies of self-sufficiency. From politics, it extracts the goals of educational access and improvement. And from sociology, it pulls collaborative models of uncovering difference and the contingencies of identity to enhance learning opportunities without inflicting harmful stereotype or stigma.

The same predicates help mold the strategic alliances and accommodation and resistance tactics necessary to challenge the difference-based separation and segregation of identity groups. Accommodation tactics search out public resources and private investment to effect race- or identity-conscious educational improvement among segregated schools and communities. Resistance tactics seek to promote the individual academic achievement of students of color in segregated schools and to foster the racial mixing and, where possible, integration of communities of color.

Guided by the ideal of equal opportunity and the search for social justice under *Brown*, such alliances and tactics strive, consistent with Duncan's exhortation, to "maximize freedom and opportunity in schools and communities [for] low-income black and brown children, and students with disabilities" already burdened by inequality.[357] By employing a combination of community-based accommodation and resistance approaches to enhance inner-city school learning environments and to improve educational outcomes, antipoverty and civil rights advocates may begin to establish service systems more responsive to the needs of marginalized and hypermarginalized student populations, including

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355. For a discussion of more experimental, multidimensional forms of advocacy in difference-based communities, see Suzanne B. Goldberg, Multidimensional Advocacy: A Clinical Teaching and Strategic Lawyering Framework (Sept. 15, 2010) (unpublished manuscript) (on file with the Southern California Law Review).

356. *See* MARY PATTILLO, BLACK ON THE BLOCK: THE POLITICS OF RACE AND CLASS IN THE CITY 149–79 (2007) (discerning tensions among low-income, working class, and middle-income families over urban school reform).

357. Duncan, *supra* note 4.

homeless, immigrant, farmworker, and foster care children. Without an explicit race- and identity-conscious vision of community-based empowerment in education, they too will be lost in *Brown*'s wake.