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INTRODUCTION: *BROWN IS DEAD? LONG LIVE BROWN!*

DENISE C. MORGAN*

Race is our national obsession. We are endlessly thinking about it, and trying not to think about it. It affects how we regard one another in public, and intrudes into our most private moments.¹ We may not be able to define it,² but we think we know it when we see it — and that makes all the difference in the world. Race is far more powerful than the invisible hand of the market in shaping our destinies.³

For lawyers and racial justice activists, the national obsession with race frequently manifests itself in a preoccupation with *Brown v. Board of Education*.⁴ That certainly is true in my case. For the fifteen years since I graduated from law school, it has been virtually impossible to get me to stop thinking, talking, and writing about *Brown*. My family, friends and students will attest that I have strong feelings about the case.

My obsession with *Brown* stems, in part, from my personal history. In 1971 when I started second grade at a private school on the Upper East Side of Manhattan, no Black child had ever graduated from that institution (*Brown* may be fifty years old but, real school integration is significantly younger since it can be measured by my lifetime). When I first went into teaching I had the good fortune of

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1. See, e.g., RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* (2003); Note, *Racial Steering in the Romantic Marketplace*, 107 HARV. L. REV. 877 (1994); *JUNGLE FEVER* (Universal Studios 1991).

2. Year after year the students in my Race and American History class are stunned to discover that they do not know how to define race and that they are uncertain how to prove what race they are. Their discomfort with those discoveries is not lessened by the fact that they are in good company. See, e.g., *United States v. Thind*, 261 U.S. 204 (1922); *St. Francis College v. Al-Khazraji*, 481 U.S. 604 (1987).

3. See IAN AYRES, *PERVASIVE PREJUDICE?: UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* (2001) (arguing that race-contingent decisionmaking occurs in retail markets); Ian Ayres, *Is Discrimination Elusive?*, 55 STAN. L. REV. 2419 (2003) (responding to reviews of *PERVASIVE PREJUDICE?*).

4. 347 U.S. 483 (1954) (hereinafter "*Brown I*").

working with the woman who was the first Black child to attend that school. Even with the support of a farsighted and uncompromising headmistress, her experience there was harrowing. I had a much easier time following in her footsteps and those of a few other Black children before me. But, even at the age of six, I understood that part of my mission there was proving that I, a little Black girl from the Bronx, belonged in that formerly all-White place. The implementation of *Brown* relied on similar commitments from hundreds of thousands of children of color and their families.⁵ That Supreme Court case touched our lives and permanently affected our senses-of-self (for good and for bad). *Brown* is not an abstraction in my mind — it is my childhood.

So, maybe that is why I am obsessed with the case. Whatever the reason, thinking, talking, teaching about the issues raised by *Brown* has been my life's work. As a champion of racial justice and someone who values racial variation in her daily life — I have found that there is no escaping thinking about it. But, here is the funny part: the more I think, talk, teach, write, and litigate *Brown*, the more questions I have about the case. Is it a case about race or about education?⁶ Is it animated by a belief in color-blindness or does it articulate an anti-subordination principle?⁷ Is race discrimination in public education a tort or is it more than just that?⁸ Is separate *really* inherently unequal or is integration only desirable for instrumental reasons — for example, because it reduces concentrated poverty, the factor most closely associated with educational failure?⁹ Can power ever be made to yield power by encouragement or legal coercion? In fact, I have come to a place

5. See, e.g., MELBA PATILLO BEALS, *WARRIORS DON'T CRY: A SEARING MEMOIR OF THE BATTLE TO INTEGRATE LITTLE ROCK'S CENTRAL HIGH* (1994); LORENE CARY, *BLACK ICE* (1992).

6. See Denise C. Morgan, *What's Left to Argue in Desegregation Law?: The Right to Minimally Adequate Education*, 8 HARV. BLACKLETTER L.J. 99, 106-08 (1991).

7. See Denise C. Morgan, *Finding a Constitutionally Permissible Path to Sex Equality: The Young Women Leadership School of East Harlem*, 14 N.Y.L. SCH. J. HUM. RTS. 95, 97-101 (1997).

8. See Denise C. Morgan, *The New School Finance Litigation: Acknowledging That Race Discrimination in Public Education is More Than Just a Tort*, 96 NW. U. L. REV. 99, 154-59 (2001).

9. See Denise C. Morgan, *The Less Polite Questions: Race, Place, Poverty and Public Education*, 1998 ANN. SURV. AM. L. 267, 278-81 (1998).

where I see *Brown* as something of a Rorschach Inkblot test: what we see in the case says at least as much about ourselves as it does about the case itself.¹⁰

There are some moments when I reflect on the *Brown* decision and it makes me feel proud — even patriotic. Those moments happen most often when I am teaching or speaking to a mixed-race audience. I look around and think that such a group would not have gathered together without the impetus of *Brown*. While the causal linkage between today's mixed-race gatherings and any single historical event must be indirect, it is unlikely that we would have been able to dismantle the infrastructure of Jim Crow to the extent we have in the absence of the *Brown* decision. Without *Brown* would there have been a 1964 Civil Rights Act or a 1965 Immigration and Nationality Act? Without the Supreme Court's validation of anti-racism in that case, would personal racial attitudes have changed to the extent that they have? Without an official national commitment to integration, how much further short of the goal of equal educational opportunity would we have fallen?

In those moments, I see *Brown* as the Supreme Court's invitation to Americans (especially White Americans) to be their better selves. The case was an invitation to make democracy real by making equal citizenship real.¹¹ It was an invitation to allow public education to live up to its revolutionary potential — to function as an engine of intergenerational mobility so that children can succeed socially, politically and economically irrespective of their parents' station in life.¹² In those moments, I remember that although we are not all the way there, we have made tremendous strides towards achieving those goals since the Jim Crow era. In those moments I understand that without a vision of a just society and moral guideposts, we are lost. In those moments, *Brown* looks like one such guidepost.

10. See, e.g., WHAT *BROWN V. BOARD OF EDUCATION* SHOULD HAVE SAID (Jack M. Balkin ed., 2001).

11. MICHAEL J. SANDEL, DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY 5 (1996) ("According to republican political theory, . . . sharing in self-rule . . . means deliberating with fellow citizens about the common good and helping to shape the destiny of the political community. But to deliberate well about the common good requires . . . a knowledge of public affairs and also *a sense of belonging*, a concern for the whole, a moral bond with the community whose fate is at stake.").

12. See Morgan, *supra* note 9.

But, that is not all that I see in the inkblot of the *Brown* case. There are other moments when I remember that we Americans like inequality in our education system.¹³ At the same time as most of us believe that children are entitled to the type of educational opportunity that will allow them to succeed or fail on their own merits, we just as firmly believe that their parents should be rewarded for their hard work and success. Unfortunately, what feels to most parents like protecting their children by passing on the advantages of their labors has the effect of more deeply entrenching the status quo hierarchy.

This realization leads to a darker set of thoughts about *Brown*. I remember that many Americans took that case not as an invitation to be their better selves, but as an invitation to massive resistance and continued violent oppression of people of color.¹⁴ Indeed, it is hard for me to read *Brown II*¹⁵ without seeing the Court's ambivalence about living up to the promises it made in *Brown I* — the Whites who stubbornly and violently resisted school integration certainly saw that ambivalence.¹⁶ I also remember that the Supreme Court was very slow to make it clear that it was serious about *Brown*. It was not until *Green v. County School Board* was decided fourteen years later that the Court mandated integrated public schools.¹⁷ Then, the Court was very quick to renege on the promise of

13. See Denise C. Morgan, *The Devil Is in the Details: or Why I Haven't Yet Learned to Stop Worrying and Love Vouchers*, 59 N.Y.U. ANN. SURV. AM. L. 477 (2003); JENNIFER L. HOCHSCHILD & NATHAN SCOVRONICK, *THE AMERICAN DREAM AND THE PUBLIC SCHOOLS 2* (2003) ("Most Americans believe that everyone has the right to pursue success but that only some deserve to win, based on their talent, effort, or ambition The paradox stems from the fact that the success of one generation depends at least partly on the success of their parents or guardians The paradox lies in the fact that schools are supposed to equalize opportunities across generations and to create democratic citizens out of each generation, but people naturally wish to give their own children an advantage in attaining wealth or power, and some can do it."); SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* (2004).

14. *Eyes on the Prize: America's Civil Rights Years — Fighting Back*, Blackside (1987).

15. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (hereinafter "*Brown II*").

16. "When asked to explain his view of 'all deliberate speed,' Thurgood Marshall frequently told anyone who would listen that the term meant S-L-O-W." CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION* 10 (2004).

17. 391 U.S. 430 (1968).

Brown.¹⁸ As early as the 1970s the Court decided three cases that significantly undermined the efficacy of that case: *Keyes v. School District No. 1*,¹⁹ which required proof of intentional discrimination in desegregation suits; *San Antonio Independent School District v. Rodriguez*,²⁰ which held that vast disparities in the financing of public education from community to community was constitutionally permissible; and *Milliken v. Bradley*,²¹ which guaranteed that most desegregation plans could not extend to wealthy White suburban schools.

In those moments, I question the *Brown* Court's sincerity and wonder if the case has been something worse than a failure. We know that our public schools are rapidly resegregating²² – what we cannot know is what opportunities we have ignored during our fifty year long struggle for integration.²³

But, that is not the most troubling thing that I see in *Brown*. The most frightening moments for me are those when I remember that power cannot be made to yield power by encouragement or legal coercion. In those moments I fear that integration is, indeed, a prerequisite to racial justice because it is too easy for politically and economically disempowered racially isolated people to be systematically (even if not intentionally) deprived of the resources necessary to improve their circumstances. In those moments, I fear as well that true integration — the coming together of people of

18. See Denise C. Morgan, *Reneging on the Promise of Brown: The Rehnquist Court and Education Rights*, in *AWAKENING FROM THE DREAM: CIVIL RIGHTS UNDER SEIGE AND THE NEW STRUGGLE FOR EQUAL JUSTICE* (Denise C. Morgan, Rachel D. Godsil & Joy Moses eds., forthcoming Carolina Academic Press 2005).

19. 413 U.S. 189 (1973).

20. 411 U.S. 1 (1973).

21. 418 U.S. 717 (1974).

22. Erica Frankenberg, Chungmei Lee & Gary Orfield, The Civil Rights Project at Harvard University, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* (2003), available at <http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingtheDream.pdf>.

23. See DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 27 (2004) (“By dismissing *Plessy* without dismantling it, the [*Brown*] Court might unintentionally predict if not underwrite eventual failure.”). See generally *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* (Derrick Bell ed. 1980) (attempting to “move school desegregation policies toward alternative visions of what *Brown* and its promise might still mean for those who need it most.”). See, e.g., Morgan, *supra* note 6, at 99 (arguing for a property right to minimally adequate education).

different races on equal terms under circumstances that do not require them to relinquish their cultural specific identities — will never occur in the United States. Race relations have changed over the course of American history, and they will continue to do so, but it is unlikely that power will ever be made to yield power.

In those moments of despair, I see that many of us have taken *Brown* as an invitation to forget. The case is an invitation to forget Jim Crow (“systemic racial discrimination is behind us, since *Brown*, the world has changed”).²⁴ The case is an invitation to forget the reality of racism (“people don’t think that way anymore, today most Americans acknowledge that *Brown* was rightly decided”).²⁵ The case is an invitation to forget that our public schools still do not adequately serve children of color.²⁶ The case is an invitation to think that race, education, and equality are no longer problems in America — or to believe that they are someone else’s problems to fix.

Is *Brown* dead? The answer to that question depends on what you see in the case — but, I hope not. I hope that the case lives on in our hearts and minds — inspiring us, daring us, sometimes threatening us, but always encouraging us to be our better selves. Rather than celebrating or burying the Court’s decision in *Brown*, I would like us to recommit ourselves to living up to the promise of that case: making democracy real by making equal citizenship and equal education opportunity real. It may be that justice is a journey, not a destination — so we cannot allow despair to turn us back. “[H]ope is more the consequence of action than its cause. As the experience of the spectator favors fatalism, so the experience of the agent produces hope.”²⁷ Long live *Brown*!

This symposium issue of the *New York Law School Law Review* opens with the speeches delivered by the symposium’s two keynote

24. RICHARD A. EPSTEIN, FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS 92 (1992) (describing the Civil Rights Act of 1964 as “administering the final crushing blow to the old order [of Jim Crow].”).

25. See *Summary of Polls Conducted on Attitudes Toward Brown v. Board of Education and Affirmative Action*, available at www.brownmatters.org/press_summary.html.

26. See generally Gary Orfield, The Civil Rights Project at Harvard University, *Schools More Separate: Consequences of a Decade of Resegregation* (2001), available at http://www.civilrightsproject.harvard.edu/research/deseg/Schools_More_Separate.pdf.

27. ROBERTO MANGABEIRA UNGER & CORNEL WEST, THE FUTURE OF AMERICAN PROGRESSIVISM 11 (1998).

speakers: Professor Gary Orfield and Professor Derrick Bell. Both men are powerful and influential scholars of race and education law and both men have dedicated their lives to the furtherance of racial justice — the ultimate goal of *Brown*. But, as Professor Taunya Banks said over dinner the night before the symposium, they represent “different tensions” that are present in that case. While they both acknowledge that the promise of *Brown* remains unfulfilled, the two men disagree about the reasons the country has failed to realize integrated schools and racial justice more broadly — and they disagree about what course the country should take now.

Professor Orfield contends that “[t]he promise of *Brown v. Board of Education* in urban America has never been realized because society has never taken seriously its demand to desegregate ‘with all deliberate speed.’”²⁸ The problem, he contends, is not with the integration mandate of *Brown*, but with the Court’s and society’s implementation of that mandate. Professor Orfield offers ample evidence that “school desegregation does actually work, it is actually durable, and it has been done on a metropolitan scale.”²⁹ In fact, he argues that southern schools integrated rapidly following the enactment of the 1964 Civil Rights Act: “Within five years, the South went from almost total apartheid to becoming the most integrated region in the United States and having the most integrated schools.”³⁰ Our commitment to racial justice was brief; however, as the Supreme Court began to dismantle desegregation decrees in the 1990s. Professor Orfield cautions that the central importance of *Brown*’s integration mandate has not diminished. He contends that integration is essential to equal educational opportunity by race because only integration can consistently reduce concentrations of poverty in schools: “if you take the poorest schools and their highest achievers, they are way below the median of the rich schools and their relatively low achievers.”³¹ Segregation, he argues, is profoundly self-perpetuating because of the “unequal resources, information, networks, and opportunities available to

28. Gary Orfield, *Why Segregation Is Inherently Unequal: The Abandonment of Brown and the Continuing Failure of Plessy*, 49 N.Y.L. SCH. L. REV. 1041, 1041 (2005).

29. *Id.* at 1051.

30. *Id.* at 1043.

31. *Id.* at 1049.

those in segregated settings.”³² Rooting out segregation will not be easy, but Professor Orfield concludes that “integration in middle-class schools provides substantial benefits for both minority and white students.”³³

Professor Bell, in contrast, argues both that *Brown* is dead, and that the case was profoundly misguided from its announcement. He contends that the *Brown* decision retarded this country’s progress toward racial justice because it “reinforced the fiction that the path of progress was clear. Everyone could and should succeed through individual ability and effort. One would think that this reinforcement of the political and economic status quo would have placated if not pleased even the strongest supporters of segregation.”³⁴ Rather than celebrating the anniversary of the *Brown* decision, Professor Bell seeks to draw lessons for future racial justice activists from the country’s fifty year long failed experiment with school integration. He contends that in hindsight it is clear that the case was “the definitive example [of interest convergence] that the interest of blacks in achieving racial justice is accommodated only when and for so long as policymakers find that the interest of blacks converges with the political and economic interests of whites.”³⁵ We are not, however, doomed to repeat what he sees as the errors of the Civil Rights Era. Professor Bell counsels that future advocates of racial justice must “rely less on judicial decisions, and more on tactics, actions, even attitudes, that challenge the continual assumptions of white dominance.”³⁶ Indeed, those advocates should harness the power of interest convergence to help them achieve their ends. Concluding on a note of hope, Professor Bell urges that “here is a truth that must energize us rather than cause us despair. Now we can continue the struggle against racism enlightened by what we have learned in the half century since *Brown* was decided.”³⁷

32. *Id.* at 1047-48.

33. *Id.* at 1051-52.

34. Derrick A. Bell, Jr., *The Unintended Lessons in Brown v. Board of Education*, 49 N.Y.L. SCH. L. REV. 1053, 1060 (2005).

35. *Id.* at 1056.

36. *Id.* at 1064.

37. *Id.* at 1065.

Dennis Parker, the Bureau Chief for the Civil Rights Bureau of the Office of New York State Attorney General Eliot Spitzer, and the former head of the Education Litigation Program at the NAACP LDF, responds to the question posed by the symposium's title: "*Brown* is dead?" Mr. Parker concedes that "[g]iven the initial delay in implementing *Brown*, the relatively short period of its aggressive enforcement, and the accelerating rate of dismissal of existing cases, the question of the actual impact of [*Brown*] on the lives of individuals is an apt one."³⁸ He argues, however, that the case is quite vital and that its impact has been felt throughout the country in large, and small but significant ways. He contends, for example, that desegregation cases worked to empower individuals in small communities and were often the "only means of addressing the day-to-day concerns of African American students and their parents."³⁹ Mr. Parker cites desegregation cases that included claims about "the availability of gifted and talented programs, disparities in the imposition of discipline, presence on athletic teams or cheer-leading squads, hiring and promoting of teachers and administrators or color, assignment to special education classes, and indeed even whether black schools would be saved from closing" as examples.⁴⁰ He concludes that the continued existence of the stigma that Jim Crow segregation visited upon African American students is not a failure of *Brown*, but a failure of "the courts and society as a whole have failed to realize the case's vast promise."⁴¹

Professor Danielle Holley responds to the question: "*Brown* is dead?" with the disheartening fact that fifty years after the case was decided "a large majority of African American and Latino students attend segregated schools,"⁴² and examines the district court unitary status cases that have been decided since the 1990s trilogy of Supreme Court cases that made it easier for courts to lift desegregation decrees.⁴³ She notes that significant resegregation followed in

38. Dennis D. Parker, *Are Reports of Brown's Demise Exaggerated? Perspectives of a School Desegregation Litigator*, 49 N.Y.L. SCH. L. REV. 1069, 1079 (2005).

39. *Id.* at 1081.

40. *Id.* at 1081-82.

41. *Id.* at 1083.

42. Danielle R. Holley, *Is Brown Dying? Exploring the Resegregation Trend in Our Public Schools*, 49 N.Y.L. SCH. L. REV. 1085, 1087 (2005).

43. *Dowell v. Oklahoma*, 498 U.S. 237 (1991); *Freeman v. Pitts*, 503 U.S. 467 (1992); and *Missouri v. Jenkins*, 515 U.S. 70 (1995).

the wake of the declaration of unitary status in thirty-four of the thirty-eight district court cases and discusses some of the common factors that contributed to that result. Finally, Professor Holley suggests strategies to maintain racially diverse student bodies in a legal climate that is hostile to desegregation.

Professor Rachel Godsil takes up the second topic posed by the title of the symposium: “Long Live *Brown!*,” and considers the relevance of that case to environmental justice litigation. Professor Godsil contends that both sides of the environmental racism debate — those who argue that poor Black and Latino communities must be empowered to better resist the siting of environmental hazards, and those who respond that the problem is intractable because Blacks and Latinos “have less power in the market and are thus apt to ‘come to the nuisance’”⁴⁴ — assume the continued existence of racial segregation. Professor Godsil suggests, however, that “the disproportionate burden of pollution upon segregated communities of color compels the conclusion that there is a dire need to resuscitate *Brown* and press for implementation of its integrative promise.”⁴⁵ Her article invites scholars in the fields of environmental justice and housing segregation to join in conversation about how to achieve a “racially integrated society in which environmental burdens are highly concentrated[.]”⁴⁶

Professor Hiroshi Motomura writes about the relationship between *Brown* and immigration law. Acknowledging that citizens and non-citizens have different claims on equality rights, he asks, “how [should] we think about immigrant rights in the context of civil rights?”⁴⁷ Professor Motomura offers three different ways of conceptualizing immigration in the United States: immigration as contract, in which immigrants are entitled to whatever equality rights the United States chooses to bestow on them in consideration for the privilege of staying in the country; immigration as affli-

44. Rachel D. Godsil, *Environmental Justice and the Ideals of Integration*, 49 N.Y.L. SCH. L. REV. 1109, 1111 (2005) (citing Vicki Been, *Locally Undesirable Land Uses In Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383 (1994); Vicki Been & Francis Gupta, *Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims*, 24 ECOLOGY L.Q. 1 (1997)).

45. *Id.* at 1109.

46. *Id.* at 1112.

47. Hiroshi Motomura, *Brown v. Board of Education, Immigrants and the Meaning of Equality*, 49 N.Y.L. SCH. L. REV. 1145, 1145 (2005).

ation, in which immigrants earn equality rights as “they become enmeshed in the fabric of American life”;⁴⁸ and immigration as transition, the dominant way of conceptualizing immigration through the 1920s. Immigration as transition presumes the equality of lawful immigrants and accords them the respect due to future citizens. Professor Motomura concludes that if we are to take the anti-subordination mandate of *Brown* seriously, we must accept immigrants as “Americans-in-waiting” entitled to the equal rights due to people in transition to becoming citizens.

Professor Penelope Andrews investigates the legacy of *Brown* beyond the U.S. borders. She explains that in 1954, when *Brown* was decided, South Africa’s Nationalist Party — which was committed to white racial supremacy and racial segregation — had recently come to power. It would be another forty years, during which time the majority-Black population would be disenfranchised and any political opposition to the apartheid regime violently crushed, before that country would move toward a non-racial democracy. Professor Andrews contends that during that time, “[t]he rhetorical power of *Brown*, seen by many as an unequivocal rejection of notions of racial superiority and racial inferiority, provided succor to those in South Africa who believed that a societal route towards racial equality was possible.”⁴⁹ In addition to being symbolically important, the legacy of the *Brown* decision has been practically instructive to the South African Constitutional Courts in interpreting the equality, right to education, and other socio-economic provisions in their constitution.

So, indeed, *Brown* lives on. This fact is most apparent in the student contribution to this volume — an example of the next generation of lawyers creatively grappling with the ongoing project of making equal citizenship real. Victor Suthammanont critically examines the Ninth Circuit’s decision in *Coalition for Economic Equity v. Wilson* upholding Proposition 209’s prohibition of race or sex-based affirmative action by the State of California.⁵⁰ He argues that voter initiatives and legislation prohibiting affirmative action should be

48. *Id.* at 1149.

49. Penelope E. Andrews, *Perspectives on Brown: The South African Experience*, 49 N.Y.L. SCH. L. REV. 1155, 1156 (2005).

50. Victor Suthammanont, Note, *Judicial Notice: How Judicial Bias Impacts the Unequal Applications of Equal Protection Principles in Affirmative Action Cases*, 49 N.Y.L. SCH. L.

subject to the same strict scrutiny as other facially neutral legislation that has a racially invidious motivation. Moreover, Mr. Suthamnant fashions a new test to determine whether a voter initiative is motivated by impermissible purposes:

if a state enacted an affirmative action program to redress past discrimination and made the proper findings of fact outlining the present effects of discrimination, in order to end that program, the state should need to show that the program has achieved the desired results and is no longer necessary, or has failed and must be discarded or modified. This will help rebut a presumption that the state acted on an unfounded racial stereotype that such programs are no longer necessary or do not work.⁵¹

Such an approach, he argues, will best promote the anti-racism principles underlying the Equal Protection Clause.

The articles gathered in this volume are an excellent starting place for those of us on the journey to racial justice who must learn from the legacy of *Brown*.

REV. 1173 (2005) (examining *Coalition for Economic Equity v. Wilson* 122 F.3d 692 (9th Cir. 1997)).

51. *Id.* at 1224-25.