From the SelectedWorks of Jonathan C. Augustine

January 2013

The Interest Convergence of Education Reform and Economic Development: A Response to "The State of Our Unions"

Contact Author

Start Your Own SelectedWorks

Notify Me of New Work

Available at: http://works.bepress.com/jonathan_c_augustine/8

THE INTEREST CONVERGENCE OF EDUCATION REFORM AND ECONOMIC DEVELOPMENT: A RESPONSE TO "THE STATE OF OUR UNIONS"

Jonathan C. Augustine[*]

> The [C]ivil [R]ights [M]ovement, like the Reconstruction governments, sought to overturn a deep-seated system of racial subordination, and as it had during Reconstruction, schooling would figure prominently in the struggle. Of particular importance were the Mississippi freedom schools of 1964. In these schools, civil rights workers . . . worked with volunteers to set up an alternative school system. The summer volunteers, many white and from elite northern universities, tried to educate Mississippi blacks about history, civics, politics, and the means by which they could change society. Beyond the freedom schools' well known contribution to the racial justice struggle, I would suggest that they are important in another, less often recognized way. *Just as blacks during Reconstruction refused to accept the absence of schools, the freedom schools movement refused to accept the inadequacy of schools. By building separate schools and openly repudiating the establishment system, the freedom schools movement laid a foundation for later progressive school choice proposals*.

—James Foreman, Jr., Professor of Law, Yale Law School and Co-Founder of the Maya Angelou Charter School, Washington, D.C.[1]

---

[*] jayaugustine9@gmail.com. Herbert S. & Mary L. Beane Fellow and National Rainbow-PUSH Coalition Foundation Scholar, United Theological Seminary; Adjunct Professor, Southern University Law Center. The author previously served as Vice President of the East Baton Rouge Parish School Board, the governing body of Louisiana's largest public school district. This Essay benefits from my spring 2012 presentation at Tulane Law School, following the generous invitation of Francis X. Shen, Ph.D., J.D., then-Visiting Professor at Tulane and now Professor at the University of Minnesota Law School. I am grateful for Dr. Shen's invitation and the facilitation by Ms. Amanda L. Austin. I also thank Maria G. Pitre-Martin, Ph.D., Director of the North Carolina Department of Public Instruction, Division K–12, for insight regarding North Carolina's successful application for Race to the Top education innovation funds and comments on an earlier draft. I am also grateful to Edward M. O'Brien and the editors of the University of Louisville Law Review for excellent work in publishing this response.

[1] James Foreman, Jr., *The Secret History of School Choice: How Progressives Got There First*, 93 GEO. L.J. 1287, 1296 (2005) (emphasis added); *see also* SEE FOREVER FOUND. & MAYA ANGELOU CHARTER SCH., http://seeforever.org/ (last visited Dec. 14, 2012).

I. INTRODUCTION

In *Brown v. Board of Education*,[2] the Supreme Court placed access to educational opportunities at the heart of the twentieth century Civil Rights Movement ("the Movement").[3] Moreover, in *Grutter v. Bollinger*,[4] decided almost fifty years later, the Court affirmed this position.[5] As a successor to several other reform-oriented enactments, the No Child Left Behind Act of 2001 ("NCLB")[6] placed closing the achievement gap between black and white students at the pinnacle of the ongoing Movement.[7] Indeed, the administration of Democratic President Barack Obama continues the

---

[2] Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954).

[3] *See id.* at 493 (providing that education is "perhaps the most important function of state and local governments" and "the very foundation of good citizenship"). Opinion varies as to when the Movement began. I previously argued it began in December 1955 with Rosa Parks and the Montgomery Bus Boycott. Jonathan C. Augustine, *The Theology of Civil Disobedience: The First Amendment, Freedom Riders and Passage of the Voting Rights Act*, 21 S. CAL. INTERDISC. L.J. 255, 257 n.2 (2012). Herein, however, I respectfully argue the Movement was underway when the Court decided *Brown* in 1954. Moreover, I argue it remains in progress today.

[4] Grutter v. Bollinger, 539 U.S. 306 (2003).

[5] *Id.* at 331–32. For an argument of *Grutter* as a reaffirmation of *Brown*, see Harry T. Edwards, *The Journey from* Brown v. Board of Education *to* Grutter v. Bollinger*: From Racial Assimilation to Diversity*, 102 MICH. L. REV. 944, 946 (2004).

[6] No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified at 20 U.S.C. §§ 6301–7941 (2006)). Congress passed NCLB as a bipartisan means of improving the quality of public education. On December 13, 2001, the House of Representatives passed the bill with 381 votes. *See Final Vote Results for Roll Call 497*, U.S. HOUSE OF REPRESENTATIVES (Dec. 13, 2001), http://clerk.house.gov/evs/2001/roll497.xml. Similarly, it passed the Senate with 87 votes. *See Roll Call Vote on H.R. 1 (No Child Left Behind Act of 2001)*, U.S. SENATE (Dec. 18, 2001), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00371.

[7] *See generally* Damon T. Hewitt, *Reauthorize, Revise, and Remember: Refocusing the No Child Left Behind Act to Fulfill* Brown*'s Promise*, 30 YALE L. & POL'Y REV. 169, 173–74 (2011); ROD PAIGE & ELAINE WITTY, THE BLACK-WHITE ACHIEVEMENT GAP: WHY CLOSING IT IS THE GREATEST CIVIL RIGHTS ISSUE OF OUR TIME (2010). Dr. Rod Paige, Secretary of Education when NCLB was enacted, writes:

> In 2001, for the first time in our nation's history, closing the black-white achievement gap was determined to be of such importance to our national interest that it became a matter of federal policy. The purpose of the bill was clearly stated right up front on the title page: "To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind."

Id. at 15 (internal citations omitted); *see also* ABIGAIL THERNSTROM & STEPHEN THERNSTROM, NO EXCUSES: CLOSING THE RACIAL GAP IN LEARNING 11–23 (2003). As Professor Kevin Brown argues, with empirical data in support, blacks underperform their Hispanic and non-Hispanic white counterparts in almost every indicia of academic achievement, especially standardized test scores. Kevin Brown, *The Supreme Court's Role in the Growing School Choice Movement*, 67 OHIO ST. L.J. 37, 42–45 (2006).

Movement with emphasis on improving education, building upon the efforts of his Republican predecessor, George W. Bush.[8]

In a time of such partisanship, the question must be "why?" Why is it, with all the political differences between Presidents Bush and Obama,[9] the issue of education reform maintains continuity?[10] Accepting the premise that education reform is part of the ongoing Movement,[11] in a time in which civil rights means economic opportunity,[12] this Essay shows the United

---

[8] In fairness to both administrations, the Department of Education is still relatively new, having been established at the cabinet level in 1980. U.S. DEP'T OF EDUC., http://www2.ed.gov/about/overview/fed/role.html?src=ln (last visited Dec. 15, 2012). Considering the Department's brief history, one can argue President Bush made great strides with NCLB's bipartisan passage. *See generally* George W. Bush, Remarks on Implementation of the No Child Left Behind Act of 2001 (Sept. 4, 2002), *available at* http://www.presidency.ucsb.edu/ws/index.php?pid=73078#axzz1qvklzovq. For an historical analysis of education in the United States, see Sandy Kress et al., *When Performance Matters: The Past Present, and Future of Consequential Accountability in Public Education*, 48 HARV. J. LEGIS. 185, 187–94 (2011). *See also* Jonathan C. Augustine & Craig M. Freeman, *Grading the Graders and Reforming the Reform: The State of Public Education Ten Years After No Child Left Behind*, 57 LOY. L. REV. 237, 247–50 (2011).

[9] *See, e.g.*, Jonathan C. Augustine, *A National Model for Disaster Recovery*: *Growing Green Jobs in the Age of Energy Efficiency*, 37 T. MARSHALL L. REV. 179, 181–83 (2012) (illustrating President Obama's opposition to President Bush's oil drilling policy, evidenced by a moratorium after the BP *Deepwater Horizon* oil spill).

[10] Notwithstanding NCLB's unprecedented reform measures, the Obama Administration announced NCLB waivers, along with its own original education reform initiative, Race to the Top. Speaking about the initiative, President Obama said:

> When a child walks into a classroom, it should be a place of high expectations and high performance. But too many schools don't meet this test. That's why instead of just pouring money into a system that's not working, we launched a competition called Race to the Top. To all 50 states, we said, "If you show us the most innovative plans to improve teacher quality and student achievement, we'll show you the money."
>
> Race to the Top is the most meaningful reform of our public schools in a generation. For less than 1 percent of what we spend on education each year, it has led over 40 states to raise their standards for teaching and learning. And these standards were developed, by the way, not by Washington, but by Republican and Democratic governors throughout the country. And Race to the Top should be the approach we follow this year as we replace No Child Left Behind with a law that's more flexible and focused on what's best for our kids.

Barack Obama, Address Before a Joint Session of the Congress on the State of the Union (Jan. 25, 2011), *available at* http://www.presidency.ucsb.edu/ws/index.php?pid=88928; *see also* Helene Cooper, *Obama Urges Education Law Overhaul*, N.Y. TIMES, Mar. 14, 2011, at A24, *available at* http://www.nytimes.com/2011/03/15/us/politics/15obama.html?_r=2&ref=nochildleftbehindact. Regardless of differences, Presidents Bush and Obama are clearly united in their desire to systemically improve education.

[11] *See* Augustine, *supra* note 3.

[12] *See e.g.*, JESSE L. JACKSON, JR. WITH FRANK E. WATKINS, A MORE PERFECT UNION: ADVANCING NEW AMERICAN RIGHTS 252–73 (2001) (arguing for a reformed capitalism in the United States such that full employment might become an economic reality).

States' two major political parties embrace education reform as a pathway to economic development. Moreover, this Essay argues that blacks, who significantly populate public schools,[13] have a deep interest in reform, too. In essence, therefore, education reform's contemporary focus is the interest convergence theory 2.0.[14]

In giving the interest convergence theory contemporary application—moving past race and into economics—notwithstanding President Obama's reform efforts for *all* students, and the black community's desire for improved outcomes,[15] some argue Obama's reforms are destroying his Democratic Party by failing to consider ancillary effects on teachers'

---

[13] In 2009, sixty-three percent of students in America's 100 largest school districts were Hispanic or black. *See* U.S. DEP'T OF EDUC., CHARACTERISTICS OF THE 100 LARGEST PUBLIC ELEMENTARY AND SECONDARY SCHOOL DISTRICTS IN THE UNITED STATES: 2008–09 STATISTICAL ANALYSIS REPORT, at iii (2010), *available at* http://nces.ed.gov/pubs2011/2011301.pdf .

[14] After *Brown*'s twenty-fifth anniversary, the late Professor Derrick Bell wrote of the interest convergence leading to *Brown*. *See generally* Derrick A. Bell, Jr., Comment, Brown v. Board *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980). Bell analyzed why the Court moved from "separate but equal":

> [T]he decision in *Brown* to break with the Court's long-held position on these issues cannot be understood without some consideration of the decision's value to whites, not simply those concerned about the immorality of racial inequality, but also those whites in policy-making positions able to see the economic and political advances at home and abroad that would follow abandonment of segregation. First, the decision helped to provide immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world peoples. . . .
>
> Second, *Brown* offered much needed reassurance to American blacks that the precepts of equality and freedom so heralded during World War II might yet be given meaning at home. Returning black veterans faced not only continuing discrimination, but also violent attacks in the South which rivaled those that took place at the conclusion of World War I. . . .
>
> Finally, there were whites who realized that the South could make the transition from a rural, plantation society to the sunbelt with all its potential and profit only when it ended its struggle to remain divided by state-sponsored segregation. Thus, segregation was viewed as a barrier to further industrialization in the South. . . .

Id. at 524–25. In summary, understanding blacks wanted the best opportunities for educational advancement, their interest converged with whites, who—notwithstanding goodwill and progressive thinking—wanted economic development. Accordingly, as the groups' interests "converged," de jure segregation ended.

[15] For example, the Black Alliance for Educational Options ("BAEO"), a national non-profit education reform group, was formed "to increase access to high-quality educational options for [b]lack children by actively supporting parental choice policies and programs that empower low-income and working-class [b]lack families." *Our Mission and Beliefs*, BAEO, http://baeo.org/mission.html (last visited Dec. 15, 2012).

unions.[16] This Essay, informed by hands-on experience,[17] refutes such criticism.[18]

This Essay is organized into five parts. Part I provides an introductory overview. Part II critiques Professor Teixeira de Sousa's scholarship[19] and establishes a foundation for Part III, which refutes the main points she argues. Part IV provides support for my argument that education reform directly correlates with economic development, something championed by black[20] and mainline interests,[21] as an important convergence for the prospects of reform. Finally, Part V concludes.

---

[16] Monica Teixeira de Sousa, *The State of Our Unions: How President Obama's Education Reforms Threaten the Working Class*, 50 U. LOUISVILLE L. REV. 201, 216–23 (2011). For an excellent empirical analysis of unionization serving teachers' interests, *but not* students, see Timothy Deloache Edmonds, *Contracting Away Success: The Way Teacher Collective Bargaining Agreements Are Undermining the Education of America's Children*, 2 COLUM. J. RACE & L. 199, 217–21 (2012). Further, for a recent political history, see *Teacher Unions – Overview, Influence on Instruction and Other Educational Practices*, STATEUNIVERSITY.COM EDUC. ENCYCLOPEDIA, http://education.stateuniversity.com/pages/2486/teacher-unions.html (last visited Dec. 15, 2012). Indeed, President Obama's intra-party discord is more about his detractors' identity issues. Craig Livermore, *Racial Complexity and the Elementary and Secondary Education Act*, 26 J. C.R. & ECON. Dev. 67, 70 (2012) ("[U]nions and civil rights groups project their own solidified identity performance onto educational reform in a manner which both consciously and subconsciously seeks to protect their identity interests more than it does issue toward greater educational equality.").

[17] This Essay builds upon arguments that education reforms don't go far enough. Augustine & Freeman, *supra* note 8, at 270–72 (providing policy making recommendations on specific ways NCLB should be strengthened for reauthorization); *see also* Jonathan C. Augustine, *America's New Civil Rights Movement: Education Reform, Public Charter Schools and No Child Left Behind*, 59 LA. B.J. 340, 343 (2012) (offering additional policy recommendations for strengthening NCLB).

[18] President Obama's education agenda cannot be a surprise. As a candidate, Obama promised to more than double funding for charter schools. Sonja Ralston Elder, *Adding Autonomous Schools to New Orleans' Menu of School Choice*, 11 LOY. J. PUB. INT. L. 389, 389–90 (2010); *see also* Sam Dillon, *Obama Looks to Lessons from Chicago in His National Education Plan*, N.Y. TIMES, Sept. 10, 2008, at A21, *available at* http://www.nytimes.com/2008/09/10/us/politics/10educate.html?pagewanted=all&_r=0.

[19] Teixeira de Sousa, *supra* note 16. I have had the pleasure of reading some of Professor Teixeira de Sousa's other work. *See, e.g.*, Monica Teixeira de Sousa, *The Politics of Supplementing Failure Under NCLB: How Both Left and Right Are Forcing Low-Income Children to Choose Between a Deficient Education and Working Overtime*, 10 NEV. L.J. 118 (2009). Although I respect her scholarly insight, I differ in opinion and offer an alternative perspective.

[20] "The engineers of the school desegregation effort argued they fought for *Brown v. Board of Education* in part because they believed that 'green follows white.'" James Foreman, Jr., *Do Charter Schools Threaten Public Education? Emerging Evidence from Fifteen Years of a Quasi-Market for Schooling*, 2007 U. ILL. L. REV. 839, 853 (2007) (citations omitted); *see also* Lia Epperson, *Resisting Retreat: The Struggle for Equity in Educational Opportunity in the Post-*Brown *Era*, 66 U. PITT. L. REV. 131, 145 (2004) (acknowledging "green follows white" from a civil rights lawyer's perspective).

[21] For an excellent analysis and application of Professor Bell's interest convergence theory from a white perspective, see generally Robert A. Garda, Jr., *The White Interest in School Integration*, 63 FLA. L. REV. 599 (2011) (arguing diversity in education benefits whites and society as a whole). "The interest convergence theory conveys an ugly truth—whites (or any empowered group) will not help minorities (or any disempowered group) unless it is in their best interest to do so." *Id.* at 603.

II. CRITIQUING "THE STATE OF OUR UNIONS"

> This is not to suggest that educationally oriented remedies can be developed and adopted without resistance. Policies necessary to obtain effective schools threaten the self-interest of teacher unions and others with vested interests in the status quo.
>
> —Derrick A. Bell Jr.[22]

Professor Teixeira de Sousa takes issue with Race to the Top's ("RTT") incentive-based financial reward for innovation,[23] and America's pro-charter school movement.[24] Although her arguments are premised on the alleged destruction of teacher unions,[25] the American Federation of Teachers' ("AFT") education reform partnership with the Bill and Melinda Gates Foundation ("the Gates Foundation") belies the arguments.[26] Moreover, her oversimplification is flawed in at least three regards.

First, Professor Teixeira de Sousa categorizes a political tension between the "left" and "right."[27] In actuality, the tension is between the

---

[22] Bell, *supra* note 14, at 532 (emphasis added).

[23] *See* Teixeira de Sousa, *supra* note 16, at 210–13. Although widely publicized as President Obama's initiative, RTT's $4.35 billion state education reform incentives are part of Congress' American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115, 516 (also known as "The Stimulus"). *See generally The American Recovery and Reinvestment Act of 2009: Saving and Creating Jobs and Reforming Education*, http://www2.ed.gov/policy/gen/leg/recovery/implementation.html (last visited Dec. 15, 2012). *See also* Maria Gloud, *Stimulus Includes $5 Billion Flexible Fund for Education*, WASH. POST, Feb. 14, 2009, at A10, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/02/13/AR2009021303346.html.

[24] *See* Teixeira de Sousa, *supra* note 16, at 214–16. For positive critiques noting the benefits of charter schools, see generally THE EMANCIPATORY PROMISE OF CHARTER SCHOOLS (Eric Rofes & Lisa M. Stulberg, eds. 2004) (providing essays arguing that community-controlled charter schools geared toward low income children, including children of color, offer an emancipatory potential); Foreman, *supra* note 20, at 842 ("[T]he weight of the evidence so far suggest that charters and traditional public schools serve similar students. To the extent there are differences, charter schools are *more likely* to serve African American students.") (emphasis in original); Suhrid S. Gajendragadkar, *The Constitutionality of Racial Balancing in Charter Schools*, 106 COLUM. L. REV. 144, 144–45 (2006) (defining charter schools' operational function and noting their benefits). *See also* BRYAN C. HASSEL, THE CHARTER SCHOOL CHALLENGE: AVOIDING THE PITFALLS, FULFILLING THE PROMISE 1–12 (1999) (providing a comprehensive explanation of how charter schools work).

[25] *See* Teixeira de Sousa, *supra* note 16, at 203.

[26] While addressing the AFT's July 2010 national convention, commending the organization for its support of charter schools and other reform-oriented measures and criticizing teacher tenure laws, Bill Gates remarked that "[b]y partnering with school districts in key states, you bolstered the states' applications for the federal Race to the Top program. This collaboration will bring crucial new funding for schools that teach some of the nation's most underserved students." Bill Gates, Speech to the American Federation of Teachers (July 10, 2010), *available at* http://www.aft.org/pdfs/press/sp_gates071010.pdf.

[27] *See* Teixeira de Sousa, *supra* note 16, at 203.

"old" and "new" unionism.[28] Democrats have not abandoned teachers or unions. Instead, they respond to ongoing problems with educational outcomes by reimaging what teacher unions can and should be. Moreover, although the article implies there are two sides, Republicans and Democrats, with Democrats moving to join Republicans, an objective analysis shows political unity and a collective desire to improve educational outcomes.[29]

Second, the article assumes unions are monolithic, when they have diverse perspectives on education reform.[30] Public opinion shows this diversity, as does the creation of "thin contracts" by unions.[31] Third, the article's categorization of the Gates Foundation is off base.[32] As a non-partisan stakeholder, the Gates Foundation *works with teachers*, something unions value,[33] in improving outcomes.[34]

III. EDUCATION REFORM AND AMERICA'S CIVIL RIGHTS MOVEMENT

> [C]harter schools are publically financed and open to any child, but they are run by entities other than the conventional local school district. Typically, they are operated by nonprofit organizations that rely on donations to provide seed money to launch the school but then use the same amount, or less taxpayer money per pupil, as is doled out to the public schools for ongoing operations. Those who run charters are

---

[28] As a part of the "new," a recent Teach for America corps member writes: "[TFA was] an opportunity to participate in the struggle to provide a quality education for students . . . . I personally did not enter TFA (nor would I have joined) if I believed the organization to function as an anti-teacher union or attack on veteran teachers." E-mail from Amanda Austin (May 23, 2012, 3:00 PM CDT) (on file with author).

[29] *See, e.g.*, Augustine & Freeman, *supra* note 8, at 247–50 (discussing education reform enactments during the presidential administrations of Lyndon Johnson, Bill Clinton, and George W. Bush).

[30] Indeed, AFT's president describes how her union supports new ways to evaluate and pay teachers and establish charter schools. Randi Weingartner, *The Role of Teachers in School Improvement: Lessons from the Field*, 6 HARV. L. & POL'Y REV. 9, 23–24 (2012).

[31] Former AFT President Sandra Feldman was one of the first and biggest proponents of "thin contracts," along with TURN, the Teacher Union Reform Network. LINDA KABOOLIN & PAUL SUTHERLAND, WIN-WIN LABOR-MANAGEMENT COLLABORATION IN EDUCATION: BREAKTHROUGH PRACTICES TO BENEFIT STUDENTS, TEACHERS, AND ADMINISTRATORS 32 (2005). "Under the thin contract model, school site agreements are the norm . . . . Thin contract supplements serve as the only place that local school issues—student performance targets, resource allocation, class size, professional development programs, and similar matters—are contractually addressed." *Id.* at 33; *see also* GREEN DOT PUB. SCH., http://www.greendot.org/page.cfm?p=2244 (last visited Dec. 15, 2012) (providing information about unions collaboration with the Gates Foundation in Los Angeles).

[32] Teixeira de Sousa, *supra* note 16, at 232.

[33] *See* Weingartner, *supra* note 30, at 21–22 (describing successful collaborative reform efforts wherein unions actively participated in policy development).

[34] *See supra* note 26 and accompanying text.

> accountable for the school's performance. However, they are free to manage as they wish, which includes the freedom to hire teachers who are not union members.
>
> —Steven Brill, *Class Warfare*[35]

A. Congressional Engagement in Education Reform Is Nothing New

The policy-oriented goals behind RTT's incentivizing classroom improvements are not new. They date back to *Sputnik*.[36] In the wake of World War II and the Cold War's intensification, concerns arose as to whether the United States could keep up with the Soviet Union in math and science after the 1957 launch of the Soviet Union's space satellite *Sputnik*.[37] Consequently, policymakers pressured public schools to quantify educational improvement to ensure America would not lose the space race.[38] Congress then passed the Elementary and Secondary Education Act of 1965 ("ESEA").[39]

ESEA's signature item was Title I, the federal government's largest education aid program.[40] A former White House education policy advisor and president of the Schott Foundation for Public Education describes ESEA as providing a clear federal role for education after *Brown* and the Civil Rights Act of 1964, placing America on a course toward sustaining its position as a global leader of opportunity and democracy.[41] Moreover, the

---

[35] STEVEN BRILL, CLASS WARFARE: INSIDE THE FIGHT TO FIX AMERICA'S SCHOOLS 8 (2011).

[36] SCOTT S. COWEN, INST. FOR PUB. EDUC. INITIATIVES AT TULANE UNIV., PUBLIC SCHOOL PERFORMANCE IN NEW ORLEANS: A SUPPLEMENT TO THE 2008 STATE OF PUBLIC EDUCATION IN NEW ORLEANS REPORT 4 (2009) (internal citations omitted).

[37] *Id.*

[38] *Id.*; *see also* Augustine, *supra* note 17, at 341.

[39] Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27–58 (codified as amended in scattered sections of 20 U.S.C.). ESEA's currently enforced version is NCLB. President Obama's proposed NCLB amendments are publically available. *See generally* U.S. DEP'T OF EDUC., A BLUEPRINT FOR REFORM: THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT (2010), *available at* http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf. They outline four areas for NCLB reform, aligned with RTT: (1) improving teacher and principal effectiveness; (2) providing adequate information and data to families and educators; (3) implementing standards and assessments to ensure all graduates are college and career ready; and (4) improving student performance in the lowest performing schools. *Id.* at 3.

[40] Nick Lewin, *The No Child Left Behind Act of 2001: The Triumph of School Choice over Racial Desegregation*, 12 GEO. J. ON POVERTY L. & POL'Y 95, 101 (2005).

[41] John H. Jackson, *From Miracle to Movement: Mandating a National Opportunity to Learn*, *in* THE STATE OF BLACK AMERICA 2009: MESSAGE TO THE PRESIDENT 62 (Nat'l Urban League 2009). Moreover, government's focus on education improvement significantly benefited many blacks after 1965. *See* Anna Williams Shavers, *Katrina's Children: Revealing the Broken Promise of Education*, 31 T. MARSHALL L. REV. 499, 516, n.84 (2006).

director of the NAACP Legal Defense Fund's Education Practice Group describes ESEA as a civil rights statute designed to level the playing field by expanding opportunity for poor children and children of color.[42]

In the decades following ESEA's enactment, Congress continually poured hundreds of billions of dollars into public education, with lackluster results.[43] Consequently, policy makers must demand systemic change and outcomes-based improvement, something Obama and the progressive left are doing.[44] Indeed, notwithstanding RTT's detractors, RTT receives praise "for inspiring education reforms without dictating the details and without spending a great deal of the money . . . . Many also applaud the priorities of the program, especially its desire to measure teacher performance through student test scores and its encouragement of national standards."[45]

B. The Data on Charter Schools: Are They Working for Children?

As Congress continually funds education, given the historical return on investment, RTT incentivizes states to break bureaucracy and make much needed reforms.

> Fundamental to the philosophical force behind RTT is the belief . . . that . . . competition by the states for such large grant monies will not only engender positive educational steps . . . but that all states will move toward more constructive educational approaches . . . . *In other words, it is not the*

---

[42] Hewitt, *supra* note 7, at 169.

[43] *See* Augustine & Freeman, *supra* note 8, at 249.

[44] Although Professor Teixeira de Sousa argues President Obama succumbs to the political right, the political left actually originated demands for autonomy in education in the 1960s:

> While freedom schools were a summer phenomenon, they would help give rise to a group of schools that operated year-round, mostly in the North, and which shared many of their basic assumptions. These were the free schools, which came into being in the 1960s and 1970s and constitute the next chapter in the history of progressive school choice. . . .
>
> *Free schools also were grounded in the left's critique of bureaucracy that marked the 1960s. In today's educational debates, when many members of the progressive and civil rights communities defend the public school system against challenges from the right, it is easy to forget that in the 1960s, it was the left that attacked the bureaucracy*.

Foreman, *supra* note 1, at 1300–01 (emphasis added).

[45] MARK G. YUDOF ET AL., EDUCATIONAL POLICY AND THE LAW 921–22 (5th ed. 2012).

> *money by itself that will produce effective educational reform, but the innovative abilities unleashed by competition*.[46]

Furthermore, Professor Teixeira de Sousa argues that data doesn't support the conclusion charter schools are better than traditional schools.[47] In actuality, however, anecdotal data shows charter schools *are working* in improving results-based outcomes.[48] Moreover, because charter schools often enroll poor children with historic challenges,[49] empirical data cannot yet accurately refute detractors.[50] Research shows, however, that ongoing school reform could significantly reduce racial earning gaps.[51]

IV. THE CONVERGENCE OF EDUCATION REFORM AND ECONOMIC DEVELOPMENT

> So many poor babies . . . enter the world with multiple strikes already against them . . . . Lack of access to health and mental health care . . . lack of quality early childhood education to get ready for school; educational disadvantages resulting from failing schools that don't expect to help them achieve or detect and correct early problems that impede learning . . . too few positive alternatives to the streets after school and in summer months; and too few positive role models and mentors in their homes . . . .
>
> —Marian Wright Edelman[52]

Case studies show the direct correlation between social capital (familial relationships, etc.) and educational opportunities.[53] Moreover, regarding race, considerable differences in income earning directly relate to such

---

[46] Livermore, *supra* note 16, at 69 (emphasis added).

[47] Teixeira de Sousa, *supra* note 16, at 203.

[48] Michael Olneck, *Economic Consequences of the Academic Achievement Gap for African Americans*, 89 MARQUETTE L. REV. 95, 100–01 (2005) (providing a quantitative, income-based analysis to support the argument that "choice" and reduced class size lead to better incomes).

[49] Foreman, *supra* note 20, at 857 (empirically noting that "[n]ationally, the proportion of blacks in charters is higher than the proportion in district schools; the opposite is true for whites").

[50] Charter schools only have a recent history, with the first opening in Minnesota in 1992. Augustine & Freeman, *supra* note 8, at 240–41, n.9 (internal citations omitted).

[51] Olneck, *supra* note 48, at 101.

[52] Marian Wright Edelman, *A Call to End Adult Hypocrisy, Neglect and Abandonment of Children and America's Cradle to Prison Pipeline*, *in* AMERICA'S CRADLE TO PRISON PIPELINE: A REPORT OF THE CHILDREN'S DEFENSE FUND 1, 3–4 (2008).

[53] Omari Scott Simmons, *Lost in Transition: The Implications of Social Capital for Higher Education Access*, 97 NOTRE DAME L. REV. 205, 218–21 (2011) (highlighting the results of case studies from the Chicago and North Carolina public schools).

opportunities.[54] It is therefore logical that where many "vulnerable students"[55] lack social capital, they simultaneously lack meaningful opportunity to improve their economic status.[56] While white interest in school reform may be in improved learning outcomes through diversity,[57] black interest is in increased income earning potential.[58] These interests have converged for a paradigmatic shift: the interest convergence theory 2.0.

V. CONCLUSION

> I want for all children to go to schools worthy of their potential—schools that challenge them, inspire them, and instill in them a sense of wonder about the world around them. I want them to have the chance to go to college—even if their parents aren't rich. And I want them to get good jobs: jobs that pay well and give them benefits . . . .
>
> —President Barack H. Obama[59]

Since education reform began in the wake of *Sputnik*, it has not been immune from controversy. Regardless of partisan perspective, however, America is unified behind the idea that education is the foundation of good citizenship. Indeed, education has also long been regarded as the key to economic opportunity.[60]

---

[54] Olneck, *supra* note 48, at 98–99.

[55] I adopt the definition of vulnerable students used by Professor Simmons. Accordingly, the term broadly includes students facing risk factors including, but not limited to, lower socioeconomic status, historical disenfranchisement, geographic isolation, minority status, and limited parental educational attainment. Simmons, *supra* note 53, at 208 n.2.

[56] During a National Public Radio interview regarding wealth disparities, economist Tyler Cowen discussed social mobility and education:

> And if you look at why the United States has, in some ways, lower-than-average mobility, it's because people whose parents went to good schools tend to go to good schools tend to go to good schools themselves. People whose parents did not go to good schools tend to not go to good schools. So the key is to fix education.

Morning Education: Is Income Inequality a Problem in the U.S.?, NAT'L PUB. RADIO (Nov. 29, 2011), *available at* http://www.npr.org/2011/11/29/142883180/how-to-solve-wealth-inequality.

[57] Garda, *supra* note 21, at 616–22.

[58] Olneck, *supra* note 48, at 104 ("Equalizing achievement across race would go a long way toward diminishing economic disparities between whites and blacks . . . . Even modest gains in achievement . . . are predicted to meaningfully increase economic attainments.").

[59] Barack Obama, *What I Want for You—and Every Child in America*, PARADE, Jan. 18, 2009, at 4, *available at* http://www.parade.com/news/2009/01/barack-obama-letter-to-my-daughters.html.

[60] *See* Senator Paul Simon, Foreword, *Symposium:* Brown v. Board of Education, 20 S. ILL. U. L.J., at i, ii

Although NCLB was passed as overwhelmingly bipartisan legislation aimed at closing the achievement gap and consequently creating economic opportunity, reaction to Congress' creation of RTT, an incentive-based method to achieve NCLB's goals, has been less sanguine. While RTT is far from perfect, the AFT—a teachers' union that would presumably be opposed to its reforms—has partnered with states in attempting to secure RTT funds.[61] Moreover, the AFT also supports new standards for teacher evaluation and pay as well as charter schools.[62] In *Brown*, ethnic interests converged to end segregation. In current reform, economic interests converge to improve education. Any argument failing to address that reality is lacking, at best.

(1995).

[61] *See* Press Release, La. Fed'n of Teachers, Race to the Top: Frequently Asked Questions 1 (Mar. 4, 2010), *available at* http://la.aft.org/files/article_assets/9AE1AFF5-BEB1-B947-B2FF905E66AE89D7.pdf.

[62] *See* Weingartner, *supra* note 30, at 30.