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RACE WITHOUT RACISM: RELIGIOUS SCHOOL CURRICULA AND THE RACE-NEUTRAL LEGACY OF *BROWN*

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INTRODUCTION

For many, *Brown v. Board of Education* stands for everything great about education law and progress for educational equality.[1] Yet, we cannot deny that seventy years after Justice Warren declared that education was "the most important function of state and local governments" and that in the field of education, separate but equal had "no place," the utopia of racially integrated and equal schools is far from being reality.[2] For many American students, primary and secondary education remains as segregated, if not more so, than it was in the twentieth century.[3]

Segregation is not the only vice characterizing public education. Socioeconomic inequality, poor resources, and a lack of teachers also make up some of the challenges facing the public education system.[4] Increasingly, the media and the public believe that public schools are failing, and many have turned toward school choice frameworks as a solution to the failures of public schools.[5] While school choice

1. *See, e.g.*, RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY 780-89 (Vintage Books 2004) (1975) (arguing that despite *Brown*'s shortcomings, Black people were better off in 2004 than in 1954); *see also* JUSTIN DRIVER, THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT, AND THE BATTLE FOR THE AMERICAN MIND 311-12 (2018) (arguing that *Brown*'s legacy might not have achieved full integration in schools across the country, but that its significance extends beyond its original educational context).

2. Brown v. Bd. of Educ., 347 U.S. 483, 493, 495 (1954); *see* DEREK W. BLACK, SCHOOLHOUSE BURNING: PUBLIC EDUCATION AND THE ASSAULT ON AMERICAN DEMOCRACY 29 (2020) (noting the problem of segregation in schools today); JON N. HALE, THE CHOICE WE FACE: HOW SEGREGATION, RACE, AND POWER HAVE SHAPED AMERICA'S MOST CONTROVERSIAL EDUCATION REFORM MOVEMENT 8-9 (2021) (discussing how school choice has perpetuated race and class divisions in education).

3. *See* Thiru Vignarajah, *Introduction* to STEPHEN BREYER, BREAKING THE PROMISE OF *BROWN*: THE RESEGREGATION OF AMERICA'S SCHOOLS 1, 3, 35 (2022); *see also* BLACK, *supra* note 2, at 29-30; HALE, *supra* note 2.

4. *See generally* AMANDA E. LEWIS & JOHN B. DIAMOND, DESPITE THE BEST INTENTIONS: HOW RACIAL INEQUALITY THRIVES IN GOOD SCHOOLS (2015); H. RICHARD MILNER IV, RAC(E)-ING TO CLASS: CONFRONTING POVERTY AND RACE IN SCHOOLS AND CLASSROOMS (2015). Both books demonstrate that racial status still connects to academic achievement.

5. Many scholars argue that this turn toward choice is a threat to public education. *See* MERCEDES K. SCHNEIDER, SCHOOL CHOICE: THE END OF PUBLIC EDUCATION?, at xvii (2016); JACK SCHNEIDER & JENNIFER BERKSHIRE, A WOLF AT THE SCHOOLHOUSE DOOR: THE DISMANTLING OF PUBLIC EDUCATION AND THE FUTURE OF SCHOOL, at xv-xvi (2020); DIANE RAVITCH, SLAYING GOLIATH: THE PASSIONATE RESISTANCE TO PRIVATIZATION AND THE FIGHT TO SAVE AMERICA'S PUBLIC SCHOOLS 5-6 (2020).

frameworks are praised for their ability to further innovation and respond to market interests, they share a long legacy connected to *Brown* and the resistance that followed the decision.[6]

Ignoring the racist roots of school choice reform "conceal[s] [the] problematic and paradoxical development of school choice over time."[7] When the Court decided *Brown*, southern parents and politicians immediately latched onto the private school loophole—that is, the fact that *Brown* only applied to public education.[8] They strategized on how to use public money to support these private educational institutions, and the frameworks of vouchers and tax credits—now hailed as the saviors of choice—were born.[9] But this is not just a lesson of history; today, school choice still maintains its connection to those racist segregationist roots, as private school enrollment is majority white.[10]

Religious private schools are not exempt from this history.[11] Like segregation academies, southern religious private schools also became vessels for segregation and, unlike other private schools, were not legally desegregated until 1983.[12] Due to their nature as religious institutions, the Court desegregated these schools by connecting desegregation to tax-exempt status.[13]

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6. *See* HALE, *supra* note 2, at 11-14; STEVE SUITTS, OVERTURNING *BROWN*: THE SEGREGATIONIST LEGACY OF THE MODERN SCHOOL CHOICE MOVEMENT 9-11 (2020); MICHAEL W. APPLE, EDUCATING THE "RIGHT" WAY: MARKETS, STANDARDS, GOD, AND INEQUALITY 109-10 (2d ed. 2006). *See generally* Vania Blaiklock, *The Unintended Consequences of the Court's Religious Freedom Revolution: A History of White Supremacy and Private Christian Church Schools*, 117 NW. U. L. REV. ONLINE 46 (2022), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1324&context=nulr_online [https://perma.cc/8JNP-ADGZ]. In fact, Michael Apple argues that "race has always been a key presence in the structures of feeling surrounding markets and choice plans in education." APPLE, *supra*, at 109.

7. HALE, *supra* note 2, at 4.

8. *See id.* at 3, 21-25 (describing the connection between freedom of choice plans and desegregation resistance); *see also* SUITTS, *supra* note 6, at 22-24 (arguing that the early language of these strategies was explicit in their avoidance of desegregation).

9. HALE, *supra* note 2, at 25-26; *see also* SUITTS, *supra* note 6, at 13.

10. HALE, *supra* note 2, at 11 (stating that 70 percent of private school enrollment is white); *see also* SUITTS, *supra* note 6, at 74-75 (reporting a study from the 2000s that shows that most private schools are still segregated).

11. *See* Blaiklock, *supra* note 6, at 57-62.

12. *See* Bob Jones Univ. v. United States, 461 U.S. 574 (1983). Michael Apple argues that religion is a useful way to hide racist motivations because it obscures race from decision-making so that parents and schools make discriminatory decisions based on their religious beliefs, not racist beliefs. *See* APPLE, *supra* note 6, at 164.

13. *See Bob Jones Univ.*, 461 U.S. at 589-93.

Even still, the requirements that the IRS set for enforcing this ruling were so minimal that most religious schools could continue with majority-white spaces without truly risking their tax-exempt status.[14] Religious private schools exist as historical sites of segregation while also continuing to perpetuate majority-white spaces in the present.[15] This Article, however, seeks to move beyond this obvious demographic connection that religious private schools have to the legacy of *Brown*. To do so, I will examine how these schools exist as ideological sites of resistance to *Brown*'s goal of racial equity through their curricula.

Current conversations about race and equity curricula in primary and secondary education exclude examining religious curricula because of their private classification.[16] Yet, this omission prevents us from exploring how religious curricula might mirror the legal transformation of *Brown*'s racial equality legacy to constitutional race neutrality.[17] This Article brings religious curricula into these conversations by specifically linking the Court's race-neutral transformation of *Brown* to the way religious curricula frame discussions about race without racism.[18] Throughout the Article, I argue that the Court's transformation of *Brown* is not just a top-down legal framework but also a bottom-up educational ideology. By making this connection, this Article suggests that religious schools are relevant to the legacy of *Brown* in the present as well as the past.

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14. *See* SUITTS, *supra* note 6, at 63; *see also* Blaiklock, *supra* note 6, at 66-68.

15. *See* SUITTS, *supra* note 6, at 89.

16. *See* Rebecca Klein, *The Rightwing US Textbooks that Teach Slavery as 'Black Immigration,'* GUARDIAN (Aug. 12, 2021, 7:00 AM), https://www.theguardian.com/education/2021/aug/12/right-wing-textbooks-teach-slavery-black-immigration [https://perma.cc/FGL7-ZM5T] (arguing that even though private schools are left out of the current curriculum conversation, they have "quietly been excluding diverse voices and teaching biased versions of history for years").

17. I will use the term race neutrality interchangeably with the term colorblindness as a way of expressing the notion that race has no place in constitutional interpretation or enforcement. For a more detailed discussion of colorblindness, see generally EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA (6th ed. 2022). For the Supreme Court's articulation of colorblindness, see Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting); see also Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 746 (2007); Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2175 (2023).

18. By race without racism, I mean the calculated effort to cultivate discriminatory ideology without explicitly denying events of America's racist past.

Thus, this Article is set up in two Parts. Part I considers how the Court moved from *Brown* to *Parents Involved in Community Schools v. Seattle School District No. 1* to *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*.[19] Like others, I argue that Chief Justice Roberts's opinion in *Parents Involved* solidified a race-neutral interpretation of *Brown*.[20] By race-neutral, I mean both the specific idea or belief that any consideration of race by the government is prohibited by the Equal Protection Clause of the Fourteenth Amendment as well as the general notion that the Constitution should be colorblind.[21] This Part also situates the Court's most recent affirmative action decision, *Students for Fair Admissions*, into this legacy of race neutrality and constitutional colorblindness. Lastly, this Part concludes by suggesting that this concerted effort to transform *Brown* reflects the inherent power of the decision's ideological force.[22]

Part II then provides a limited case study on the way that Abeka—one of the leading Christian curriculum companies[23]—discusses race in its recommended history book for eleventh graders, *United States History: Heritage of Freedom in Christian Perspective*.[24] I draw examples from the book's coverage of Black American experiences during slavery, Reconstruction, the civil rights movement, and the twenty-first century. In each example, the curriculum includes what is necessary to tell a positive narrative of American history that diminishes America's legacy of racism and oppression. Using these examples as a limited case study, I argue that some

19. *See Parents Involved*, 551 U.S. at 747-48 (holding that schools cannot voluntarily consider race even for the purpose of facilitating integration); *see also Students for Fair Admissions*, 143 S. Ct. at 2175 (holding that race-conscious college admission policies cannot satisfy strict scrutiny by simply arguing that the policies attempt to enhance diversity).

20. *See, e.g.*, Christopher W. Schmidt, Brown *and the Colorblind Constitution*, 94 CORNELL L. REV. 203, 203-09 (2008) ("*Brown v. Board of Education* has always featured prominently in debates over 'colorblind' constitutionalism." (footnote omitted)).

21. *Id.* at 203-04.

22. This Article will argue that those in search of racial equity can reclaim the power of *Brown*. But to do so, we must first understand that the conservative Court is not alone in co-opting this power. The co-option has also been furthered by grassroots efforts.

23. PAUL F. PARSONS, INSIDE AMERICA'S CHRISTIAN SCHOOLS 40 (1987); *see also Why Choose Abeka?*, ABEKA, https://www.abeka.com/christianschool/whyabeka/ [https://perma.cc/8SKP-JCGJ].

24. For the history textbook, see MICHAEL R. LOWMAN, UNITED STATES HISTORY: HERITAGE OF FREEDOM IN CHRISTIAN PERSPECTIVE (4th ed. 2020).

religious curricula facilitate a discussion of racial events without racism, erasing voices of color and elevating white supremacy in a way that complements constitutional ideology.[25]

Resistance to *Brown* has been just as infamous as the decision itself.[26] Understanding the historical and modern resistance, along with appreciating the great promise of *Brown*, reinforces why the decision "has never been treated like an ordinary Supreme Court opinion."[27] If we truly want to reclaim *Brown* as the foundation for racially equitable education, then we must arm ourselves with knowledge of the ways the decision continues to be defied both legally and in practice.

I. *BROWN*'S COLORBLIND CONVERSION

It is impossible to overstate the impact of *Brown*. When the NAACP's Legal Defense Fund decided to confront segregation head on, it was not clear that they would be successful.[28] Chief Justice Warren's declaration that "[s]eparate educational facilities are inherently unequal" was far from a foregone conclusion.[29] Richard Kluger's comprehensive tracking of the four cases that were consolidated into *Brown* demonstrated that the outcome of *Brown* was not merely a product of moral correctness but also the result of circumstantial alignment.[30]

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25. For the purposes of this Article, white supremacy refers to a power system where whiteness is the dominant political, economic, and cultural force maintained through a right to exclude. *See* Charles W. Mills, *White Supremacy*, *in* A COMPANION TO AFRICAN-AMERICAN PHILOSOPHY 269, 269-76 (Tommy L. Lott & John P. Pittman eds., 2006); *see also* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1714, 1736 (1993).

26. *See* Vignarajah, *supra* note 3, at 8 ("Rare in American history has a decision with so much promise met with such resistance.").

27. Schmidt, *supra* note 20, at 214.

28. *See, e.g.*, KLUGER, *supra* note 1, at 592 (arguing that most of the records and memories of the Vinson Court deliberations suggested that the Chief Justice was "not ready to support the abolition of segregation").

29. Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).

30. The most important circumstance was Justice Vinson's unexpected death and Earl Warren's unexpected appointment as his replacement. Kluger implies (and I think he is right) that had Justice Vinson not had a heart attack, the outcome of *Brown* would have been much different. *See* KLUGER, *supra* note 1, at 659-68 (detailing how Justice Vinson's death and Justice Warren's appointment changed the trajectory of the segregation cases).

Yet, moral correctness and luck of circumstances were not enough to isolate *Brown* from immediate resistance and contentious interpretation. In many places, this resulted in what the literature calls "Massive Resistance"—a time when states and localities met desegregation with physical force and political defiance.[31] Often this form of resistance to *Brown* predominates the narrative, but this is not the only way people resisted the decision. Legal resistance to *Brown* relied on criticisms of the decision's rationale and judicial methodology instead of explicit segregationist arguments.[32] Distancing legal criticism of *Brown* from racism legitimized theoretical aversions to integration as simple rejections of "judicial activism" which purportedly had nothing to do with race.[33]

Even with this resistance, *Brown* remained the judicial litmus test for moral correctness.[34] For that reason, the entire legal profession—from judges to lawyers—must account for the decision in their approach and application of the Constitution.[35] For example, even though Chief Justice Warren was very explicit that the Court cannot "turn the clock back"[36] in *Brown*, conservatives who subscribe to an originalist approach—the notion that constitutional meaning is *exclusively* derived from the original meaning as

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31. *See* Vignarajah, *supra* note 3, at 8. The details of Massive Resistance are outside of the scope of this Article, but for a more comprehensive view of how violent and forceful the resistance was, see generally JOHN KYLE DAY, THE SOUTHERN MANIFESTO: MASSIVE RESISTANCE AND THE FIGHT TO PRESERVE SEGREGATION (2014); MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION (Clive Webb ed., 2005).

32. *See, e.g.*, Alexander M. Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1, 3, 7, 63-65 (1955) (critiquing the Warren Court for ignoring the historical "fact" that the Fourteenth Amendment did not appear to support integration); *see also* Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 26, 31-34 (1959) (critiquing the Warren Court as being unprincipled in its *Brown* analysis and therefore suggesting that the case is illegitimate).

33. *See, e.g.*, Calvin TerBeek, *"Clocks Must Always Be Turned Back":* Brown v. Board of Education *and the Racial Origins of Constitutional Originalism*, 115 AM. POL. SCI. REV. 821, 822 (2021) (arguing that conservative originalism has its roots in racist resistance to *Brown*).

34. *See* Pamela S. Karlan, *What Can* Brown *Do For You?: Neutral Principles and the Struggle over the Equal Protection Clause*, 58 DUKE L.J. 1049, 1060 (2009).

35. *See* Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 VA. L. REV. 947, 952 (1995); ROBERT H. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 77 (1990); Karlan, *supra* note 34 (arguing that "*Brown* has become the crown jewel of the *United States Reports*," and as such, "[a] constitutional theory that cannot produce the result reached in *Brown*—the condemnation of de jure Jim Crow—is a constitutional theory without traction").

36. Brown v. Bd. of Educ., 347 U.S. 483, 492 (1954).

understood at the time the provision was ratified—have found a myriad of ways of reclaiming *Brown* as originalist.[37]

Typically, originalists do this by agreeing with the outcome of *Brown* but disparaging the Warren Court's rationale. For example, as early as 1995, Professor Michael McConnell argued that the Warren Court could have decided *Brown* using originalism if it had relied on the congressional debates of the Civil Rights Acts of 1866 and 1875.[38] He argues that those debates demonstrate that Congress intended the Fourteenth Amendment to prohibit segregated schools.[39] Congressional intent is key to McConnell's analysis because he argues that the Reconstruction Amendments were specifically a "congressional creation" over which "[t]he states and the people exercised little control."[40]

Likewise, Professor Stephen Calabresi and Michael Perl argue that not only can originalism produce the decision in *Brown*, but that it is the only method of judicial interpretation that can legitimately deliver *Brown*'s outcome.[41] They argue that the mere presence of educational provisions in state constitutions during the passing of the Fourteenth Amendment shows that states recognized a "child's right to a free public school education."[42] Both McConnell's

37. For a definition of originalism, see FRANK B. CROSS, THE FAILED PROMISE OF ORIGINALISM 1 (2013) (defining originalism as the belief that "the Constitution should be interpreted according to the meaning or intent of the drafters"); see also Jamal Greene, *On the Origins of Originalism*, 88 TEX. L. REV. 1, 9 (2009) (noting that originalism requires not only fidelity to the meaning or intent of the drafters but also the consideration that the original understanding is dispositive). This is by no means a complete and comprehensive definition, as the term "originalism" has been analyzed and evolved tremendously since the 1970s. For my purposes, however, this definition captures the general understanding of the term. For originalist interpretations of *Brown*, see generally McConnell, *supra* note 35; see also Steven G. Calabresi & Michael W. Perl, *Originalism and* Brown v. Board of Education, 2014 MICH. ST. L. REV. 429.

38. *See* McConnell, *supra* note 35, at 958-59, 985.

39. *Id.* at 1104-05.

40. *Id.* at 1109. McConnell's reliance on congressional intent, however, made his argument easy to criticize and deconstruct. *See generally* Michael J. Klarman, Response, Brown*, Originalism, and Constitutional Theory: A Response to Professor McConnell*, 81 VA. L. REV. 1881 (1995) (arguing that McConnell's evidence was poor because it did not meet originalist standards and the evidence itself is flawed).

41. Calabresi & Perl, *supra* note 37, at 440.

42. *Id.* at 460. Interestingly, Calabresi and Perl never really address the important distinction between a fundamental right to education and a fundamental right to integrated education. Even if one takes their evidence as correct on its face, it would not be illogical to conclude from that evidence that the education states valued would be a segregated education,

work and Calabresi and Perl's are just major examples of originalist attempts to justify *Brown*; there are others.[43]

While these originalist defenses of *Brown* look at evidence from either Congress or the states in the aftermath of the Fourteenth Amendment's passing and ratification, most do not address the immediate white resistance to *Brown* after the Warren Court's decision.[44] This omission is not meaningless, because the foundation of originalism—the theoretical aversion to "judicial activism"—formed specifically out of this resistance.[45] Additionally, the incompatibility of originalism's resistance origins to its later reclaiming of *Brown* mirrors the way that colorblind Justices (who often also subscribe to originalism)[46] have reclaimed *Brown*'s legacy as one of race neutrality.[47]

There are many ways to approach understanding that legacy. Those involved in litigating the decision saw *Brown* as a beacon of hope for the entire civil rights movement.[48] Famously, Thurgood Marshall was quoted saying that all school segregation would be destroyed in the next few years.[49] Of course, time proved Marshall's sentiment overly optimistic, but it reflects the universal attitude

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based on actual practice at the time. *See* McConnell, *supra* note 35, at 965; *see also* Klarman, *supra* note 40, at 1927. For a detailed critique of their argument, see Ronald Turner, *On* Brown v. Board of Education *and Discretionary Originalism*, 2015 UTAH L. REV. 1143, 1192.

43. *See* BORK, *supra* note 35, at 76-77 (arguing that *Brown* was consistent with the original understanding of the Fourteenth Amendment's Equal Protection Clause); *see also* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 87-88 (2012) (arguing that it is reasonable to interpret the original meaning of the Fourteenth Amendment to prohibit all laws that would assert the separateness and superiority of the white race, and citing Justice Harlan's dissent in *Plessy v. Ferguson* for authority).

44. One exception is Professor McConnell's article. *See* McConnell, *supra* note 35, at 1133-34.

45. *See* ERIC J. SEGALL, ORIGINALISM AS FAITH 57-64 (2018).

46. *See* Schmidt, *supra* note 20, at 206.

47. This strategy of using language intended to further anti-racist outcomes to further anti-Black realities is a very common white supremacist strategy, even if only recently discussed. *See, e.g.*, Corinne Mitsuye Sugino, *Multicultural Anti-Racism: Anti-Blackness and Asian Americans in* Students for Fair Admissions v. Harvard, 86 W.J. COMMC'N 423 (2022) (arguing that the recent affirmative action decision is an example of how white supremacy co-opts anti-racism strategies to continue and strengthen racism).

48. *See* KLUGER, *supra* note 1, at 717.

49. *See id.*

surrounding the symbolism of a decision negating "separate but equal" when it came to race.[50] For many scholars, *Brown*'s symbolism is sufficient for deeming the decision a success both on the merits and for what the decision did to open the door for future race equality in the law.[51]

Yet, the decision is not without criticism. Practically speaking, fully integrated school systems were never obtained, and desegregation led to an ongoing strategic and violent battle.[52] Additionally, Black Americans have expressed dissatisfaction with the one-sidedness of desegregation and the lack of the ultimate benefit: long-term Black educational advancement.[53] The pros and cons to *Brown*'s forced desegregation make up a significant part of the complex literature on the decision's legacy.[54] Any discussion of *Brown*'s legacy, however, cannot be complete without comprehending the precedential impact of the decision on the modern Court.[55]

Today's precedential use of *Brown* remarkably owes its rationale to language found in the dissent of *Plessy v. Ferguson*— the decision *Brown* overturned—and not the text of *Brown* itself.[56] Justice

50. Even those who fiercely criticize *Brown*'s practical impact on integration acknowledge its symbolic power. *See* DERRICK BELL, SILENT COVENANTS: *BROWN V. BOARD OF EDUCATION* AND THE UNFULFILLED HOPES FOR RACIAL REFORM 2-10 (2004).

51. *See, e.g.*, KLUGER, *supra* note 1, at 780; *see also* DRIVER, *supra* note 1, at 249-59.

52. I intentionally distinguish desegregation and integration because while often conflated, there are strong arguments that they are not the same. *See* SONYA DOUGLASS HORSFORD, LEARNING IN A BURNING HOUSE: EDUCATIONAL INEQUALITY, IDEOLOGY, AND (DIS)INTEGRATION 4 (2011) (defining desegregation as the means of obtaining integration but arguing the terms should not be used interchangeably).

53. *See, e.g.*, SARAH GARLAND, DIVIDED WE FAIL: THE STORY OF AN AFRICAN AMERICAN COMMUNITY THAT ENDED THE ERA OF SCHOOL DESEGREGATION, at ix, 194-96 (2013). Derrick Bell goes so far as to argue that the NAACP, by solely focusing on segregation, sacrificed educational equality—which was the real goal of most Black parents. *See* Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 488-500, 516 (1976).

54. For the unintended costs of desegregation, see generally VANESSA SIDDLE WALKER, THEIR HIGHEST POTENTIAL: AN AFRICAN AMERICAN SCHOOL COMMUNITY IN THE SEGREGATED SOUTH (1996); ADAM FAIRCLOUGH, A CLASS OF THEIR OWN: BLACK TEACHERS IN THE SEGREGATED SOUTH (2007); GARLAND, *supra* note 53. The scholars all describe the costs that desegregation had on Black teachers and Black schools.

55. In that way, this Article builds upon the debate highlighted in Schmidt's *Colorblind Constitution* by looking at how this struggle over *Brown*'s meaning translates into spaces outside of legal academia. *See* Schmidt, *supra* note 20, at 214.

56. This is not to ignore the work done by Christopher Schmidt, who brilliantly shows that the history of the litigation leading up to *Brown* does indeed include arguments for colorblind constitutionalism. *See id.* at 206-07. Yet even Schmidt recognizes that an unqualified

Harlan's position that "in the eye of the law, there is in this country no superior, dominant, ruling class of citizens" such that we must conclude that "[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens" has become the official interpretation of *Brown* from the Supreme Court.[57]

Justice Harlan's dissent was the foundation for the idea that the Equal Protection Clause of the Fourteenth Amendment means that generally lawmakers cannot consider race, no matter the circumstances, when making law.[58] While advocates for the civil rights movement may have at one time appealed to colorblindness as a mechanism for equality, today the ideology generally translates to prohibiting race-conscious law that could help move a non-equal society to a genuinely equal one.[59] Thus, the colorblind approach, despite any idealistic origins, has become "a centerpiece of conservative constitutional interpretation."[60]

As the modern Court became more conservative, it is no surprise that it continued to accept this interpretation of *Brown*'s legacy despite Chief Justice Warren's specific statement that the ruling in

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articulation of a colorblind constitution is not compliant with the message of the NAACP at the time and, regardless, the point stands that this "history" is not relied on in the actual opinion of *Brown*. *Id.* at 204, 208, 217, 225.

57. Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). For an early expression of this dissent as the position of *Brown*, see Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 772 (2007) (Thomas, J., concurring). The majority adopts this argument explicitly in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2175 (2023).

58. *See Parents Involved*, 551 U.S. at 772; *see also Students for Fair Admissions*, 143 S. Ct. at 2175. For scholarly work on colorblind constitutionalism, see generally Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over* Brown, 117 HARV. L. REV. 1470 (2004) (arguing that a colorblind interpretation of *Brown* formed in light of the attacks on the decision's legitimacy in the 1950s and 60s).

59. For arguments about the civil rights movement's use of colorblind rhetoric, see Schmidt, *supra* note 20, at 225-26; see also Ian F. Haney López, *"A Nation of Minorities": Race, Ethnicity, and Reactionary Colorblindness*, 59 STAN. L. REV. 985 (2007). For critiques of the Court's current use of colorblind rhetoric when it comes to race equality, see IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM & WRECKED THE MIDDLE CLASS 89-92 (2014) (arguing that colorblind rhetoric reinforces dog whistle complaints on racism and white supremacy); see also Neil Gotanda, *A Critique of "Our Constitution is Color-Blind*," 44 STAN. L. REV. 1, 5-7 (1991) (arguing that colorblind constitutionalism limits the Court's ability to address racial inequalities). Additionally, Schmidt shows that those involved in the *Brown* litigation have come out against the use of their appeals to colorblindness to remove all racial classifications in the law. *See* Schmidt, *supra* note 20, at 204.

60. Schmidt, *supra* note 20, at 237.

Brown cannot rely on the ideas of "1896 when *Plessy v. Ferguson* was written."[61] No two decisions demonstrate this acceptance better than *Parents Involved in Community Schools v. Seattle School District No. 1* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*.[62] Both cases dealt with concerns about whether racial classifications for equality outcomes can survive the Court's strictest standard of scrutiny, the former in primary and secondary education and the latter in higher education.[63]

Parents Involved is a consolidation of two cases dealing with race-conscious programs in state primary and secondary education.[64] The named case involved a Seattle program that let students rank their preference for high school.[65] If there was a tie when placing students, the tiebreaker first went to the student with a sibling at the school, and the district next considered the racial composition of the school.[66]

The other case concerned a Kentucky school program that "require[d] all nonmagnet schools to maintain a minimum [B]lack enrollment of 15 percent, and a maximum ... of 50 percent."[67] Students in this district could be denied from attending the school closest to their location due to either lack of space or the application of the racial guidelines.[68] The Court considered both of these programs as voluntary integration programs, even though only the Kentucky district had previously been under a desegregation order due to maintaining a segregated school system.[69]

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61. Brown v. Bd. of Educ., 347 U.S. 483, 492 (1954); *see also* Schmidt, *supra* note 20, at 208, 238 (noting that the Warren Court intentionally "rejected an anticlassification rationale for *Brown*").

62. 551 U.S. 701 (2007); 143 S. Ct. 2141 (2023). *Parents Involved* is when the Court first officially endorsed a race-neutral interpretation of *Brown* and, by extension, the Fourteenth Amendment. *See* Schmidt, *supra* note 20, at 204.

63. *See* Kathryn A. McDermott, Elizabeth DeBray & Erica Frankenberg, *How Does* Parents Involved in Community Schools *Matter? Legal and Political Influence in Education Politics and Policy*, TCHRS. COLL. REC., Dec. 2012, at 1, 2-3. Strict scrutiny is the standard by which the Court evaluates laws that consider race. *Parents Involved*, 551 U.S. at 720.

64. *Parents Involved*, 551 U.S. at 711, 715.

65. *Id.* at 711.

66. *Id.* at 711-12.

67. *Id.* at 716.

68. *Id.* at 716-17.

69. *Id.* at 712, 715-16.

White parents challenged these programs, arguing that they were unconstitutional because they considered race when placing students into schools.[70] In response to these challenges, the Court relied on case law that limited the impact of *Brown* through the application of strict scrutiny.[71] Strict scrutiny is the Court's highest level of review, and for a law to survive this standard, it must be "'narrowly tailored' to achieve a 'compelling' government interest."[72]

Racial classifications, regardless of whether they burden or benefit an individual, invoke this standard.[73] The rationale behind this standard is that because our government has a history of using race illegitimately, courts should be hesitant to trust that the government is using race for a legitimate reason.[74] While it is difficult to satisfy this standard, cases involving racial classifications for the purposes of furthering diversity and remedying past discrimination have been constitutional under strict scrutiny.[75]

Yet, in *Parents Involved*, Chief Justice Roberts found these two interests to not be compelling enough in the primary and secondary educational context.[76] First, he disregarded any past racial discrimination by relying on formalities—that the Seattle school district never had legal segregation and that the Kentucky district had reached "unitary status."[77] Additionally, he disregarded diversity as a compelling government interest because he differentiated the *Parents Involved* programs as "racial balancing" that depended on "demographics," different from the accepted affirmative action programs that take a holistic approach to diversity.[78] And even though these programs were seeking to achieve the outcome

70. *See id.* at 710-11.

71. *Id.* at 722-25.

72. *Id.* at 720.

73. *Id.*

74. *See id.* at 742.

75. *See, e.g.*, Grutter v. Bollinger, 539 U.S. 306, 343-44 (2003); Fisher v. Univ. of Tex. at Austin, 579 U.S. 365, 388-89 (2016). Both cases allowed affirmative action policies because of the government's compelling interest in diversity.

76. *See Parents Involved*, 551 U.S. at 730.

77. *Id.* at 720-21.

78. *Id.* at 722-26, 731. Importantly, later in *Students for Fair Admissions*, Chief Justice Roberts limited diversity as a compelling interest. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2166-68 (2023). But at the time of *Parents Involved*, he still accepted it as a circumstance in which racial classifications can survive strict scrutiny.

commanded by *Brown*—that is, diverse and integrated classrooms—Chief Justice Roberts rejected any outcome-based interpretation of *Brown*.[79]

This rejection of an outcome-based interpretation of *Brown* allowed Chief Justice Roberts to usher in race neutrality/colorblindness as the decision's official precedential value.[80] Ignoring the text, context, and history of *Brown*, Chief Justice Roberts conflated the Seattle and Kentucky programs designed to increase integration with the Jim Crow segregation of the past.[81] Cleverly, he suggested that the racial discrimination experienced by the Black students in segregated schools is no different than the differential treatment experienced by white students in these voluntary integration programs.[82]

He emphasized this conflation by saying that "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[83] Under this rationale, Chief Justice Roberts was able to argue that *Brown* is about ending racial classifications (race neutrality) and not about eliminating racial inequality.[84] Thus, after *Parents Involved*, the Court can rely on *Brown* not as a barrier to racially unequal outcomes, but as a way to prohibit any state from legitimately using racial classifications under the Fourteenth Amendment, regardless of any evidence of that use aiding racial equality.[85]

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79. *Parents Involved*, 551 U.S. at 742 (holding that the Court has "repeatedly rejected" the claim that racial classifications designed for inclusivity are better or different than those designed for exclusivity).

80. *Id.* at 730 (noting that "[a]ccepting racial balancing as a compelling state interest would ... [be] contrary" to the idea that the Equal Protection Clause commands race-neutral treatment of citizens as individuals); *see also* Schmidt, *supra* note 20, at 204.

81. *Parents Involved*, 551 U.S. at 735, 747 ("Before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin. The school districts in these cases have not carried the heavy burden of demonstrating that we should allow this once again—even for very different reasons.").

82. *See id.* at 745-46.

83. *Id.* at 748.

84. *See id.* at 746. Critics of this opinion were quick to point out that Chief Justice Roberts not only created this new interpretation of the Fourteenth Amendment but also used this decision to claim the history of *Brown* in a dishonest way. *See* Schmidt, *supra* note 20, at 204-05. Justice Breyer's dissent, for example, argued that *Brown* and the Fourteenth Amendment are about "the promise of true racial equality," not colorblindness. *Parents Involved*, 551 U.S. at 867 (Breyer, J., dissenting); *see also* Vignarajah, *supra* note 3, at 1.

85. Christopher Schmidt argues that *Brown* becomes the constitutional home for

This prohibition on racial classifications did not stop with voluntary education programs aimed at successfully integrating primary and secondary schools. The Roberts Court in *Students for Fair Admissions* extended this ideology in the college admissions context.[86] *Students for Fair Admissions*, similar to *Parents Involved*, is a decision "premised on a sweeping condemnation of racial classifications."[87]

The two schools involved, Harvard College and the University of North Carolina (UNC) both had admissions policies that allowed for reviewers to consider race as a factor when making decisions about admissions.[88] At Harvard, a subcommittee could consider race when making their final recommendation to the full committee, and at UNC, the initial admissions readers were required to consider race when making their decisions for admissions.[89] Students for Fair Admissions (SFFA), a nonprofit organization set on eliminating affirmative action in college admissions, alleged that these policies violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment.[90]

In both cases, the district courts upheld the admissions policies as constitutional based on Supreme Court precedent.[91] In prior decades, the Supreme Court had affirmed that diversity in higher education was one of the few race-conscious compelling government interests sufficient to overcome strict scrutiny in education.[92] Both

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colorblind principles because colorblind principles cannot be found in the original meaning of the Fourteenth Amendment. Schmidt, *supra* note 20, at 206.

86. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2154, 2175 (2023).

87. Schmidt, *supra* note 20, at 209; *see Students for Fair Admissions*, 143 S. Ct. at 2165, 2168.

88. *Students for Fair Admissions*, 143 S. Ct. at 2154-55.

89. *Id.*

90. *Id.* at 2156. For background on SFFA, see *About*, STUDENTS FOR FAIR ADMISSIONS, https://studentsforfairadmissions.org/about/ [https://perma.cc/FE8A-Q45C]. The founder of SFFA, Edward Blum, also helped get *Shelby County v. Holder*, 570 U.S. 529 (2013), to the Supreme Court—a decision that helped limit the force of the Voting Rights Act of 1965. *See* Sugino, *supra* note 47, at 423.

91. *Students for Fair Admissions*, 143 S. Ct. at 2157.

92. *See* Grutter v. Bollinger, 539 U.S. 306, 341 (2003); Fisher v. Univ. of Tex. at Austin, 579 U.S. 365, 381 (2016). This was true even in *Parents Involved*, when Chief Justice Roberts acknowledged diversity as a compelling government interest; he just dismissed it as not a present interest in the Seattle and Kentucky programs. Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 722-25.

Harvard and UNC relied on this precedent and asserted a need for diversity as the reason behind their admissions policies.[93]

For the first time, in *Students for Fair Admissions*, the Supreme Court rejected that conclusion and limited the compelling interest of diversity—one of the last constitutionally acceptable ways of using race consciousness in education to attain equal opportunity.[94] Chief Justice Roberts did not completely reject diversity as a compelling government interest, but he did make it harder for a state or private institution to demonstrate that interest.[95] He did so by arguing that, in this case, diversity was not enough for two reasons: (1) neither school could show how their plans further diversity outside of racial stereotyping, and (2) neither school provided an end date to the need for their policies to obtain diversity.[96] Thus, both schools' admissions policies were unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.[97]

This conclusion relied heavily on the Court's understanding of diversity, racial classifications, and *Brown*'s legacy. Using *Regents of the University of California v. Bakke* and *Grutter v. Bollinger*, Chief Justice Roberts argued that the Court never intended diversity to be a limitless compelling government interest and that they had always allowed it cautiously.[98] This need for caution rested on the majority's acceptance of *Brown*'s legacy as colorblind and race neutral, as well as the belief that the original meaning of the Equal Protection Clause was race neutral.[99]

Similar to the majority in *Parents Involved*, Chief Justice Roberts argued here that *Brown* stood only for the belief that the mere act of separation is unconstitutional, not the specifics of why the

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93. *Students for Fair Admissions*, 143 S. Ct. at 2166.

94. *See id.* at 2166-67.

95. At the end of the opinion, Chief Justice Roberts implied that diversity might be a compelling interest in future cases, but only if the policies designed to accomplish diversity further "the educational benefits that the universities claim to pursue." *See id.* at 2167.

96. *Id.* at 2166-67.

97. *Id.* at 2175.

98. *Id.* at 2164-65.

99. *Id.* at 2159 (stating that Congress only proposed the Equal Protection Clause because states believed "[t]he Constitution ... 'should not permit any distinctions of law based on race or color'" (quoting Supp. Brief for the United States on Reargument at 41, Brown v. Bd. of Educ., 347 U.S. 483 (1954) (Nos. 1, 2, 4, 8, 10))).

separation existed.[100] To support this argument, he quoted language from *Brown*, stating that "[t]he mere act of separating 'children ... because of their race,' ... itself 'generate[d] a feeling of inferiority.'"[101] The use of this quote without the context of the Black/white power dynamics of the Jim Crow South conflates all racial classifications with racial discrimination.

This is a necessary conflation if the goal is to eliminate all racial classifications, regardless of the role they play in furthering equality. According to Chief Justice Roberts and the majority, this is precisely what a colorblind Equal Protection Clause necessitates.[102] Thus, accepting a colorblind Constitution required asserting that "[e]liminating racial discrimination means eliminating all of it"—regardless of whether the elimination reinforces racial hierarchies.[103]

These two decisions, *Parents Involved* and *Students for Fair Admissions*, highlight how the Court has transformed *Brown*'s legacy from one of racial equality to one of race neutrality. This approach to understanding both America's racial history generally and *Brown*'s legacy specifically is not limited to the rationale of the Supreme Court. The next Part examines how this rationale spreads internally in education via curricula, specifically in private religious education—a space demographically connected to the historical resistance to *Brown*.

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100. *See id.* at 2160.

101. *Id.* (omission in original) (quoting Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954)). However, Chief Justice Roberts left out the portions of the quote that establish that the feeling of inferiority is connected to the Black students' specific existence as Black students not simply because they were separated but because they were separated for being Black. *See Brown*, 347 U.S. at 493-94.

102. *Students for Fair Admissions*, 143 S. Ct. at 2160-61.

103. *Id.* at 2161. This quote sums up Chief Justice Roberts's entire position and is not without precedential support. He quotes *Bakke* for this position. *Id.* at 2162 (quoting Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 289-290 (1978)). This is important because it highlights how flawed the Equal Protection jurisprudence has been from the beginning. The blueprints for destroying affirmative action were not created in 2014 with the filings against Harvard, *see* Complaint at 1, Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141 (2023) (No. 1:14-CV-14176), but in 1978 when the Court refused a flat-out exception to strict scrutiny for racial classifications designed to further racial equality.

II. ABEKA CASE STUDY—NARRATIVES OF RACE WITHOUT RACISM

In 1954, the same year that the Supreme Court decided *Brown*, Dr. Arlin Horton and his wife Beka had the idea to create Christian textbooks and a curriculum that were based on a "biblical educational philosophy."[104] This vision quickly materialized into the company today called Abeka, Inc.—a company that includes textbooks, teaching aids, and video instruction for Christian schools and homeschoolers across the nation.[105] While Abeka is not the only Christian curriculum on the market, it "dominate[s] the market" as one of the top three Christian curriculum publishers.[106] For this reason, this Article uses Abeka as a concise case study on how Christian textbooks participate in the neutralizing of *Brown*'s legacy through the broader reiteration of a colorblind framework of American history.

The goal of Abeka's textbooks, from primary to secondary levels, is allegedly to provide students with a worldview "based on eternal truths."[107] Central to this so-called realistic view is the fundamental belief that the Christian God inspired the creation of America on free-enterprise principles.[108] Because of that belief, each history textbook seeks to inspire Christian patriotism while simultaneously highlighting the "benefits of free-enterprise economics ... in contrast with the *dangers* of Communism, socialism, and liberalism."[109] Key to this worldview is the desire to instill and emphasize patriotism and dedication to America as a great nation.[110] This is precisely the

104. *History, Mission & Purpose*, ABEKA, https://www.abeka.com/AbekaDifference.aspx [https://perma.cc/LK6M-P383].

105. *Id.*

106. *See* PARSONS, *supra* note 23.

107. ABEKA, CHRISTIAN SCHOOL CATALOG: EXCELLENCE IN EDUCATION FROM A CHRISTIAN PERSPECTIVE SINCE 1972, at 10 (2023) [hereinafter ABEKA CATALOG].

108. *See id.* at 10, 22-27 (primary education history book titles); *see also* LOWMAN, *supra* note 24, at 36.

109. ABEKA CATALOG, *supra* note 107 (emphasis added).

110. For a Language Arts book that seeks to encourage patriotism via studying famous Americans in the first volume and emphasizing citizenship, dedication, and patriotism in the second volume, see *id.* at 32, 34.

narrative arc included in the suggested history book for eleventh graders, *United States History: Heritage of Freedom* (*Heritage*).[111]

Perhaps surprisingly, this positive narrative does not avoid uncomfortable racial subjects such as slavery or civil rights.[112] But that is not to say that the narrative is inclusive of the experiences of Black Americans. Instead, the book takes a race-without-racism approach, making sure to contextualize America's racial sins and to distance racial events from racist actors or systems, leaving holes in the historical narrative and reinforcing a colorblind worldview.[113]

Although not explicitly racially discriminatory, this approach to America's racial history is an example of what critical race theorists call implicit or subtle tools of white supremacy.[114] Derrick Bell, the father of critical race theory (CRT), articulated racial realism as a theory that described how racism had become "more subtle though no less discriminatory."[115] The strategy of the current racism movement is that people accomplish it via race-neutral rhetoric, shaped more by what they omit than by what they embrace.[116]

This can appear in historical narrative by ignoring the voice of color thesis. The voice of color thesis is a theory of CRT that acknowledges the unique experiences of people of color.[117] It argues that because people of color have different experiences with oppression, they "may be able to communicate to their white counterparts matters that the whites are unlikely to know."[118] A narrative of American history that ignores voices of color is free to

111. *See* LOWMAN, *supra* note 24.

112. *See id.* at 39 (discussing how Africans came over as slaves, but also stating that some came "voluntarily").

113. *See, e.g.*, *id.*; *see also id.* at 94 (discussing the Great Compromise without mentioning the role slavery played in shaping it).

114. *See* Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373 (1992). One of the main goals of critical race theory is to develop "new theories and strategies" to combat these more subtle forms of racism. *See* RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 4 (2d ed. 2012) (providing a summary of critical race theory's early origins); *see also Introduction* to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, at xvii-xxviii (Kimberlé Crenshaw et al. eds., 1995).

115. Bell, *supra* note 114, at 373-74.

116. *See* HALE, *supra* note 2, at 30 (arguing that modern racial movements use "race-neutral rhetoric").

117. DELGADO & STEFANCIC, *supra* note 114, at 10.

118. *Id.*

tell a more admirable story of America's historical arc without the contrasting undesirable conditions which aided that arc.[119]

In other words, as its title suggests, the textbook tells America's heritage as one of freedom and not of subjugation.[120] This intentional erasure of the experiences of people of color in *Heritage* eliminates the nuances of America's history with slavery, civil rights, and oppression.[121] Thus, it allows for the indoctrination of students into a worldview designed to corroborate colorblindness and maintain white supremacy.

A. African Slave Trade & American Slavery

Cleverly, the author of the book does not completely erase instances of the Black experience—instead, he selectively mentions some facts while simultaneously excluding other facts that would acknowledge racism in the narrative of American history. One of the most interesting examples of this is the way that the book handles slavery and historical events related to enslaved Africans. *Heritage* does not shy away from the existence of the African slave trade or slavery in the Americas, but it situates the institution of slavery as being closely linked with indentured servitude.[122]

The book notes that the earliest Africans "may have been purchased as indentured servants rather than slaves."[123] This suggestion alone does not necessarily remove slavery from its volatile legacy, but when paired with later statements that some Africans "came to the colonies voluntarily as settlers," one can see a pattern

119. This is precisely what *United States History: Heritage of Freedom* does, stating that America begins as a "nation of freedom and prosperity" and even as early as the Declaration of Independence set the stage as a "worldwide example of liberty." *See* LOWMAN, *supra* note 24, at 36, 76.

120. For example, when discussing the Great Compromise that made way for the Constitution, the textbook provides no context for the role that slavery plays in shaping that compromise. *See id.* at 94. Instead, the book praises the Founders' compromise as setting the standard for a worldwide example of liberty without an acknowledgement that the Founders were also setting a worldwide example of bondage. *See id.*

121. Although I am focusing on the things the book ignores, there are instances in which it includes things to make bad parts of America's history more palatable. For example, when talking about the slave trade, it also makes sure to say, "some [Africans] came to the colonies voluntarily as settlers." *Id.* at 39.

122. *Id.* at 20-21.

123. *Id.* at 21.

of destigmatizing this period of American bondage.[124] The destigmatizing is necessary because the textbook very strongly indicates that the Constitution is a result of a desire to promote Christian morality in government, an argument that falls apart if the immoral institution of slavery was more than a necessary evil.[125]

Additionally, *Heritage* argues that Christian morality was the foundation of resistance to slavery and abolition.[126] The book states that "slavery was biblically wrong" and that this was one of the reasons Americans joined the abolition movement.[127] Yet, there is no coverage of the role that Christianity played in preserving slavery, nor is there any recognition that those who owned enslaved people often identified as Christians.[128] This allows the book to continue to situate Christianity as the beacon of American morality and to sever that morality from its connection to white supremacy.

The idea that slavery was always wrong but a necessary evil also permeates the textbook's coverage of the institution's destruction. While the book states that the primary cause of the Civil War was fears of economic competition, it does not shy away from slavery's role in the sectional conflict.[129] The textbook notes that the creation of the cotton gin made slavery a "fixed institution" in the South, yet it does so to argue that prior to 1800, "many anticipated that the horrible practice would ... die out."[130] Historical scholarship vastly debates whether slavery as an institution would have "die[d] out" without the invention of the cotton gin.[131] But typically people use

124. *See id.* at 39.

125. This is why there is very little conversation in the book about the role that slavery played in shaping the outcome of the Constitutional Convention. *See id.* at 93-94. It only briefly discusses the Three-Fifths Compromise and the Slave Trade Compromise, and focuses instead on the compromises that could be isolated from the slavery question. *Id.* at 94-95.

126. *See id.* at 164.

127. *Id.*

128. *See id.* For discussions of the role that Christianity played in Atlantic slavery, see generally KATHARINE GERBNER, CHRISTIAN SLAVERY: CONVERSION AND RACE IN THE PROTESTANT ATLANTIC WORLD (2018); REBECCA ANNE GOETZ, THE BAPTISM OF EARLY VIRGINIA: HOW CHRISTIANITY CREATED RACE (2016 ed.).

129. LOWMAN, *supra* note 24, at 140.

130. *Id.* at 172-73; *see also id.* at 199 ("At the birth of the republic, most people in both the North and the South agreed that slavery should be abolished as soon as abolition became feasible.").

131. *See id.* at 173. *Compare* ANGELA LAKWETE, INVENTING THE COTTON GIN: MACHINE AND MYTH IN ANTEBELLUM AMERICA (2005 ed.) (detailing the role the cotton gin played in revitalizing slavery), *with* WALTER JOHNSON, RIVER OF DARK DREAMS: SLAVERY AND EMPIRE

the argument that it would have died out or that the Founders of America expected it to die out as a means of disentangling the evils of the institution from the idealistic promises of American freedom and liberty.[132]

This framing of slavery focuses almost exclusively on the economics of the institution and discusses nothing of the anti-Black racism that supported slavery. Teaching slavery without racism removes a lot of the relevant context that would help explain the treatment of Black Americans after slavery ended. This is precisely *Heritage*'s goal: to equip students with the knowledge of slavery's existence without connecting that institution with future oppressive policies against the formerly enslaved—that is, Black Americans. Ultimately, this version of slavery—as an economic institution devoid of racism—allows for the book to present early Americans, including slave-owning Southerners, as heroes and visionaries, positively disconnected from their roles in slavery.[133]

Additional examples of erasing racism from the narrative of slavery arise when the book discusses events of resistance, such as early instances of collective rebellion. The two most important rebellions are Bacon's Rebellion in the seventeenth century and Nat Turner's Rebellion in the eighteenth century. When discussing Bacon's Rebellion—a rebellion against the colonial government in Virginia composed of settlers, indentured servants, and enslaved people from 1676-1677[134]—the book exclusively categorized it as a class-based conflict.[135] And as such, the book suggests that it was a

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IN THE COTTON KINGDOM (2013) (arguing that the institution of slavery was supported by more than the cotton gin).

132. The book even includes Southerners in this group of people who favored abolition, even if gradual, and even if "they saw no economically or socially feasible way to do it." LOWMAN, *supra* note 24, at 199.

133. The section on Robert E. Lee highlights this strategy. The book states that Robert E. Lee is "remembered as a great American" due to his ability to diligently oversee his plantation and command the Confederate armies—both jobs that can only be viewed as positives when disconnecting the racist aspect of slavery. *See id.* at 217. The book tries to mitigate the existence of slavery in Lee's story by arguing that he "opposed secession and wanted slavery to be eventually abolished," but that Lee's allegiance to his state came first. *Id.*

134. For a summation of the events surrounding Bacon's Rebellion, see MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 30 (Tenth Anniversary ed. 2020).

135. *See* LOWMAN, *supra* note 24, at 21.

fight only between frontiersmen and Jamestown colonists, concluding that the lesson learned from the rebellion was that "Americans expected their government to protect all citizens."[136]

This conveniently left out one of the biggest results of Bacon's Rebellion—the change in American laws regarding servitude and slavery due to fear of lower-class white men working with enslaved Africans.[137] There is no mention of the enslaved people who assisted Bacon in his rebellion,[138] which historians note as a key factor in the government's response to Bacon and essential to the changes that occurred after the conflict was over.[139] The biggest change excluded from the book's narrative is the unification of the white planter class and white labor class in opposition to enslaved Africans, which deepened American patterns of racism.[140] Not including this important part of the story prevents students from grasping the beginnings of the racial caste system in America; thus, it opens the door for arguments that the racial caste system does not exist.[141]

Likewise, *Heritage*'s discussion of Nat Turner's Rebellion—an 1831 enslaved uprising predicated on resisting the oppression of slavery—exemplifies the dangers of including events involving race while excluding the racism surrounding those events.[142] Nat Turner, a religious leader in Southampton County, led a group of other men to kill white inhabitants over the course of one day.[143] *Heritage* accurately describes this uprising as "one of the largest slave uprisings in the history of the South."[144]

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136. *Id.*

137. *See* EDMUND S. MORGAN, AMERICAN SLAVERY, AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA 328 (1975).

138. *See* LOWMAN, *supra* note 24, at 21.

139. *Id.* For a more detailed summation of the role that enslaved people played in Bacon's Rebellion, see generally Justin Iverson, *Enslaved Rebels Fight for Freedom: Nathaniel Bacon's 1676 Slave Rebellion*, 18 ATL. STUDS. 271 (2021).

140. *See* ALEXANDER, *supra* note 134, at 31; *see also* MORGAN, *supra* note 137.

141. For the argument that this is the beginning of a racial caste system in America, see ALEXANDER, *supra* note 134, at 25-26.

142. For a more detailed discussion of Nat Turner's Rebellion and its outcomes, see EVA SHEPPARD WOLF, RACE AND LIBERTY IN THE NEW NATION: EMANCIPATION IN VIRGINIA FROM THE REVOLUTION TO NAT TURNER'S REBELLION 196-234 (2006); see also NAT TURNER, THE CONFESSIONS OF NAT TURNER, THE LEADER OF THE LATE INSURRECTION IN SOUTHAMPTON, VIRGINIA (Thomas R. Gray ed., Univ. of North Carolina at Chapel Hill Libr. 2011) (1831).

143. WOLF, *supra* note 142, at 196.

144. LOWMAN, *supra* note 24, at 200.

But, instead of also highlighting the circumstances that led Nat Turner to stir up the rebellion and the total loss of both Black and white lives, the book more insidiously references only the white people who died.[145] Ignoring the over one hundred Black American deaths, the book states only that "about fifty-five white individuals, mostly women and children, were mercilessly killed."[146] Further, the book uses these deaths as a justification for violence enacted on Black Americans, stating that Southerners blamed abolitionist propaganda for the revolt and took out "revenge on innocent black Americans."[147]

There is also no mention of the legal justice Southerners received from the government via the trials of forty-five enslaved people, including the execution of Nat Turner and eighteen others.[148] At first glance, this depiction of Nat Turner's rebellion might seem harmless, and the illusive mention of the violence enacted on Black Americans unintentional. Yet, by framing the story this way, the book minimizes the extralegal violence done by white Southerners in retaliation while also implying that the violence of the rebellion transcended the problems of slavery that precipitated the rebellion. Thus, it frames Black violence as the main point of this ugly part of American history instead of framing it as a symptom of American racism.

B. Reconstruction

The slavery era is not the only context where this kind of selective storytelling occurs in the book. A paternalistic view of the formerly enslaved shrouds the section on Reconstruction. Despite the many advancements of Black Americans during this period, including the passing of the Reconstruction Amendments, *Heritage* classifies this time as a "gloomy period."[149]

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145. *See id.*

146. *Id.* It is unclear just how many Black Americans were killed in retaliation, but the estimates generally are over one hundred. *See* WOLF, *supra* note 142, at 196; *see also* PATRICK H. BREEN, THE LAND SHALL BE DELUGED IN BLOOD: A NEW HISTORY OF THE NAT TURNER REVOLT 98-99 (2015).

147. LOWMAN, *supra* note 24, at 200.

148. *See id.*; BREEN, *supra* note 146, at 122.

149. LOWMAN, *supra* note 24, at 232. For the advancements of Black Americans during

According to the book, this "gloomy period" was "grim" for all Southerners, "regardless of ethnicity."[150] Although the book focuses primarily on how Southerners in general were treated poorly during this period, it does mention violence specifically towards Black people, such as the Black Codes—post-slavery laws designed to restrict Black people's rights—and the creation of the Klu Klux Klan (KKK)—a violent white supremacy organization.[151] But the book does not rely on these concerted efforts of legal and illegal racism to support the notion that this was a grim period. Instead, the book focuses on the radical Republicans and their political desire to protect their interests as the key problem, framing the violence of the Klan as simply a response to "poorly conducted government."[152] Further, *Heritage* depicts formerly enslaved people as puppets to this alleged Republican overreach who were not fully capable citizens worthy of democracy's privileges.[153] Thus, the book teaches students that Black Americans during this time were "former slaves who were not prepared for political responsibility," and because of that, their inclusion in state governments led to poor policies, a result made possible only by barring southern whites from voting.[154]

The book is more gracious to those formerly enslaved people who stayed on to work with their former masters. After the war, many formerly enslaved people had to continue working on the same plantations where they were once enslaved.[155] Because the Thirteenth Amendment prohibited direct slavery, a new form of labor exploitation began to develop in the postbellum South called sharecropping.[156] To many, sharecropping was one of the post-war

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Reconstruction, see generally W. E. B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA (Routledge 2017) (1935) (arguing that Reconstruction was a time when formerly enslaved people acted on their civil rights and achieved progressive outcomes in the economy and education).

150. LOWMAN, *supra* note 24, at 232-33.

151. *See id.* at 234, 238. For a discussion of the Black Codes, see generally THEODORE BRANTNER WILSON, THE BLACK CODES OF THE SOUTH (1965). For a more in-depth discussion of the creation and rise of the KKK, see generally ELAINE FRANTZ PARSONS, KU-KLUX: THE BIRTH OF THE KLAN DURING RECONSTRUCTION (2015).

152. *See* LOWMAN, *supra* note 24, at 234-35, 238.

153. *See id.* at 238.

154. *See id.*

155. *See* EDWARD ROYCE, THE ORIGINS OF SOUTHERN SHARECROPPING 1 (1993).

156. *Id.* at 2.

systems different from slavery in name only.[157] The idea behind sharecropping was that formerly enslaved Black Americans and lower-class whites could contractually work as farmers for plantation owners in exchange for a share of the crop that they could live and profit from.[158]

Heritage equates that idea with reality and argues that sharecropping was a solution to the problems left by the abolition of slavery because it allowed all parties to "share[ ] in the profits."[159] This ignores, however, the reality of the sharecropping experience for most Black Americans. In practice, the system left little room for sharecroppers to benefit from the arrangement, generally leaving them dependent on the owners of the land for necessities, such as food and housing, and impoverished by their debt.[160] Thus, the story of sharecropping is a story of continued exploitation, not a story of progress after slavery.

C. The Civil Rights Movement

After the chapters on the nineteenth century, *Heritage* discusses the biggest American social movements of the twentieth century, of which the civil rights movement is a key part.[161] The book, however, makes no distinction between the civil rights movement and other movements when it argues that the twentieth century contributed to America's moral decay.[162] Further, throughout the

157. *See, e.g.*, SLAVERY BY ANOTHER NAME (TPT National Productions 2012). *But see* ROYCE, *supra* note 155, at 2-3 (arguing that the real difference between slave labor and sharecropping was the decentralization of plantation ownership, or the change from single-owned massive farms to individually owned family farms).

158. *See* ROYCE, *supra* note 155, at 2.

159. LOWMAN, *supra* note 24, at 240.

160. *See* Devon Douglas-Bowers, *Debt Slavery: The Forgotten History of Sharecropping*, HAMPTON INST. BLOG, https://thehamptoninstitute.wordpress.com/2013/11/09/debt-slavery-the-forgotten-history-of-sharecropping/ [https://perma.cc/Q9AW-94N8] (arguing that the system of sharecropping "created a cycle where the farmer was constantly behind in his paying his debt," leaving the sharecropper "in perpetual debt").

161. *See* LOWMAN, supra note 24, at 462-66.

162. The chapter ends with the question, "How did the various social movements contribute to the moral decline in the 1960s and 1970s?" *Id.* at 467. Of all the social movements in the chapter, the civil rights movement is arguably the largest, *see id.* at 462-66, implying that readers need to consider whether the obtaining of legal rights by Black Americans has a causal effect on the country's so-called "moral decline."

entire discussion of the twentieth century, there is no real discussion of racism, even when talking about the specific violence faced by Black Americans during the civil rights movement.[163]

Instead, the book talks about this period as a cooperative movement between Blacks and whites for desegregation and equality where "Americans saw the need to fully end racial prejudice."[164] The transition from *Plessy* to *Brown* is provided to show the change in American culture from one consumed with racial prejudice to a culture of ending racial prejudice.[165] This account completely ignores the massive resistance and great violence that Black Americans faced while fighting for basic civil rights.[166]

For example, there is almost no discussion of resistance to *Brown*. Instead, the book simply states that "some communities" chose not to obey the Court's desegregation order, citing without any explanation the use of the military to enforce desegregation in Little Rock.[167] This is how the book treats resistance to segregation generally, as rooted in politics or government ideology instead of racism.

For example, the book states that "[s]egregation had become an accepted way of life for many white southerners, and they had a difficult time changing their ways," and so they "resented federal officials telling their state and local governments what to do."[168] When the book explicitly mentions white racial violence, the perpetrators of that violence are either not mentioned at all or labeled "extremist[s]."[169] Not mentioning white racism and the violence it

163. *See id.* at 422. Often, instances of racist violence, if mentioned, are in passive voice so that the book can write without providing the reader with an explicit violent actor. *See id.* at 464 (stating that "several hundred peaceful protesters began the march; however, when confronted by the authorities, a brutal attack resulted, and many were hospitalized," leaving the reader to assume who initiated the brutal attack and which group was injured).

164. *Id.* at 422, *see also id.* at 463.

165. *See id.* at 422.

166. For examples of white violence during the civil rights movement, see Courtney M. Echols, *Anti-Blackness is the American Way: Assessing the Relationship Between Chattel Slavery, Lynchings, & Police Violence During the Civil Rights Movement*, 14 RACE & JUST. 217 (2022); Wayne A. Santoro, *The Civil Rights Movement and the Right to Vote: Black Protest, Segregationist Violence and the Audience*, 86 SOC. FORCES 1391 (2008).

167. LOWMAN, *supra* note 24, at 422.

168. *Id.* at 464.

169. *Id.* at 463. For example, the book does not mention the perpetrators of the riots and violence exerted on the Freedom Riders. *See id.* at 462-63. When referring to James Meredith trying to enroll in a Mississippi college, the resistance is pinned on "white extremist groups." *Id.* at 463.

requires allows the textbook to situate resistance to Black American progress as isolated events, which is reflected in its conclusion that during the twentieth century, "many blacks and whites continued to work for desegregation and equality."[170]

Because this account focuses almost exclusively on Black and white cooperation, it is no surprise that Dr. Martin Luther King Jr. is the focal point of the section on the racial upheaval of the 1960s and 70s.[171] Relying on Dr. King's "I Have a Dream" speech, the book focuses on King's desire for Black people to be rightly included in the American promise of freedom.[172] Doing so allows the story of Black civil rights to be one of assimilation into American ideals, which can overlook how white Americans did not consider Black Americans covered under those ideals.[173]

Additionally, the book contextualizes the progressive gains of the civil rights movement—desegregation, the Civil Rights Act, and the Voting Rights Act—as causing problems due to intrinsic characteristics of Black communities.[174] Like the section on Reconstruction, the book suggests that Black people were unfit to handle the rights granted by the government.[175] For example, the book cites frustration with Black crime and gangs in the ghettos as the reason for the 1960s race riots and not Black Americans' continued frustration with racial and socioeconomic inequalities.[176] It also says that the government's urban housing projects of the time were wasting

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170. *Id.* at 463.

171. *See id.* at 463-64.

172. *Id.*

173. This is why the book does not include the parts of the "I Have a Dream" speech that discuss the abuses faced by Black Americans or the racial revolts. *See id.* at 462-63. For the entire text of the "I Have a Dream" speech, see *Read Martin Luther King Jr.'s 'I Have a Dream' Speech in its Entirety*, NPR (Jan. 16, 2023, 10:32 AM), https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety [https://perma.cc/3C5D-XQKE].

174. *See* LOWMAN, *supra* note 24, at 426.

175. *See id.* (arguing that civil rights reform concerning housing was well intentioned but failed because people did not take care of property they did not earn).

176. *See id.* See HOWARD RAHTZ, RACE, RIOTS, AND THE POLICE 21-28 (2016), for a more comprehensive discussion of the reasons for the 1960s race riots, including protests of Dr. Martin Luther King Jr.'s death; see also PETER B. LEVY, THE GREAT UPRISING: RACE RIOTS IN URBAN AMERICA DURING THE 1960S (2018). Additionally, there is no mention of the race riots initiated by white gangs early in the twentieth century. *See* RAHTZ, *supra*, at 9 (referring to the "common script" of race riots of this time being a "mob[ ] of white men descending on black neighborhoods"); *see also* SHEILA SMITH MCKOY, WHEN WHITES RIOT: WRITING RACE AND VIOLENCE IN AMERICAN AND SOUTH AFRICAN CULTURES 5 (2001).

money because "people did not take care of the property they were given by the government because they had not worked for it."[177] This, of course, ignores the constant governmental corruption that led to many of the urban housing projects not benefitting the intended communities of color.[178]

D. Oppression in the Twenty-First Century

Heritage does not end in the past but covers all the way through the election of President Trump in 2016.[179] There are various places in the chapters on the twenty-first century where one can see examples of the race-without-racism strategy—but I will focus on how the book handles two concepts: police brutality and what the book calls "multiculturalism." The extralegal violence that Black men and women face at the hands of police has received more media attention in the last two decades.[180] Arguably starting with the brutal recorded beating of Rodney King, the existence of visual recording devices has brought the issue of police brutality to the forefront.[181]

This is most recently demonstrated by the death of George Floyd in 2020, which sparked global protests even during a global pandemic.[182] From 2013 to 2020, the organization and phrase "Black Lives Matter" (BLM) played a significant role in bringing the racialized issue of police brutality to the forefront, especially with its protests against police killings of unarmed Black men and women.[183] Along with protests and grassroot actions, the BLM

177. LOWMAN, *supra* note 24, at 426.

178. For more on the history of the urban housing programs, see generally KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP (2019).

179. *See* LOWMAN, *supra* note 24, at 514-22.

180. *See* Andrew Rosado Shaw, Note, *Our Duty in Light of the Law's Irrelevance: Police Brutality and Civilian Recordings*, 20 GEO. J. ON POVERTY L. & POL'Y 161, 162 (2012).

181. *Id.*

182. *See* Abdul Karim Bangura, *Preface* to BLACK LIVES MATTER VS. ALL LIVES MATTER: A MULTIDISCIPLINARY PRIMER, at ix (Abdul Karim Bangura ed., 2021). For more information on George Floyd's death and the impact it had on racial relations, see generally ROBERT SAMUELS & TOLUSE OLORUNNIPA, HIS NAME IS GEORGE FLOYD: ONE MAN'S LIFE AND THE STRUGGLE FOR RACIAL JUSTICE (2022).

183. *See* MARC LAMONT HILL, WE STILL HERE: PANDEMIC, POLICING, PROTEST, & POSSIBILITY 70-71 (Frank Barat ed., 2020).

movement has also generated considerable criticism over how Black Americans should respond to oppression.[184]

Yet, surprisingly, even though *Heritage*'s fourth edition was published in 2020, there is no reference—positive or negative—to BLM.[185] This makes sense considering the book frames its discussion about police brutality and race relations as overhyped issues fueled by President Obama's actions.[186] In reference to Rodney King's beating, the book states, "[w]hile police brutality occurs in America, it is typically on a smaller scale than the media portrays."[187] And while the Rodney King beating occurred seventeen years before the election of the first Black president, the book is sure to attribute the so-called decline in "Americans' views of race relations" and the distrust minorities have with police to "President Obama's attempts to resolve [racial] problems."[188]

Like other instances in the book, erasing BLM leaves a significant hole in the discussion of police brutality and racism in the twenty-first century.[189] This allows the book to situate police brutality as a media and political construction rather than a problem of a racist system, and it implies that organizations like BLM exaggerate a very small problem. Thus, it makes calls for systematic reforms to the criminal justice system seem misplaced.[190] This implication is necessary for the book to maintain its positive narrative that America continues to progress as a place of liberty without systematic problems of oppression.

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184. Generally, this criticism concerns perceived violence as the method of choice for BLM protests. *See, e.g.*, Bangura, *supra* note 182, at 9-10 (noting general criticism of BLM); Barbara Reynolds, *I Was a Civil Rights Activist in the 1960s. But It's Hard for Me to Get Behind Black Lives Matter*, WASH. POST (Aug. 24, 2015, 11:35 AM), https://www.washingtonpost.com/posteverything/wp/2015/08/24/i-was-a-civil-rights-activist-in-the-1960s-but-its-hard-for-me-to-get-behind-black-lives-matter/ [https://perma.cc/LQW4-ER5D] (providing specific criticism of BLM's methods). But see HILL, *supra* note 183, at 64-70, for responses to these critiques and for the argument that BLM is not violent and disruptive.

185. *See* LOWMAN, *supra* note 24, at 477-526.

186. *See id.* at 508.

187. *Id.* at 490.

188. *See id.* at 508.

189. This is not to say that BLM as an organization is not above criticism. *See supra* note 184 and accompanying text. But to ignore it completely, while at the same time claiming to educate on racial tensions in the twenty-first century, is problematic and simply dishonest.

190. For calls to reform the criminal justice system, see ALEXANDER, *supra* note 134, at ix-xiv (stating that while a lot of work has been done to reform the criminal justice system in the last ten years, there is still much to be done).

That narrative culminates in the book's concluding rejection of what it calls "multiculturalism."[191] According to *Heritage*, multiculturalism "is the view that all cultures ought to be equally represented."[192] The book finds this view problematic because it apparently requires equating western civilization's advancements with hatred toward other cultures.[193] This is because it views defining oneself by race, sex, or sexual orientation as intrinsically contradictory with "the pillars of western civilization, such as nation, family, and God."[194]

Heritage argues that it is multiculturalism—not racism—that has made "Americans more divided and suspicious of one another."[195] This division, then, prevents the unity that the Founders envisioned "when forming their great nation."[196] While not explicitly referencing colorblind constitutionalism, this line of reasoning coincides with that belief and is problematic for the same reasons.[197]

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Colorblind constitutionalism is the belief that the Constitution does not see race or color, a legal position made famous by Justice Harlan in his dissent in *Plessy v. Ferguson*.[198] Like its rejection of

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191. *See* LOWMAN, *supra* note 24, at 520.

192. *Id.* (emphasis omitted).

193. *Id.*

194. *Id.*

195. *Id.* at 524. There is a fascinating piece in this section on America being a melting pot versus a salad bowl. *See id.* The book argues that being a melting pot was the original vision that we have somehow traded for the multiculturalist vision—that of a salad bowl (meaning people do not assimilate). *Id.* The section explicitly rejects any notion that assimilation can be a bad thing without, of course, engaging with who must assimilate and how the majority culture remains the standard. *Id.*

196. *Id.*

197. For example, the section on Dr. King concludes by arguing that since his death, "all ethnicities have been striving to realize King's dream that people be judged by their character rather than the color of their skin." *Id.* at 464. This is explicitly an appeal to colorblindness that ignores racism as a reality.

198. 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) ("Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."). For a broader examination of the way that the idea of racial colorblindness shapes modern society, see TIM WISE, COLORBLIND: THE RISE OF POST-RACIAL POLITICS AND THE RETREAT FROM RACIAL EQUITY 14-15 (2010) (arguing that throughout the election of Barack Obama, racial avoidance predominated the public sphere, making it harder to tackle racism).

multiculturalism, *Heritage* argues that the façade of unity is the ultimate answer to the legacy of race and racism in the United States.[199] The problem is that this unity is not grounded in reality, and it ignores the historical, systematic, and cultural presence of racism in our country.[200]

Even by the book's own logic, the requirement of assimilation for unity suggests the questions of who must assimilate and to what culture and norms must they assimilate. The book answers this by pointing the reader to western civilization as the unifying norm, but it leaves out that historically, western civilization has meant whiteness.[201] A call to unify under whiteness is undeniably a call to affirm white supremacy, even if framed as a rejection of postmodern ideas of identity.

CONCLUSION

These examples from *United States History: Heritage of Freedom*, from slavery to the present, highlight how a Christian curriculum might frame race without racism, thereby erasing the experiences of many Black Americans at best and continuing the indoctrination of white supremacy at worst. Like the Supreme Court's interpretation of *Brown*'s legacy, half-truths and intentionally crafted omissions fill Abeka's history curriculum with the aim to separate America's racial failings from its current reality. The curriculum supplants the colorblind belief that we cannot tether any present racial discrimination or inequalities to the racial violences of the past and, as such, we should not remedy present racial problems with racially conscious policies and ideas.

The narrative outlined by *Heritage* is insidious not simply because of its historical inaccuracy but also because it corroborates

199. *See* LOWMAN, *supra* note 24, at 524.

200. *See* Gotanda, *supra* note 59.

201. *See* LOWMAN, *supra* note 24, at 520. For arguments that "western civilization" has been a euphemism for whiteness, see Kwame Anthony Appiah, *There Is No Such Thing as Western Civilisation*, GUARDIAN (Nov. 9, 2016, 12:59 AM), https://www.theguardian.com/world/2016/nov/09/western-civilisation-appiah-reith-lecture [https://perma.cc/BLF9-7U24]. Likewise, the idea of classical literature has contributed to this notion that western civilization and whiteness are the same. *See* Rachel Poser, *He Wants to Save Classics from Whiteness. Can the Field Survive?*, N.Y. TIMES (June 15, 2023), https://www.nytimes.com/2021/02/02/magazine/classics-greece-rome-whiteness.html [https://perma.cc/8SS9-5P5N].

the colorblind ideology that aided the Supreme Court in reshaping *Brown*'s legacy from educational equality for Black students to formal equality that ignores the pervasive present reality of racial inequality. This Article provides just one example of the ongoing ideological defiance to *Brown*'s promise of equitable education. Seventy years later, the defiance to *Brown* can seem stronger than the hope the decision sparked. If, however, we want to bring that hope back to life, understanding and confronting all defiance—both ideological and practical—is a necessary first step.