

RACE, JUSTICE, AND DESEGREGATION¹

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Abstract

In this essay we argue that the ideology of colorblind justice has made resisting the retreat from public school desegregation a hard sell in postracial America. We do not believe that desegregation is the silver bullet for solving all the problems with public education. Nor do we believe that it alone can close the racial achievement gap. Yet there is convincing evidence regarding the potential benefits of desegregation and evidence on its negative consequences is weak. Therefore we believe that it is a policy still worth pursuing. Our hope is that by casting light on the anatomy of colorblind justice and its limits we can contribute to ongoing efforts to ensure that desegregation remains in the conversation about how to address the unfinished business of racial justice.

Keywords: Desegregation, Education, Inequality, Justice, Egalitarianism, Postracialism

INTRODUCTION

State governments face economic pressure to trim budgets in the aftermath of the Great Recession. And in our highly polarized political climate—where Democrats and Republicans can hardly agree on anything—state lawmakers can count on decreased federal funding and on facing virtually insurmountable obstacles to raising taxes to fund education and other vital public goods. To be sure, this has not deterred politicians from negotiating hard to get what they want and warning of catastrophic consequences when deals cannot be reached. As a case in point, in the spring of 2013, Massachusetts Governor Deval Patrick warned that budget cuts and reluctance to hike taxes in his state would result in raising transportation fees. In response, some local officials scrambled to cut spending by targeting the school busing system first imposed in 1974 under a federal court desegregation order. They argued that the old system, which bused kids across town to achieve integration, was wasteful and expensive in addition to being “inefficient” (often getting kids to school late) and “weird” (often sending students on the same block to different schools). Tight budgets are not the only consideration pertinent to understanding the declining appeal of policies such as school desegregation that aim to address the unfinished business of racial justice. In this article, we argue that the ideal of colorblind justice, as shaped by law, philosophy,

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and racial attitudes, is also germane to the retreat from desegregation in “postracial” America.

Desegregation is customarily defined as the racial/ethnic mixing of students along with various initiatives designed to achieve curricular, pedagogical, and other tangible equities across the schools (Hochschild 1984). However, this definition has changed over time, in part due to the retreat from desegregation as a national policy. During the 1970s, when the policy peaked, it typically involved comprehensive busing programs to achieve racial balance in the schools and centrally administered resource equalization efforts within a district or a metropolitan region. By the 1990s, desegregation typically implied limited voluntary approaches and rare inter-district transfer programs inspired by neoliberal “freedom-of-choice” principles. Neoliberal approaches to educational reform have become so dominant in the 2000s that initiatives no longer involve primary reference to racial/ethnic categories, but instead emphasize the centrality of individual efforts—irrespective of race/ethnicity—to achieve educational equality. This has fueled the rise of a colorblind view of justice and the associated retreat from desegregation as customarily understood.

After elaborating on this view, we examine the anatomy of colorblind justice by reviewing pivotal Supreme Court cases on school desegregation. In addition to having engineered the retreat from *Brown v. Board of Education*’s (1954) race-conscious conception of justice to a race neutral one, more recent rulings have facilitated the movement from desegregation as a remedy for racial inequality to school choice remedies, which may be aggravating segregation and inequality. We then posit a convergence between choice egalitarianism, which deems inequalities stemming from individual choices as just, and an individualistic political morality (that we connect with the Reagan Revolution), which assigns greater significance to individual agency rather than structural factors in explaining inequality. We conclude that the anatomy of colorblind justice has made resisting the retreat from desegregation a hard sell within an ethos where many believe that factors having to do with Blacks themselves (e.g., their voluntary choices, their culture, or their family background) rather than racial discrimination or anti-Black prejudice best account for persistent racial inequalities.

COLORBLIND JUSTICE

Education is a central domain where racial inequality persists in the United States. Black students not only have lower tests scores and lower grades than White students, but they experience greater dropout risks, are typically overrepresented in special education, and tend to enroll in college at a lower rate than Whites (Losen and Orfield, 2002; Magnuson and Waldfogel, 2008; Orfield et al., 2004). The fourth and eighth grade Black-White gaps in mathematics performance in the 2007 National Assessment of Educational Progress were twenty-six and thirty-one points respectively. The gaps in reading for the same grades were twenty-six and twenty-seven points respectively. Thus, Black students are nearly three grade levels behind their White peers in the same age (National Center for Education Statistics 2010). As of 2006, the national graduation rate for Whites was nearly 75%, while that for Blacks was 50%, dropping to as low as 30% in some large urban school districts (Losen 2006). Among all high school graduates in 2008, nearly 70% of Whites enrolled in college, while only 55% of Blacks did (Baum et al., 2010).

Black students are also nearly 65% more likely than Whites to be identified for special education (Skiba et al., 2008). In particular, Blacks are three times more likely to be identified as mentally retarded and twice more likely to be identified as

emotionally disturbed, which often results in removal from regular classrooms and placement in restrictive classrooms (U.S. Department of Education 2010). This not only limits their exposure to regular curricula, peers, and teachers, but also aggravates their risk of stigmatization and academic failure (Wagner et al., 2005). While Blacks are persistently overrepresented in special education, they are underrepresented in advanced placement classes and gifted programs (Losen and Orfield, 2002).

Educational achievement and attainment are important for labor market outcomes. Given the growing demand for knowledge-intensive labor, the educational gap in cognitive skills puts Blacks at a significant disadvantage (Mitra 2000). Education influences how much income one earns, how much wealth one can accumulate, and whether one can secure adequate health benefits and afford decent housing in low-crime neighborhoods with good schools. In addition, some social scientists have identified non-pecuniary returns to education including better health outcomes, longer life expectancy, greater efficiency in choices about labor, consumption, savings, marriage, family size, voting, and civic participation among other things (Haveman and Wolfe, 1984). Philosophers and political theorists have argued that education is also vital for democratic citizenship and for living a life that one has reason to value (Anderson 2007).

Are racial inequalities in education always objectionable from the standpoint of justice? If not, then when are they permissible? Generally speaking, an egalitarian theory of distributive justice helps us assess the ethical status of substantive social inequalities in wealth, health, education, punishment, honor, and power. It sheds light on when participants have a morally legitimate complaint about their relative position in the distribution of benefits and burdens of their social cooperation, or their competition, with other mutually self-interested, rational, free, and equal persons within well-established social institutions where the circumstances of justice obtain. The principles of this theory establish when inequalities are permissible as well as when parties should accept their relative position and shares according to a *prima facie* duty of fair play.

Although we might object to these inequalities for various moral reasons including concerns with alleviating human suffering, promoting self-respect, and correcting imbalances of economic and political power, according to one philosophical conception of egalitarian justice we should only be concerned with the elimination of “arbitrary” distinctions. One way of accounting for when distinctions are arbitrary has been to rely upon a conceptual distinction between choices and circumstances or, alternatively, between choice and luck (Cohen 1989; Dworkin 1981). This distinction has been used to formulate an imperative concerning the moral status of substantive inequalities. According to this imperative, we ought not oblige others to shoulder the costs of inequalities stemming from another person’s voluntary choices, though we may spread the costs of inequalities stemming from unchosen aspects of their circumstances. This is the ethical core of the prevailing theory of egalitarian justice, which offers a way of spelling out the kind of arbitrariness that just social institutions aim to avoid. This approach also offers a substantial concession to critics (especially libertarians and classical liberals) who complain that egalitarians do not assign enough moral significance to individual choice and responsibility in matters of justice.

We shall refer to egalitarians that embrace this view as *choice egalitarians*. While they have debated over how to parse the distinction between choice and circumstance, most agree that racial differences (as well as differences in gender, class, family background, and the like) count as unchosen features of a person’s circumstances. Thus, choice egalitarians will condemn racial inequalities in the distribution of benefits and burdens attributable to these differences and seek to mitigate them on grounds of justice. But if these inequalities are shown to stem from individual choice then justice

provides no basis for mitigation. What makes this a “colorblind” conception of justice is that all the moral weight is put on individual choice to establish when racial inequality is permissible.

Within philosophy, choice egalitarianism has been criticized: for being too cold hearted in forcing us to abandon the imprudent; for undermining individual self-respect and stigmatizing recipients of assistance; for misunderstanding the point of equality; and for overlooking the extent to which promoting individual autonomy demands that we sometimes share the burden of a person’s voluntary choices (Anderson 1999; Shiffrin 2004). Some philosophers, with strong egalitarian sensibilities, have sought to provide a more robust egalitarian alternative by tapping into concerns about various forms of oppression that lie at the core of real world egalitarian movements (Anderson 1999; Scheffler 2005). Whereas choice egalitarianism aims to neutralize the effects of circumstances beyond an individual’s control on her share of benefits and burdens of social cooperation, this alternative aims for a situation where all persons can stand in relationship to one another as equals notwithstanding differences in advantages and disadvantages. This relational approach to egalitarian justice shifts focus to overcoming oppressive social divisions rooted in exploitation, status hierarchy, marginalization, imperialism, and domination. It purports to be more attuned to real world egalitarian movements preoccupied with identifying, criticizing, and rooting out these hierarchical social divisions. Moreover, it aims to take seriously the social conditions of freedom that are vital for democratic citizenship. And this requires that citizens have the capabilities necessary to participate in society as equals socially, economically, and politically.

However, these and other criticisms have not gone unanswered (Barry 2006; Tan 2008). Proponents of choice egalitarianism continue to stress the intuitive appeal of maintaining that persons should not be disadvantaged due to features of their circumstances over which they have no personal control, and that they should only be responsible for their individual choices. But for those who endorse choice egalitarianism the attractiveness of this colorblind conception of justice is not merely intuitive, it also converges with commonsense political morality. Our argument in this article is that *when combined with prevailing racial attitudes about the persistence of inequality, this convergence between choice egalitarianism and commonsense political morality helps account for why resisting the retreat from school desegregation is a hard sell in this postracial ethos.* If this argument stands, then, as we noted earlier, tight budgets in tough economic times are far from being the only thing that explains resistance to policies at odds with the presumption that differences in effort and choices between Blacks and Whites are the principal cause of racial inequality in education.

While the question of which policies we should select to address inequality must be informed by rigorous research on its causes, the question of whether inequalities are just must be informed by normative political philosophy, or ideal theory. Ideal theories of justice advance general principles of justice for a perfectly just society. With these principles in hand, we can ascertain and appraise the ways in which actual societies fall short of the ideal. Theorizing about these principles has been the main preoccupation within normative political philosophy since the publication of Rawls’s (1971) *A Theory of Justice*. But in recent years some theorists have questioned the fitness of ideal theory to address social problems such as inequality, poverty, racism, and discrimination (Farrelly 2007; Mills 2005; Sen 2006). Proponents of such theories will object that ideal theory offers us a normative perspective for assessing such problems. But be that as it may, in our non-ideal world where anti-Black prejudice and presumptions of Black inferiority endure—as the social science research we review later shows—we should not assume that all normative theories are created equal.

More specifically, when it comes to advancing racial justice particular normative theories can create ideological obstacles to pursuing certain policies such as desegregation and other race-conscious remedies, which aim to advance this goal. We believe this is true of choice egalitarianism, which captures the intuition that it is fair when what people have, or do not have, is due to their choices, efforts, and agency rather than to circumstances unrelated to this. If one embraces this philosophical conception of justice, and one further assumes (as many people do in these “postracial” times) that racial inequalities in education are largely due to racial differences in choices and efforts, then policies such as desegregation, which aim to alter opportunity structures, will seem outdated, dispensable, and unfair.

Although our task in this article is not to offer a theoretical alternative to choice egalitarianism, highlighting the contribution it makes to stacking the deck against desegregation may motivate the search for an egalitarian theory of justice that does not have the same limits. To complete our argument, we must expand on postracialism and racialized individualism, and on how both interact with choice egalitarianism to facilitate the retreat from school desegregation. Before getting to these tasks, however, we shall review how a line of Supreme Court desegregation rulings replaced a color-conscious notion of justice with one that is colorblind.

THE *BROWN* REMEDY FOR INEQUALITY

Brown v. Board sought to make equality of educational opportunity for Blacks a meaningful reality. It ushered in era of color-conscious remedies, to overcome the legacy of state-sponsored segregation. It called attention to how prevailing educational and other institutional arrangements reproduced unfair inequality for African Americans, and it constituted a decisive rejection of the longstanding notion of “separate can be equal” that had prevailed since *Plessy v. Ferguson* (1896). A distinctive feature of *Brown*, both in spirit and in explicit terms, was that it construed the disadvantaged party, namely African Americans, as an oppressed “group,” whose members suffered from historically accumulated and ongoing racial discrimination by Whites (Sitkoff 1993); and whose constitutional interests required remedial policies that applied to them as a “group” (Balkin 2001). This sense of group struggle along racial lines was also conveyed by the growing mobilization of African Americans to voice grievances within the traditional Civil Rights Movement and, in especially powerful ways, by voices within the Black Power Movement (Joseph 2010), in addition to the popular and organized resistance to racial justice and equality among many Whites (McAdam 1982).

During the period leading up to *Brown*, and some years after, there was an obvious need for law and public policy to dismantle the vestiges of racial apartheid to achieve meaningful social justice and equality of opportunity for all. The realities of Jim Crow racism were impossible to ignore (Bobo and Smith, 1998). But with *Brown* and subsequent federal efforts to more fully integrate Blacks into American society, many people began to believe that America had finally turned the corner on its troubled race relations and leveled the playing field so that all Americans had access to fair equality of opportunity in education and in other areas. The view of Blacks as a group in need of color-conscious remedies set in motion by *Brown* is fundamentally different from contemporary reforms such as school choice initiatives that rely on private efforts by individuals and families (irrespective of racial/ethnic background) to overcome inequities. Soon after this ruling, however, efforts got under way that prepared the foundation for a rejection of color-conscious efforts and a retreat from meaningful desegregation.

In the post-*Brown* years, a common means to evade desegregation in the South and border states was to establish “freedom-of-choice” plans, giving parents the option to select from a modest number of alternative schools in their residential area on the basis of their preference for integrated education (Orfield 1969). Such plans also received support at the presidential level, as Richard Nixon praised freedom-of-choice, arguing against federal involvement in desegregation, warning that “it was dangerous . . . to force a local community to carry out what a Federal administrator or bureaucrat may think is best for that local community” (Semple 1968, p. 1). Freedom-of-choice was an evasion of desegregation primarily because private family initiatives were unlikely to overcome the prevalence of racial separation due to deep-rooted normative obstacles and socioeconomic differences in parental efficacy that put many African American households at a disadvantage in the school choice market (Carl 2011).

Many civil rights activists considered freedom-of-choice a ploy to help maintain the traditional racial order, while many ordinary Blacks viewed it as a signal conveying the limits of White tolerance for racial integration (Bell 1989). School choice was the central issue in the Supreme Court’s 1968 *Green v. County* ruling, which concluded that freedom-of-choice failed to produce desegregation at levels consistent with the 1964 Civil Rights Act, and declared that where there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary system, freedom-of-choice is not acceptable.

The Court’s next move came a year later in *Alexander v. Holmes* (1969). Despite the more “restrained” attitude of the new Chief Justice, Warren Burger (a Nixon appointee), regarding school desegregation (Maltz 2000), the Court unanimously ruled that it was the obligation of every district to terminate dual school systems at once and to operate now and hereafter only unitary schools. This ruling, combined with the limits placed by *Green* on freedom-of-choice and the threat of federal litigation under the Civil Rights Act, in conjunction with the promise of extra funds under Title I of the Elementary and Secondary Education Act of 1965, compelled the majority of school districts in the South and border states to desegregate by means of explicitly color-conscious rezoning policies for admissions. In 1966, less than 10% of Black students in the region were in majority-White schools; by 1970, nearly 35% were in such schools; and by 1987, this figure peaked at 47% (Boeger and Orfield, 2005).

As desegregation was speeding up in the South and border states in the late 1960s, the NAACP and other civil rights groups were increasingly focusing their energies on ways to challenge school segregation and inequality in the North and the West. However, the situation outside the South and many border states was different because the schools were *de facto* segregated due to residential separation by neighborhoods—a natural consequence of decades-long racial discrimination in metropolitan housing markets (Massey and Denton, 1993). There was a deep-rooted tradition of “neighborhood schools,” reflecting the homogenous makeup of segregated communities within any given district.

Moreover, residential separation in the North and the West was increasingly shaped by between-district rather than within-district segregation, due to White exodus to the suburbs (Hyden 2004). The majority of Blacks were located in the urban core due to the abundance of low-skill manufacturing jobs in city centers in prewar decades (Wilson 1978). Given the racially exclusionary character of suburbanization and the low socioeconomic status of many Blacks—limiting their ability to relocate to the suburbs—there was a growing urban/suburban divide along racial lines, with adverse consequences for schooling (Saatcioglu and Rury, 2012).

Meaningful implementation of *Brown* in the North and the West required thorough strategies, such as color-conscious methods of pairing or clustering schools across

those neighborhoods and transporting students, ultimately bridging the urban/suburban divide where necessary. The contentious nature of this was explicitly addressed by President Nixon (1971), who charged that “extreme demands have raised widespread fears that the nation might face a massive disruption of public education: that wholesale compulsory busing may be ordered and the neighborhood schools virtually doomed” (p. 375).

Nonetheless, the Court specified the means to overcome *de facto* segregation in metropolitan areas in two consecutive rulings in the early 1970s: *Swann v. Charlotte-Mecklenburg* in 1971, and *Keyes v. Denver* in 1973. These not only alluded to the inherent flaws of the neighborhood school concept at the time, but also explicitly validated the use of race in developing remedial procedures to integrate the schools. In *Swann*, the Court declared that desegregation plans need not always be limited to the walk-in school because bus transportation has been a key part of the public school system for years. *Keyes* reinforced *Swann*'s logic further. A common defense by large city school systems against charges of intentional segregation was that school locations, and compositions were determined based on residential segregation, over which school boards had little control. But, the Court ruled in *Keyes* that this was an untenable excuse because a district with segregated neighborhoods had a constitutional responsibility to use positive initiative in determining new school locations, school expansions, and zoning and transfer policies in ways that did *not* comply with residential segregation when possible. *Keyes* also noted that a district's failure in exercising such initiative in even a limited segment of its jurisdiction obliged it to desegregate the entire school system root and branch.

Given the Court's emphasis on deep-seated social, economic, and spatial obstacles to educational equality beyond the control of many African Americans and its rulings that involved “structural” remedies—as opposed to those centered on voluntary choice—many activists assumed that the pace of school integration in North and the West would soon catch up with that in the South. By early 1974, there were few cities that did not face administrative or judicial pressure to desegregate (Orfield 1983). Many districts also initiated voluntary efforts to desegregate their schools (Rossell and Howley, 1983). But this progress would be threatened by the coming of a postracial ethos.

POSTRACIALISM AND THE RETREAT FROM DESEGREGATION

Brown and subsequent Supreme Court rulings weakened the conventional link between family social status and school quality, allowing the mixing of students from different racial/ethnic, social, and economic backgrounds in common schools. The quality of mixture would not rely entirely on the status and wellbeing of the surrounding community (Hochschild 1984). However, efforts to defend desegregation, and other laws and policies predicated upon treating African Americans as a group that still suffers from collective disadvantage and unequal opportunity, have become increasingly difficult to sell in this so-called postracial epoch.

Postracialism has different interpretations. The least controversial one is that it expresses an aspiration regarding the kind of society we hope to become, namely one where a person's race does not constitute a barrier to equality of opportunity or to the fruits of citizenship. From this perspective postracialism is not taken to be a concrete reality; rather it is a goal that we aim to realize in the future. Somewhat more controversially, postracialism may indicate an aspiration where racial identity politics cease to become a useful way to sort persons. Various reasons might be advanced in

justifying this aspiration. For instance, it might be argued that race (particularly the Black-White divide) is no longer an illuminating category of difference due to changing demographics—the influx of immigrants and the growing presence of mixed-race persons both of which challenge the Black-White racial divide (Bobo 2011). There is also the concern that sorting people in terms of racial identities undermines cross-racial political coalitions (Wilson 2009). And then there is the concern that the issues that most negatively impact all citizens are about class rather than race. This suggests that we should pay more attention to economic inequality, the growing power of corporate forces, and the diminishing power of individual citizens.

One of the most controversial and commonly expressed interpretations of post-racialism is summarized eloquently by Bobo (2011): “From this perspective, black complaints and grievances about inequality and discrimination are well-worn tales, at least passé if not now pointedly false assessments of the main challenges facing blacks in a world largely free of the dismal burdens of overt racial divisions and oppression” (p. 13). This perspective has gained significant currency because overt racism has become less pronounced, and so linking racial discrimination to persistent racial disparities in education and other areas is a much harder sell.

Contrary to what critics of post-racialism have charged (Cho 2009), however, the post-racial perspective does not ignore racial disparities. Instead the burden of proof has been shifted to those who take discrimination to be a significant component in explaining racial disparities. And discharging this burden (at least within law) has meant establishing racist intent as the basis for observed disparities (Darby 2009a). In the absence of such proof post-racial thinking has led many to dismiss racial inequalities as largely the product of agent-driven economic transactions in response to various needs, wants, liabilities, and incentives in a free market economy rather than the unhappy results of bad or racist intentions.

A central development of the ascendancy of post-racial thinking was that it ushered in a more hands-off approach to using state power to remedy persistent structural factors associated with educational inequality. This meant, among other things, a retreat from race-based desegregation. An underlying philosophical basis for this retreat and this hands-off approach was a slow but steady shift in emphasis away from a concern with group-based rights and remedies, which enabled race reformers to highlight the peculiar claims of Black Americans rooted in the long legacy of racial apartheid, to a concern with safeguarding individual rights of parents to choose where their children would be educated, and a concern with shifting authority for education matters from the federal government to state governments and local school districts. This movement shows up clearly in several significant Supreme Court rulings.

In the 1974 *Milliken v. Bradley* ruling, the Court placed a significant limitation on the scope of desegregation by exempting predominantly White suburbs from plans to help desegregate adjacent urban districts. The Court ruled that metro-wide desegregation plans were impermissible unless the plaintiffs could demonstrate that the suburbs and/or the state took deliberate actions that contributed to segregation in the city.² The suburbs’ ability to have control over their own schools was viewed as essentially consistent with educational traditions of the United States, most important of which was local control over schooling. *Milliken* also declared that desegregation, in the sense of dismantling a racially segregated school system, did not require any particular degree of racial balance in each school, grade or classroom. While the ruling retained *Brown’s* color-conscious conception of educational inequality as well as *Swann’s* and *Keyes’s* approach to color-conscious remedies, it established a “shelf life” on desegregation by disavowing the implications of the deepening racial urban/suburban

divide (James 1989). The persistent loss of White students in urban districts would eventually make desegregation infeasible within city limits.

Three years later, in *Milliken II v. Bradley II* (1977), the Court concluded that, when increasingly isolated and poor urban districts experienced difficulty in bearing the cost of school desegregation, the state could be ordered to pick up the cost. Although this ruling helped sustain a number of urban desegregation programs in the short run, it was a subtle sign of the return to *Plessy's* notion of “separate but equal” schools (Orfield 1996), because it assumed that between-district racial disparities at the metropolitan level could be remedied by policies that failed to foster racial integration in the long run (Clotfelter 2004).

The Court withdrew from the judicial scene of desegregation for the next fourteen years. But the limits it placed on desegregation played an important role in the return of freedom-of-choice as a key policy option for implementing desegregation and for broader progress in minority education. By the mid-1980s, several aspects of desegregation plans became ineffectual in many urban districts. And, in addition, many African Americans in urban areas were increasingly affected by unprecedented levels of joblessness, concentrated poverty, neighborhood social disorganization, and family instability throughout the 1970s and 1980s (Stern 1993; Wilson 1987). These problems not only undermined education, but also aggravated social and economic problems faced by schools and students (Rury and Mirel, 1997). Consequently, many districts turned to school choice strategies to pursue desegregation within the limiting legal constraints.

The opening wedge of school choice in this regard was magnet schools—voluntary desegregation options operating with additional federal funding and offering specialized curricula (e.g., arts, science, or engineering) to attract diverse families who preferred integrated education for their children. Magnets typically relied on lottery and talent exams to fill racially- and/or ethnically based admission quotas reflecting the demographic compositions of their respective districts (Rossell 1990). Charter schools—-independent schools operated by private citizens, universities, foundations, or other entrepreneurs largely free of public regulation—and private school vouchers—certificates issued by the government, applying toward tuition at private schools—were the subsequent wave in providing freedom-of-choice (Gill et al., 2001). However, unlike magnets, charters and vouchers are not explicitly designed as desegregation devices, but more generally as options for urban parents to seek alternatives to unsatisfactory regular schools, which are often majority non-White.

As in the 1960s in the South and border states, the common attribute of all contemporary choice options has been the fundamental reliance on private parental initiative for improvement in educational conditions and outcomes of disadvantaged students. The implicit contribution of *Milliken* and *Milliken II* to the expansion of this approach was inherently antithetical to the logic of *Green*, where the Court had decided that freedom-of-choice was insufficient for meaningful desegregation and school improvement for African Americans. The limitations of freedom-of-choice at the time were associated with the normative obstacles to racial mixing as well as the socioeconomic disparities that potentially undermined political efficacy and educational decision-making among low-income African American households. Recent evidence on the effects of school choice reveals the persistence of these problems.

First, except for magnet schools, choice initiatives rarely result in systematic interracial exposure, because they are often characterized by greater segregation than regular schools (Frankenberg and Lee, 2003; Garcia 2008). The exception with magnets has to do with racial quotas in admissions (Rossell 1990). Second, choice policies frequently “cream” only a limited portion of disadvantaged students—typically from

upwardly mobile, near-poor households—and fail to spur racial integration beyond their doors (Smrekar and Goldring, 1999). By implication, they may also aggravate the racial and poverty concentration in regular schools and limit the access of these schools to educational and parental resources (Rothstein 2004). Academic outcomes of school choice also appear to be mixed, with many charter and voucher programs performing worse than regular schools (Buckley and Schneider, 2009; Gill et al., 2001).

Perhaps the most important implication of the return to freedom-of-choice has been the discursive transformation in education reform. Prior to the full-fledged prominence of school choice, “racial separation” was considered a principally problematic situation. Therefore, a color-conscious perspective on the structural causes of and associated remedies for inequality had been a paradigmatic concern in policy-making, regardless of the prospect of eventual success in achieving racial integration. While most magnet schools continue to reflect this concern to some degree—because of their reliance on racial quotas—color-conscious perspectives are commonly absent in the underlying logic and practical operation of the majority of charter schools and voucher programs (Henig 1994). These options typically treat school quality and performance as objectives largely distinct from racial desegregation. Contemporary school choice conveys a subtle reversal in the openly racial understanding of unfairness and of the perceived need for policies directed explicitly at alleviating racial separation and unfairness (Rothstein 2004).

Choice initiatives gained considerable ground in the 1990s as the Supreme Court explicitly retreated from school desegregation in three consecutive rulings. In the 1991 *Board of Education of Oklahoma v. Dowell* ruling, the Court described racial desegregation not as a consistent, long-term goal, but as a temporary and formalistic punishment for historical violations. It was therefore constitutionally acceptable for a district to return to segregated schools once it was declared “unitary,” even if it had successfully desegregated schools. The following year, in *Freeman v. Pitts* (1992), the Court concluded that districts could be partially released from desegregation responsibilities even if integration had not been achieved in all the specific areas outlined in the 1968 *Green* ruling. In addition, the concept of unitary status, which had previously denoted “racial integration,” was recast on the basis of the defendant district’s ability to demonstrate its *commitment* to desegregate, not on the basis of its actual success in desegregation. This was followed by *Missouri v. Jenkins* in 1995, where the Court declared that *Milliken II* equalization remedies should be limited in time and scope, and that districts need not show any actual correction of the educational harms of segregation. *Jenkins* also defined rapid restoration of local control as the primary goal in desegregation cases.

Given this retreat from the goal of comprehensive racial integration in the schools, formal legislative efforts at the state and local levels to establish school choice options as the dominant means to achieve equality—particularly charter schools and private school vouchers—spread rapidly in the 1990s (Renzulli 2005), reinforcing the plausibility of the colorblind view of egalitarian justice. This view became most explicit in Supreme Court’s 2007 *Parents Involved v. Seattle* ruling, which struck down color-conscious admissions to magnet schools and, by implication, to other choice programs that may such admissions. The Court argued that color-blind admission was the true policy perspective consistent with *Brown’s* spirit and its goals of racial non-discrimination and equality. While *Parents Involved* had little impact in practice on desegregation—since much of the momentum for school desegregation had already been lost—it had considerable implications for law and policy orientation because it nullified race as an essential frame of reference in examining educational inequality and diminished the relevance of group-rights in developing remedies. The Court

considered racial integration an “elitist fad,” even if, as James Ryan (2007) points out, it made little sense to assume that *Brown’s* focus on race and advocacy of integration was meant to keep Black students in separate schools.

RACIALIZED INDIVIDUALISM AND RACIAL INEQUALITY

The Reagan Revolution in the 1980s was pivotal in the ascendancy of the colorblind view of egalitarian justice. In this section, we review how the turn to individual choice and personal responsibility during the Reagan era helped shaped the values driving the retreat from color-conscious remedies to racial inequality such as school desegregation.

A central ambition and lasting legacy of the Reagan revolution was to restore faith in American progress on the backs of rugged American individuals and risk-taking entrepreneurs rather than on the back and dime of a large and overly intrusive federal government. During this period, the values of individual freedom, hard work, ingenuity, and personal responsibility ascended to their former pre-New Deal glory. This marked a shift in focus from safeguarding racial group-based rights to safeguarding and promoting individual rights, especially the right not to be disadvantaged by state-sponsored efforts to remedies to secure greater racial equality. Hence the following imperative became the guiding normative ideal: *individuals should work hard (within the limits of law and morality) to get what they want out of life and take full personal responsibility for their voluntary choices.*

During the Reagan years this imperative—embraced by everyday people and viewed as a deeply American value (Hochschild 1995)—served to shape and justify government policy and practices. It figured centrally in people’s skeptical attitudes toward the welfare state. It figured centrally in the public justification for dismantling the welfare state and rolling back the Johnson era Great Society programs, which among other things deployed government power and resources to break down systemic and economic obstacles to equal Black participation in American society. This imperative influenced general public attitudes about how to deal with racial inequality in particular, and about what role, if any, government should play in this endeavor. As such, it also helped account for discursive transformation in education reform.

The role of individualism in shaping attitudes toward welfare and other government efforts to diminish racial inequality is subject to competing perspectives. One interpretation suggests that White Americans largely rejected various equal opportunity programs and school desegregation because of their abiding commitment to individualism and the belief that Blacks, like everyone else, should embrace self-reliance and take personal responsibility for their choices and for how their lives turn out. For if they did this, they could be much better off on average and perhaps just as well off as Whites on average, since Jim Crow racism is a thing of the past, and since racial inequality is not part of God’s divine plan nor the result of a small group of powerful and wealthy White people conspiring to hold Blacks down (Sniderman et al., 2000).

An alternative view, however, ascribes a limited role to individualism as the sole factor in explaining anti-egalitarian attitudes, when the impact of perceptions about Blacks on the general attitudes toward egalitarian policies are taken into account (Kinder and Mendelberg, 2000). While many Americans have little objection to using the hand of government to help those in need so long as they are truly deserving of the help—by virtue of putting in an honest effort but failing, or suffering from a significant handicap—96% of Americans feel that people should take advantage of opportunity and not expect help from the government. And 74% agree that people are responsible

for their well-being. Also, four out of five believe that trying to get ahead on one's own effort is a vital ingredient in being a 'true American' (Gilens 1999). Also, these attitudes appear to be racialized when it comes to views about Blacks and whether Blacks are truly deserving of support. It is argued that when measuring Americans' general attitudes toward Black welfare recipients, and Black beneficiaries of government efforts to diminish inequality, questions about their neediness and commitment to work ethic loom large (Gilens 1999).

Both in the media and the public imagination, welfare and government aid are typically identified with Black recipients, such as the young, unmarried, Black mother on Section 8 or young, jobless, Black males living with mothers or grandmothers in urban ghettos. And with Blacks squarely at the center of the public imagination when it comes to welfare and government aid (even though they do not constitute the majority of aid recipients), two out of three Americans believe that recipients are gaming the system, and only one in three believe that most welfare recipients are truly deserving of the help (Gilens 1999). In addition, there appears to be a strong correlation between attitudes about the work ethic of Blacks—reflecting stereotypes of Blacks as lazy, shiftless, and promiscuous—and attitudes about welfare. When asked whether Blacks are hardworking or lazy, 44% of respondents regarded them as lazy, while only 20% regarded them as hardworking. And 63% of respondents who viewed Blacks as lazy preferred to cut welfare spending, while only 35% of those who viewed them as hardworking wanted to decrease such spending (Gilens 1999).

Some social scientists have identified this phenomenon as *racialized individualism*, in which racial prejudice or stereotypes coupled with individualism and its associated values join to create a form of racism, variously described as new racism, symbolic racism, modern racism, and laissez-faire racism (Bobo et al., 1997). Different versions of this perspective coalesce around a number of themes, but the upshot is that biological racism no longer seriously informs racial attitudes in America, nor does it legitimate racial inequality. Instead, it has given way to the view that Blacks, to their detriment, do not generally live up to the individualism imperative of hard work and personal responsibility. And insofar as prejudice is expressed primarily in the language of individualism, then individualism has become part of racism (Kinder and Mendelberg, 2000).

Among other things this hypothesis accounts for why, as one study finds, many Whites believe that we have simply gone too far in our societal efforts to achieve greater equality:

Many whites may believe that "we've gone too far" because they believe that blacks no longer face great handicaps at that metaphorical starting line. That is, they may see any remaining racial inequalities as primarily attributable to blacks themselves, to their lack of work ethic or impulse control, their irresponsibility, and other internally controllable factors (Sears et al., 2000, p. 103).

Naturally, a number of objections may be raised to downplay the role of anti-Black prejudice in explaining resistance to welfare and other government efforts to aid Blacks. For example, one may argue that *Brown*, the Civil Rights Movement, and the subsequent Great Society programs did indeed mark a vital turning point in American history, in which all of the remaining societal obstacles to racial equality were dismantled so that race can no longer be considered a viable explanation of persistent racial inequality. Another objection may be that affirmative action measures to increase racial equality is harmful to Blacks as they elicit racial stigma, and are more of an impediment to Black uplift rather than an avenue to Black self-reliance.

Still another criticism may be that welfare and government support programs are too costly and wasteful because benefits are too high and are used for more than basic needs. In connection with this, efforts to diminish racial inequality amount to reverse discrimination against Whites and thereby violate egalitarian principles. And, lastly, some may insist that Reagan-style limited government is simply the best way to secure liberty, personal responsibility, and self-reliance, and hence that principled opposition to big government rather than anti-Black effect accounts for opposition to egalitarian aspirations.

POLITICAL MORALITY AND CHOICE EGALITARIANISM

The imperative of individualism that reemerged during the Reagan revolution—placing the idea that individuals should work hard to get what they want out of life and take full responsibility for their voluntary choices—has had considerable influence over contemporary debates on how to distinguish between just and unjust inequality. Individual self-reliance was not only a guiding ethical principle, it was also put forward as a vital ingredient of what it was to be a true American—a standard that Blacks were taken not to measure up to. Conservative social science and libertarian political philosophy—which represented the external and internal sources of pressure on philosophical egalitarianism respectively—were instrumental in putting the right spin on what it meant to be faithful to individualism, and in articulating the demands of justice when it came to matters of social welfare and racial inequality.

With respect to conservative social science, in the same year that Reagan took office and philosopher Ronald Dworkin published his papers on equality (which helped to define philosophical egalitarianism), Thomas Sowell (a Milton Friedman-trained conservative economist) published two influential books, *Ethnic America* (1981a) and *Markets and Minorities* (1981b). Sowell argued against government intervention on behalf of Black Americans in part by showing how much better other minorities fared without it, and that ethnic groups are best off when government pursues hands-off policies that require members of these groups to fend for themselves in laissez-faire economic systems. Three years after this, conservative political scientist Charles Murray came to public prominence with the publication of his *Losing Ground* (1984) in which he argued, among other things, that welfare style in-kind transfer programs impoverished rather than uplifted the poor.

Interestingly, this book, which has been described as the new bible of the Reagan administration, cites one of the giants of contemporary political philosophy, Robert Nozick, in making its case against seeking to achieve greater equality of material conditions through a social welfare state.³ Nozick's (1974) formidable articulation and defense of libertarianism—as the main alternative to Rawlsian egalitarianism—proved to be a more popular normative framework during this Reagan era turn away from the welfare state and from egalitarian ambitions. Furthermore, it proved to be a central inspiration for other libertarian moral and political philosophers, who were poised to seize the moment by developing the case for why equality was an enemy of liberty in a truly liberal society. The subsequent prioritization of liberty, which was deemed a matter of taking individuals seriously, was tethered to the importance of giving proper due to individual choice and responsibility—the values that helped to define the core of commonsense, old-fashioned American individualism.

Thus, as an important source of anti-egalitarian thought, libertarianism supplied a coherent normative framework rooted in the individualism imperative. This view was generally framed in the language of what individuals are entitled to or have rights

to—first and foremost being the right to the fruits of one’s labor, closely followed by being left alone to pursue one’s projects and being the master of one’s destiny. In addition to advancing individual rights to safeguard persons from infringements for the sake of welfare, equality, or some other value, this normative framework has also stressed the importance of individual responsibility for the outcome of one’s actions. As the individual is entitled to reap the benefits of her good choices, she alone is obliged to bear the responsibility for her poor ones. While others might voluntarily help with these costs, society ought never to compel such assistance or compel others to share the burden of these choices, say, in the form of higher taxes, compulsory insurance, or in-kind welfare transfers (Steiner 1998).

Within this postracial ethos, political morality deems it unfair to force people to fully bear the burdens of inequalities that derive from things over which they have no control such as being from a poor family or being a racial minority. And so proponents of choice egalitarianism will readily entertain policies that seek to spread the costs of these burdens. However, they will deem it equally unfair to spread the costs of inequalities on others when these inequalities are taken to derive from a person’s voluntary choices. Some choice egalitarians may even adopt a very demanding standard for determining when substantive inequalities stem from voluntary choices and when they do not. For instance, they may contend that Black underachievement in school stems from poor schooling choices of Blacks unless it can be convincingly shown that this is the result intentional racial discrimination by schools or teachers. Of course this is an unreasonable standard given the difficulty of proving intentional racial discrimination in concrete cases (Mickelson 2003). The present point, however, is simply to observe that choice egalitarianism squares with the core intuition of postracial political morality by locating a concern with individual choice and personal responsibility at the center of egalitarian justice and thereby rendering the call for justice colorblind.

Choice egalitarians might complain that their view should be applauded rather than scrutinized for accommodating a concern with freedom. While we can indeed applaud them for this, we can certainly scrutinize the way that they and libertarians focus too narrowly on a sense of freedom that stresses the capacity to make choices but pays insufficient attention to the broader conditions and circumstances that are necessary for persons to exercise this capacity effectively. Even Rawls—who emphasized the priority of liberty in articulating his theory of social justice—stated that liberty *only* takes priority when the conditions for equal liberty have been met. And a line of liberal thinkers including late nineteenth-century British new liberals such as Thomas Hill Green, and the great American philosopher John Dewey have also stressed the importance of realizing the social conditions of freedom (Darby 2009b). When we turn our attention to these conditions and circumstances, the limits of relying upon a sharp dualism between choices and circumstances to distinguish permissible from impermissible inequalities becomes apparent.

We have argued that the anatomy of colorblind justice, as shaped by this interplay of law, philosophy, and racial attitudes, has made resisting the retreat from desegregation a hard sell within an ethos where many people believe that factors having to do with Blacks themselves, not racial discrimination or anti-Black prejudice, best account for why racial inequalities in education and other areas persist. Colorblind justice—as it has taken shape in Supreme Court rulings and in choice egalitarianism—has made resisting the retreat from school desegregation difficult in this postracial ethos. While the problem of racial inequality in education is complex and desegregation may not be the silver bullet, there is cause to be concerned about the rapid resegregation of schools since the early 1990s (Boeger and Orfield, 2005; Orfield 2001). This body of evidence provides ample reason to criticize the retreat from desegregation.

THE BENEFITS OF SCHOOL DESEGREGATION

Desegregation outcomes have been studied in terms of multiple criteria, which as we review below, indicate modest academic social and long-term benefits for African Americans with little or no harm on White students (553 Social Scientists, 2006). However, a strongly negative view on the merits of school desegregation prevails among conservative policy experts and researchers (Armor 1995; Rossell 2002), and among large segments of the public, with an increasingly acute nostalgia for segregated schooling (Saad 2007). Therefore, it is important to put into context what is meant by desegregation “outcomes” and “benefits.”

A central criticism about desegregation is that it caused racial isolation and loss of wealth in urban areas due to the resulting affluent (particularly White) flight to the suburbs. However, such demographic changes can also be considered a condition that undermined, rather than resulted from, desegregation (James 1989). Not only does suburbanization of the predominantly White affluent date back to at least the 1950s (Jackson 1985), but desegregation programs, on average, tended to influence ongoing migration only to a limited degree and only during few years before and after the initial implementation (Farley et al., 1980; Wilson 1985). Ultimately, even this limited influence may have been absent had the 1974 *Milliken* ruling not complicated the inclusion of the suburbs to urban desegregation plans. Indeed, recent studies indicate that residential patterns became racially more integrated in county-wide school systems in the South during desegregation implementation (Frankenberg 2005).

Another criticism against desegregation has been that it impeded White students' learning. There is no solid evidence supporting this view either. Evidence on comparative academic performance suggests that White students rarely lost ground academically, and in some cases benefited in terms of learning outcomes (Cook et al., 1984). As Jennifer Hochschild and Nathan Skovronick (2003) point out, White harm occurred mostly when officials irresponsibly placed a handful of White students in predominantly Black schools for symbolic desegregation. Long-term trends at the national level indicate that average White academic performance did not suffer by any measure during desegregation years (Jencks and Phillips, 1998).

As far as Black students are concerned, the racial achievement gap narrowed notably across the nation during the desegregation years, between the mid-1960s and late 1980s (Hedges and Nowell, 1998). However, the gap has been widening since the early 1990s, with the return to segregation (Lee 2002). A similar reversal has occurred in the funding gap (Carey 2004), and drop out and college readiness gaps (Greene and Winters, 2005). The greatest extent of progress in Black high school graduation occurred between the 1960s and 1990s. In 1960, less than 25% of Blacks had at least a high school education, and by 1990 over 60% (National Center for Education Statistics 2001). In the same period, Blacks' SAT and ACT scores have also increased, indicating higher educational aspirations and better preparation for college (Hochschild and Skovronick, 2003).

Naturally, it is difficult to attribute improvements in Black educational outcomes entirely to school desegregation because much has changed for African Americans besides the schools, such as improvements in occupational status, political participation, and wealth accumulation (Grissmer et al., 1998; Jencks and Mayer, 1990; Rury and Hill, 2012). Nonetheless, evidence on the independent effects of desegregation is telling. In an oft-cited meta-analysis of desegregation's academic outcomes, Thomas Cook et al. (1984) found that integrated schools modestly benefited Black students' math scores, but considerably improved their reading performance. Others, such as David Armor (1995) and Christine Rossell (2002), have argued that controlling for SES nearly nullifies desegregation effects. Yet, the “competing effects” approach to evaluating

the relative roles of social class and racial/ethnic background ignores the complex overlap between race and class (Brooks-Gunn and Duncan, 1999). The resulting analytical biases may lead to the underestimation of desegregation outcomes, as well as to inconsistent findings depending on which other covariates are included in the models. There are indeed a number of other studies showing benefits of integrated education for African American performance, even when controlling for SES (Entwisle and Alexander, 1992; Trent 1997).

Nevertheless, most findings suggest that desegregation's academic benefits for Black students have often been modest in size, likely due to adverse effects in the non-school context, such as socioeconomic, family, and neighborhood disadvantage—effects that tend to undermine most educational initiatives, since education policy has little bearing on factors beyond the school. Ironically, the Supreme Court's openly colorblind perspective on segregation came at a time when analytical methodologies for examining desegregation effects had reached a level of sophistication far beyond that in earlier decades. Using hierarchical and longitudinal regression techniques, contemporary studies reduce prior estimation biases and decompose school and non-school effects more effectively (Mickelson 2008), revealing robust academic benefits of integrated schools for Black students without harm to Whites (Hanushek et al., 2009; Saatcioglu 2010). These findings imply that resegregation in the context of adverse non-school factors would aggravate educational inequality for many Black students.

Desegregation has also been shown to improve social outcomes for students, such as reduction in racial prejudice and greater appreciation for interracial cooperation, which positively influences learning gains and critical thinking skills as well (Braddock and Eitle, 2004). Moreover, integrated education predicts interracial trust and appreciation in adulthood (Mickelson 2008). Kristie Phillips et al. (2009) found that the racial mix of students' high schools significantly predicts the racial mix of the residential area students chose to live five years after graduation. Amy Wells et al. (2009) found that the majority of Black and White adults who had attended desegregated schools appreciated their experiences and aspired to live and work in diverse contexts in adulthood. A common problem many of them had, however, was that opportunities to realize such aspirations were limited due to less diverse social structural, economic, and occupational conditions beyond the schools.

The increasingly robust and favorable evidence on the virtues of school desegregation receives little attention in the legal, political, and public spheres in a postracial context. The prevalence of choice egalitarianism is reinforced by accompanying limitations in the political opportunity structure: (1) the federal retreat from desegregation; (2) suburban sprawl and associated isolation of minorities in urban areas; and (3) increasingly adverse non-school effects on the learning of disadvantaged students, who may not be able to realize their full potential by means of desegregation alone (Saatcioglu and Carl, 2011). These factors constrain the space for a dynamic conversation on the potential virtues of desegregation. Although recent attitudes make it unlikely for desegregation to reenter the policy agenda in the foreseeable future, they do not limit the risk of deeper divisions along educational, occupational, and racial/ethnic lines in coming decades. As Ronald Ferguson (2007) points out, there is no modern society that is politically and economically stable where there are also unjustifiably large disparities among racially and/or ethnically dissimilar groups. In Christopher Jencks et al.'s (1972) blunt words: "If we want a segregated society, we should have segregated schools. If we want a desegregated society, we should have desegregated schools" (p. 106). Contemporary postracialism and colorblind justice may obscure the need for such a daring perspective at a time when American society is irreversibly multicultural.

CONCLUSION

There is a limit to which democratic governments can force groups to integrate, since freedom and choice cannot be fully constrained for ideals of social and political equity and cohesion. But if “choice” is a central value, as libertarians and choice egalitarians presume, then all citizens deserve a fair choice set in determining preferences. Precluding school desegregation, and arguing—often untenably—that it has little merit is antithetical to basic ideals of fairness because it constrains educational choices and opportunities for many students and families. A more justifiable option may be to develop voluntary desegregation programs, inter-district transfer policies, and more meaningful investment and development in urban schools to attract non-urban students. Essentially, rather than wholly reject desegregation or deem it an “elitist fad,” it is possible to at least incentivize desegregation and maintain it as a future ideal. It’s true that the days of Jim Crow racism are far—though not all that far—behind us. But substantive racial inequalities in education remain, and there is evidence that desegregation has a measurable impact on mitigating them.

An influential empirical account of persistent racial inequality suggests that the interaction between structural and cultural factors best explains this (Wilson 2009). This account, which has been deemed too liberal by some, is not without critics (Darity 2011). But if it has merit, then desegregation and other remedies, which target structural factors, still have a vital role to play in addressing the unchosen circumstances that influence individual choices. Our hope is that by casting light on the anatomy of colorblind justice and its limits, we have contributed to ongoing efforts to ensure that school desegregation and broader color-conscious remedies remain in the conversation about how to address racial inequalities in education, and how to satisfy the demands of racial justice.

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NOTES

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2. Such a demonstration (i.e., “the smoking gun”) was problematic for two fundamental reasons. First, many suburbs had little direct role in urban segregation because the suburbanization process gained momentum decades after patterns of segregation were institutionalized in the cities (Rury and Mirel, 1997). And second, any direct role the suburbs may have played in urban segregation—for example due to racial exclusion in suburbanization or the manipulation of urban/suburban residential or school boundaries (Massey and Denton, 1993; Wilson 1987)—were extremely difficult to document and time-consuming to prove in court.
3. For a discussion of this connection between Charles Murray and Robert Nozick, see Katz (1989).

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