Restoring Justice to Civil Rights Movement Activists?: New Historiography and the “Long Civil Rights Era”

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Civil Rights is a term that did not evolve out of black culture, but rather, out of American law. As such, it is a term of limitation. It speaks only to physical possibilities—necessary and treasured, of course—but not of the spirit. Even as it promises assurance of greater freedom[,] it narrows the area in which people might expect to find them…

Alice Walker

Introduction:

This paper seeks to engage ongoing discussions and conceptualizations about the Civil Rights and Restorative Justice Project and its meanings, boundaries, and goals. It tells two different but overlapping stories of the civil rights era and argues that the dominant abbreviated story of the movement, focusing on the ten-year period centered on the King-led nonviolent movement in the South, should be rejected as a framework for the Project. This ten-year story truncates, decontextualizes, and tames the movement while rendering it legalistic, episodic, triumphant and nostalgic. The effect is that it obscures the movement’s relevance to today’s circumstances; it distorts the nature, objectives and activities of the masses of ordinary black people who fought its battles, including their broad egalitarian democratic agenda; and it allows forces hostile to the movement’s objectives to easily appropriate and misappropriate its ideas. As such it undermines the goals of the Project, justice for civil rights activists. Based on new historiography, this paper advocates for an understanding of the civil rights period as constituting what Nikhil Pal Singh calls the “long civil rights era,” and part of what

2 LESLIE BENDER AND DAAN BRAVERMAN, POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER 1-2 (1995) (citing Alice Walker’s discussion of her poem Silver Writes” and its relationship to the civil rights movement in In Search of Our Mothers’ Gardens 335 (1983)). Walker notes that the term “civil rights” does not capture the vibrancy of the movement she joined.

3 The goals of the Project, according to the brochure are to: [I]nvestigate the role of state, local, and federal law enforcement agencies and courts in protecting civil rights activities and activists during the mid-century movement. The Project examines the geo-politics that led to the large-scale breakdown of law enforcement, the wide-scale repression of movement activists, and the reforms that have been designed to rectify the abuses. CRRJ initiates and assesses policy measures designed to redress the workings caused by government repression. The Project assesses legislative approaches and marshals support for state and federal laws addressing the personal harms suffered by activists in the civil rights movement. Program Brochure on file with author.

4 See SINGH supra note 1, at 1-14 (describing the typical account of the civil rights era as a “King-centric” account and a “short civil rights era” and suggesting that it misrepresents modern US history, portrays the South as an exception to national racial norms, fails to recognize the depth and heterogeneity of black struggles, narrows “the political scope of black agency” while reinforcing a “formal legalistic view of black equality.” Also noting that this history obscures a violent history of black opposition to white supremacy well underway in urban areas before the southern civil rights movement, particularly in the north in reaction to de facto racial hierarchies of state and private agencies in housing, labor markets, policing and criminal justice practices.” See also, Robert O Sef, The Black Panther Party and the Long Civil Rights Era, in IN SEARCH OF THE BLACK PANTHER PARTY NEW PERSPECTIVES ON A REVOLUTIONARY MOMENT (JAMA LAZEROW AND YOHURU WILLIAMS eds.) 9 (2006); and Peniel E. Joseph, Introduction: Toward a Historiography of the Black Power Movement, in THE BLACK POWER MOVEMENT: RETHINKING THE CIVIL RIGHTS – BLACK POWER ERA (PENIEL E. JOSEPH ed.) 1, 3 (2006) (making similar points).

5 See SINGH, supra note 1 at 1-14.

6 Id.
scholars such as Manning Marable and Clayborne Carson call the “black freedom struggle.”

The Project on Civil Rights and Restorative Justice was organized to support efforts occurring across the country to rectify and account for the tremendous cost to civil rights activist and supporters of participating in the civil rights movement. The civil rights movement is celebrated in the United States and throughout the world as a movement that challenged oppression and broadened American concepts and practices of equality and democracy. However, there was and remains tremendous white community resistance to the struggle and its objectives, often effectuated and encouraged by government as well as lax and complicit law enforcement. The cost of this resistance has been borne almost exclusively by black people, other people of color and activist of all races. The Restorative Justice Project is meant to aid in addressing the historical cost of movement participation, manifested in an array of lynchings, murders, beatings, home

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8 See generally, Letter from Margaret Burnham, Conference Brochure, Crimes of the Civil Rights Era, April 27-28 (on file with author).

9 See, Jacquelyn Dowd Hall, The Long Civil Rights Movement and the Political Uses of the Past, J. AM. HISTORY 1233, 1245 (Mar. 2005) (critiquing the truncated story as a story of American progress). See also, Emily A. Spieler, Dean of Northeastern Law School, in her letter in the opening sections of the conference brochure, which makes a more definitive claim than I am prepared to make in reference to the civil rights movement. She stated: “The Civil Right Movement is rightly celebrated throughout the world for breaking the back of racial segregation and paving the way for genuine equality in the U.S.” Though the civil rights movement can be said to have broken the back of racial segregation as sanctioned by law, the existing and extensive reality of residential segregation from coast to coast in the US cast doubt as to whether segregation itself has been broken. Further, a glance at the overall structure of American society cast even more doubt that “genuine equality” obtains. For instance consider health disparities (black adults have a lower life expectancy than white adults, black infant mortality rates are higher, as are the rates of chronic illness; See Centers for Disease Control’s National Center for Health Statistics, at http://www.cdc.gov/nchs/data/factsheets/racialandethnic.pdf (last visited DATE); wealth gaps (“Depending on the data source used, white households in the United States hold somewhere between five and ten times the net worth of black households.”, Robert Barsky, Accounting for the black-white wealth gap: a nonparametric approach, J. American Statistical Ass’n (Sept. 2002)); “Blacks comprise 13 percent of the national population, but 30 percent of people arrested, 41 percent of people in jail, and 49 percent of those in prison,” HUMAN RIGHTS WATCH, Incarceration and Race in the U.S., available at http://www.hrw.org/reports/2000/usa/Rcdrg00-01.htm#P154_25524 (last visited DATE); Gary Orfield & Chungmei Lee, Racial Transformation and the Changing Nature of Segregation, REPORT OF THE CIVIL RIGHTS PROJECT, HARVARD UNIVERSITY (Jan. 12, 2006), available at http://www.civilrightsproject.ucla.edu/research/deseg/Racial_Transformation.pdf.
and church bombings, mass arrest, intimidation, cross burnings and other kinds of anti-civil rights violence against activist and their supporters.

The paper grows out of discussions held at the national conference on Crimes of the Civil Rights Era sponsored by the Northeastern University Project on Civil Rights and Restorative Justice and the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. The conference was organized to explore the questions implicated in conceptualizing the Restorative Justice Project. For instance, the Project draws upon a second branch of restorative justice theory that finds its most well known reference in the South African Truth and Reconciliation effort. But what is the relationship between restorative justice in the criminal law context, which is meant to repudiate retribution as a model of criminal punishment and to reconcile criminal offenders with their victims and their communities and restorative justice in the “transitional” context? Transitional notions of restorative justice were developed within the context of efforts to reconstruct societies after periods of mass human rights violations that implicate group conflict and embrace some forms of retribution. The latter is the South African model. How might these two different notions relate and interact? Another question involved the relationship between the theories of restorative justice and theories of reparations in the United States. A third set of questions asked:

10 See generally, Letter from Margaret Burnham, supra note 8.
11 Margaret Burnham’s work in South Africa leads me to believe this is her focus.
12 Criminal law theories of restorative justice generally seek to replace and supplant theories of retributive punishment. In fact the two are in many ways incompatible. Restorative justice focuses on repairing the harm that crime visits on victims and involves all stakeholders, including the offender, victim and the community in dialogue and mediation to resolve the arm done. Retribution as a theory of punishment focuses on the just deserts of the offender. That it focuses on the offender getting what he deserves, given what he has done; See (Heather Strang & Lawrence W. Sherman, Repairing the Harm: Victims and Restorative Justice, 2003 UTAH L. REV. 15; and Stephen P. Garvey, Restorative Justice, Punishment, and Atonement, 2003 UTAH L. REV. 303); But see e.g., John Dignan, “Towards a Systemic Model of Restorative Justice: Reflections on the Concept, its Context and the Need for Clear Constraints,” in RESTORATIVE JUSTICE AND CRIMINAL JUSTICE (Andrew Von Hirsch, Julian V. Roberts, Anthony Bottoms, Kent roach and Mara Schiff, eds.) 135-156 (2003), arguing that even repairing the harm done to victims should be considered a punishment. Further See, Erik Luna, The Practice of Restorative Justice: Punishment Theory, Holism, and the Procedural Conception of Restorative Justice, 2003 UTAH L. REV. 205 (2003) (suggesting a procedural understanding of restorative justice in the criminal context that accommodates both retributive and utilitarian concepts of punishment within a restorative justice process).
13 See Transitional Justice Approaches at http://www.ictj.org/en/tj/ (last visited DATE) discussing the approaches used by the International Center for Transitional Justice, See History and Missions at http://www.ictj.org/en/about/mission/ (last visited DATE); See also LESSONS IN TRUTH-SEEKING: INTERNATIONAL EXPERIENCES INFORMING US INITIATIVES for work done in the US, at http://www.ictj.org/en/news/pubs/index.html (last visited DATE)explaining the work of the International Center for Transitional Justice and noting that the Center helps advocates to develop “integrated, comprehensive, and localized approaches to transitional justice, comprising five key elements: Prosecuting perpetrators; documenting and acknowledging violations through non-judicial means such as truth commissions; reforming abusive institutions; providing reparations to victims; facilitating reconciliation processes.”.
14 This author is exploring this set of issues in a separate article.
what types of activities constitute civil rights era crimes or anti-civil rights or anti-black violence? Should the focus be only on violence? Does a focus on violence privilege a legal concentration? What about all the other ways in which black activism was punished through social and economic processes?

This paper focuses on one of the questions highlighted during this process: what do we mean when we talk about the civil rights era? Organizers of the Project initially viewed this question as unproblematic and self-evident. They adhered to the popular and dominant story of the civil rights era as beginning with Brown v. Board of Education decision in 195417 and ending with the enactment of the Voting Rights Act in 1965. This paper critiques adherence to this story as a framework for the Project because it distorts and excludes the range of people, places, philosophies, strategies, events and most importantly the range of agendas that constitute the movement and thereby limits the reach of the Project.

Specifically it argues that the dominant story truncates the movement limiting the time-period and activities associated with the movement to a ten-year period focused on the nonviolent movement in the South. First, the story centers law, suggesting that the removal of unfair laws were the civil rights movement’s only goals, and as if changing a few laws undid the country’s racial caste system erected over two hundred years of slavery and nearly a hundred years of Jim Crow. Second it highlights a limited cast of characters, often centering the persona and early years only of Martin Luther King - as if he were its only leader. Third, it ignores the goals of economic justice and social transformation often advocated by black freedom activists. Fourth, it obscures the movements’ critique of American exceptionalism. Fifth it disregards the movement’s activism around the pressing and developing, yet unresolved, issues of urban life in central cities in the North, as well as in the West and South. Sixth, it privileges nonviolent strategies over those of black self-defense in the face of brutal racist attack while preserving white privilege to this same right. And finally, it excludes the Black Power phase movement and its activists, the criminalization of whom likely foreshadowed the mass incarceration of men of color that we see today. In short, the truncated story is a

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16 Id.
18 Hall, supra note 9 at 1245 (noting that the link between race and class lay at the heart of the political imagination of the movement, a movement beginning in the late 1930s).
19 Mass incarceration often attributed to the “fateful shift from the 1960s War on Poverty to he 1980s War on Drugs.” See Singh, supra note 1, at 9. But see Commentary: Mass Black Incarceration is White Societal Aggression 18 THE BLACK COMMENTATOR MARCH 18, 2004 AT HTTP://WWW.BLACKCOMMENTATOR.COM/82/82_PRISONS_PF.HTML (commenting: The semi-learned like to say that draconian drug laws are a “cultural reaction” to the “excesses” of the Sixties. This too is a euphemism and diversion, as is proven by the statistics and by white political behavior in the face of the facts of incarceration. The real “culture shock” of the decade
triumphant one that limits the long civil rights era to the most liberal (as opposed to the more radical) phase of the movement, \textsuperscript{20} while simultaneously obscuring, mischaracterizing and underestimating the breath and depth of white American resistance, of which the short story is itself a part, and which is by far more triumphant. \textsuperscript{21}

New historiography is beginning to expose the limitations of the truncated civil rights story and to provide a fuller picture of the era. \textsuperscript{22} For instance, it suggests that the civil rights era begins in the 1930s, is transformed in the 1950’s, and again in the mid-1960’s and ends but remains unfinished sometime around the early eighties with its broad egalitarian democratic agenda largely unmet. \textsuperscript{23} It also exposes the movement’s various strategies, its multitude of leaders, and the masses of ordinary people who participated in it in hundreds of cities, towns and villages across the country both in the South and in the mythical North.

was the sight of Blacks standing up as men and women – not the irritating sideshow of white kids getting intoxicated. (Otherwise, the prisons would have been filled with white youth, in order to teach them a “cultural” lesson.) \textit{Mass incarceration was the national response to the Civil Rights and Black Power Movements, a white societal reaction to Black intrusions onto white space.” The incarceration frenzy shows no signs of letting up} [emphasis mine].

\textsuperscript{20}Self, supra note 4, at 18. I use the term “liberal” loosely, but generally am referring to the commitment to a particular set of ideas about the way in which society and its government or political economy should be organized. This set encompasses at least the following three ideas: 1) an understanding of the Individual (as opposed to communities or groups) as the basis of society and law, with the society through its government committed to protecting individual liberty; 2) a commitment to a capitalist or market economy and the protection of private property within that system and 3) a commitment to political democracy or some form of representative government. These are the ideas of liberalism and a movement operating within such system and committed to maintaining an order based on these ideas is a liberal movement. Arguably until 1965 the US was a racial dictatorship that subjugated black people as a group (it was neither democratic nor saw black people as individuals). In so far as the black struggle sought to transform this dictatorship, it can be considered a radical movement. However, I seek to highlight the egalitarian aspect of the black struggle. Thus, I am concerned with economic arrangements and refer to those committed to maintaining capitalism and the private market exchange system as the primary organizing principle of the economy as liberals whether or not they are conservative, stressing negative rights for protecting individual liberty, free markets and rejection of government intervention in the economy; or progressive, stressing positive rights, and government intervention in the economy for the provision of individuals’ well-being. Both operate within the individualist capitalist (market exchange) system. By radicals, I mean those who were committed to transforming the political economic arrangements by, among other things, placing workers, cooperatives, etc., at the center of political-economic ordering and control, including socialists, communists, among others.

\textsuperscript{21} \textit{Id.}, (arguing that the short story is used strategically to blunt the gravitas of the movement.)


\textsuperscript{23} See supra note 19.
This longer story’s importance is not limited to the Restorative Justice Project, however. It also potentially provides context and direction in a host of modern debates. For example, recent work by William Forbath and Lauren Goluboff bring to light the hidden economic agenda and legal labor strategies of the early civil rights years, a history untold in the truncated civil rights story. Further, issues snatched from today’s headlines, such as, the Jena affair, make little sense in the absence of the longer civil rights story.

24 See e.g. William E. Forbath, Caste, Class and Equal Citizenship, 98 Mich. L. Rev. 1 (1999) (arguing in part that constitutionalists’ interpretations that suggest that the constitution does not address issues of class or economic and social rights (social citizenship) are wrong and arguing that historically there was a social citizenship tradition located outside of the courts in more “democratic (elected) arenas” of government that was supported by a wide range of social movements, of which the black freedom struggle was one. At the heart of this social citizenship tradition was a “guarantee of equal citizenship [which] entailed decent work, [that is, the right to work and provision of such work], a measure of economic autonomy and democracy, and social provision for “all Americans;”’ a tradition that was betrayed and limited by the same forces that had conspired to betray the first Reconstruction - Southern Dixiecrats together with northern (industrialists) Republicans. Id., at 4-5. This betrayal however, not only denied black people political and civil rights for “almost another century but also denied all Americans the benefits of social citizenship.” In advancing this argument Forbath details the labor-based civil rights movement of the 1930s and 1940s that I in part discuss in this article. Forbath also discusses this movement in his article Civil Rights and Economic Citizenship: Notes on the Past and Future of the Civil Rights and Labor Movements, 2 U. Pa. J. Lab. & Emp. L. 697 (1999-2000).

While both Forbath and Goluboff focus on the early years of the civil rights movement they do not examine the later phase of the civil rights movement, that of Black Power.

25 See e.g., Risa L. Goluboff, Let Economic Equality Take Care of Itself*: The NAACP, Labor Litigation, and the Making of Civil Rights in the 1940s, 52 UCLA L. Rev. 1393 (2005); Goluboff, THE LOST PROMISE OF CIVIL RIGHTS, (2007); Goluboff, Brown v. Board of Education and the Lost Promise of Civil Rights in Civil Rights Stories (Myriam Gilles and Risa Goluboff eds.) 25 (2007). In these texts, Goluboff focuses on the litigation strategy of the National Association for the Advancement of Colored People, the NAACP, in the 1930s and 40s, a strategy that entailed a significant practice in labor and employment disputes involving African Americans. In doing so she describes the civil rights movement of that moment. She argues in part that the labor and employment cases and the various lines of arguments that the NAACP pursued through them, both in terms of employment discrimination and in terms of ideas around the right to work, constitute forgotten goals and doctrinal analyses of the civil rights movement, analyses that could be of benefit today. She argues that these analyses were the lost in part as a result of the success of the Brown decision, a decision which focused on education, on the psychological harms of discrimination, as well as on segregation and state action as opposed to the material economic harms of Jim Crow perpetuated not simply by the state but also through the private actions of whites in their daily lives. This limited focus permeates notion of civil rights to this day, a focus that does not represent the thinking of civil rights in the 1930s and 40s.

26 On August 30, 2006 in Jena Louisiana, a black student asked during a school assembly whether black students could sit underneath specific tree in the center of the campus. The assistant principal responded that of course anyone could sit anywhere. The next day two hangman nooses were found hanging from the tree. Few students actually saw the nooses but the students responsible for hanging it were suspended. Over the next several months several acts of violence occurred including arson at the school. In particular on December 2, six blacks students were said to have gotten in a fight with or attacked a white youth. They were charged with a series of crimes including attempted murder, charges that were later reduced. It is unclear that the acts of violence occurred because of the hung nooses, however, they did occur within the context of racially charged environment because of the nooses. Protest in favor of the six, who came to be known as the Jena Six also occurred with protesters arguing that these students were over-charged within a criminal justice context in the United States that often over charges and disproportionately incarcerates black men. See, N. Y. Times, Sunday November 25, 2007 at http://topics.nytimes.com/top/news/national/usstateterritoriesandpossessions/louisiana/jena/index.html;
and what it left untouched. Even the recent Supreme Court school decisions might be better evaluated against this fuller history of the civil rights struggle.\footnote{See \textit{Parents Involved in Community Schools v. Seattle School District}, 127 S. Ct. 2738; 168 L. Ed. 2d. 508; (2007)}

Part I of this paper briefly describes the Project on Civil Rights and Restorative Justice. Part II tells the dominant civil rights story. Part III describes in part the development of the new historiography of the long civil rights era. Part IV chronicles in broad strokes the story of the long civil rights era, first focusing on its antecedents, then the context and activities of some of the protest organizations that represent various strands of the movement’s thought. This is the longest and most detailed section of the paper. I have tried in this part to provide a preview of the missing history of black organizations and theoretical developments beginning as early as the 1920s. Part V presents reasons for abandoning the dominant story by showing what the dominant story obscures. Part VI demonstrates the value of the long story by exploring a number of the examples mentioned. Specifically this part briefly examines the Supreme Court case\footnote{See e.g. Parents Involved in Community Schools v. Seattle School District, 127 S. Ct. 2738; 168 L. Ed. 2d. 508; (2007)} \textit{Parents Involved in Community Schools v. Seattle School District} and then questions modern day groups’ claims that they are heirs to the civil rights movement, suggesting that they often misappropriate the movement’s rhetoric and symbols while working to frustrate its objectives. Part VII concludes suggesting that the Restorative Justice Project can only be successful by recognizing, reclaiming and facilitating the dream of the civil rights era of a broad egalitarian democratic order, a dream obscured in the truncated civil rights story.

\section*{Part I The Project on Civil Rights and Restorative Justice}

The Project on Civil Rights and Restorative Justice was established at Northeastern University for the purpose of supporting efforts to “restore justice” to those long denied it in their quest for black freedom during the civil rights movement. The title of the Project begs the question whether there has ever been justice in the United States for black people “to be restored.” Nonetheless, the least the country can do, so the theory goes, is to convict perpetrators of anti-black and anti-civil rights violence and undo the penalties

\url{http://www.thejenatimes.net/home_page_graphics/home.html}; and \url{http://www.thejenatimes.net/Chronological_Order_of-Events.pdf}. The noose is a symbol of an American pastime known as lynching, and as such is a symbol of racial hatred. Though many different kinds of people were lynched, the overwhelming majority of those lynched historically were black men. Lynching generally involved the hanging, burning or overall mutilation (often including castrating) of the person lynched, in front of large crowds of white men, women and children partaking of what was viewed as a festive event. See also Jordan, \textit{supra} note 15 (discussing the history of lynching); and \textit{The Noose: An American Nightmare} at \url{http://www.cnn.com/CNN/Programs/siu/the.noose/}. While the students who initially hung the nooses on the tree claimed not to know of the historical meaning of the noose as a symbol of lynching (something rather hard to believe), the event has since sparked the appearance of nooses all around the country, the racial significance of which are not in doubt. At the same time questions remain about the “for whites only” tree in Jena, and the range of charges arrayed against the black students.
assessed against those who fought these justice battles. These efforts, theories of restorative justice suggests, might begin to pave the way for racial reconciliation and perhaps a Third Reconstruction, the process needed to complete the civil rights movement agenda. But while the project seems broad and promising in paving this path, I argue that its reliance on the truncated story of the civil rights movement to bound the Project, reinforced by the range of activities already underway, compromise its very goals of justice.

The Project specifically was established to support a host of efforts already occurring across the country to rectify and account for the tremendous cost to civil rights activists and their supporters for their participation in the movement. The conference on Civil Rights Era Crimes marked these efforts as a seemingly countrywide trend toward accounting for the crimes. These efforts, chronicled by the conference flyer, include the following efforts and specifics:

- **State and local prosecutors have brought fresh cases against the perpetrators of old hate crimes; fresh trials have put behind bars at last the killers of Medger Evers, the three Mississippi Freedom Summer workers, the four Birmingham girls [killed in a church bombing]; and Hattiesburg voting rights activist Vernon Dahmer.**
- **Seven states have re-opened 29 killings from this period. Twenty-two individuals have been convicted.**
- **In May 2006 a state judge exonerated posthumously Clyde Kennard, who was framed and falsely imprisoned in 1960 by Mississippi officials after he tried to integrate a state college.**
- **Victims of white resistance to school desegregation have pursued legislative remedies. In 2004, the Virginia state legislature established a scholarship aid fund of $2 million to benefit former students whose schools were closed in the ‘60s to avoid desegregation.**
- **In June 2006 a high school in McComb, Mississippi conferred diplomas on a group of sixty year olds who had been expelled in 1961 because of their civil rights activity.**
- **The Unsolved Civil Rights Crimes Act (the “Till Bill”) is pending before the House.**

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29 This is part of what I argue in a paper on the Project exploring theories of restorative justice. See Eric Foner, *Time for a Third Reconstruction: Memo to Bill*, 256, 4, THE NATION 117 (1993) (suggesting that a “Third Reconstruction is needed to address directly the economic inequalities that are the accumulated consequence of 250 years of slavery and a century of discrimination.)
31 See, Program Brochure, supra note 2.
32 Save the Date Flyer for Conference on “Crimes of the Civil Rights Era.”
33 Id. On the murder of Medger Evers, see generally, MYRLIE EVERS-WILLIAMS, MANNING MARABLE, THE AUTOBIOGRAPHY OF MEDGAR EVERS: A HERO’S LIFE AND LEGACY REVEALED THROUGH HIS WRITINGS, LETTERS, AND SPEECHES (2005); and ADAM NOSSEITER, OF LONG MEMORY: MISSISSIPPI AND THE
While these activities are wide-ranging and diverse, the last item, the Till Bill, in many respects represents the philosophical heart of the Project. The Till Bill is named after Emmett Till, the 14-year-old boy who was lynched and mutilated in 1955 by two white men in what is now referred to as a hate crime. Till’s mother insisted that his funeral proceed with an open casket in order to let the world know what these men had done to her son. The image, historians argue, marked/engendered a generation of black activists as much as did the historic Supreme Court decision in Brown in 1954. Both, often alternatively, are credited with launching, what I argue is, the second phase of the civil rights movement at mid-century, in the fifties and sixties.

Till’s acknowledged murderers, though tried and acquitted by an all-white jury of twelve men, were never convicted, even though they admitted and fully described their crime in a national magazine. Their impunity in the face of brutally murdering a black child, served to terrorize the black communities to which their message was directed and of which they were a part, terror that in similar cases continues today.

The Till bill seeks to beef up federal investigative and prosecutorial resources. Specifically, it would create an Unsolved Crimes Section in the Civil Rights Division of the Department of Justice (DOJ) and an Unsolved Civil Rights Crime Investigative

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34 Black Power; See also, Margaret M. Russell, Critical Race Lawyering: Reopening the Emmett Till Case: Lessons and Challenges for Critical Race Practice, 73 FORDHAM L. REV. 2101 2105, 2124 (2005)[Hereinafter, Russell, Critical Race Lawyering]

35 See JEFFREY O. G. OGBAR, BLACK POWER: RADICAL POLITICS AND AFRICAN AMERICAN IDENTITY 38-39(2005) (explaining that the Till murder galvanized activism, “magnified the salience of racial oppression like no single event in recent times,” and fueled with other forms of white supremacist violence black nationalism among blacks)

36 Russell, Critical Race Lawyering, supra note 34 at 1202.

37 Rita Schwerner spoke about this reality in her comments at the conference. She had testified against Edgar Ray Killen during his trial for participating in the murder of the three Mississippi workers, Goodman, Schwerner and Chaney. Schwerner had been her husband. She noted that there were some places where blacks and well meaning people did not frequent in Philadelphia Mississippi in part out of fear, a fear engendered by the impunity of killers of blacks and other civil rights era activist. She suggested that the impunity, with which black life had been taken, and was in many ways known and sanctioned by the government and community continued to haunt and terrorize these communities, particularly the black sections of it, until this very day. She also noted that more work needed to be done in communities that suffered such atrocities even in the face of new trials. She states in reference to the Killen trial: “The fact that some members of that jury could have sat through that testimony, and could not bring themselves to acknowledge that these were murders, committed with malice, indicates that there are still people, unfortunately, […] who choose to look aside and choose to not see the truth.” See, Widow says verdict shows race still a factor Daily Journal June 23, 2005 at http://www.djournal.com/pages/archive.asp?ID=195908
Office in the Civil Rights Unit of the Federal Bureau of Investigation (FBI) to investigate actions that violated criminal civil rights statutes before January 1, 1970 and resulted in death.\(^{38}\) In other words, it authorizes new departments to investigate unsolved (cold case civil rights) murders.\(^{39}\)

The bill’s structure in many ways draws upon and reinforces the truncated civil rights story and thus suffers from some of the same limitations. For example, first the bill focuses on murder. While this is justifiable, it ignores the range of penalties assessed those who participated in the civil rights movement. But more importantly and like many of the efforts listed above, it emphasizes crimes committed in the South and before 1970. This corresponds to more traditional notions of the civil rights era, reinforcing the truncated story that centers on activities in the South and dates the end of the civil rights movement roughly around 1965. One exclusion immediately obvious to the participants at the Civil Right Crimes conference was the exclusion of Black Power activist and their issues, many of which arise in the late 1960’s and throughout the 1970s. This was particularly clear because two conference attendees were black power adherents, Leonard Harrison and John Manning. Both were part of the Kansas Nine,\(^{40}\) a group of anti-poverty workers, who were tried in 1969 for various extortion and robbery offenses in Wichita Kansas in part of what Harrison called the State “putting Black Power on trial;” and in a trial the dissent on appeal characterized as overcharged and prejudicial.\(^{41}\) Their presence at the conference helped to raise the issue of the movement’s periodization.

In addition, the violations targeted by the Till Bill contemplate their resolution through law as a result of trials. This too reinforces the truncated civil rights story, which centers law and focuses primarily on cases. However, scholars have noted that the prosecutions of cases, and particularly old cases, may be inadequate in restoring justice or reconciling opposing groups and institutions. These inadequacies or limitations result in part from the nature of cases within the American adversarial system. This system often prohibits the full telling of an event, the full revelation of ugly truths, often needed to begin a process of healing because a defendant, who knows the full story, may never testify. In such situations, for example, family members of victims may never really know what happened to their loved ones. But in addition, government agencies may be less than forthcoming, especially about information that provides the full extent of damage done and in need of repair, because they are themselves implicated in the miscarriage of justice.\(^{42}\) And even where these problems are not implicated in a case,

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\(^{38}\) Emmett Till Unsolved Civil Rights Crime Act (“Till Bill”), H.R. 923, S. 535, Secs. 4(b)(1) and 5(a).

\(^{39}\) Further the bill requires federal officials to consult with state officials on the issue of venue and to refer cases that violate criminal civil rights statutes but are neither murder cases nor occurred before December 31, 1969 to the criminal section of the civil rights division. Check, Till Bill Section 4 In addition the bill authorizes $10 million in annual appropriations to fund these new services for ten years. Till Bill, Sec. 6(a) provides another 1.5 million in annual funding for a Community Relations Service within the DOJ to work with local communities to solve these crimes. Till Bill, Sec. 6(b).

\(^{40}\) I refer to these gentlemen as my uncles. Leonard Harrison is in fact my maternal uncle. See, working draft of Athena D. Mutua, “Kansas Nine, Black Power and Pardons as a Tool of Restorative Justice?” (On file with author).

\(^{41}\) *State of Kansas v. Pierce*, 208 Kan 19; 490 P.2d 584 (1971).

\(^{42}\) Margaret Russell in her comments at the conference.
philosophical questions nonetheless arise as to whether justice so long delayed can ever be just and whether the psychological scars on memory both of the crime and government inaction in the face of continued oppression and in the absence of more deep-seated structural change can be healed, despite a trial.  

More sinister is the timing and motivation of such trials as well as a host of the governmental actions taken, such as state apologies. These potentially demonstrate the ways in which these efforts, like the civil rights story itself, can be cynically employed and manipulated by those who have little interests in justice for civil rights advocates, or in the civil rights project itself. For instance, some people have suggested that the timing of the re-opening of the Till investigation, long after the lead killers were dead, may have been simply an election-year tactic. Further, Romano suggests that the primary goal of the Birmingham bombing trials may well have been simply to redeem the South, to make it a more acceptable place to live, work, and more importantly to attract business investments, rather than to address the injustices wrought on blacks and other activists. Seen from this perspective, this effort, like many others if not carefully pursued, may simply reinforce the abbreviated civil rights story as one of American triumph and exceptionalism while masking the country’s continuing commitment to white supremacy.

Though the short story is extremely problematic, the truncated story also justifies the Civil rights Era Restorative Justice Project itself. For instance, the civil rights movement is celebrated in the United States and throughout the world; it is a story, as told, of American progress successfully carried out by the least of the Americans, the formerly enslaved, and the historically despised, black people. The Project intimates

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43 See generally, Margaret M. Russell, Critical Race Lawyering, supra note 34.
44 Id., at nn. 16.
46 I argue elsewhere that another effort should be used as a model for structuring these efforts. In Greensboro, North Carolina a Truth and Justice Commission was established, the first of its kind created in the United States. The Commission spent two years investigating “the context and facts of the killing of five labor and civil rights activists by members of the Ku Klux Klan and Nazi party in the city during a daytime rally on November 3, 1979.” The Commission report found that “the Greensboro police department bore a heavy responsibility for the deaths and called for public apologies from the city authorities and the local police force. It also called for a range of measures to tackle ongoing problems of racism and inequality in the city.” Community, Truth and Justice in Greensboro at http://info.edgehill.ac.uk/SPSNewsletter/article.asp?id_art=2; See also International Center for Transitional Justice, LESSONS IN TRUTH SEEKING: INTERNATIONAL EXPERIENCES INFORMING UNITED STATES INITIATIVES (2006) at http://www.ictj.org/static//Americas/Greensboro/Greensboro.confreport06.pdf These kinds of efforts should be encouraged in multiple locations but in any event alongside any trials and other efforts undertaken. They, I suggest hold greater promise than the typical trial and state apologies that are issuing forth from various governmental departments because their scope can be wide and they typically involve grassroots people in creating a shared story and set of remedies that address the issues raised by the event and its many consequences which invariably continue to structure their lives. Participants in this effort were also present and featured at the conference on Civil Rights Era Crimes.
47 Hall, supra note 9, (noting that the truncated story is a story of American progress.)
then, that it is obvious that those who fought its battles, those whose loved ones were killed, those who were kicked out of school and falsely imprisoned should see justice. However, the dominant story of the movement then simultaneously precludes this justice. It does so in part by excluding the range of people to whom justice is owed. Further, not only the way the story is told but also the way civil rights law has developed additionally truncates the movement’s agenda for social and economic justice, and makes its resolution again simple, through law. And finally the story tempers justice efforts by obscuring and underestimating the breadth and depth of white American resistance, of which the truncated civil rights story itself is a part. The remedy is to contextualize the story of this powerful mass social movement, recognizing both its accomplishments and failures.

**Part II — Dominant Civil Rights Story**

The Restorative Justice Project, at least initially, adopted the traditional popular and dominant historiography of the civil rights era. This history has been driven in part by the media’s contemporaneous chronicling of the events, focusing on charismatic individuals and stunning actions. Civil rights, according to this story, generally boils down to a ten-year period beginning in 1954 with the historic case of *Brown v. Board of Education*, in which the Supreme Court struck down legal racial segregation in the schools. It ends with President Johnson signing into law first the Civil Rights Act of 1964 and later the Voting Rights Act of 1965. Thus, “these years contour the beginning of the demise of legal segregation and the acquisition of black voting rights.” The story centers on Martin Luther King, Jr. He apparently single-handedly held together the movement made of seemingly disparate episodic protests, sit-ins, and boycotts and molded them into a mass movement.

The story of this ten-year story proceeds as follows: Black people all over the South, responded to the Brown decision by seeking its enforcement. They also sought, in different places and different times, to register black voters, given the demise of the all

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48 See, Forbath supra note 24(discussing the ways in which the economic justice agenda of the movement was frustrated). See also, BENDER AND BRAVERMAN supra note 2, at 381-404 (discussing the case of San Antonio Independent School District v Rodriguez 411 U.S. 1 (1971) in which the Supreme Court rejected the class claims advanced to implement Brown and to establish equitable funding for schools among poor and rich school districts; and discussing the case’s aftermath explored in Jonathan Kozol’s SAVAGE INEQUALITIES (1991)).

49 Charles W. Eagles, Toward New Histories of the Civil Rights Era, 66 J. SOUTHERN HISTORY, 817-818 (November 2000); Hall, supra note 9, at 1235; Self, supra note 4.


51 *Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).*


53 JOSEPH, supra note 4, at 3.

54 Theoharis, supra note 52, at 11.
white primary that had worked, among other white structured tactics, to largely disenfranchise the black southern voter. In addition blacks challenged more generally Jim Crow segregation, symbolized by white only signs. Such activities were met with massive and violent white resistance, captured and circulated throughout the country and world through the emerging medium of television.

The story, well-known, continues: Shortly after the Brown decision, on December 1, 1955 Rosa Parks was arrested for refusing to relinquish her seat on a bus to a white man. This kicked off the Montgomery bus boycott. The spokesman, who emerged from this boycott though new to the Montgomery area and an unknown, was none other than the Reverend Dr. Martin Luther King, Jr.

King is often seen as the personification of the civil rights moment and all that is heroic about this more limited ten-year period, a period that Bayard Rustin called the classical phase of the civil rights movement. King combined a charismatic leadership style from the tradition of prophetic black Christianity with a Gandhi-inspired philosophy of non-violent activism. Both the timbre of his voice and the content of his messages demanding justice and advocating struggle through love, nonviolence and redemption enabled him to speak to both the black and white communities, particularly northern white communities who supposedly brought more to the table than a critique of the style of southern white racism. He was also able to speak with equanimity to a wide social range of people, from sanitation workers to presidents.

Within a year of the end of the Montgomery Bus boycott, another major racial crisis would erupt, this time in Arkansas. On September 4, 1957, the Governor of Arkansas, Orval Faubus, deployed the Arkansas National Guard, in support of segregationists, to block the attendance of nine black students to the previously all-white

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55 The Supreme Court struck down the white democratic primary in Smith v. Allwright, 321 U.S. 649; 64 S. Ct. 757 (1944) (striking down a rule within the Texas Democratic Party that only allowed whites to vote in primary elections as violative of black citizens’ right to vote). Several scholars have suggested that this decision rivaled the importance of Brown v. Board of Education in black communities. See, e.g., Hall, supra note 9, at 1248, and Payne, supra note 22, 23-24 (1995) (citing David Garrow, Protest at Selma 6-7 (1978), among others).

56 For example in Florida there was an active black voter registration effort.

57 On King as central to the civil rights movement and particularly the short period see generally e.g., Taylor Branch, Parting the Waters: America in the King Years 1954-63, xi (1988). For confirmation and critique of this idea, See Singh, supra note 1, at 1-14. See also Joseph, supra note 4, at 2-4 (discussing this period as the heroic period as compared to the Black Power Movement).

58 Hall, supra note 9, at 1234 (citing Bayard Rustin, Down the Line: The Collected Writings of Bayard Rustin 111 (1971)).

59 The inspiration for this statement is taken from Branch, supra note 57, at xi. The statement refers in particular to King’s work on behalf of sanitation workers in Memphis on the eve of his death and his meetings with presidents Eisenhower, Kennedy, and president Nkrumah of Ghana. For discussions of meetings with the latter presidents See id., at 233-37, 516-518, 214-215, respectively, among others. The boycott lasted for over a year during which time black workers traveled by foot, carpool taxi service in a citywide effort coordinated by the Association. After the boycott King, together with other black ministers established the Southern Christian Leadership Conference. It was responsible for a number of protest campaigns in different cities and rural area across the South and performed much of the practical work for registering new black voters. See, Van Gosse, Rethinking the New Left 41 (2005).
Little Rock Central School. The blockade made national headlines and ignited a twenty-day siege complete with television coverage of whites protesting and harassing the black students. It ended with President Eisenhower sending the elite 101st Airborne Division of the United States Army to Little Rock, federalizing the entire 10,000 member Arkansas National Guard and escorting the black students into the school. The federal troops remained in place throughout the school year, after which the school system shut down the schools rather than integrate them.

After a lull, the movement was re-ignited by the next signature, spontaneous event in Greensboro, North Carolina. There on February 1, 1960, four freshman boys decided to sit-in at the whites-only lunch counter in a downtown Woolworth store. Refused service, they remained the entire day and vowed to come back the following day. By the end of February student sit-in campaigns were under way in thirty-one Southern cities across eight states. From these arise the Student Nonviolent Coordinating Committee (SNCC) organization and the student movements heralding the entry of the iconic 60s. SNCC would become a “major regional [force] for action” with well-dressed primarily black students practicing non-violent protest spreading out throughout the south to work with local communities on a variety of efforts, not only sit-ins, but also voter registration, school desegregation and other local efforts.

The SNCC students together with King’s Southern Christian Leadership Conference, SCLC would gain unexpected assistance in their voter registration campaign from the newly elected Kennedy administration. The Kennedy administration preferred voter registration to protests, assuming it would provoke less violence while helping President Kennedy in future elections.

Student participation in the movement received a lift in the summer of 1961, when the Congress of Racial Equality, CORE, a rather moribund organization at the time but a “pioneer of Gandhian direct action in pursuit of integration” sponsored an interracial team to travel by bus throughout the south to test the extension of the law banning interstate segregation. Known as the Freedom Rides, the first ride made it half way through the South to Alabama where it ran into mob and Klan violence, during which, one bus was burned and the passengers of both buses were severely beaten. The violence was transmitted nation-wide by television. Both King and President Kennedy
were drawn into the conflict with the Governor of Alabama and other Alabama government officials legitimating the violence.  

In brief, the story continues through Albany and then through Mississippi. In Mississippi, Bob Moses of SNCC, Merger Evers of the local NAACP and CORE begin working together in voter registration campaigns to register rural poor and working class blacks. At about the same time, James Meredith’s registration at the University of Mississippi under the escort of federal marshals kicked off two days of gunfire and fights with several thousand whites trying to stop his admission. Back to Birmingham in the spring of 1963, King and the SCLC, in a targeted campaign organize protests to desegregate downtown businesses. During one of these protests, King is jailed and writes his famous “Letter From a Birmingham Jail.” Well-dressed high school students and then later younger children march through Birmingham rescuing the campaign by enduring the televised persecution of Bull Conner unleashing dogs and water from fire hoses onto the children.

On June 11, 1963 George Wallace, then governor of Alabama, blocked the door of the University of Alabama in order to stop integration by two black students, only to have President Kennedy send enough force to make him step aside. That evening Kennedy makes his famous civil rights speech. Within hours of it, whites gun down Medger Evers in front of his Mississippi home. The Civil Rights movement has exploded into the consciousness of the American public.

The March on Washington for Jobs and Freedom, the largest mass march held in Washington up until that time, is held in August 1963. The March is clearly multiracial. King, presumably at the apex moment of the movement, makes his famous “I have a Dream” speech hoping for a time “when his children will one day be judged by the content of their character instead of the color of their skin.” Despite the seemingly transcendent moment of King’s speech, shortly thereafter, in September, some Birmingham whites bomb the 16th Street Baptist Church killing four young black girls. In November, President Kennedy is killed.

In the spring of 1964, the SNCC community organizing in Mississippi resulted in a massive voter campaign to support a “new explicitly interracial Mississippi Democratic Party” and later a “parallel primary campaign open to all voters.”

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69 Id.
70 One of the most disheartening battles was in Albany Georgia in late 1961-1962. In the end SCLC, SNCC, the NAACP and local leaders were involved in a struggle for minimalist black demands including: “hiring blacks for municipal jobs, a biracial committee to discuss school integration [— then some seven years after Brown], and desegregating the local bus station.” See, GOSSE, supra note 59, at 40. The city’s elite leadership arrested hundreds of blacks and drug out the campaign until it eventually collapsed due in part to in fighting and competition among the groups. See, BRANCH, supra note 57, 525-561
72 Address delivered at the March. on Washington for Jobs and Freedom. 28 August 1963.
73 GOSSE, supra note 59, at 44.
proposed a Mississippi Summer Project that recruited and attracted hundreds of white students from the northern and western states to work in Mississippi who spread out in a door-to-door campaign. Yet the summer had barely begun when three civil rights workers in Mississippi go missing. By the end of the summer “one thousand civil rights workers [have been] arrested and eighty seriously beaten, thirty-nine black churches and thirty black schools [have been] firebombed, and five civil rights activist [have been] killed,” including the three, Goodman, Schwerner, and Chaney, that had gone missing at the beginning of the summer. Their bodies are discovered in a dam in August. President Johnson uses the national outrage to push the Civil Rights Act of 1964 through Congress.

Meanwhile and despite the violence, some 80,000 people in Mississippi vote in the new party’s alternative primary and a delegation is sent to the Democratic Party’s convention in August of this year, expecting to be seated. SNCC students feel betrayed, unforgivably so, when Johnson puts pressure on civil rights leaders and the credential committee to deny the delegation seats. Instead, the all-white segregationist Mississippi Democratic delegation is seated. A breach widens with the students and the movement moving left just at the time that Johnson is having some legislative victories on civil rights. The move would aid in the radicalization of significant elements of both SNCC and CORE.

King wins the Nobel Peace Prize in December 1964, and in early 1965 he goes to Selma to support SNCC voter registration efforts there. They plan a march from Selma to Montgomery on March 7, 1965. Only 6 blocks into the march state troopers and local law enforcement attack the protesters. Pictures of the attack again are beamed all over the country. A second march is successful but several people are killed in the interim. The Voting Rights Act is overwhelmingly passed in Congress in August 1965. It bans the literacy test, and provides for special government examiners with power to register black voters where they fall below a certain minimum, among other things.

This story traditionally ends here. It is told as a story of American triumph. We are left with the impression that Black struggle and white resistance end with a change of white hearts, particularly in the North, a liberal consensus and the promulgation of laws that provide opportunities for blacks to vote and the call for the end of segregation. Other chroniclers of the movement end the narrative in 1968. Here they may include the enactment of the Fair Housing Act of 1968, but for the most part they end the movement with King’s death, shot in Memphis on April 4, 1968 where he had gone to support a strike by sanitation workers, leading up to his Poor People’s March on Washington.

Black people riot in cities all over the country upon learning of King’s death, they do so,

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74 Manning Marable, supra note 7 at 30.
75 Gosse, supra note 59, at 44.
76 Id.
77 Ogbar, supra note 35 at 61 (noting that by 1966 CORE and SNCC “were thrust into the Black Power movement as its most visible exponents.”)
78 Id., at 46.
it is pointed out, in contradiction to King’s own philosophy of non-violence, ending the heroic period of long-suffering non-violent black protests.

Unseen in this story is the persistent pervasiveness of black oppression and the continuing economic and cultural structures and barriers to black liberation that were endemic not only in the South but also in the North where frustration with the lack of progress there was already being expressed in the forms of black riots. The southern protests appear to stop but in reality they change character, and it is this change in character, this transition, rendering the demand of and the critique by the civil rights movement for large numbers of black people unmistakable, - black liberation, black empowerment, black power!

Black militancy—this change in character, seemingly erupting from nowhere in the mid-sixties, captured by the idea of Black Power, and punctuated by black riots in Watts, Detroit, New Jersey, etc, is the foil for the civil rights movement, so the story goes, the cause of its demise. This demise results not from white resistance, white public and private aggression, violence and “powerful structures of economic and political exclusion,” both in the North and the South, the South not an exception to national racial norms but simply a leader in it. Nor does it arise from the accumulated weight of the structured social processes and institutional history of slavery and Jim Crow with global dimensions implicated in an imperial economic system. Rather we are informed that Black radicals went too far, angering and alienating even their liberal white supporters and eventually engendering a white backlash, as if whites—though now shunning explicit abuse of blacks—had ever ceased resisting even the most moderate reforms favoring black progress, insisting instead on black subordination. Rarely even considered is the idea that the civil rights movement did not end per se, but was transformed and yet remains, even if ended, unfinished.

New Historiography tells a different, more complicated story, one that refutes the idea that the black struggle was strictly a southern issue, that refutes the idea that Martin Luther King was the “unquestioned leader” of this struggle, and refutes the idea that once “legal segregation was abolished and southern blacks could vote, the struggle was over.”

79 Joseph, supra note 4, at 3 (suggesting that according to the truncated story “Black Power simultaneously triggered the demise of civil rights and the New Left’s apocalyptic descent into destructive ‘revolutionary’ violence” [Citations omitted]).
80 GOSSE, supra note 59, at 46-47.
81 SINGH, supra note 1 at 8 (noting that the demise of truncated civil rights period was the result not of black anger but of “the difficulty surmounting accumulated national and global contradictions of racial-imperial history …”)
82 Id.
83 This story is referred to by these new historiographies as the story of declension. Where the movement declines, ends and in many ways fails because of the radical movements of black power and the New Left. See Hall, supra note 9, at 1254 (noting the 1970s are often viewed as a “tragic denouement that “belittle second-wave feminism and other movements that emerged from the black freedom struggle and institutionalized themselves); Joseph, supra note 4, at 3-4; and see generally JOSEPH, supra note 4 (which discusses the various project, movements and successes of this movement itself arising out of, if not a part of, the civil rights movement.).
even if whites were want to see it that way. Rather, they tell of a longer national movement consisting of local struggles all over the country from Boston to Los Angeles. It was built on the interplay between local organizing and protest and national endeavors by organizations such as the NAACP, SNCC, CORE but also the Communist Party, the pacifist movement and labor unions, in which heterogeneous leadership and philosophies, including practices of self-defense and violence, were present, and yet one in which liberation and empowerment were the, still largely unmet, goals.

Part III Impetus for New Historiography.

The new historiography is motivated by many factors. Some suggest that the current construction of the history of the civil rights falls within a common pattern of historiography. The initial historical accounts are the product of media stories written contemporaneously with the events and thus reflect media interests and the strategies organizations employ to bring attention to a specific issue. These accounts present what

84 GOSSE, supra note 59.
85 PAYNE, supra note 22
86 Id.; and LAWSON, supra note 22. See also Van Gosse, supra note 22 at 277, 278 (2006) (discussing the need for new historiography and critiquing the dominant historiography on the New Left, which limits “Cold War radicalism” to the circumscribed mythic period of the 1960s and focuses on the white-led organization of Students for A Democratic Society (SDS) instead of the “broader, larger, more diverse New Left whose birth predated the 60s and included the “campaigns, organizations, and mobilizations of African Americas, Puerto Ricans, Chicanos, Native Americans, Asian Americans, women , gays and lesbians, poor people, prisoners, pacifists, anti-imperialists, [white youths ], and others.”). Gosse focus is on periodization of the New Left but he discusses the current status of historiography of the civil rights movement at length because he believes it is a central part of the development of the New Left. Gosse rejects the historiography that sums up the New Left’s history through one group, SDS, and that argues that the civil rights was its precondition and the feminist movement and the gay and lesbian movement its outgrowth. Rather he characterizes the New Left as “polycentric” encompassing “a series of overlapping contingent social movements, each with its own centers of power that related to each other through a series of strategic arrangements.” He argues that the New Left had two major phases, each with “a locus of protest, a ‘moral economy,’ that generated a rising tide of visible radicalism,” and extending before and beyond the 60s. Id. at 292. He argues that the first phase of the movement of movements was the classical civil rights period, which “provided a moral, political, discursive, and physical center for the new postwar radicalism.” The second encompassed opposition to the Vietnam War. Id. at 293. He suggest that the New Left “represented a break not just from Cold War America and the New Deal Order, but from the frame of American politics established by Reconstruction’s defeat and the grinding down of black citizenship rights coinciding with a new imperialism and a dynamic industrial order based in a new white immigrant working class;” Id. at 294, even as it incorporated much of the old left made up of communist, Trotskyites, other socialists, and very importantly pacifists and religious radicals with their “orthodox socialist teleology.” Id. at 293-4. Ultimately the New Left’s unity was a stance against imperialism, viewing “the central problem in American politics [as] a pervasive urge to empire,” and refusing “to tolerate white supremacy at home or abroad , [open] to alternative humanistic forms of socialism [and] the invocation of the “beloved community” – all strains run[ing] from King’s SCLC to SNCC to SDS, and then on to the vast decentralized ‘Resistance’ to the draft [that] sprang up in 1966.” Id. At 294 He explains that any readings from the likes of the “Young Lords Party, the Black Panthers, the various post-SDS factions moving toward Maoism, AIM and numberless unaffiliated local groups involved in Black Power or anti-war activities” will show that “the radical sections of the left , multiracial but usually youthful, adopted a joint identity as ‘anti-imperialist.’” Id.
Charles Payne calls a rough draft of history. Later more reflective and investigative work is undertaken to further flesh out a story.

The short story of civil rights with its highlighting of specific events and charismatic individuals operating at the helm of key organizations is the result of this rough draft. However, historians currently reviewing and revising this story argue that the short story has gained traction and resist revision in part because new political uses have been found for it. Specifically, the short story of civil right fits into and flatters a national story of American exceptionalism, one in which America is distinguished from Europe and its colonial and imperialist past, and unlike so many other countries, has engaged in and overcome an epic historic struggle of racial conflict rooted in the enslavement and oppression of a racial minority. Such a story appeals to both white liberals and neo-conservatives alike, the latter having found themselves on the wrong side of the struggle but currently proclaiming themselves the vanguard of its vision, employing civil rights inspired rhetoric of colorblindness, among other things, to hinder its goals. But much is lost. New groups of historians point these loses out from their various perspectives bringing to the fore a more complicated, varied, wide-spread and critical rendition of this history, one that better reflects the experience and goals of those who participated in it and to whom justice is owed. Three groups are discussed below.

The first group of historians reconsidering the civil rights movement is interested in the development of social mass movements, how these movements occur, how they spread, who participates in them and what themes they sound. These historians are less interested in combing presidential historical archives and more interested in flushing out the grassroots origins of movements. Charles Payne, in his study of the grassroots

87 Id.; Hall, supra note 9, at 1236; Eagles, supra note 22.
88 PAYNE, supra note 22; LAWSON, supra note 22; Eagles, supra note 22
89 PAYNE, supra note 22.
90 Hall, supra note 9, at 1237-1239.
91 SINGH, supra note 1, at 18-19, 153-158 (explaining America’s concept of exceptional universalism built first around ideas of America’s religious tolerance and the absence of distinction of birth and rank and later fashioned around racial and ethnic inclusion; and then discussing J.A. Rogers, W.E.B. Du Bois and Ralph Ellision’s critique of GUNNAR MYRDAL’S AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944), which embodies these ideas.); See also Hall, supra note 9, at 1238 (commenting that the short story conforms to “white, middle-class interests and flatter[s] national vanities” in part because it resonates with ideas of merit and individual effort but referring to the appeal for the colorblind rhetoric).
92 Hall, supra note 9, at 1237
93 Hall, supra note 9, at 1235 (commenting that the story that she is about to trace which focuses on what she calls civil rights unionism – a focus on the class and racial interests of the movement is “a more robust, more progressive, and truer story.”)
organizing traditions in Mississippi, which are grounded in the voting registration movement there, makes a clarion call for case studies of these grassroots social movements as well as for in-depth studies of the movement in specific locations. His own study reveals the widespread occurrence of local organizations and community organizing that structured and propelled the civil rights movement. Other studies reveal not only activist communities in the South but also in the North and West, in places like Detroit, Chicago, Oakland, California, Boston, New York and New Jersey. The SNCC sit-ins were able to spread so quickly and effectively into other cities and areas because a hundred cities and towns across American had local organizations, activists, and activities that grounded those efforts.

Feminist and other women’s studies scholars constitute a second group of researchers interested in re-examining the civil rights movement. They specifically ask whether women played any significant role. Their work, aided by studies that focused on the grassroots origins of movement, demonstrate that much of the organizing — the process of organizing, featured women. While the dominant story spoke of a movement led, conceptualized and implemented by men often at the helm of traditional civil rights organizations such as the NAACP, women in contrast were leaders organizing the many efforts that constituted the local movements. While women such as Mary McLeod Bethune and Ella Baker’s did operate at the national level, many more

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95 PAYNE, supra note 22. Payne also flags a number of the issues that the other two groups of scholars that I discuss take up. For instance, he discusses the fact that women leadership is absent from the dominant story. He critiques the way in which the dominant story engages the Black power movement.

96 Id.

97 See generally, THEOHARIS & WOODARD, supra note 50.

98 GOSSE, supra note 59, at 38 (explaining grassroots activity already in place in Greensboro.)


100 See e.g. Kathryn Nasstrom, Down to Now: Memory, Narrative, and Women’s Leadership in the Civil Rights Movement in Atlanta, Georgia, in THEOHARIS & WOODARD, supra note 50 at 253-289; Michele Mitchell, Silences Broken, Silences Kept: Gender and Sexuality in African-American History, in 11 GENDER AND HISTORY 433, 433-44 (Nov. 1999); Peter J. Ling and Sharon Monteith, GENDER AND THE CIVIL RIGHTS MOVEMENT (2004).

101 Both Payne’s work on Mississippi and Korstad’s work in North Carolina examining the development of a “working-class-led, union-based civil rights movement, consisting primarily of black women, for example, highlight black women’s leadership roles in organizing. See generally, PAYNE, supra note 22; and ROBERT ROGERS KORSTAD, CIVIL RIGHTS UNIONISM: TOBACCO WORKERS AND THE STRUGGLE FOR DEMOCRACY IN THE MID-TWENTIETH-CENTURY SOUTH (2003).

102 Jacquelyn Dowd Hall argues that black women’s double day included wage labor and homemaking but also kin work and social networking that were rooted in the folk and family traditions of the South. Hall, supra note 6, at 1240. These networks she suggests blurred urban-rural boundaries, linked the struggles of the city and the countryside, and reinforced and promoted interregional connections. Id.

103 Nasstrom, supra note 98.
women, whose names are only locally known, worked and were the strength behind local organizing initiatives in cities and small towns all across the country. Their leadership roles were erased by the focus on the big-man, national organization, single event history.

Scholars interested in the roots, politics, and struggles of the Black Power phase of the civil rights movement comprise the third group. They emphatically contest the idea that the black power movement sprang up spontaneously and instead trace its roots to the early origins of the long civil rights movement itself, both it success and its failures. These scholars draw on the new case studies of individual communities, the social movement studies, scholarship by and about women and upon scholars who examine the relationship between the civil rights movement and the labor movement. They have posited, contrary to the dominant story, that the black power phase was not the foil of the shorter more heroic civil rights period. Rather, the black power movement was a continuation of a longer more radical tradition of civil rights, a tradition colored and hindered or momentarily tamed by the Cold War. More, succinctly, they argue that the short period of the civil rights was merely a short liberal phase of a longer more radical civil rights tradition.

This short liberal period has been made to stand in for and to erase the more radical demands that critiqued American liberalism. But even here, they argue that the liberal phase is more radical than assumed by the dominant story, itself envisioning a transformation of American institutions, policies and politics, even if whites refused to see it as such. For example, even the concept of integration was about the transformation of American institutions and policies rather than the simple mingling of the races.
Several themes arise out of this new historiography. First, the civil rights movement was longer than the period currently ascribed to it. Second, the movement was as much concerned about economic empowerment as it was about political enfranchisement, the latter to inform the former. Third, it had an international focus; it reached beyond American boundaries, challenging American exceptionalism. Fourth, it was not just a southern movement but a national movement made of local struggles all over the country. Justice to the people who fought these struggles presumably requires, therefore, that the object of their struggles be adequately acknowledged.

Part IV A Longer History

New historians such as Nikhil Singh argue that Roosevelt’s New Deal and Johnson’s Great Society bracket the long civil rights era. He argues and others agree that the civil rights era has origins in the 30’s, and if it ends, it ends sometimes in the late 70s, early 1980s. However, even this line-drawing seems arbitrary, given that one of the most significant trends bringing the civil rights movement into fruition begins before that time, in the Great Migration.

A. Context: Precursors and the New Deal

Between 1916 and 1960 some six million black people migrated from the rural South into southern, northern and western cities in order to escape oppression and the

Segregation meant that blacks subsidized finer schools and regular sanitation, accessible city government, better public transportation, and a wide array of public serviced for whites… the lunch counter and the bus and he schoolroom were never just about a seat but always about gaining full citizenship and economic equity. Since the denial of political power was crucial to circumscribing black economic power, the fight for voting rights was seen as inseparable—and indeed a prerequisite—for economic empowerment.” At the grassroots, economics were not divorceable from civil rights.).

111 Hall, supra note 9, at 1235
112 SINGH, supra note 1.
113 Several authors argue that the civil rights movement begins in the 1930s. See e.g., Hall, supra note 9, 1235, 1245 (explaining that the civil rights force rose from the “a caldron of the Great Depression and crested in the 1940s: a powerful social movement sparked by the alchemy of laborites, civil rights, activist, progressive New Dealers, and black and white radicals, some of whom were associated with the Communist party.”); THEOHARIS & WOODARD, supra note 50, at 11 (suggesting that “the black freedom movement had its roots and branches in the 1930s and the 1940s. This activism was not merely a dress rehearsal but a crucial birthplace and battleground for the mass movement that flowered in the 1960s); SINGH, supra note 1.
114 Payne, for instance, argues for an even earlier date. Others would set the birth of the civil rights movement with the birth of the NAACP and its commitment to challenging the legal framework of discrimination and oppression in 1909. From this perspective what is important is the legal victories including Brown and culminating in the civil rights legislation.
collapsing sharecropping system. This was the largest internal migration in United States history, one that turned a largely rural (black) population into a predominately urban one. It had a profound impact on the civil rights movement because it placed large concentrated urban populations of black people in northern and western cities where they could vote. But in these cities, they also found and were forced to fight similar and different forms of racial oppression, white racial violence and institutional racism.

Communication and informational networks between rural towns and the new urban dwellers was maintained by the kinship work of black women. It was aided also by another important influence in the development of the civil rights movement, A. Phillip Randolph’s organization of the first African American labor union, the Brotherhood of Sleeping Car (train) Porters. The Brotherhood was first organized in the mid-twenties, and at its height in the 1940’s, it’s membership would include some 15,000 porters who traveled and provided informational links between rural communities and northern cities, carrying the Chicago Defender and other black newspapers to and from various communities.

Yet another important pre-1930s influence was Ida B Wells anti-lynching campaign, and Marcus Garvey’s nationalist and Pan-Africanist Universal Negro

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116 Hall, supra note 9, at 1239. They were also drawn to the north because workers were needed during the World Wars particularly WWI when European immigration declined. 117 Masses of black voters become significant especially in the mid-1930s and 1940s when the northern black voting population expands. See, HARVARD SITKOFF, A NEW DEAL FOR BLACKS: THE EMERGENCE OF CIVIL RIGHTS AS A NATIONAL ISSUE (VOLUME I: THE DEPRESSION DECADE) (1978); KORSTAD, supra note 101, at 4. Specifically, between 1940 – 1948 the number of black voters doubled in the North, and black voter registration quadrupled in eleven of the former Confederate states. This voting power makes a difference in Kennedy’s election when a substantial number of blacks voted for the democratic rather than republican party.

118 Hall, supra note 9, at 1240-1241 (describing some of the obstacles blacks faced in the north created in part by the New Deal).

119 Id. at 1240.


121 Robert O. Self, “Negro Leadership and Negro Money”: African American Political Organizing in Oakland before the Panthers, in THEOHARIS AND WOODARD supra note 50, at 96 (describing how the “Brotherhood fostered a rich organizational and social tradition “that went beyond unionism and linked Oakland to other black communities and how the porters traveled and brought back an array of newspapers from Chicago, Los Angeles, New York, Atlanta, etc.);

122 Blacks consistently placed anti-lynching legislation before Congress during the first part of the century. Over 200 anti-lynching bills were introduced, with none passing primarily due to Southern Democrats blocking the bills in the Senate. See, Senate Apologizes For Not Enacting Anti-Lynching Legislation, A Look at Journalist and Anti-Lynching Crusader Ida B. Wells, DEMOCRACY NOW, June 14, 2005 at http://www.democracynow.org/2005/6/14/senate_apologizes_for_not_enacting_anti Lynching

Wells began her anti-lynching campaign after three of her friends were accused of a crime that they did not commit and then lynched. She explains they were lynched because they were in economic competition with whites. Anti-lynching societies were established in cities across the country. See generally, McMURRAY, LINDA O. TO KEEP THE WATERS TROUBLED: THE LIFE OF IDA B. WELLS. (2000); Harris, Trudier, compiler. SELECTED WORKS OF IDA B. WELLS-BARNETT (1991); SOUTHERN HORRORS AND OTHER WRITINGS: THE ANTI-LYNCHING CAMPAIGN OF IDA B. WELLS, 1892-1900 (Royster, Jacqueline Jones, ed) (1997); CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY OF IDA B. WELLS (Duster, Alfreda M., ed.) (1991);
Improvement Association (UNIA) including his Back-to-Africa Movement in the late teens and twenties. Garvey’s UNIA was particularly important because it represented one of the largest organizational associations of black people to date, stressing black solidarity, black self-sufficiency (self-determination) and black pride. Between 1924-1928, UNIA had approximately 996 branches in thirty-eight states and forty different countries. The branches were most numerous in the South where the “great masses of black peasants” constituted its membership, while its largest branches were in the North representing newly urbanized blacks. “Outside of the United States, Cuba led with fifty-two branches” and the greater Caribbean, including Central and northern South America, was its biggest stronghold. “South Africa was the most thoroughly organized of the African countries.” Garvey was a revolutionary nationalist arguing for the separation of the races and the independent economic base for all black people across the world. He promoted and started a vast array of cooperative businesses associated with UNIA and his Negro Factories Corporation. These allied businesses, at one time, employed over one thousand employees in the US alone.

Also significant was the establishment of the NAACP in 1909 and the spread of local NAACP chapters throughout the country, as well as the establishment of the Communist Party in 1919. At the outset of the thirties it would be the Communist Party that defended the Scottsboro Nine, in a series of infamous cases in which black youths were falsely charged and convicted of raping two white women, one of whom later recanted her story. Further, the Communist Party would be “the only white-led political formation [during the thirties and forties] publicly committed to confronting Jim Crow … and promoting complete equality for black people. Its “Popular Front alliance with liberals … other leftist,” including the National Negro Congress formed with Randolph, would “help to build the huge industrial unions of the Congress of Industrial Organizations (CIO) in the 1930s.” In many ways and places the heart of the civil rights movement in the thirties and forties was in labor unionism. And finally, the


123 The organization was nationalist in its orientation seeing all blacks across the world as a collectivity and stressing black self-help, black self-determination and black cooperation.

124 There were some 725 branches in the United States with the most numerous branches in the South, (Louisiana led with 74 branches) where its membership consisted of the “great masses of black peasants.” At the same time its largest branches were in the North in New York and Chicago leading thirteen other Northern states, where it represented newly urbanized blacks. TONY MARTIN, RACE FIRST: THE IDEOLOGICAL AND ORGANIZATIONAL STRUGGLES OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION 15-17 (1976).

125 Id., at 17

126 Id.

127 cite info on growth of NAACP

128 However, when the Communist Party formed, it had no black members.

129 See generally, JAMES GOODMAN, STORIES OF SCOTTSBORO (1995); DAN CARTER, SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH (1979)

130 GOSSE, supra note 59, at 23.

131 BIONDI, supra note 107.

132 GOSSE, supra note 59, at 23.
Depression, while increasing black suffering and white anti-black hostility around the competition for resources and jobs,\(^{133}\) shifted “the whole force field of American politics to the left, giving birth to a broad eclectic “Popular Front” with the CIO at its center.”\(^{134}\)

In sketching the context for the development of activism in the long civil rights era, the new historiography points to several significant socio-political events. These were Roosevelt’s New Deal, which provided the political space for growing activism while also erecting the future socio-economic barriers to black empowerment; World War II, which undermined the rigid racial and gender social structures; altered the economy both in the North and the South and heightened international consciousness about the US role in the world; and the Cold War, which led to the repression of leftist, communists, their followers and ideas about economic and material justice. These events fueled and shaped not just association among blacks but black activism in a myriad of ways, and laid the foundation for similar activism and protests in the mid-century struggles. The early activism was internationalist in its orientation and both broadly egalitarian and democratic in its goals.

Roosevelt’s New Deal was built on the loss of faith in liberalism understood as limited government and lassie faire capitalist economics, a loss caused by the Depression. The New Deal through its various relief, recovery and reform programs expanded and legitimated government growth and intervention in the economy for the specific purpose of “raising the living standards of ordinary people”\(^{135}\) - for facilitating the four freedoms, particularly the “freedom from want.”\(^{136}\) It also galvanized union activism and formation, when it, almost as an afterthought, legalized unions in the Wagner Act.\(^{137}\)

Blacks gained little economically under the New Deal, which was implemented during the height of Jim Crow. They were significantly discriminated against in the terms of relief and the white Southern Democrats’ stranglehold on Congress ensured that the majority of blacks would not initially benefit from the old-age insurance provided by the Social Security Act, would not receive unemployment compensation, or gain protection under the Wagner Act or the Fair Labor Standard Acts. Southern Democrats accomplished this by insisting that agricultural and domestic workers be excluded from these laws’ coverage at a time when almost three-quarters of black men and women at the time worked as sharecroppers in the South and almost ninety percent of black women

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\(^{133}\) SITKOFF supra note 117 at 34-58 (discussing the increased hostility of whites toward blacks during the economic downturn of the Depression and describing the first New Deal as the same “old” and “raw deal” for blacks.

\(^{134}\) KORSTAD, supra note101, at 143. See also e.g. KEITH P. GRIFFLER, WHAT PRICE ALLIANCE?: BLACK RADICALS CONFRONT WHITE LABOR, 1918-1938, 113-115 (1995).

\(^{135}\) GOSSE, supra note 59 at 11. Forbath argues that the government was specifically expanded to support social citizenship or the social and economic rights of citizens but that the Southern democrats together with Northern Republicans killed the effort. Thus the government grew but never accomplished that for which its expansion was mandated.

\(^{136}\) Roosevelt’s four freedoms were freedom of speech and religion and freedom from want and fear.

\(^{137}\) GOSSE, supra note 59 at 11.
worked as domestics. Nevertheless, blacks were, like other poor people, kept afloat through New Deal relief and they benefited from increased government employment.  

This increase in government employment in some ways was related to the somewhat better gains blacks made politically under the New Deal. Blacks gained some access to the governing executive administration, largely through the person of Eleanor Roosevelt and a few other administrative officials, through which they made their case for fair play. Because of this access, in part, the New Deal became intertwined with struggles for racial equality even though its policy-makers, among them, Roosevelt himself, expressly sought to avoid such associations. In addition, blacks gained politically under the New Deal, not so much from what it did for them but from what they did for themselves under its glow. They engaged the heady union activity that the New Deal spurred, despite segregated unions and hostile white resistance. In fact, an entire new crop of black leadership had arisen that saw black salvation in black people’s identities as workers and who galvanized around ideas of a right to work and workplace democracy. Leaders, such as Randolph, a socialist, appreciated the support of these leaders for black unionizing, but like Du Bois, one of the most prolific and influential black intellectuals in American history, were inclined toward a practice and politics of black self-determination, in part in light of white supremacist claims and hostility. Though, New Deal policies would set in motion the construction of new social and economic barriers to black liberation and empowerment in the future, the activism of unionizing, in the 1930s met the black freedom struggle bringing together a myriad of different peoples and ideas organizing for radical egalitarian democratic social change. 

New historiographers argue that the decade of the thirties was the birth of the civil rights movement because the black protest networks were laid during that period. The movement develops the “institutional and information networks that linked black intellectuals and activists with geographically dispersed but densely concentrated black populations who could be mobilized—with unpredictable consequences for the nation as a whole.” Further a black public sphere develops, complete with a well-established black press. These networks develop in the thirties in the context of New Deal discourses

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138 *Sitkoff* supra note 117, at 34-85
139 *Id.*
140 *Singh supra* note 1, at 66. Critiques of the New Deal even today seem to often camouflage racism and resistance to black civil rights and material well-being.
141 *Bates, Double V for Victory*” Mobilizes Black Detroit, 1941-1946 in *Freedom North* supra note 46, at 19 (specifically tracing the development of black struggle in Detroit with its focus on economic issues) and Hall, supra note 9, at 1245 (speaking about he alchemy of players beginning to work together for what she calls civil rights unionism and (citing Korstad, *supra* note 101.)).
142 *Singh, supra* note 1 at 69.
143 Some of the most prominent black newspapers were well established by the thirties. For example, the Chicago Defender had been established in 1905 and had instituted one of its most successful campaigns - that of encouraging blacks in the South to migrate to the North during World War I. The Afro American based in Baltimore, had been in existence since 1892 and by the thirties was the “most widely circulated black paper along the coastal Atlantic.” The Pittsburgh Couriers, perhaps the most widely circulated black newspaper nationally had been in existence since 1907. The Courier was one of the first papers to call for a shift in black voting from the Republican Party to the Democratic Party in support of Roosevelt in the
that contemplate political economic arrangements that are meant to operate on behalf of
the economic and material well-being of the masses of (white) ordinary people. These
discourses also give rise to an open and fluid interchange of ideas and practices among
different groups and institutions, including, labor unions, and “home-grown radicals
[some a part of the communist party],” labor activists, newspaper editors, black
workers, and intellectuals, as well as pacifists, churches, women’s clubs, and
grassroots activists –both black and white- women and men. And it is these groups,
organizations and institutions engaged in a multitude of activities that lay the basis for
many of the protest philosophies and techniques used in the 1950s and 60s.

B. Organization and Protest Networks

Black protest networks were (and remain) largely unseen by whites, and the
historical existence of many local black organizations and institutions are only now being
investigated through in-depth studies of the black freedom struggle in specific
communities. These include studies such as Charles Payne’s study of the freedom
movement in Mississippi, Robert Rodgers Korstad’s study of the black tobacco’s
workers civil rights struggle in North Carolina, Martha Biondi’s study of the popular
front civil rights fight in New York, Komozi Woodard study of New Jersey in the
1960s and 70s, Dan Georgakas and Marvin Surkin’s worker democratic struggles in
Detroit, and Matthew J. Countryman on civil rights and black power in Philadelphia,
among others. Further, unseen are the family stories, strategies and networks of
activism handed down to younger generations. However, evidence of such networks
was clear even in the thirties. As one South Carolina voting registrar was heard to
complain “more blacks [are] seeking to vote because “the churches and preachers  and the
thirties. In the forties, the Courier was responsible for starting the Double V campaign. See The Black

Check Glendon Gilmore, new book due out in 2008; Hall, supra note 9, 1245; SINGH supra note 1, at
83, 80-84 (explaining that the political vision to emerge from the Joint Committee on National Recovery
(JCNR), the “most comprehensive and ambitious black intellectual gathering of the decade, meeting to
“survey the problems of the Negro under the New Deal,” and later the National Negro Congress, was a
vision of “progressive alliance politics and radical trade unionism” broadly consistent with the US
Communist Party Popular Front).; BIONDI, supra note 107.

See generally, PAYNE, supra note 22, (discussing Mississippi)

VAN GOSSE, supra note 59 at 20-21 (noting that “a history of outspoken black radicalism is unknown to
white America” and referring to the “separate world of black America). This idea comes through much of
the writing about black civil rights and has echoes even today. So for instance, Branch in describing the
Kennedy campaign to target black voters notes that they really did not know what blacks thought or did.
BRANCH, supra note 57, at ?. Gosse also discusses how any kind activity for the empowerment of blacks is
seen as subversive GOSSE, supra note 59, at 2.

PAYNE, supra note 22.

KORSTAD, supra note101.

BIONDI, supra note 107.

WOODARD, supra note 105.

DAN GEORGAKAS AND MARVIN SURKIN, DETROIT: I DO MIND DYING: A STUDY IN URBAN REVOLUTION
(1998)

MATTHEW J. COUNTRYMAN, UP SOUTH: CIVIL RIGHTS AND BLACK POWER IN PHILADELPHIA (2007)

See supra note 93.

for instance Angela Davis’ parents…; others
schools and all kinds of organizations are after them about their rights.” 156 In fact, there was a surge and shift in black voting patterns during the early thirties when blacks begin vocalizing about and affecting congressional and national elections through their increasing voting power in the North as augmented by migration. 157 Such activity had not been seen since Reconstruction and the activism was not limited to the North.

By 1932 black newspapers were advocating for blacks to shift their voting support to the Democrats and away from the Republican Party, where they historically voted. 158 The New Deal no doubt aided this movement, as blacks, though discriminated against in Roosevelt’s relief, recovery and reform programs, 159 were nonetheless kept afloat by them. By 1934 they registered a shift toward the Democratic Party in congressional elections despite the party’s control by Southern democrats critical of the New Deal and determined to maintain the segregated social and economic structures that facilitated the mass exploitation of black labor at starvation wages in the South. 160 In 1936 blacks become a force in Roosevelt’s presidential reelection, when both parties actively vied for their votes. The Republican Party added a more progressive civil rights plank to their platform in support of black civil rights, strengthening a prior platform in an attempt to maintain the black vote. 161 The Democrats responded by including some 30 delegates from twelve states in the 1936 Democratic convention, a convention never attended by a single black delegate. 162

At the same time, though very few blacks voted in the South, voter registration campaigns took off there throughout the thirties including in places such as North and South Carolina, Georgia, Florida, Virginia, and even Birmingham, Alabama. 163 These voter campaigns included not only the participation of local chapters of the NAACP but also organizations such as the Worker’s Alliance, Textile Workers of America, United Mine Workers in certain towns and cities. 164 That is, the growth of political power and protest in the thirties did not involve the isolated participation of only blacks but included

156 Id. At 99
157 Sitkoff, supra note 117 at 84-10. Sitkoff notes that “over 400,000 blacks migrated from the South during the depression, boosting the Negro population of Illinois, Michigan, Missouri, New York, Ohio, and Pennsylvania by one-third. These migrants joined the two million blacks who had previously abandoned the plantations of the South…Id., at 90
158 Id., at 87
160 Id., at 89 and 97 (noting that “for the first time in history, a majority of [blacks] voters went democratic,” and that they did so despite the Democratic party, respectively).
161 Sitkoff, supra note 117. Republican’s had included a “Negro right plank in their platform for the first time since 1908” in 1932. While the NAACP was dissatisfied with it, it marked a turn in GOP politics which hitherto had taken the vote for granted. Sitkoff, supra note 117 at 87. Further, they engaged in a host of new activities, including denouncing Roosevelt’s “raw deal” for blacks. Id. at 92. “The Democrats now wanted the growing Northern Negro vote. To demonstrate that change, Roosevelt in 1936 chose a Negro minister to offer the convention invocation and picked a black Congressman…to deliver the welcoming address.” Id. at 93.
162 Id., at 93
163 Id.
164 Id., 99-100
vibrant heterogeneous and fluid groups of people, organizations and networks that
worked together, sharing differing and similar philosophies and often common goals. The
egalitarian black civil rights agenda went national.

But black activism was not limited to voting during this time nor did it simply
involve established institutions. Rather, blacks organized around the conditions of their
lives and they often established both new local and national organizations. For instance,
three young men organized the New Negro Alliance in Washington D.C. in 1933.\textsuperscript{165} They were “outraged that white-run businesses in the middle of black neighborhoods
refused to hire black workers. The Alliance instituted [the] then-radical “Don't Buy
Where You Can't Work” campaigns, organizing boycotts and pickets of white-owned
businesses.”\textsuperscript{166} The Don’t Buy Where You Can’t Work campaigns spread throughout
urban areas in the North including Cleveland, New York City, Washington, D.C.,
Baltimore, and Newark. In these cities several white businesses sought and secured
injunctions against the protest but the Supreme Court reversed these lower courts
decisions in 1938, protecting the right of protesters to picket establishments with
discriminatory hiring practices.\textsuperscript{167}

One of the most significant new national institutions was the National Negro
Congress (NNC) formed in 1935 “to build a national constituency to pressure New Deal
administrators for labor and civil rights.”\textsuperscript{168} The NNC established local councils
throughout the country, which by the late thirties were some of the most active and
vibrant of the local organizations.\textsuperscript{169} At the same time the National Negro Congress
represented and brought together a host of local groups already active in their local
communities. Wittner notes that at the Congresses’ 1936 convention some “817
delegates [attended] from 585 organizations-largely civic groups, trade unions, religious
bodies, political parties and fraternal societies-with an estimated membership of
1,200,000 persons.” He explains, “the crowd was an exceptionally diverse one, with
widely divergent philosophies,” where “old line Republican wheel horses and ambitious
young Democrats exchanged arguments; Communists held heated altercations with
proponents of the Forty-Ninth State Movement, and Garveyites signed the registration
books immediately after Baha’ists.”\textsuperscript{170}

\begin{footnotes}
\footnote{165}{New Negro Alliance’s Sanitary Grocery Protest Site, AFRICAN AMERICAN TRAIL DATABASE, at http://www.culturaltourismdc.org/info-url3948/info-url_show.htm?doc_id=212961&attrib_id=7970.}
\footnote{166}{Id.}
\footnote{167}{Don't Buy Where You Can't Work, THE SECOND GREAT MIGRATION at http://www.inmotionaame.org/gallery/detail.cfm?migration=9&topic=8&id=486636&type=image.}
\footnote{169}{Id.}
\footnote{170}{Wittner, Lawrence S., The National Negro Congress: A Reassessment. AMERICAN QUARTERLY 22.4 (Winter 1970), p. 891 “The delegates enthusiastically voted to establish a permanent body to coordinate the local activities of constituent organizations, and passed resolutions endorsing the organization of Negro labor, attacking lynching, supporting the Negro church, condemning the Italian invasion of Ethiopia and calling upon the black community to patronize Negro business. (Emphasis mine) Id; See also, supra note 107, at 6 noting that a pro-union attitude among black community and civil rights leadership took hold in the 1930s.}
\end{footnotes}
One of the Congresses’ greatest contributions was its pro-labor position and its program to organize “hundreds and thousands of unorganized Negro workers,” workers who had historically been suspicious of unions given their strident anti-black racism. This effort was crucially important to the Congress of Industrial Organization, which was founded almost simultaneously with the NNC in 1935, both of which were unprecedented in the history of American labor and would profoundly affect black workers and the civil rights movement. “Beginning in 1936 the CIO conducted the most massive organizing campaigns in American labor history. Unlike the traditional racial [exclusion and segregation] policies of the AF of L [American Federation of Labor], the CIO opened its doors to all black workers on an equal basis.” Further, its leader “knowingly hired members of the Communist Party to work as organizers, primarily because of their special interests in the unity of black and white labor and their achievement of such unity previously.” In 1936-37 with the help of the NNC, especially in industries where black participation was crucial, such as in steel, “the CIO initiated a series of great organizing campaigns in the steel, auto and rubber industries, among house-painting, and textile workers; in mining, woodworking, shipbuilding and communications; and among seamen, warehouse workers, and many others”

In the South, the CIO organized thousand of workers “in mining, oil, tobacco, the pulp and paper industry, transportation and automobile manufacturing. The fact that several Southern industries, especially textile, the largest industry in the South, were white preserves kept down the number of blacks organized there.” And yet the CIO and other Popular Front organizations saw blacks as key to organizing the South and believed that breaking the conservative southern Democratic hold on the South was critical to expanding New Deal policies. Overall, “black union members in the country rose from 150,000 in 1935 to 1.25 million by the end of the war” in 1945. And later in

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171 Id. at 891
172 CIO consisted of “eight international unions: the United Mine Workers; the Amalgamated Clothing Workers Union; the International Ladies Garment Workers Union; the International Typographical Union; the Oil Field, Gas, Well and Refinery Workers; the United Hatters, Cap, and Millinery Workers; and the International Mine, Mill, and Smelter Workers. PHILIP FONER, ORGANIZED LABOR AND THE BLACK WORKER 212-13 (1982)
173 FONER, supra note 172 at 216
174 Id.
175 Id. at 218
176 Id. 230
177 KORSTAD, supra note 101, at 4.
178 MARABLE, RACE, REFORM AND REBELLION 15 (1991). However, Griffler argues that the successes of the NNC and the interracial labor movement of this period ultimately had limited success because it was a lopsided alliance in which the NNC worked hard to organize blacks into unions, an effort that provided their numbers to white union strength but the unions and its white membership contributed almost nothing concrete, save supportive rhetoric, to the social equality of blacks either within the unions or without in the greater society as a whole. This occurred, he argues, in part due to the theoretical position that prevailed which suggested that black and white workers were positioned exactly the same in terms of class and that black freedom would not materialize in the absence of resolving the class question. That is, the “Negro Question” was simply an issue of class. Left out was the insight that class solidarity might not materialize in the face of racial divisions and the observation that white workers, at least the most privileged sectors of it, might have a material interest and advantage in the super-exploitation of black workers and thus shun class solidarity with blacks. See generally, Griffler, supra note 134.
Birmingham for instance, “union [members] crisscrossed with networks, caucuses, and study groups organized by black workers. These informal organizations directly linked black union members to civil rights mobilizations based in churches and in community organizations. “In some cases, union activity made the better known later marches and court cases possible.”

Leadership in the NNC and the “alliance among liberals, leftist and nationalist around the broad agenda of black working class empowerment and social and economic justice” would also play a significant role in the development of the Council on African Affairs (CAA), also established in the thirties. This organization, which Paul Robeson helped to found in 1937, would sharpen, over the next fifteen years, black anti-colonial and anti-imperialist consciousness and provide a new analytical framework based on Hobson and Lenin, which linked brown and black workers all over the world. Pan African sensibilities had long been a feature of black thought dating back to Martin R. Delaney’s 19th century “vision of independent black organizing [and] calls for black emigration, Du Bois’ turn of the 20th century Pan- African Congress Movement, and Garvey’s Universal Negro Improvement Association which linked the entire black world to and in solidarity with Africa. The latter’s effort brought these links to a mass audience “creating a new working-class diaspora consciousness.” But unlike the new framework, these past visions stressed cultural ties.

Under the new framework, black leaders created a broader and more intellectually sophisticated reading of these connections, linking historical, political, economic and social factors in a more powerful theory. “African American leaders argued that the bonds black Americans shared with colonized peoples were rooted not in a common culture but in a shared history of racism spawned by slavery, colonialism and imperialism.” Capitalism, they argued, in its search for markets and new resources required colonial and imperialistic expansion. As such racism was rooted “in the history of specific economic, political and social practices,” and was a foundational pillar of capitalist formation in the West. In light of these ideas, the black press regularly featured articles on events abroad and paid particular attention for example to the Ethiopian crisis of 1935, the 1945 “Nigerian trade union struggles and the fight against

The CIO did eventually support an anti-lynching bill that Congress never passed. However, Griffler notes that “the greatest signal the CIO could have sent to African Americans would have been to start a serious national campaign to organize agricultural workers and domestics.” Something it was asked to do. It did not. Id., at 189. In this sense the CIO did very little in terms of improving the economic conditions of African American life, except for small number of workers in northern industries. Id. And even much of that effort came for the NNC.

HORACE HUNTLEY AND DAVID MONTGOMERY, BLACK WORKERS’ STRUGGLE FOR EQUALITY IN BIRMINGHAM (2004) This book is a part of the Birmingham Civil Rights Institute’s Oral History Project and it contains some 17 interviews with union activists in industry and the community.

Von Eschen, supra note 22, at 10.

Id., at 9-10

Id., emphasis mine

Id. at 40

Id.

Id., at 41
British suppression of Nigerian newspapers,” the 1946 South African miners strike, and the various anti-colonial liberation struggles.\textsuperscript{187} Often blacks would start or participate in new organizations to support these causes such as the nationalist organization of the “Ethiopian World Federation.”\textsuperscript{188} Further, the Pan–African Congress of 1945 was institutionally tied to African labor, as a result of this frame and consciousness.

Black people were also particularly interested in India’s liberation war. In fact, “one of the most important new biracial groups” to develop for the civil rights movement was the Congress of Racial Equality (CORE) established in 1942 by the pacifist Fellowship of Reconciliation.\textsuperscript{189} Bayard Rustin, a social democrat and pacifist “gave political purpose and direction to the new formation,”\textsuperscript{190} and traveled several times to India to study under the direction of Ghandian movement leaders. His role would be pivotal during the mid-century phase of the movement.

Established national organization also expanded into local communities. For example, NAACP chapters continued to expand to multiple cities and towns after a slump in expansion during World War I and later the Depression. These chapters though tied to the national office often operated with a fair amount of independence and frequently contributed to the dynamism of local activity even when the national office was leery. Membership in the NAACP tripled between 1934 and 1944.\textsuperscript{191} Youth chapters later became sites for the types of “direct action”\textsuperscript{192} that the NAACP headquarters would shun in favor of the litigation strategy it had pursued almost since its inception which sought to challenge the legality of \textit{Plessy} on a case-by-case basis.\textsuperscript{193} The NAACP received a boost to its program in 1935 when it secured a dynamic new leader, Charles Hamilton Houston, formerly the dean of Howard Law School, to aggressively forward its litigation approach. Houston with his assistant, Thurgood Marshall, began to actively cultivate test cases instead of simply waiting for cases to come to the NAACP.

Further, the NAACP was pushed toward more radical politics during this time by a new cadre of leaders and intellectuals outside of it, such as Ralph Bunche, Abram Harris Jr., and E. Franklin Frazier,\textsuperscript{194} who believed that the litigation approach was too slow, advocated for mass demonstrations and insisted that the labor movement would be

\textsuperscript{187} Von Eschen, \textit{supra} note 22, at 2
\textsuperscript{188} \textit{Id.} at 11.
\textsuperscript{189} MARABLE, \textit{supra} note 176 at 25
\textsuperscript{190} \textit{Id.}
\textsuperscript{191} \textit{Id.} at 15
\textsuperscript{192} See \textit{e.g.} Bates \textit{supra} note 141, at 20 (noting that the Youth branch in Detroit was connected to the local branch of NAACP in name only and explaining that the Youth branch collaborated with the NNC and the campaign to free Angelo Herndon, “a black communist sentence to 18 years in prison for speaking out for the rights of black workers.”).
\textsuperscript{193} Many scholars have argued that that the NAACP litigation strategy of attacking \textit{Plessy} evolved over time and was neither the initial nor the single focus of the NAACP’s litigation work in the early years. See \textit{e.g.} Risa Goluboff, \textit{supra} note 25; and MARK V. TUSHNET, \textsc{The NAACP’S Legal Strategy Against Segregated Education}, (2004 ).
\textsuperscript{194} See generally, JONATHAN SCOTT HOLLOWAY, \textsc{Confronting the Veil: Abram Harris Jr., E. Franklin Frazier, and Ralph Bunche, 1919-1941} (2002).
the key to black empowerment. The NAACP’s concern for workers grew and was evident in a line of labor cases in the 1930s and 1940s, a line of cases and strategies that Goluboff argues has been lost and forgotten.

At the same time, black nationalism from sources as diverse as Alexander Crummell, Booker T. Washington, Marcus Garvey, Ida B. Wells, and eventually W.E.B. Du Bois, which emphasized black or racial self-determination, black cultural pride (black pride) and Pan–Africanism, found a new and different reinforcement in the mid-thirties with the rise of Elijah Muhammad at the helm of The Nation of Islam. The Nation of Islam, though socio-religiously conservative would become in time a consistent force for nationalist ideas, and with Malcolm X as spokesman, it would become a force in the transition of the mid-century civil rights movement in the 1960s and in the cultural transformation of black America.

C. Activism, World War II and The Cold War

These organizations would lay a foundation for protest, one of direct action, which would instruct later efforts at mid-century. They drew on earlier black activism as well as on current labor activism while working in often “spirited” cooperation with labor and others. A significant effort came from Randolph who started a movement to March on Washington for the purpose of pressuring the Roosevelt administration to open industrial and war industry jobs for blacks. His March on Washington Movement (MOWM) threatened Roosevelt with the prospect of 100,000 angry black workers in D.C. in 1941 in protest of employment discrimination at a time when much of the rest of the world was at war, a time when protest might prove embarrassing. Roosevelt bargained. He signed Executive Order 88702 on June 25th 1941 barring discrimination in

195 Von Eschen, supra note 22; Bates supra note 141; SINGH supra note 1 (both discussing scholars such as Du Bois, Padmore, C.L.R James, Bunche)
196 See, Goluboff, supra 25.
198 See generally OGBAR, supra note 35.
199 Id.
200 Self, supra note 4, at 34 (noting that radicals and liberals in the 1930’s often worked in “spirited cooperation.”)
201 Bates, supra note 141, at 18. Bates also notes “with the intentional exclusion of whites from participation in the MOWM, a politics of black self-determination rose to the fore.” Id. at 20. She notes on black activism in Detroit that centered around economic and unionism, that: The politics of self-determination (articulated by Randolph) was part of a larger, long-term goal to remove vestiges of inferior status embedded in a system that was still coming to terms with accepting black Americans as first-class citizens. The legacy of this period was its contribution to building networks that relied on independent, collective, mass action to checkmate the dominant culture’s ability to keep African Americans in an inferior place.” Id. at 33.
defense industries and federal bureaus and created the Fair Employment Practice Commission to implement it. In exchange, Randolph called off the March. However, the “MOWM taught black community activists the importance of using mass demonstrations as a tool for challenging existing power relations.” 202 It also laid the foundation, for the March on Washington in 1963, a march organized in part even then by Randolph and one of his trusted allies, Bayard Rustin.

Another example of this activism was the early sit-ins by CORE in the 1940s.203 These sit-ins initially occurred in the North and Midwest, and drew on earlier practices of labor, the sit-down strike of industrial workers. They were the precursors to the later mid-century sit-ins held first in Kansas and Oklahoma in the late 1950s and the seismic sit-in protests in Greensboro in 1960.204

World War II also fueled black activism. As the country geared up to potentially enter WWII, war industries expanded attracting more blacks from the rural South and accelerating their migration to northern cities. There, blacks faced housing shortages, housing discrimination, job discrimination in all areas of employment including the expanding war industries, school segregation, under-financing, high infant mortality rates, white racial violence in the form of race riots, and what Mary Biondi calls, lynching Northern style – police brutality.205 These issues together with issues such as education and segregation fueled activism in the North.

Goose suggests that World War II not only laid the groundwork for the black freedom movement at mid-century, it also laid the foundation for many of the movements that emerged in the late 1960s and 70s, including the feminist and gay and lesbian movements.206 WWII, he suggest, as have others,207 loosened the grip on the racial and gender social structures that were in place before the war because the government needed to send men to war, while workers were nonetheless needed to work the factories converted to war production.208 Some black men went to war while other black men and women in mass moved into jobs and positions that previously had been occupied only by white men. The effect was that the social rules that prohibited women, blacks and other groups from filling these positions were relaxed, never to fully return.209

202 Id., at 22. (discussing Detroit)
205 She notes that from 1947-1952 forty-six unarmed blacks and two whites were killed by police officers in the state of New York alone.205 These practices became the stuff of struggle for blacks in the North and the West and they would go largely unresolved, despite the protest and riots of the 1960s. BIONDI, supra note 107, at
206 GOOSE, supra note 55 at 15-18.
207 See e.g., MARABLE, supra note 176
208 GOOSE, supra note 55 at 15-18.
209 Id.
However, blacks were suspicious of the goals of the war despite the rhetoric suggesting the US was fighting for freedom, equality and democracy against the Axis powers. This suspicion comes through in the newspaper quip about a fallen soldier: “Here lays a black man killed fighting a yellow man for the protection of a white man.”

Nevertheless, the War was instructive in terms of black consciousness on two levels. First it legitimated a fight, a struggle for freedom, equality and democracy that was not only legitimate in the face of Nazi aggression but, from a black perspective, also legitimate as against both colonial and racial oppression. Further, it also demonstrated a justification for defensive violence.

Yet, many blacks supported the war but did so refusing to forgo the domestic struggle as they had been urged to do during World War I. Instead they seized upon the Double V campaign started by the Pittsburgh Courier in 1942. The campaign urged a victory abroad against fascism, and victory at home against white supremacy. The Double V campaign galvanized black activism, with black veterans playing a role in insisting on changes in the conditions of black life.

The War thus heightened the international reach and anticolonial commitment of black consciousness. For instance, blacks embraced Roosevelt’s four freedoms--freedom of speech and religion and freedom from want and fear--for all the peoples of the world. They criticized Churchill’s interpretation of the Atlantic Charter, which pledged among other things, that the “sovereign rights and self-government [would be] restored to those who had been forcibly deprived of them” in Europe, but suggested that such restoration did not apply to colonial subjects. Black people supported India’s struggle for Independence and celebrated Ghandi’s stance that India had to be free before it would cooperate with England to win the war against Germany. Even after the US entered the war, 87.8 percent of African Americans in a survey of 10,000 indicated that India should continue to contend for her liberty.

In part because of these ideas, blacks were enthusiastic about the establishment of the United Nations at the end of the War. Linking the black freedom struggle to other liberations struggles led activists to petition the United Nations about black American conditions. The National Negro submitted a petition in 1946; the NAACP under the supervision of W.E.B. Du Bois submitted one to the UN in 1947, and Malcolm X would later contemplate a similar petition in the 1960s.

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210 Lawson, supra note 22, at 7.
211 Consider Malcolm’s later statements promoting self-defense and criticizing nonviolent direct action. He states: “How can you justify being nonviolent in Mississippi and Alabama when your churches are being bombed, and your little girls are being murdered, and at the same time you are going to get violent with Hitler, and Tojo, and somebody else you don’t know?” OGBAR, supra note 35 at 45.
212 See generally Bates supra note 141. Others?
213 VAN GOSSE, supra note 59.
215 VON ESCHEN, supra note 22, at 25-28
216 Hugh H. Smythe, The N. A. A. C. P. Protest to UN in PHYLON (1940-1956), Vol. 8, No. 4 (4th Qtr., 1947), pp. 355-358 (appealing to the UN for redress for the denial for human rights of black people as a minority in the US); Singh, supra note 1 at 157.
217 SINGH, supra note 1, at 188 (citing Alex Haley, Autobiography of Malcolm X (1965)).
If the War fueled black activism, the Cold War context chilled, truncated, and splintered it. The US in seeking to “assert global leadership, contain the influence of the Soviet Union, and hold the spread of Communism around the world,” made anti-communism the primary objective shaping both US foreign and domestic policy.\(^{218}\) Escalating the Cold War, the Truman Doctrine of 1947 announcing the containment policy “instituted a far reaching period of [domestic] repression,”\(^{219}\) unleashed in part through Truman’s Executive Order.\(^{220}\) The order created the Federal Employee Loyalty Program to investigate the beliefs and associations of federal employees.\(^{221}\) Government employee association or membership in any one of approximately eighty organizations considered “subversive,” would subject the employee to investigation and possible dismissal. Labor, peace, civil rights and other organizations along with the Communist Party were included in this list. These and other activities paved the way for the rise of McCarthy and the red scare witch hunts of the 1950’s. They led to the government prosecuting and terrorizing known or suspected communists, which in turn led organizations to purge their leftist members, encouraged liberal organizations to break off their cooperation with the Communist Party or other organizations that had been influenced by it, and painted almost any criticism of American foreign or domestic policy from the left as un-American, unpatriotic. The overall social effect of this, according to Biondi, was to largely destroy the Communist party, undermine the broader American left, unleash hysteria over possible subversion and thereby generate support for the militarization of the economy and society that was taking place.\(^{222}\)

The Cold War severely impacted black activism in part because organizations such as the National Negro Congress, the Civil Rights Congress and the Council on African Affairs were included among those suspected of “subversive” activities, and because the Communist Party had played a role in a number of protest organization activities as one of the only multiracial organizations that promoted black freedom. But in addition, blacks had increasingly, since the New Deal, sought and found jobs in government, and thus were easy targets of the order.\(^{223}\) In fact what emerged was often anti-black and anti-communist (anti-black red-) baiting thoroughly employed by Southern Democrats, among others, opposed to black people’s egalitarian civil rights agenda. Further like other organizations, such as labor groups, many black protest organizations muted their criticism of American foreign policy, purged its membership, isolated and abandoned communist or communist sympathizers in the face of prosecution, abandoned work with groups which advocated for more open processes and maintained internationalist and anticolonial critiques. For example, the NAACP dismissed Du Bois in 1948, and it and other black liberal organizations condemned Paul Robeson for critical comments about participation in war efforts.\(^{224}\) Further, there was also a manifest split between liberal and more radical black organizations and a split between the burgeoning

\(^{218}\) Biondi, supra note 107 at 137
\(^{219}\) Id.
\(^{220}\) Truman’s Executive Order 9835.
\(^{221}\) Id. at 139-140
\(^{222}\) Biondi, supra note 107, at 137. Emphasis mine.
\(^{223}\) Id.
\(^{224}\) Id., at 153-163
cooperation between white labor and the civil rights movement, destroying much of the institutional framework that had been established.225

The effect of all this was that many of the economic claims of the movement were lost, at least on a national level, even though they endured in local struggles. That is, to the extent communism privileged concern for economic and material well-being around issues such as food, housing, and jobs, these fell off the national agenda, while “civil rights,” including such things as voting rights, privileged by the United States and the West came to more narrowly define black freedom claims.226 The message of the black freedom movement was further narrowed as groups like the NAACP turned their attention South, and focused on segregation, with the push for unionism in the South having been abandoned by a host of organizations including labor.227 And yet, liberal civil rights organizations did attempt to keep the pressure on the government and the American polity for black freedom by buying into the anti-communism hysteria. They did so however by trying to leverage the anticommunist repression - arguing that communism was boosted everywhere in the world by images and practices of racial oppression in the US.228 In this sense, although many were undoubtedly committed to the anti-communist message, they and others attempted to manage the changed conditions of international attention and anti-communist hysteria to maintain elements of the past activism. But the struggle became one temporarily stripped of its broad economic message and institutions and stripped of its anti-colonial connections.229 This marked a transition in the struggle and began the second phase of the movement, one based in the black church.

Nevertheless, the political-economic agenda advanced by black radicals and liberals in the urban North, West and even in the many places in the South…remained intact, albeit damaged from 1950’s anti-black redbaiting.230 Their relevance would not re-emerge until a post-red scare generation grew up into the struggle amidst the new

225 See generally, KORSTAD, supra note 101.
226 An example of the conflict of ideology between the US and the Soviet Union played out at the United Nations over the creation of human rights conventions. The resolution involved the creation of two separate conventions one for political and civil rights and another for economic, social and cultural rights. The political and civil rights convention was privileged in international law well into the late eighties and nineties, after which the United Nations Conference on Human Rights held in Vienna declared human rights to be indivisible as between political and civil rights and economic, social and cultural rights. See generally, World Conference on Human Rights in Vienna (1993) at http://www.unhchr.ch/html/menu5/wchr.htm; see also Hurst Hannum, Contemporary Developments in the International Protection of the Rights of Minorities, 66 NOTRE DAME L. REV. 1431, 1432-36 (1991) analyzing the debate between these two sets of rights during both the League of Nations and the United Nations.)
227 See generally, Griffler, supra note 134.
228 BIONDI, supra note 107, and ESCHEN, supra note 22.
229 Manning Marable has argued that “‘The black middle class’s almost complete capitulation to anti-communism not only liquidated the moderately progressive impulse of the New Deal years and 1945-46; it made the Negroes unwitting accomplices of a Cold War domestic policy which was, directly both racist and politically reactionary.” MARABLE, supra note 176 at 31.
230 Self, supra note 4, at 35.
social and economic barriers to black liberation and empowerment set in motion by the New Deal.  

These new barriers arose as a result of policies and institutions constructed by the New Deal that unleashed the second largest internal migration in the country, that of white migration from the cities to the suburbs. New Deal policies that had been already inequitable in disbursement of relief and opportunity, had also put in place institutions, programs and policies that subsidized the development of the suburbs through federal and private credit financing for housing, subsidized the suburban infrastructure through the construction of highways, and eventually subsidized the growth of the white middle class (mostly men) through the GI Bill. This it did on the backs of, to the exclusion of, and at the expense of black people and the urban spaces where they now found themselves. In short capital was being pumped out of inner cities, draining and disinvesting in them, to support both suburban growth and the Sunbelt southern boom. These policies and practices laid the base and frame for white resistance to black empowerment after the enactment of the Voting Rights Act, and they were compounded by the steady de-industrialization of these same self-cities. Consequently, the New Deal had not only failed to “offer a ‘new founding’ on race but in fact had reasserted white supremacy through discriminatory labor, housing, and welfare programs.” The consequences of this were already visible by the time the mid-century phase of the civil rights movement started.

In the meantime, however, the turn South for national organizations meant they encountered ongoing local struggles that continued to speak even in the context of the Cold War. What was emerging though was a church–based movement that attacked in spectacular forms the “legal architecture of southern segregation.” The black struggle received a boost from the Supreme Court in 1954 when it decided the Brown case. While black people were jubilant, the decision set off massive white resistance. This resistance eventually was met with the lessons blacks had carried with them from the not-too-distant past, lessons of protest, of direct action. So when Rosa Park refused to give up her seat

231 Id.  
232 Hall, supra note 9,  
233 BROWN, WHITENASH, infra note 292, 27-28; See also, Self, supra note 4 and American Babylon: Race and the Struggle for Postwar Oakland (2003).  
234 MARABLE, supra note 7, at 35 (discussing the process as beginning in the mid-century and continuing for example in the 70’s where “local banks in Brooklyn …committed less than 6 per cent of mortgages to their home borough: fully 63 per cent of local savings were exported to Florida and elsewhere.”). The Southern boom was also attractive to northern industrialist who moved businesses first South and then later out of the country. This boom was fueled in part by low corporate taxes in the South, low wages for workers, low welfare benefits for the unemployed, “minimal investment in human capital ” through education and the sort, minimal union activity and thus the easy exploitation of undereducated and non-unionized labor both black and white though spatially separated. Hall, supra note 9, at 1243-1245. This strategy of under-educating, under-supporting human beings to ensure their availability for work for poor pay for the benefit of business and the business elite apparently became the economic paradigm for the entire country under neo-liberalism.  
235 Hall, supra note 9,  
236 Self, supra note 4, at 24 (referring and citing Singh, supra note 1).  
237 Id. at 35
on that Birmingham bus, she was not simply a tired woman but a NAACP member, and a
well-known and respected member of a community who could be engaged by activist
involved in the struggle in the past to do battle with the City of Birmingham. Parks was
bailed out of jail by E.D. Nixon, a former union leader and a Pullman Porter, together
with Virginia and Clifford Durr, white, New Dealers who had been ostracized by the
community for Clifford’s defense of victims of the Truman Loyalty Program. The
Durr’s were sponsors of the Highlander Folk School of Tennessee, a school that had
worked with the CIO in labor organizing, had worked with issues of school desegregation
even before Brown, and would serve as a training site for SNCC and other protest
activists in the future. Nixon later also called Jo Ann Robinson, a professor of English
at Alabama State and a member of the Women’s Political Council in Montgomery.
Within hours, Parks would agree to use her situation as a test case for organizing the
black community for protest. The Women’s Political Council in Montgomery Council
proposed a one-day boycott bus and the Montgomery Bus Boycott was born.

Direct action, not just simply litigation, would follow in Little Rock, Arkansas,
Greensboro, North Carolina, Alabama, Albany, Georgia, Mississippi, and Washington
D.C., among other places. By 1964 Congress would pass civil rights legislation and in
1965 the Voting Rights Act was passed. But violence, segregation, human and structural
oppression of black people continued. The following year in 1966, the violence and
sense of fear remained so pervasive among blacks in the Mississippi Delta that James
Meredith decided to stage a solo-walk across Mississippi in a “March Against Fear.”

Meredith was ambushed on the second day of the “March Against Fear” but
hundreds continued it, among them, Dr. Martin Luther King Jr., and Stokely Carmichael
of SNCC. Reporters played up the generational differences between King and
Carmichael and “clashes over armed self-defense, interracial cooperation and political
tactics” marked the long walk. For example, when King was asked during the march
“whether the Meredith incident would shake the movement’s resolve” King “professed
unwavering commitment to nonviolence while Carmichael,” walking beside him at the
head of the march, “casually proclaimed his tactical rather than philosophical support.”
One evening, in reaction to police harassment of demonstrators, Carmichael in both
frustration and planned execution exclaimed: “This is the twenty-seventh time that I’ve
been arrested. I ain’t going to jail no more. The only way we gonna stop them white
men from whuppin’ us is to take over. What we gonna start saying now is Black


238 BRANCH supra note 57, 128-132
239 Id.
240 The Highlander Folk School, The Tennessee Encyclopedia Of History and Culture, at
http://tennesseeencyclopedia.net/imagetemplate.php?EntryID=H048
241 BRANCH supra note 57, at 131-2
242 Joseph, supra note 4, at 1-2 (telling the story of the march)
243 Id.
244 Id.
245 Id.
Thus the term Black Power was born and the media seized upon it as a signpost of a new militancy among blacks.

King remained uncomfortable with the phrase black power, but not necessarily with the concept. Though committed to nonviolent engagement as a philosophy of struggle, he would agree with much that the Black Power phase of the movement had to say. Though he is conveniently frozen in memory on the steps of the Lincoln Memorial delivering his “I have a Dream” speech, by the end of his life he had come to view “the idea of obtaining civil rights for black individuals as an inadequate framework for combating the economic consequences and cultural legacies of white supremacy.”

Further, he saw himself as a “citizen of the world and called for a “world perspective,” particularly on the issues of violence and inequality. As such he can be situated within the larger phenomenon of black anti-colonial thought. Specifically, King came out in opposition to the Vietnam War; and on the black struggle in relation to America he had this to say:

The black revolution is much more than a struggle for the rights of Negroes. It is forcing America to face all its interrelated flaws—racism, poverty, militarism, and materialism. It is exposing evils that are deeply rooted in the whole structure of our society…and suggests that radical reconstruction of society itself is the real issue to be faced.

D. Black Power!

Black Power affected African American identity and politics as much as any speech, march or legal victory of the civil rights movement. Its thrust was “black nationalism, though Black power was not necessarily nationalist…In essence, it demanded inclusion while advocating autonomy and self-determination. It asserted black access for full citizenship rights while conspicuously cultivating pride in much that was not American…Two fundamental themes [ ] were widely celebrated…black pride and black self-determination.”

Taylor Branch notes, that though black people have always fought against their slavery, oppression and subordination in America, there came in the Sixties this “extraordinary” moment, when almost overnight an entire social group, led by their
young, shifted from being ‘Negroes’ to ‘Blacks.’” With that change, according to Leonard Harrison of the Kansas Nine, the very body language of the folks - the way they walked, talked and established themselves, - shifted. They, blacks, would no longer bow and defer to whites, something they had been forced to do almost since their very arrival on the continent. More importantly, and not alone in some disagreement with the Southern civil rights strategy, they would not suffer the blows of white self-serving hatred and aggrandizement in silence nor would they absorb them – unmerited suffering - in resistance. Rather, they would, like most whites then and now, claim the right to defend themselves. They would act in self-defense! And they would advocate for fundamental change in the United States…to fundamentally redistribute the wealth and the power in the country, and do so – to quote Malcolm X, “by any means necessary.” They would fight against white racial oppression and violence and they would protect black communities.

While the performance of armed patrols, particularly by one of the most influential Black Power groups, the Black Panther Party, was culturally powerful in the black community, and is an aspect of the Black power movement to which a disproportionate amount of attention has been focused; self defense advocates had always been a part of the movement. Further, self-defense had been a part of the Southern movement in groups like the Deacon of Defense and in the philosophy of Robert Williams. But protecting black communities, it turned out was about more than armed patrols; it was also about serving and educating the community.

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254 Taylor Branch, Parting the Waters: America in the King Years 1954-63, xii (1988)
255 Video interview with Leonard Harrison
256 Of course there were many in the South who believed in self-defense. See e.g. Timothy Tyson, supra 105. LANCE E. HILL, THE DEACONS FOR DEFENSE: ARMED RESISTANCE AND THE CIVIL RIGHTS MOVEMENT (2004); CHRISTOPHER STRAIN, PURE FIRE: ARMED SELF-DEFENSE AS ACTIVISM IN THE CIVIL RIGHTS ERA (2005).
257 Martin Luther King, Jr., Suffering and Faith in CHRISTIAN CENTURY MAGAZINE, APRIL 27, 1960. The following quote can be located online at http://www.quoteland.com/rate.asp?QUOTE_ID=2700
My personal trials have also taught me the value of unmerited suffering. As my sufferings mounted I soon realized that there were two ways that I could respond to my situation: either to react with bitterness or seek to transform the suffering into a creative force. I decided to follow the latter course. Recognizing the necessity for suffering I have tried to make of it virtue. If only to save myself from bitterness, I have attempted to see my personal ordeals as an opportunity to transform myself and heal the people involved in the tragic situation, which now obtains. I have lived these last few years with the conviction that unearned suffering is redemptive.
258 Panthers??
259 See infra, a discussion of the ways in which this statement has been distorted through literalist misinterpretation.
260 See supra note 250.
261 See Tim Lake, The Arm(ing) of the Vanguard, Signify(ing), and Performing the Revolution: The Black Panther Party and Pedagogical Strategies for Interpreting a Revolutionary Life, 306 –323, in LAZROW AND WILLIAMS, supra note (discussing Erika Doss’ work examining the “role of art as a means for the BPP’s vision and emboldening its members in the revolutionary struggle.”) Tate suggests that Eldridge Cleaver saw the breakfast program as part of a nationalist program, a program which was part of the self-determination goal. Newton saw the program as helping people survive so that they might be in a position to fight the revolution. Seale saw it as a tool to unify the people.
nurtured thousands of black children daily.\footnote{Ogbar notes that by 1969 the Panthers had free breakfast programs in nineteen locations that feed some twenty-thousand children weekly. Ogbar, supra note 35, at 90.} Given the immense popularity of these programs, it is not surprising that it was with the start of this program that J. Edgar Hoover, director of the FBI, declared the Panthers “the most dangerous organization in the country.”\footnote{Self, supra note 4, 26}

Even more important, however, was the Panther’s focus, which like many other Black Power groups was on the neighborhood, a neighborhood that by 1960 was largely urban. And what was clear to many black people in cities all over the country was that the promise of the city, and of democracy and opportunity as told by liberal pluralism – consisting of a free market and the jostling but eventual pluralist interaction of various groups, had failed.\footnote{Self, supra note 4, 26} Instead, what obtained were increasingly poor, de-industrialized cities with large numbers of black and other people of color surrounded by affluent white suburbs – what the funk group Parliament called “chocolate cities with vanilla suburbs,” the new de facto segregation that continues to this day.\footnote{Parliament’s album and title song was called “Chocolate City. The lyrics can be found online at http://www.lyricsmode.com/lyrics/p/parliament/chocolate_city.html. The song celebrated the city as a site for black self-determination (it focused on DC). In this sense it was not about white flight although it characterized the phenomenon of brown cities and white suburbs. See, Kenneth Carrol, The Meanings of Funk, THE WASHINGTON POST Sunday, February 1, 1998 at http://www.washingtonpost.com/wp-srv/local/longterm/library/dc/dc6898/funk.htm} Embedded within these increasingly de-industrialized spaces, in this urban crisis, was a lack of jobs, “Jim Crow in the private economy,” hardened segregation, discrimination in private and public housing, and disinterested white urban politicians, among other disempowering features.\footnote{See generally, Self, supra note 4, at 34-36}

What Black Power put forth, then, was a program for urban reform. The program echoed the demands raised thirty years before when blacks had migrated to the industrial city and faced similar limited and segregated opportunities. Though the institutional framework and cooperation with labor had largely disappeared due to Cold War repression, a number of elements of that previous struggle were reborn; namely, calls for broad economic empowerment, a theory that re-connected the conditions of black people in the US to colonial people abroad, and a sharp critique of American exceptionalism.\footnote{Self 40-42} These elements were linked to and informed the urban reform agenda.

This urban reform agenda called for allowing the people to control the communities and cities within which they lived (self-determination). Specifically it called for a massive re-investment in this space, the cities, as well as, for the right to work - a right to a job, the right to pursue a decent livelihood - through policies and programs of full and fair employment. But black Power adherents were not the only people advocating for these policies. Whitney Young of the Urban League had called for a “domestic Marshall Plan” for reinvesting in the cities. Martin Luther King, Jr. and A. Phillip Randolph had
called for a “Freedom Budget,” for all Americans, one, which entailed a “multi-billion dollar social investment to destroy the racial ghettos of America, decently house both the black and the white poor, and … create full and fair employment in the process. Bayard Rustin had argued that it was “‘essential’ but insufficient’ to outlaw discrimination in employment when there [were] not enough [jobs] to go around.” “What,” he explained, “will [the Negro] gain by being permitted to move to an integrated neighborhood if he cannot afford to do so because he is unemployed.” Ultimately Black Power adherents, based in the city, particularly the Panthers, advocated for a “people’s economy,” one that “rearranged political and economic priorities [and] included major tax reform, massive public sector investment in urban infrastructure, payroll taxes to deal with suburban income flight, and aggressive affirmative action in public sector hiring and in public awarding of contracts,” policies with which many black activist leaders agreed.  

But in addition, some of these Black Power groups connected the conditions of blacks in the city to colonialism and to the colonial project of extraction and oppression. They theorized that the city functioned like a colony, albeit an internal one. In this internal colony, there was little government or private investment and there was minimal investment in its inhabitants through schooling or otherwise. The inhabitants thus represented an impoverished human pool upon which industry could draw cheap laborers, and to whom white businesses could sell their goods while spending their profits in and for the benefit of the spatially separate suburbs. The effect was that money and resources had a one-way ticket out of the city. Further, the population was terrorized and corralled by white police who brutalized and killed them at will. This was not unlike the colonial situation, which was a situation of extraction where both resources and profits were extracted from the colony for the benefit of the metropolis and in which colonial police and the military patrolled.

From this perspective, so the critique went, the United States was not an exception to Europe’s imperialist extraction and oppression of others, but rather was likely the logical extension of it. Colonial people in their quest for freedom, on the other hand, most of whom were of color, were allies of black people, who too fought for freedom. Cuba “became a repository of black American support for the Third World during the age of [the Black power phase of] civil rights,” and figures such as Frantz Fanon, Mao Zedong, among others provided the revolutionary lexicon for the most radical groups. Even the Nation of Islam, though more conservative than most groups, and though calling for a separate territory in the US for black people, saw black, brown and red people, the colonial folks, as blacks’ allies against an evil white world minority.

268 Self, supra note 4, at 43
269 Id.
270 Id.
271 Id.
272 JOSEPH, supra note 4, at 13
273 Id. at 38
The calls for full employment, massive economic investment, community control self-defense and exemptions from military actions, particularly against people of color, are captured in the Black Panther’s Ten Point Plan written in 1966. It is reminiscent of Garvey’s “Beliefs of UNIA” and “Declaration of Rights of the Negro Peoples of the World,” written in the 1920’s, and to the Nation of Islam’s Official Platform written the year before in 1965, in terms of style. It is also reminiscent of all of these and the 1948 Declaration of Negro Voters, in terms of content in that it focuses on both economic and civil rights issues. It reads:

What We Want: What We Believe
1. We want freedom. We want power to determine the destiny of our Black Community. We believe that black people will not be free until we are able to determine our destiny.

2. We want full employment for our people. We believe that the federal government is responsible and obligated to give every man employment or a guaranteed income. We believe that if the white American businessmen will not give full employment, then the means of production should be taken from the businessmen, and placed in the community so that the people of the community can organize and employ its entire people…

3. We want an end to the robbery by the white man of our Black Community. We believe that this racist government has robbed us and now we are demanding the overdue debt of forty acres and two mules….The Germans are now aiding the Jews in Israel for the genocide of the Jewish people. The Germans murdered six million Jews. The American racist has taken part in the slaughter of over fifty million black people…

4. We want decent housing, fit for shelter of human beings. We believe that if the white landlords will not give decent housing to our black community, then the housing and the land should be made into cooperatives…

5. We want education for our people that exposes the true nature of this decadent American society. We want education that teaches us our true history and our role in the present-day society…

6. We want all black men to be exempt from military service. We believe that Black people should not be forced to fight in the military service to defend a racist government that does not protect us. We will not fight and kill other people of color in the world who like black people, are being victimized by the white racist government…

7. We want an immediate end to POLICE BRUTALITY and MURDER of black people. We believe we can end police brutality in our black

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274 See, SUNY at Stony Brook, Africana Studies: Marcus Garvey at [http://www.sunysb.edu/afs/afsphotos/mgarvey](http://www.sunysb.edu/afs/afsphotos/mgarvey)
275 See, the Official Site for the Nation of Islam, Muslim Plan at [http://www.noi.org/muslim_program.htm](http://www.noi.org/muslim_program.htm)
community by organizing black self-defense groups that are dedicated to defending our black community…

8. We want freedom of all black men held in federal, state, county and city prisons and jails…

9. We want all black people when brought to trial to be tried in court by a jury of their peer group or people from their black communities, as defined by the Constitution…

10. We want land, bread, housing, education, clothing, justice and peace. And as our major political objective, a United Nations–supervised plebiscite to be held throughout the black colony in which only black colonial subjects will be allowed to participate for the purpose of determining the will of black people as to their national identity.

[The Ten Point Plan then quotes the American Declaration] When in the course of human events, it become necessary for one people to dissolve the political bands which have connected them with another…impel them to the separation. We hold these truths to be self-evident, that all men are created equal; and are endowed by their Creator….But, when a long train of abuses and usurpations, pursing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide a new guard for their future security.277

The federal government unleashed insurmountable force and intrigue to crush the Panthers and the Black Power movement. It succeeded. Ultimately, despite President Johnson’s Great Society program, which focused on job training, there was not a major restructuring of the city or its economy to provide jobs, and there was no massive investment, although affirmative action programs were established that primarily benefited the black middle class. What obtained in all too many spaces occupied by black people, a short time after the movement, was increasing economic desperation. But not before the Black Power movement was able to translate itself into black studies programs in American universities all over the country and into the election of a host of black mayors and politicians.278

The precepts of the black rights movement had “changed dramatically over [the] ten years [between 1957 to 1967] from faith in the law to faith in direct action; from faith in individualist remedies to faith in collective and community-based remedies and from faith in American pluralism to faith in Black Nationalism and radicalism.”279 But over the long arc of the long civil rights movement, the dual agenda of civil rights and broad social and economic welfare can be seen.280

277 See, Black Panther Organization, THE TEN POINT PLAN at http://www.blackpanther.org/TenPoint.htm
278 See generally, Peniel E. Joseph, Black Studies, Student Activism, and the Black Power Movement, in JOSEPH, supra note 4 at 251.
279 Self, supra note 4, at 36
280 Self, supra note 4, at 24 (citing DONA HAMILTON AND CHARLES HAMILTON, THE DUAL AGENDA: THE AFRICAN AMERICAN STRUGGLE FOR CIVIL AND ECONOMIC EQUALITY (1997)).
V. Omissions of the Dominant Story in Light of the Long Civil Rights Era

The story of the long civil rights era can be told in many ways. In addition, there exists not one story of the movement but a multitude of stories. However, the truncated story of the civil rights movement distorts both the agency of black people and the broad agendas of, and philosophies that informed that agency.

Specifically this paper suggests that this story ignores black people’s (and those who stood beside them) radical egalitarian democratic agenda, an agenda that is more evident over the long arc of the civil rights movement, and one which early on understood the global reach of racial ordering, and the connections between race and class.\(^\text{281}\) It does this by cutting the movement off from its origins in an early union-based phase and from its later black power moment both stages of which re-emphasized an economic justice agenda as a component of the struggle and which critiqued not just the hypocrisy of American liberalism but critiqued the American liberal ideal and practice itself both nationally and abroad.

Further, the story focuses primarily on the South with three different effects. First this focus creates the impression that racism was a regional matter as opposed to a national one. Second, it conveniently ignores the racialized and urban-based activism of the newly urbanized black population, occurring in the North in many of the central cities located in the North, West and South. And third, ignoring the national scope of the problems, it limits the problems themselves to issues of “civil rights,” rights of segregation, voting and education, thereby eluding a host of economic and urban issues such as those having to do with housing and jobs - a range of issues that inform the indivisible body of “human rights.”

Finally, the story turns, multiple leaders, messages and strategies into one, and turns what might well be viewed as strategies into messages and goals. Specifically, the focus on the King-led nonviolent aspect of the movement while impressive, suggests that King was the only leader in the movement and that nonviolence was its only strategy. More problematic, non-violent struggle has been read as the central message and highlight of the movement. Yet for many activists non-violence was merely a strategy and not one with which they all agreed. Self-defense, a right assumed and vigorously protected by most white Americans at the time and still today, was not a right allowed to blacks. And it is still discouraged by this story that celebrates the long-suffering black victim of white racial violence instead of the aggressive freedom fighter in defense of self and community. Further, it is the claim and assertion of self defense and empowerment that marks not a transition in the movement but according to the dominant story, the movement’s fatal decline and oblivion, a move that facilitates the disconnection of the past from today. However, it is doubtful that black identity, culture and conditions can be

\(^{281}\) Hall, supra note 9, 1245 (Mar. 2005) (noting that the link between race and class lay at the heart of the political imagination of the movement, a movement beginning in the late 1930s, political imagination.)
understood without some reference and understanding of the Black Power movement, including its assertion of self-defense.

The ultimate effect of this story is that it minimizes the black struggle. But equally important, it camouflages the country’s continuing commitment to and institutionalization of white supremacy both domestically and internationally; it bolsters the country’s dubious claims to a fair and democratic order while distorting the activities of its most vulnerable critics; it severs the connections between racial and economic justice even as economic exploitation and marginalization are central to racial ordering and racial ordering central to class exploitation and marginalization. Further, it allows for the easy manipulation and appropriation of the symbols of the civil rights movement and it disconnects the past from the present, severing the movement’s potential relevance and guidance to a new generation of black freedom fighters today.

VI. Applying the Insights from the Long Civil Rights Era: Preliminary Thoughts

New historiography is beginning to restore the bite and promise of the civil rights movement. It points out that although black struggle for freedom has been continuous throughout American history, this particular phase of history lasted close to fifty years. The retelling and the elaboration of this history is not just important for the Restorative Justice Project, however, but is important to the larger legal community as a tool for assessing, evaluating and understanding where the civil rights project stands now. It potentially restores the historical backbone of a narrative around which many laws and events still circle. Two brief examples might suffice here to demonstrate how it might be used. I raise a number of issues and questions rather than engage in sustained analysis of these examples involving the case of *Parents Involved in Community Schools v. Seattle School District* and claims by the pro-choice and pro-life movements that they are heirs to the civil rights movement.

Recently the Supreme Court in a five to four decision struck down school district programs in Seattle, Washington and Jefferson County, Kentucky that took race into consideration in assigning children to public schools. The schools argued that they used racial classifications for the purposes of remedying past discrimination, promoting diversity and integration, or restraining re-segregation caused in part by residential patterns and preventing the racial isolation of schools.\(^{282}\) The Court’s majority decision, written by Justice Roberts, turned in part on the distinction between de jure and de facto school segregation in determining whether the schools were seeking to remedy past discrimination, a compelling state interest for which the use of race is constitutionally permissible if narrowly tailored.\(^{283}\) The difference between the two concepts is that de facto segregation is the separation of the races in reality as required and enforced by custom, violence and other social and economic factors structured in part by the everyday actions and decision of white people, backed by the state, and in part by the state. De jure

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\(^{282}\) *Parents Involved in Community Schools v. Seattle School District*, 127 S. Ct. 2738; 168 L. Ed. 2d. 508; (2007)

\(^{283}\) *Id.* At 2751-2752  (J. Roberts majority decision, IIIA)
segregation is the same except that it is additionally enforced or required explicitly by law and thus explicitly and clearly by the state.

The Court held that because there had never been de jure discrimination in Seattle and no longer any de jure segregation in Jefferson County, neither of the school districts were permitted to use race to remedy past discrimination.\(^{284}\) It also considered and held that the compelling interest of diversity as upheld in \textit{Grutter} did not apply here,\(^{285}\) and that the limited notion of racial diversity, which the schools proposed for the purpose of prohibiting concentration and re-segregation of the schools, was not narrowly tailored to meet a compelling state interest.\(^{286}\)

New historiography detailing the long civil rights movement provides context that might help evaluate this case. For instance, much of the new historiography details widespread school, residential and public accommodations segregation across the country, some states segregated by statutes – de jure segregation, others not, but all states operating under the segregation permitted by \textit{Plessy v. Ferguson}, the law of the land for more than half a century and enforced by the everyday actions of whites. Further, as the Court notes, patterns of the school re-segregation emerged after a brief period of movement toward integration during the 1960s and 70s. And finally, some of the new historiography discusses the creation of an American phenomenon of black or minority cities separated from and surrounded by white suburbs where schools are often better funded. This phenomenon is the result of New Deal government programs in which white suburbs were subsidized while cities suffered from disinvestments. Such history also details the increase in white people moving to the suburbs (white flight) after the \textit{Brown v. Board} decision, presumably to avoid sending their children to integrated schools. Thus, might the modern residential housing patterns that are resulting in that which Justice Thomas calls the “racial imbalance” of schools, but what the school’s call re-segregation, be the outcome not of some random “innocent private decisions” and choices as Thomas suggests but rather, the results of the historically biased planning and implementation of government programs seized and complimented by intentional prejudiced white activity?\(^{287}\)

This context makes the Justices reasoning around the distinctions between de jure and de facto segregation seem abstract, at best, suspect at worst. As Justice Kennedy notes in his concurrence on the differences between de jure and de facto segregation:

\begin{quote}
[\text{A}\text{n injury stemming from racial prejudice can hurt as much when the demeaning treatment based on race identity stems from bias masked deep within the social order as when it is}
\end{quote}

\(^{284}\) \textit{Id.} at 2751-2752 (J. Roberts, majority decision, IIIA)

\(^{285}\) \textit{Id.} at 272-2755 (J. Roberts, majority decision, IIIA)

\(^{286}\) \textit{Id.} at 2759-2761 (J. Roberts, majority decision IIIC)

\(^{287}\) Justice Thomas also took pains to provide his definition of segregation in his concurrence as “the deliberate operation of a school system to carry out a governmental policy to separate pupils in schools solely on the basis of race.” Id. 2769 (J. Thomas, concurrence). He noted that racial imbalance is the failure of a school’s district’s individual schools to match or approximate the demographic makeup of the student population at large.” Id. Although he recognized that “racial imbalance can result from past de jure segregation,” he noted that it could “also result from any number of innocent private decisions.”” Id.
imposed by law. The distinction between government and private action, furthermore, can be amorphous both as a historical matter and as a matter of present-day finding of fact. Laws arise from a culture and vice versa. Neither can assign to the other all responsibility for persisting injustices.\textsuperscript{288}

The problematic use of the distinction between de jure and de facto segregation, is further exposed by Justice Breyer’s use of the specific histories of Seattle and Jefferson County in his dissent, which histories demonstrates widespread segregation, always de facto in Seattle, and always de facto and once upon a time de jure in Jefferson County, as the foundation for the current segregation. The effect of Breyer’s description is damning and its effect is not lost on the majority which takes great pains to dismiss his argument; Roberts setting aside an entire section of his opinion to counter Breyer’s argument and exposure of that history and Justice Thomas directing much of his opinion to it.

The decision becomes even more suspect when the majority’s adherence to the relatively abstract distinction between de facto and de jure segregation is not matched by the same careful parsing of distinctions as between discrimination meant to correct or rectify racial oppression and segregation (benign) and that meant to exclude, oppress or bring about such discrimination (odious discrimination). The more liberal members of the Court have long advocated that this distinction should dictate whether strict scrutiny standard applies to racial classification cases.\textsuperscript{289} The conservative majority has long preferred to ignore it while justifying their actions on cases only recently decided.\textsuperscript{290}

Another example where the long civil rights era story might be helpful is in evaluating the multitude of group’s claims that each is the heir of the civil rights era traditions. For example, the American Right in recent years has claimed to be the protectors of the civil rights tradition, arguing that their colorblind ideology is the heir to the civil rights idea.\textsuperscript{291} Much has been written about colorblindness serving as a proxy for whiteness and operating to cement the status quo of white privilege and black

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{288} Id., at 2795 (J. Kennedy, concurrence)
\item\textsuperscript{289} Id. at 2816 (J. Breyer, dissent, discussing the distinction between racial classification meant to include verses those meant to exclude).
\item\textsuperscript{290} See if at 2799 (J. Stevens, dissent, noting that J. Roberts does not recognize this distinction and stating: The only justification for refusing to acknowledge the obvious importance of that difference is the citation of a few recent opinions – none of which even approached unanimity – grandly proclaiming that all racial classification must be analyzed under “strict scrutiny.”).
\item\textsuperscript{291} This ideology is based in part on a literalist interpretation of King’s comments referencing that his kids be judged by the content of their character rather than the color of their skin. The literalist interpretation mischaracterizes and distorts King’s commitment to justice for black people, among others, and places the comment in service of those hostile to his dream. The same thing is happening around Malcolm X’s comment “by any means necessary.” Made in reference to the debate surrounding the use of self-defense, this comment has now been misappropriated and subject again to literalist misinterpretation and distortion that would justify lying, cheating and stealing to obtain a certain goal. What is missing is the fundamental integrity within the comment, which is at essence, seeks to speak “truth to power.” The distortion combined with a postmodern sensibility meant to ferret out complicated social phenomenon, is now used to render acceptable and immune to challenge a host of claims that are either wrong or simply lies, as in the sky is yellow, the world is flat and a little over 6000 years old and there were weapons of mass destruction in Iraq in 2003.
\end{enumerate}
\end{footnotesize}
subordination. That a great many of the Rights’ leaders would qualify as segregationist might suffice in dispelling such a myth. But a comparison of the actual social projects of the two movements especially around black empowerment and economic justice might be more helpful.

But what is most disturbing about this claim and others is that there is often no real interrogation of the claims themselves. The longer story of the civil rights movement might aid in such an interrogation. For instance, Serena Mayeri, in her discussion of feminist/pro-choice groups and the pro-life groups around the free speech case of *Schenck v. Pro-Choice Network of Western New York*, fails to interrogate both groups’ claims that each is the heir of the civil rights movement. Some scholars have indicated that this is justified. The civil rights movement, this thinking suggests, was about the empowerment of black people, then there was the feminist movement that was about the empowerment of women, then there is the struggle for the empowerment of gays and lesbian and now there is the pro-life and pro-choice movements which are about the empowerment of fetuses and women respectively. This argument makes some sense. And perhaps this is a good thing; after all, civil rights are good.

But are these movements really the heirs to the black freedom struggle? Other than sharing a protest tradition based on the black freedom struggle and using civil right cases spawned by the civil rights movement, do they have an egalitarian democratic agenda? Would they support black empowerment? That is, are they connected to and concerned about other oppressed people the world over, as in the anticolonial sympathies and connections made by the civil rights movement? What might be their position on self-determination, on American exceptionalism? Would they work with others to ensure a vibrant democratic society empowering for all and work with others to ensure it, as black activist attempted to do with white labor, albeit with limited success? Are the pro-choice women connected to and concerned about poor women’s rights? Do pro-life sympathies extend to anyone other than the fetus, such as to the women who carry the fetus, the children that are born of the fetus or anybody else? Further, are they committed to basic civil rights of bodily integrity in the way that a black agenda, given slavery might be? Do these groups want jobs and material well-being for those within and without the society, including black people? These questions could be sharpened and refined.

295 My colleague Isabel Marcus outlined this argument.
296 I have suggested that the experience of slavery lends itself to an elemental commitment to bodily integrity, an integrity supported by the Thirteenth Amendment. This commitment does not support making abortion illegal, forcing birth without regard to the context, women, families, and choices of those involved. Rather, pro-birth commitments are encouraged through creating life-affirming conditions.
However, the long civil rights story provides a context and fabric against which such examinations might be made.

**Conclusion**

It would seem that in order to restore justice to civil rights era activists, the heroes of the civil rights movement, the Civil Rights Era Restorative Justice Project, at a minimum, would have to acknowledge and account for the very goals, objectives and agendas for which these people fought. Further, to be successful, one would think, that it would have to account for all those who participated in the movement and the different ways and times in which they participated -- a daunting challenge. I suggest that the Project cannot even come close to rendering something akin to justice if it is conceptually limited to the truncated triumphant story of the civil rights movement. In fact, the Project may aid in efforts to undermine and minimize these activists’ work because it, in relying on the short story to bound it, reinforces the ways in which the story excludes a wide range of movement participants, truncates the movements agendas, activities and philosophical richness, and decontextualizes the struggle by minimizing the resistance to it. More importantly, to the extent that activists worked in the past with the hope that we might be free today, the Project undermines their goals because it fails to forward the movement’s limitations, limitations that might inform activists today and in fact facilitates the re-connection between what existed then and what obtains now.

This paper argues that the abbreviated story of the civil rights movement cuts it off from its roots in the protest activism of the 1930s and its wings in the black power movement. In doing so it not only excludes a host of people involved in the movement, people who passed their traditions on to future generations, but it guts the movement of its central message and goal of a broad egalitarian democratic order. That is, the movement recognized that both slavery and Jim crow, as well as today’s oppressive racial isolation, were not just racial systems meant to oppress and offend human dignity but also economic systems meant to facilitate the exploitation of black labor, to deny black material well-being, and to assist the few in hoarding the resources created by the many including that created by black people as a whole. As such they recognized the fundamental indivisibly of the human rights project in the human endeavor. They thus sought to fundamentally alter the imperialist trajectory of the country and its impact abroad, toward a path in which they and others might better be served. This was, I argue, the dream. Justice to the dreamers will require conceptualizing the Project broadly, adopting the story of the longer civil rights era, and ultimately facilitating the dream.