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Michael J. Klarman*

In his 1958 book, Stride Toward Freedom, Martin Luther King noted that “[i]f the executive and legislative branches were as concerned about the protection of the citizenship rights of all people as the federal courts have been, the transition from a segregated to an integrated society would be much further along than it is today.” (P.198) This essay addresses two questions regarding the relationship between judicial and legislative action on civil rights. First, what explains one branch sometimes being in front of the others on civil rights issues? Second, what was the causal connection between Brown v. Board of Education and the landmark civil rights legislation of the mid-1960s?

Who’s Out in Front and Why?

In 1870-1871 Congress, responding to atrocities committed by southern whites on blacks, passed legislation aimed at suppressing such private violence. Because the Fourteenth and Fifteenth Amendments contain explicit “state action” requirements, that legislation tested constitutional limits. In 1875 Congress passed a statute forbidding race discrimination in (privately owned) places of public accommodation, raising similar “state action” issues. In 1883 the Supreme Court, reversing a federal criminal conviction of whites who lynched a black man, ruled that Congress could not constitutionally reach private white violence against blacks and invalidated the relevant provision of the 1871 Act. That same year, and for the same reason, the justices invalidated the public accommodations provision of the 1875 Civil Rights Act. Clearly, in the period immediately following the Civil War, Congress reached more progressive results on civil rights than did the Court. Why?

Three factors may explain this phenomenon. First, the timing of the two branches’ decisions matters. Congress passed the 1870-1871 legislation during the peak of Reconstruction and the 1875 Civil Rights Act as that era drew to a close. Judicial invalidation of the legislation came several months after the

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years later. National opinion on race had changed dramatically in the interim. By 1883, many northern whites had tired of national intervention to protect southern blacks’ political and civil rights, and some had concluded that the Fifteenth Amendment was a mistake. Whether the justices would have resolved these cases differently had they arisen ten years earlier is impossible to know. But lower courts adjudicating similar issues in the early 1870s reached more racially progressive results. Justices’ constitutional interpretations generally reflect the social and political context of their times. That a Court adjudicating civil rights issues several years after the demise of Reconstruction would reach results different from a Congress enacting legislation during the peak of civil rights ardor is hardly surprising.

Second, congressmen voting for civil rights legislation possibly had greater incentive to support it (and thus to believe it permissible) than justices adjudicating its constitutionality. The 1870-1871 legislation focused on protecting voting rights of southern blacks. The Republican Party did not exist in the South before the Civil War, and its only significant chance of establishing a southern base afterward was enfranchising blacks, who were 40% or more of the population in eight southern states and could be counted upon to overwhelmingly favor the party of emancipation. The public accommodations provision of the 1875 Civil Rights Act requires a different explanation, but possibly a lame-duck Republican Congress conceived the measure partly as a reward to loyal black voters, who felt strongly about the issue. Supreme Court justices, by contrast, are not directly accountable to voters. This is not to say that justices are oblivious to public opinion, but only that Republican justices (who still dominated the Court in 1883) might not have felt the same exigency as Republican congressmen about protecting blacks’ voting rights and responding to black voters’ interests.

Finally, justices may feel more constrained by legal concepts than congressmen. State action is and always has been a constitutional keystone. Constitutional constraints apply, for the most part, to state actors, not individuals. Imagining a constitutional system without a concept like “state action” is nearly impossible. Defining its contours is vexing, and judicial conceptions have changed dramatically over time. But doing without some such conception is virtually impossible.
Congressmen, by contrast, are probably less concerned about creating an internally coherent body of legal doctrine and more about solving concrete problems. Congress is under no obligation to explain why it has adopted a particular view of state action in one context and another elsewhere. Judges operate according to professional norms that impose precisely such an obligation. Thus, Congress in 1875 had a much easier time forbidding race discrimination in privately owned places of public accommodation, notwithstanding the state action requirement of the Fourteenth Amendment, than justices in 1883 had reconciling that statute with the Constitution.

From roughly 1890 through 1910, neither Congress nor the Court displayed any significant sympathy for civil rights. The justices rejected constitutional challenges to segregation and black disfranchisement, upheld a scheme for separate-and-unequal black public education, and adopted rules making it virtually impossible for black criminal defendants to prove race discrimination in jury selection. Simultaneously, Congress sanctioned racial segregation in higher education, repealed most of the Reconstruction-era legislation protecting black voting rights, and made no effort to enforce section two of the Fourteenth Amendment, which seemed to require Congress to reduce southern states’ congressional representation as a remedy for black disfranchisement.

One lesson to draw from this period is that both Congress and the Court are broadly reflective of popular opinion. By the turn of the century, most white Americans had lost interest in protecting rights of southern blacks and supported southern “home rule” on the race issue. Given free rein, southern whites began formalizing Jim Crow and nullifying the Fifteenth Amendment. At a time of escalating white-on-black violence and strong white support for “racial purity,” segregation appeared to be progressive racial policy, and the Court easily sustained it in *Plessy v. Ferguson*. Likewise, black disfranchisement seemed preferable to whites killing black voters, as they did in Wilmington, North Carolina in 1898 and Atlanta in 1906. In addition, most justices likely agreed with most white Americans of the era that the Fifteenth Amendment had been a mistake.

Court decisions sustaining segregation and disfranchisement were not absurd constitutional interpretations. Conventional legal sources such as text, original intent, and precedent did not plainly bar segregation. Nor did the Fifteenth Amendment, which explicitly forbids disfranchisement based
on race, clearly prohibit literacy tests or poll taxes, regardless of their motivation. Congress’s failure to enforce section two of the Fourteenth Amendment, which uses obligatory language, seems a clearer instance of nullification than the Court’s decisions. But by 1900, with their party securely in control of the national government, most Republicans could not generate much enthusiasm for penalizing southern states for disfranchising blacks.

A disjuncture between congressional and Supreme Court civil rights policy began to appear in the 1910s. In four sets of rulings that decade, the justices invalidated local ordinances segregating the races residentially, struck down the grandfather clause (an electoral device making black disfranchisement politically feasible by insulating illiterate whites), invalidated a state law authorizing railroads to provide first-class accommodations to whites only, and barred two legal devices by which southern states coerced black agricultural labor. This was the same decade in which the first southern-sympathizing presidential administration since the Civil War held office. While the Wilson administration segregated the federal civil service for the first time, southern congressmen took advantage of the racial climate to introduce legislation to nationalize southern racial policies—including proposals to repeal the Fifteenth Amendment, bar interracial marriage, and segregate transportation in the District of Columbia. What explains the Court’s pro-civil rights rulings in a political and social environment starkly opposed to progressive racial reform?

The best explanation may be that the justices invalidated policies that approached formal nullification of the Constitution. As the Washington Post observed, the grandfather clause—immunizing from literacy tests those who could vote, or whose ancestors could, before adoption of the Fifteenth Amendment—was “so obvious an evasion that the Supreme Court could not have failed to declare it unconstitutional.” The peonage law invalidated in Bailey v. Alabama (1911)—criminalizing entering into a labor agreement that provided advance wages with fraudulent intent to subsequently breach, and creating a statutory presumption of fraudulent intent from the fact of breach—was nearly as obvious a contravention of the Thirteenth Amendment’s prohibition on slavery and involuntary servitude (given the dominant contemporary understanding that the amendment forbade criminalizing ordinary contractual breaches). Moreover, neither decision had any
ameliorative effect on black disfranchisement or peonage. One lesson to draw from these decisions is that justices will abide by clear constitutional norms, even in an un receptive social and political climate, especially if the rulings are inconsequential. Congress, by contrast, is less inclined to reach outcomes contrary to dominant public opinion, even in the face of clear constitutional commands, such as section two of the Fourteenth Amendment.

The Court continued to be more progressive on civil rights than Congress in the period between the world wars. On three separate occasions, the Senate failed to pass anti-lynching bills that carried the House, while the justices decided several landmark criminal cases condemning aspects of southern lynch law. Yet on other race issues, the Court was no more progressive than Congress, continuing to validate school segregation and exclusion of blacks from Democratic Party primaries.

One lesson to draw from this inter-war period is that sometimes the Court is more representative of national opinion than Congress. All of this era’s race rulings were consonant with dominant public opinion. In the 1920s and 1930s, most white Americans still supported school segregation and black disfranchisement, but they did not countenance farcical trials in which possibly innocent black defendants were sentenced to death based on tortured confessions and without adequate legal representation. Most northern whites were appalled by Alabama’s efforts to execute the Scottsboro Boys–nine black teenagers wrongly convicted of raping two white women on a freight train in northern Alabama in 1931 and sentenced to death. The Court’s two decisions reversing their convictions–first because of inadequate legal representation, and second because of exclusion of blacks from the juries indicting and convicting them–almost certainly commanded majority support in the nation. So did anti-lynching legislation, according to Gallup polls, but Congress could not pass it because of Senate filibusters by southern Democrats.

The gap between civil rights positions of Congress and the Court became greatest during and after World War II–a watershed event in American civil rights history. African American soldiers returned from the war determined to experience some of the democracy for which they had been fighting. The war’s democratic, anti-fascist ideology was conducive to progressive racial change, and
the ensuing Cold War gave Americans powerful incentives to improve domestic racial practices in an effort to win allegiance from non-caucasian Third World nations. The war also disrupted traditional patterns of racial subordination, opened new political and economic opportunities for African Americans, and accelerated the migration of blacks from south to north, with attendant consequences for national racial policy.

World War II’s impact on judicial civil rights rulings was dramatic. In 1944, *Smith v. Allwright* invalidated the Texas Democratic Party’s exclusion of blacks, overruling by an eight-to-one vote a unanimous decision from just nine years earlier— an unprecedented turnabout in American constitutional history. In 1948, *Shelley v. Kraemer* barred judicial enforcement of racially restrictive covenants, rejecting dicta from a unanimous Court ruling of 1926 and departing from the result reached by nearly 20 state supreme courts. Most famously, in 1954, *Brown v. Board of Education* invalidated public school segregation, rejecting nearly three-quarters of a century’s worth of precedent and plainly departing from the original understanding of the Fourteenth Amendment. Meanwhile, Congress still remained unable to pass a single civil rights bill. Every two years in the 1940s, the House passed anti-poll-tax bills, which failed in the Senate. In 1950, fair employment practices legislation also failed to survive Senate filibuster. In the 1950s, Congress neither endorsed *Brown* nor passed proposed enforcement measures, such as empowering the Attorney General to bring school desegregation suits or cutting off federal education funds to institutions practicing racial segregation. Finally, in 1957, Congress passed its first civil rights law in 82 years, but it was limited to voting rights, and failed to adequately protect even them.

Drafters of the Fourteenth Amendment had anticipated that Congress, not the Court, would be its primary enforcer. This assumption was vindicated in the 1870s and 1880s, but contradicted during and after World War II. What accounts for the postwar Court’s being so much more racially progressive than Congress?

Anti-majoritarian features of the Senate are the most powerful explanation. The House almost certainly reflected majority national opinion when passing anti-poll-tax bills in the 1940s. Likewise, opinion polls suggest that a slender majority endorsed *Brown* from the beginning. But the Senate is
not majoritarian. Under then-governing procedural rules, a two-thirds vote was necessary to cut off a filibuster. Moreover, committee chairs exercised inordinate power over legislation. When Democrats controlled Congress, as they usually did during this period, southerners tended to control committee chairmanships by virtue of greater seniority. Senator James Eastland of Mississippi bragged of having a special suit designed with extra pockets, to be stuffed with civil rights bills. The possibility that the Court’s progressive race rulings reflected national opinion better than Congress’s refusal to enact civil rights legislation is bolstered by President Truman’s enthusiasm for civil rights. In 1946 Truman appointed a civil rights committee which advocated landmark racial reforms, and in 1948 he issued executive orders desegregating the military and federal civil service. The Truman administration also filed briefs urging the justices to invalidate judicial enforcement of racially restrictive covenants and public school segregation. Presidents rarely take positions on domestic policy issues dramatically inconsistent with dominant public opinion. Congress, not the Court or the president, was the outlier on civil rights.

A second factor may help explain the Court’s relative progressivity on civil rights. Though justices’ constitutional interpretations generally reflect the cultural and historical moment they occupy, they are members of an elite subculture, characterized by education and economic status. Justices are very well-educated, having attended college and law school, and often the most elite ones. In general, they are also relatively wealthy. On many policy issues that become constitutional disputes, opinion correlates strongly with socioeconomic status, with elites holding more liberal views (on social and cultural issues, though not on economic ones). Early in the twenty-first century, these issues include gay rights, abortion, and school prayer. In 1954 racial segregation was such an issue: 73% of college graduates approved of Brown, but only 45% of high school dropouts. Racial attitudes and practices were changing dramatically in postwar America. As members of the cultural elite, justices were among the first to be influenced. Their culturally elite status increased the chances of their invalidating segregation before national opinion had solidified against it. Yet the potential attitude gap between justices and the public is limited, as they live in the same culture and time period. As little as 10 years before Brown, racial attitudes probably had not changed enough for even a culturally
elite institution such as the Court to condemn school segregation.

Presumably, congressmen are also members of the cultural elite, yet they lagged far behind the justices in achieving progressive racial results. Why? First, congressmen have to respond to constituents to be reelected, while justices enjoy life-time tenure. Of course, justices are not completely removed from public influence, but their relative insulation affords them some leeway in responding to their own culturally elite values, whereas congressmen have to respond more directly to popular opinion, or risk early retirement. Second, as we have seen, the United States Congress—especially the Senate—was (and is) far from majoritarian. Not only did southern senators exercise disproportionate power, but they represented only the perspective of southern whites. Just 20% of southern blacks were registered to vote in the early 1950s, owing to disfranchising measures such as literacy tests and poll taxes, discriminatory administration of voting requirements, and the threat and reality of physical violence.

Though Congress’s anti-majoritarian features and justices’ culturally elite attitudes help explain why the Court was so much more progressive on race than Congress in the 1940s and 1950s, fortuity also plays some role. Though justices generally reflect elite opinion, there are obvious exceptions. Correlations exist between high socioeconomic status and liberal positions on certain cultural issues, but they are not perfect. On today’s Court, Justices Antonin Scalia and Clarence Thomas, although members of the cultural elite, certainly do not share its liberal political propensities. Constitutional rulings always reflect some element of fortuity in Court composition. Justice Stanley Reed, from Kentucky, was not an eager supporter of *Brown*; he planned on dissenting til virtually the last minute, and suppressed his opinion only for the good of the institution. Had there been five Justice Reeds, *Brown* almost certainly would not have been decided as it was. Nor was the presence of five Reeds inconceivable in 1954, given that President Roosevelt had been virtually oblivious to appointees’ racial attitudes when reconstituting the Court in the late 1930s and early 1940s.

This suggests another element of fortuity in Court decision-making. Leading constitutional issues often change across generations, and sometimes unpredictably so. Few could have forecast in the late 1930s when Roosevelt began reconstituting the Court that school segregation would become
the biggest constitutional issue of the twentieth century. Yet it did, and within just 15 years. Because
Roosevelt was indifferent to his nominees’ racial views, and because the South remained an important
compONENT of the New Deal coalition, more Reeds easily could have been serving in 1954. Yet even
Reed was not impervious to forces producing progressive racial change. Had he been so, he probably
would have stood his ground and dissented in *Brown*. Yet Reed authored opinions invalidating the
white primary and segregation in interstate travel, suggesting that he shared culturally elite values, but
of the southern variety.

In the 1960s both the Court and Congress blazed new trails on civil rights. The justices carved
out important new constitutional protections for the NAACP, reversed dozens of convictions of sit-in
protestors, accelerated the school desegregation process, revolutionized federal courts doctrine (and
many others as well) in ways that facilitated civil rights advances, invalidated poll taxes, and
expanded “state action” in novel and creative ways. Meanwhile, Congress was passing three
landmark pieces of civil rights legislation. The 1964 Civil Rights Act forbade race discrimination
in public accommodations and private employment, authorized cut-offs of federal funds to institutions
engaged in race discrimination, and authorized the Attorney General to bring school desegregation
suits. The 1965 Voting Rights Act, by threatening appointment of federal voter registrars in the most
recalcitrant Deep South counties, finally enabled southern blacks to participate in politics. The 1968
Fair Housing Act forbade race discrimination in the sale and rental of housing.

Both the Court and Congress were responding to the civil rights movement, which burst on the
scene in 1960 and quickly captivated the nation. By contrast, in the late 1950s, the justices had backed
off of the school desegregation controversy, even to the point of signaling approval of token
compliance with *Brown*. They had also rejected constitutional challenges to literacy tests,
notwithstanding the important role they played in disfranchising blacks. Justices reentered the school
desegregation fray the same month that Birmingham street demonstrations revolutionized national
opinion on race. Most of the Court’s important civil rights decisions came after, not before, the
development of direct action protest in 1960.

Congress’s adoption of landmark civil rights legislation in the mid-1960s was directly
attributable to the civil rights movement. Congress had passed civil rights bills in 1957 and 1960, but they were limited to voting rights and failed to provide effective enforcement mechanisms. The 1964 and 1965 laws were true landmarks. The former led directly to vastly accelerated school desegregation, and the latter virtually overnight enfranchised blacks in the most retrograde parts of the Deep South. Both laws emerged directly from civil rights protest—the 1964 Act from Birmingham and the 1965 Act from Selma.

Court decisions of the 1960s reveal how important social and political context are to constitutional interpretation. The justices created new constitutional doctrines, repudiated ancient maxims of law, and engaged in extraordinary legal gymnastics in their defense of the civil rights movement. *New York Times v. Sullivan* (1964), which created novel first amendment protection for newspapers against libel suits, was a case about protecting the civil rights movement from being bankrupted by southern segregationists alleging defamatory treatment. The Warren Court’s criminal procedure revolution was also rooted in justices’ concerns about racial injustice (and poverty). In civil rights cases the justices began looking at legislative motive, which for more than a hundred years they had treated as irrelevant to constitutionality. They began to repudiate traditional maxims regarding the posture of federal courts toward state court decision-making. The Court reversed sit-in demonstrators’ convictions on contrived rationales, because the justices sympathized with the civil rights cause but were unable to find convincing legal flaws in the convictions.

The most important lesson to learn from this brief canvass of civil rights history is that both judicial and congressional constitutional interpretation broadly reflect popular opinion. Most people expect Congress, as a political institution, to reflect majority sentiment. However, some hold onto a romantic image of the Court, as capable of rescuing from oppression the “helpless, weak, . . . or . . . non-conforming victims of prejudice.” But justices reflect dominant public opinion too much to protect truly oppressed groups. Not only did the Court fail to intervene against slavery before the Civil War, but it extended positive constitutional protection to the institution. The justices validated Japanese-American internment during World War II and persecution of political leftists during the McCarthy era. And, as we have seen, during Jim Crow’s heyday, they sustained segregation and
Constitutional law generally has sufficient flexibility to accommodate dominant public opinion, which justices have little inclination, and limited power, to resist. For example, conventional sources of constitutional law did not plainly bar segregation, which in 1896 seemed like progressive racial policy, given escalating white-on-black violence and most whites’ strong commitment to preserving “racial purity.” The upshot is that courts are likely to protect only those minorities favorably regarded by majority opinion. Ironically, when a minority group is most in need of judicial protection, because of severe oppression, it is least likely to receive it. Groups must command significant social, political, and economic power before they become attractive candidates for judicial solicitude. Justices would not have dreamed of protecting women or gays under the equal protection clause before the women’s and gay rights’ movements. Similarly, segregation and disfranchisement began to seem objectionable to justices only as blacks became a vital New Deal constituency and achieved middle-class status and professional success, earning Nobel Prizes, federal judgeships, military generalships, and prestigious clerkships with Supreme Court justices.

**Causal connections: Brown and the civil rights movement**

How much did *Brown* influence congressional action on civil rights? The connection was quite real, but more complicated than is generally appreciated. Congressmen plainly did not feel compelled by *Brown* to adopt enforcement legislation. Throughout the 1950s, Congress failed even to enact symbolic statements affirming that *Brown* was the law of the land (not even that it was rightly decided). Congress did pass tepid civil rights legislation in 1957, but it covered only voting rights, and even that ineffectively. A section empowering the Attorney General to bring desegregation suits was eliminated from the final bill. In the 1950s Congress declined even to offer financial support to desegregating districts.

Congress passed landmark civil rights legislation in the mid-1960s not because of *Brown* but because of the civil rights movement. Televised brutality of southern law enforcement officers against peaceful civil rights demonstrators in Birmingham and Selma, Alabama, dramatically altered northern
opinion on race and enabled passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act. How did Brown contribute to the enactment of that legislation?

Brown dramatically increased the salience of the segregation issue, forcing many people to take a position. Before Brown, desegregation of the military and major league baseball had been salient issues; school segregation was not. Truman’s civil rights committee in 1947 took a position on nearly all prominent race issues; school segregation was not among them. Brown changed this. Neither the Democratic nor the Republican national party took a position on school segregation in 1952, but in 1956 both did. During the 1956 presidential election campaign, all Democratic candidates for the nomination, as well as Eisenhower and Nixon, made several statements regarding school desegregation. Congressional civil rights bills from the 1920s to the 1950s had dealt with lynching, the poll tax, and job discrimination. School desegregation—in the context of the Attorney General’s authority to bring injunction suits—first became the topic of congressional discussion in debates on the 1957 Civil Rights Act.

That Brown forced people to take a position on segregation is not to say that it influenced the position they took. Some endorsed it and others condemned it (and Eisenhower said that he would enforce it, while refusing to endorse or condemn it). Southern politicians, forced to take a position on an issue many of them would have preferred to avoid, overwhelmingly denounced Brown. Northern liberals, who may not have had much previous occasion to consider school segregation, now condemned it as a moral evil. Most national religious organizations reacted similarly. They had not previously expressed an opinion on school segregation, but once forced to do so, the only conceivable one was to condemn it. Any serious Democratic presidential candidate in the mid-1950s also had to endorse Brown.

Nor does taking a position in favor of Brown equate to being strongly committed to implementing it. One could endorse Brown without supporting use of federal troops to enforce it, or cutting off federal education funds to districts that defied it, or breaking a southern filibuster over legislation to implement it. A 1957 poll showed 72% of Americans opposed to cutting off federal education funds to segregating districts. Seventy-five percent of northerners thought Brown was right,
but only 6% considered civil rights the nation’s most important issue. In the South, where 33% thought civil rights the leading issue, only 15% agreed with Brown. In the mid-1950s, those with the strongest feelings about Brown generally disagreed with it most vehemently. Only the 1960s civil rights movement would equalize the intensity of commitment of those whites who supported and those who opposed segregation.

Passage of the 1957 Civil Rights Act illustrates these points about salience and relative intensity of preference. Absent Brown, Congress most likely would not have enacted civil rights legislation that year. None had passed since 1875, and many bills since the 1920s had succumbed to the threat or reality of Senate filibuster. After Brown raised the salience of race, many northerners—white and black—demanded civil rights legislation. Liberals in both parties endorsed the concept as the 1956 elections approached.

Although heightened attention to race after Brown made civil rights legislation possible, the relatively tepid preferences of northern whites ensured that any statute would be limited in scope and largely ineffectual. In an extraordinary display, Eisenhower confessed publicly that he “didn’t completely understand” his administration’s own bill. Title III, which would have authorized the Attorney General to sue for injunctions over any civil rights violation, including school segregation, was stricken from the bill after the president appeared dismayed by Senator Richard Russell’s charge that the measure would force desegregation with federal bayonets. The bill’s scope was then restricted to voting rights. Yet even thus limited, southerners were able to sabotage it with an amendment guaranteeing jury trials for those charged with contempt for violating injunctions. As few southern whites would convict public officials for disfranchising blacks, the jury-trial provision essentially nullified the statute’s impact. The crucial votes on narrowing its scope came from western Democrats, who traded votes on civil rights legislation for southern support of federal water projects. Seven years later, when pro-civil rights preferences were stronger, even the longest filibuster in Senate history could not induce northern and western senators to abandon their support.

Conventional wisdom holds that Brown educated white Americans to condemn racial segregation, yet little evidence supports this view. Americans generally have felt free to disagree with
the Court and make up their own minds on moral controversies. For example, *Dred Scott v. Sandford* (1857) did not convince many Americans that slavery should be permitted into federal territories. *Engel v. Vitale* (1962) notwithstanding, most Americans still favor voluntary, nondenominational school prayer. Rather than educating people to oppose the death penalty, *Furman v. Georgia* (1972) seems to have mobilized support for it. Opinion polls suggest that *Roe v. Wade* (1973) has not changed many minds on abortion. Of course, *Brown* may simply be different. Yet, one should not discount the possibility that most Americans ultimately agreed with *Brown*, not because the Court influenced their thinking, but because other developments such as the civil rights movement did.

Opinion poll data suggest that *Brown* did not educate southern whites. A 1959 Gallup poll showed that only 8% of southern whites supported *Brown, down* from 15% in 1954. Rather than influencing southern whites to support desegregation, *Brown* inspired them to ridicule the Court, criticize its “shocking, outrageous, and reprehensible” decision, support curbs on its jurisdiction, recommend impeaching its justices, and propose investigating its members for communist influence. Southern whites were not educated by a decision that they believed ignored precedent, transgressed original intent, indulged in sociology, infringed on states’ reserved rights, and usurped Congress’s authority. Newspaper editor James J. Kilpatrick stated a typical view: “[I]n May of 1954, that inept fraternity of politicians and professors known as the United States Supreme Court chose to throw away the established law. These nine men repudiated the Constitution, sp[a]t upon the tenth amendment, and rewrote the fundamental law of this land to suit their own gauzy concepts of sociology.” Segregationist groups, far from being educated by *Brown*, celebrated its anniversary by holding protest rallies, at which they told the Supreme Court to “go to Hell.”

Most northern whites did not ridicule *Brown* in this way, and many strongly agreed with it. But this is not necessarily to say they were educated by the decision. Powerful political, economic, social, and ideological forces impelled Americans toward more egalitarian racial views, quite independently of the Court’s pronouncements. Revulsion against Nazi theories of Aryan supremacy and the Holocaust probably educated northern opinion at least as much as *Brown* did. Moreover, poll data suggest no large shift in northern attitudes in the years after *Brown*, as one would have expected.
if its educational influence was significant. A 1959 poll revealed that five percent more Americans agreed with Brown than had in 1954—an opinion shift of one percent a year, which might have been attributable to extralegal forces as much as to Brown. Brown may have had a marginal impact on those who were undecided and thus most subject to the Court’s influence, but it did not fundamentally transform racial attitudes of most Americans. African Americans, of course, did not need the Court’s moral instruction to convince them that racial segregation was evil.

Although Brown was unnecessary for educating blacks to condemn segregation, it unquestionably motivated them to challenge it. After both Brown rulings, the NAACP urged southern blacks to petition school boards for immediate desegregation, on threat of litigation. Blacks filed such petitions in hundreds of southern localities, including in the Deep South, where such challenges would have been inconceivable in the mid-1950s, absent Brown. This part of the South had been least affected by postwar changes in race relations. One might have predicted that a campaign for racial reform there would have begun with voting rights or equalization of black schools, not school desegregation, which was hardly blacks’ top priority and was most likely to incite violent white resistance. The petition campaign contributed significantly to the rise of massive resistance in the mid-1950s, which was often more a response to black efforts to implement Brown than to the decision itself.

Southern blacks took other action as well “to strike while the iron is hot.” Four days after Brown, Jo Ann Robinson, president of the Montgomery Women’s Political Council, warned the mayor that blacks would boycott buses if segregation did not end. In Columbia, South Carolina, blacks filed lawsuits challenging segregation in city parks and buses. In Birmingham Brown inspired Reverend Fred Shuttlesworth and his Alabama Christian Movement for Human Rights to seek out litigation opportunities, and suits were brought challenging segregation in city parks, buses, the railroad terminal, and public employment. Mississippi blacks mounted voter registration campaigns in 1954-1955. Blacks in Greensboro, North Carolina, demanded desegregation of the public golf course and improvements in black schools.

Brown motivated litigation, but what about direct action protest? What is the connection
between Brown and the Montgomery bus boycott or the 1960s sit-ins, freedom rides, and street demonstrations? Some scholars have treated Brown as the “spiritual father” of direct action protest, occasionally even suggesting that, without Brown, the 1960s civil rights movement would not have taken place when it did. Evidence for this causal claim is weak.

There is no denying Brown’s symbolic importance to African Americans. A black newspaper stated a widely shared view—Brown was “the greatest victory for the Negro people since the Emancipation Proclamation.” One black leader called Brown “a majestic break in the dark clouds,” and another later recalled that blacks “literally got out and danced in the streets.” Blacks celebrated Brown’s anniversary, May 17, attesting to its symbolic importance. For the Court to vindicate their cause, especially when few other important institutions were doing so, provided blacks with “moral support.” Because a principal obstacle confronting any social reform movement is convincing potential participants that success is feasible, Brown must have facilitated mobilization of civil rights protest.

Yet neither the symbolism of Brown nor the hopefulness it inspired were tantamount to putting black demonstrators on the streets. One cannot know for sure, but evidence that Brown directly inspired such protest is thin.

Beginning in December 1955 and lasting a year, the Montgomery bus boycott was the first major direct action protest of the modern civil rights era—a “decisive turning point in the life of southern Negroes.” What was its connection to Brown? If Brown directly inspired the boycott, it is puzzling why protestors did not include integration among their demands for the first two months. Rather, they principally sought an end to humiliating practices of white drivers, hiring of black drivers for predominantly black routes, and seating practices that would fill buses on a first-come, first-served basis—whites from the front, blacks from the rear, and nobody forced to stand over empty seats or relinquish her own. At the boycott’s outset, black leaders repeatedly stressed they were not seeking to end segregation—the logical goal had Brown been their primary inspiration. The NAACP initially refused to support a boycott seeking only “more polite segregation.” That boycott leaders did not originally contemplate litigation further weakens claims regarding Brown’s causal influence.
A similar bus boycott took place in Baton Rouge, Louisiana, the year before Brown, proving that direct action protest did not require the Court’s inspiration. In June 1953 Baton Rouge blacks boycotted city buses for a week, after drivers refused to apply a new ordinance requiring first-come, first-served seating. Several thousand blacks attended mass meetings, the boycott was nearly 100% effective, and the city council quickly offered a compromise accepted by black leaders. Montgomery’s black ministers knew of the Baton Rouge boycott, were in touch with its leaders, and adopted some of its tactics. That Baton Rouge blacks conducted a successful bus boycott in 1953 does not prove that Brown had nothing to do with the Montgomery boycott, but it is suggestive.

Brown’s most significant contribution to events in Montgomery may have been its impact on whites rather than blacks. The Baton Rouge episode suggests Brown was not necessary to inspire Deep South blacks to protest offensive bus practices. But why did public officials in Baton Rouge capitulate to black protest, while those in Montgomery refused to accept the same seating practices already prevailing in many Deep South cities, including in Alabama? Rather than making minimalist concessions, Montgomery officials became intransigent, adopting a “get tough” policy, arresting boycott organizers on fabricated charges, joining the citizens’ council, and failing to suppress violence against boycott leaders. Greater white resistance explains why the Montgomery boycott lasted a year, while Baton Rouge’s was over in a week, and why Montgomery blacks’ initially minimalist demands turned into a federal court challenge to segregation. In the post-Brown South, whites tended to view all racial issues against the backdrop of school desegregation. Thus Mayor W.A. Gayle thought what blacks really wanted was “to destroy our social fabric,” and another Montgomery segregationist called the bus demands “piddling stuff,” as compared with the NAACP’s real objectives–complete integration and interracial marriage. In that environment, whites refused any concessions to black demands, no matter how reasonable. Had it not been for Brown’s crystallization of southern white resistance, events in Montgomery might have taken a different course.

After Montgomery, surprisingly little direct action protest took place in the South until 1960. The Montgomery Improvement Association undertook no further direct action, as city parks, other public facilities, and schools remained segregated. Blacks in a few cities conducted bus boycotts
patterned after Montgomery—most notably, in Rock Hill, South Carolina, and Tallahassee, Florida—but they proved less successful. On *Brown’s* third anniversary, Martin Luther King led a prayer pilgrimage to Washington in support of black voting rights, but the turnout was disappointing—only 15,000 to 25,000, as compared with predictions of 50,000 to 60,000. In 1957-1958 blacks in Tuskegee, Alabama, protested the state legislature’s gerrymandering them out of the city with an effective boycott of white merchants; mass rallies in support of the boycott attracted thousands. Blacks in Orangeburg, South Carolina, also conducted a boycott in response to economic reprisals taken by whites against black parents signing school desegregation petitions. In 1958-1959 small sit-in demonstrations protesting lunch-counter segregation took place in several cities in the southern and border states—Oklahoma City, Wichita, St. Louis, Miami, Nashville, and others—but they attracted little attention and had no ripple effect. Thus, whether or not *Brown* inspired the Montgomery bus boycott, it produced no general outbreak of direct action protest in the 1950s.

In 1960 the South exploded with such protest. On February 1, four black college students sat in at Woolworth’s segregated lunch counter in Greensboro, North Carolina. Within days, similar demonstrations spread to other North Carolina cities; within weeks, to surrounding states; and within months, to much of the urban South. Hundreds participated in most cities, and scores were arrested. In the spring of 1961, black and white “Freedom Riders” traveled on buses through the South to enforce a Supreme Court decision forbidding segregation in interstate bus terminals. Initial demonstrators were severely beaten in Birmingham and Montgomery, Alabama, and their successors were incarcerated by the hundreds in Jackson, Mississippi. The Freedom Rides were a huge fundraising and public relations success for the Congress on Racial Equality (CORE), which sponsored them. Beginning in late 1961, the Southern Christian Leadership Conference (SCLC) commenced mass demonstrations against segregation in Albany, Georgia, lasting nearly a year. The Student Nonviolent Coordinating Committee began projects to register black voters in some of the most retrograde parts of Mississippi. In the spring of 1963, massive street demonstrations by blacks in Birmingham, Alabama, resulted in hundreds of arrests and produced scenes of televised violence against peaceful demonstrators that sickened northern audiences and impelled national politicians to
support landmark civil rights legislation. In the months after Birmingham, spin-off demonstrations occurred in hundreds of southern cities and towns, involved more than 100,000 people, and produced nearly 15,000 arrests.

What, if any, was the connection between Brown and the direct action protests of the early 1960s? The nearly six-year gap between Brown and the Greensboro sit-ins suggests that any connection must be indirect and convoluted. If Brown was a direct inspiration, why did the protests not take place until 1960?

The outbreak of direct action protest can be explained independently of Brown. Background political, economic, social, and ideological forces had created conditions ripe for racial protest. As southern blacks moved from farms to cities, they became easier to organize as a result of superior urban communication and transportation. Growth of black social, political, civic, educational, and religious institutions in southern cities provided the organizational framework from which a civil rights movement could emerge. Most notably, the black church provided leadership, finances, and a mass following, and black colleges produced aggressive young leaders and a corps of willing foot soldiers. Rising economic status of southern blacks enabled financing of protest activities as well as boycotts to leverage social change. Greater black prosperity also highlighted indignities of enforced social subordination. Better education for blacks created leaders to direct social protest and college students to participate in it. A better-educated white population meant fewer diehard segregationists willing to use violence defending a dying cause. Growing restraints on violence, especially in southern cities, also facilitated direct action protest. Those restraints were both internal—modern southern city dwellers generally did not countenance violence, and businessmen despaired of it—and external—the federal government by 1960 was less willing to permit southern whites to kill or maim blacks with impunity. Increasing political power of northern blacks made the national government more supportive of southern black protest. Growing political power of southern blacks produced politicians more responsive to black concerns and unwilling to countenance brutal suppression of racial protest. Growth of national media, especially television, ensured that news of black protest spread quickly to other southern communities, where it could be duplicated, and to the North, where
sympathetic audiences rallied in support. In addition, southern whites exposed to the media were less likely to be hard-core segregationists. The ideology of racial equality flowing from World War II broadened and deepened in succeeding years, leaving fewer white Americans prepared to empathize with Jim Crow. A generation of black soldiers serving during and after the war were not easily intimidated by white supremacists and found insufferable the incongruity between their former role as soldiers for democracy and their continuing racially subordinate status. Many became civil rights leaders.

That conditions for a mass racial protest movement were ripe does not explain why the explosion came in 1960, rather than, say, five years earlier. Two factors may help explain the timing of the modern civil rights movement. The first has to do with the Cold War and McCarthyism. Americans’ concern over spreading international communism and the threat it posed to national security peaked in the early 1950s. Within the space of a year beginning in 1949, Soviets detonated their first nuclear bomb, Communists won control over mainland China, and North Korea invaded the South, putting the United States at war again. With the threat of nuclear holocaust looming on the horizon, Americans became preoccupied with foreign policy concerns, making the time inopportune for a crusade for domestic racial reform. Anxiety over domestic subversion peaked simultaneously, as Americans were unnerved by Senator Joseph McCarthy’s allegations of communist infiltration of the State Department and by trials of alleged Soviet spies, including Alger Hiss, Klaus Fuchs, and Julius and Ethel Rosenberg. Fear of communists was rampant, and any protest movement challenging the political, social, or economic order was susceptible to charges of being communist-inspired. Southern segregationists deftly turned this dynamic to their advantage. They constantly charged—and for the most part seem genuinely to have believed—that racial reformers were communist-inspired. Liberal groups such as the NAACP, especially sensitive to charges of communist infiltration, devoted much time and energy in the early 1950s to purging left-wingers. Launching large-scale direct action protest would have been difficult in such an environment. By 1960, however, fears of domestic subversion had dramatically declined—the issue played essentially no role in the presidential election that year—and risk of nuclear holocaust had receded, if only slightly. Perhaps these developments
opened space for emergence of a mass racial protest movement. On this view, the civil rights revolution of the 1960s had little to do with *Brown*, and much to do with McCarthyism’s demise and the slight easing of Cold War tensions, which had proven temporary impediments to a protest movement spawned by World War II.

Decolonization of Africa may also help explain why direct action protest broke out in 1960, rather than a few years earlier. In 1957 Ghana became the first black African nation to achieve independence from colonial rule. Within half a dozen years, over thirty other African countries had followed suit, 17 of them in 1960 alone. American civil rights leaders identified the African independence movements as an important motivation for their own. They saw American civil rights protest as “part of the revolt of the colored peoples of the world against old ideas and practices of white supremacy.” African freedom movements demonstrated to American blacks the feasibility of racial change through collective action, while heightening frustration with the domestic status quo. As James Baldwin explained, American blacks observing African independence movements lamented that “all of Africa will be free before we can get a lousy cup of coffee.” Roy Wilkins observed in 1960 that Africans were electing prime ministers and sending delegates to the United Nations, while Mississippi blacks still could not vote. Decolonization of Africa possibly provided a spark to detonate a social protest movement that already was set to explode.

Conditions were ripe for a mass racial protest movement, and factors such as African decolonization and McCarthyism’s demise may help explain why it exploded in 1960 rather than a few years earlier. Alternatively, the precise timing of the Greensboro sit-ins and the extraordinary spin-off response they produced may simply be fortuitous. Compelling background circumstances did not dictate that the movement begin at a particular time and place. One cannot tell why the scattered sit-in demonstrations of 1958-1959 failed to produce the volcanic response of Greensboro in 1960. Once the latter attracted media attention, though, repetition elsewhere was virtually guaranteed. Moreover, once sit-ins began to achieve some success, making racial reform seem feasible, new volunteers were certain to appear.

Whatever its connection to *Brown*, a powerful direct action protest movement had exploded
in the South by the early 1960s. Sit-ins, freedom rides, and street demonstrations became a regular feature of southern life. When law enforcement officers responded to demonstrations with restraint and unlawful arrests, media attention quickly waned and demonstrators failed to achieve objectives. This is how Sheriff Laurie Pritchett defeated mass demonstrations in Albany, Georgia, in 1961-1962 and how Mississippi officials defused the Freedom Rides in the summer of 1961. However, when southern sheriffs violently suppressed demonstrations with beatings, police dogs, and fire hoses, media attention escalated and northerners reacted with horror and outrage. Brutal assaults on peaceful demonstrators by southern law enforcement officers transformed northern opinion and enabled passage of landmark civil rights legislation.

*Brown* contributed to this violence by radicalizing southern politics. By encouraging extremism, *Brown* increased the likelihood that direct action protest, once it developed, would incite a violent response. Civil rights demonstrators of the early 1960s often sought racial reforms less controversial than school desegregation—voting rights, desegregated lunch counters, more black jobs. If not for the retrogression *Brown* produced in southern politics, such demands might have been received sympathetically, or at least without unrestrained violence. *Brown* ensured that when street demonstrations came, politicians such as Bull Connor, Jim Clark, Ross Barnett, and George Wallace were there to meet them.

*Brown* produced a racial retrogression in the South. One dramatic illustration is the resurgence of the Ku Klux Klan, which earlier had seemed set to “disappear permanently from the American scene.” After *Brown*, the Klan reappeared in states such as South Carolina, Florida, and Alabama, where it rarely had been observed in recent years. Southern states’ legal assault on the NAACP was another racial retrogression. Before *Brown*, most white southerners thought the NAACP “at worst was a bunch of Republicans.” But afterwards, it “became an object of consuming hatred.” The Association’s southern membership, steadily rising after the war, plummeted after *Brown*, as affiliation became too dangerous. With school desegregation lurking in the background, Deep South whites suddenly found black voting intolerable. Dramatic postwar expansions in black suffrage in Mississippi, Alabama, and Louisiana were halted and then reversed. *Brown* also retarded progress
in university desegregation, which had been proceeding fairly smoothly after *Sweatt v. Painter* (1950). The post-*Brown* backlash also reversed progress in desegregating sports. Trends toward integrating minor league baseball and collegiate sporting competitions were sharply curtailed after *Brown*. Even minor interracial courtesies and interactions often were suspended in the post-*Brown* racial hysteria. In 1959 Alabama Governor John Patterson barred black marching bands from the inaugural parade, where previously they had been warmly received. Koinonia Farm, an interracial religious cooperative in Americus, Georgia, had experienced little harassment since its founding in 1942, but after *Brown* found its products boycotted and its roadside produce stands shot at. Interracial unions that had thrived for years self-destructed after *Brown*.

Political contests in southern states assumed a common pattern in the mid-1950s: Candidates tried to show they were the most “blatantly and uncompromisingly prepared to cling to segregation at all costs.” “Moderation” became “a term of derision,” as the political center collapsed, leaving only “those who want to maintain the Southern way of life or those who want to mix the races.” Moderate critics of massive resistance were labeled “double crossers,” “sugar-coated integrationists,” “cowards,” “traitors,” and “burglars . . . [who] want to rob us of our priceless heritage.” Most moderates joined the segregationist bandwagon or were retired from service. A Virginia politician observed that it “would be suicide to run on any other platform [than segregation].”

Though it is hard to know for sure, the simple existence of *Brown* may have fostered private white violence against blacks. Polls revealed that 15% to 25% of southern whites favored violence, if necessary, to resist desegregation. The KKK’s post-*Brown* rebirth suggests greater white willingness to use violence. A Klan leader reported that *Brown* created “a situation loaded with dynamite” and “really gave us a push.” Now that justices “have abolished the Mason-Dixon line,” Klansmen vowed “to establish the Smith and Wesson line.”

In the late 1940s, Mississippi whites had threatened and beaten blacks for suffrage activities, but in 1955 Reverend Lee in Belzoni and Lamar Smith in Brookhaven were killed for voting or encouraging other blacks to do so. The annual number of reported lynchings in Mississippi had
dropped to zero in the years before *Brown*, but in 1955, in addition to the Lee and Smith murders, 14-year-old Emmet Till was killed for allegedly whistling at a white woman in Money, Mississippi. The NAACP published a pamphlet that year entitled, “M is for Mississippi and Murder.” Connecting these killings to *Brown* is speculative, but the timing suggests a possible linkage, and some contemporaries drew the causal connection. The Yazoo City (Mississippi) *Herald* declared that the blood of Till was on the hands of the justices. Unwillingness of white jurors to indict or convict clearly guilty murderers is even more plausibly linked to *Brown*’s impact on southern white opinion. One Mississippi white declared that “[t]here’s open season on the Negroes now. They’ve got no protection, and any peckerwood who wants can go out and shoot himself one, and we’ll free him.” Till’s funeral in Chicago attracted thousands of mourners, and a photograph of his mutilated body in *Jet* seared the conscience of northerners. Segregating black school children was one thing, lynching them quite another. The NAACP’s Roy Wilkins condemned Mississippi’s “political murders” and the “system that permits the shooting down of little boys,” and demanded federal civil rights legislation. Republican Representative Hugh Scott of Pennsylvania, itemizing the Mississippi brutalities, also called for legislation to “eliminate this kind of horror from American life.”

The lynching of Mack Parker in April 1959 also influenced national opinion. Mississippi whites seized Parker, scheduled to stand trial for raping a white woman, from the Poplarville jail and killed him—Mississippi’s first old-style lynching since World War II. One cannot say whether *Brown*’s radicalizing effect on southern whites contributed to the lynching, though a Mississippi newspaper blamed the Court and drew the lesson that “force must not be used in pushing revolutionary changes in social custom. Every such action produces equal and opposite reaction.” Southern congressmen worried that Parker’s lynching would prompt efforts to pass civil rights legislation. Governor James Coleman condemned the murder and hoped that Mississippians “won’t be punished by civil rights legislation for what a handful have done.” Citizens’ council guru, Judge Tom Brady, predicted the NAACP would “rejoice in this highly regrettable incident” and “will urge passage of vicious civil rights measures.” He was right. Wilkins declared that Parker’s murder proved “mob violence is not dead in the South” and demonstrated “the necessity of further and stronger protection
of civil rights . . . by the federal government.” Constituents wrote congressmen expressing horror and demanding federal legislation to curb such atrocities.

Attributing private white violence to Brown is speculative, but diehard segregationists identified and promoted that linkage. Mississippi citizens’ councils, which claimed to repudiate violence, conceded “there is a point beyond which even the most judicious restraint becomes cowardice.” A Dallas minister told a large citizens’ council rally that if public officials would not block integration, plenty of people were prepared “to shed blood if necessary to stop this work of Satan.” A handbill circulated at a huge Montgomery citizens’ council rally denouncing desegregation declared that “[w]hen in the course of human events it becomes necessary to abolish the Negro race, proper methods should be used,” including guns and knives.

White southerners hardly could be collectively blamed for random acts of private violence against innocent blacks. However, when public officials incited such violence, which they did both directly and indirectly, northerners responded by demanding civil rights legislation. Most southern politicians avoided explicit exhortations to violence, and many affirmatively discouraged it, either to immunize themselves from criticism when violence occurred or because they rightly understood that violence would “do irreparable harm to our cause and turn public opinion against us.” Still, a few politicians could not restrain themselves. An Alabama legislator declared that whites must leave the state, “stay here and be humiliated, or take up our shotguns.” Others promoted violence more discreetly. Senator Eastland told an enormous citizens’ council rally a few days after a mob had ended Autherine Lucy’s effort to desegregate the University of Alabama that he knew “you good people of Alabama don’t intend to let the NAACP run your schools.” On other occasions, Eastland told audiences that they were “obligated to defy [Brown]” and that “Southern people have been tested in the past, and have not been found wanting.”

Other officials repudiated violence, while using extremist rhetoric that probably encouraged it. Governor Marvin Griffin of Georgia condemned violence, but insisted that “no true Southerner feels morally obliged to recognize the legality of this act of tyranny [Brown],” and proclaimed that the South “stands ready to battle side-by-side for its sacred rights, . . . but not with guns.” Senator
Eastland cautioned that “[a]cts of violence and lawlessness have no place” and insisted “[t]he fight we wage must be a just and legal fight,” after inciting his audience with reminders that “[t]here is no law that a free people must submit to a flagrant invasion of their personal liberty” and that “[n]o people in all the history of Government have been forced to integrate against their will.” Congressman James Davis of Georgia insisted “[t]here is no place for violence or lawless acts,” after calling Brown “a monumental fraud which is shocking, outrageous and reprehensible,” warning against “meekly accept[ing] this brazen usurpation of power,” and denying any obligation on “the people to bow the neck to this new form of tyranny.” These politicians either knew, or were criminally negligent for failing to appreciate, that such rhetoric was likely to incite violence.

Whether political demagoguery produced violence was less important than the perception that it did. The NAACP constantly asserted such a linkage—for example, blaming southern politicians for fostering a climate conducive to Mack Parker’s lynching. James Meredith, the first black man to attend Ole Miss, blamed the assassination of the NAACP’s Mississippi field secretary, Medgar Evers, on “governors of the Southern states and their defiant and provocative actions.” Others drew similar connections. One Tennessee lawyer blamed school desegregation violence on congressmen who signed the Southern Manifesto, which assailed Brown as a “clear abuse of judicial power” and pledged all “lawful means” of resistance: “What the hell do you expect these people to do when they have 90 some odd congressmen from the South signing a piece of paper that says you’re a southern hero if you defy the Supreme Court.” After Atlanta’s Temple Bombing in 1958, Mayor William Hartsfield declared that “[w]hether they like it or not, every rabble-rousing politician is the godfather of the cross-burners and the dynamiters who are giving the South a bad name.”

The general connection between extremist politicians and violence is plausible, but the linkage between particular public officials and the brutality that inspired civil rights legislation is compelling. For present purposes, I shall consider only the two most prominent exemplars of this phenomenon, T. Eugene (“Bull”) Connor, police commissioner of Birmingham, and George Wallace, governor of Alabama. The violence they cultivated, condoned, or unintentionally fomented proved critical to transforming national racial opinion.
Connor first had been elected to the Birmingham City Commission in 1937, pledging to crush the communist-integrationist threat posed by the Congress of Industrial Organization’s unionization efforts. By 1950, however, civic leaders regarded Connor as an embarrassment, because of his extremism and frequent brutality toward blacks, and they orchestrated his public humiliation through an illicit sexual encounter. Connor retired from politics in 1953, and racial progress ensued in Birmingham, including establishment of the first hospital for blacks, desegregation of elevators in downtown office buildings, and efforts to desegregate the police force.

After Brown, Birmingham’s racial progress ground to a halt. An interracial committee disbanded in 1956, consultation between the races ceased, and Connor resurrected his political career. In 1957 he regained his city commission seat, defeating an incumbent he attacked as weak on segregation. In the late 1950s, a powerful Klan element wreaked havoc in Birmingham with a wave of unsolved bombings and brutality. The police, under Connor’s control, declined to interfere. Standing for reelection in 1961, Connor cultivated extremists by offering the KKK fifteen minutes of “open season” on the Freedom Riders, as they rolled into town. After horrific beatings, administered to media representatives as well as demonstrators, the Birmingham News wondered, “Where were the police?” Voters may have been less curious, having handed a landslide victory just two weeks earlier to Connor, who had invited the violence.

In 1963 the SCLC, after the failed demonstrations of Albany, Georgia, was searching for a city with a police chief unlikely to duplicate Laurie Pritchett’s restraint. They selected Birmingham, perhaps the South’s most violent city, where Connor already had achieved notoriety by allowing the Klan to beat Freedom Riders. Martin Luther King was criticized for refusing to defer Birmingham demonstrations until after attempting negotiations with the new mayor, Albert Boutwell, who had recently defeated Connor. But King wanted to act quickly, while Connor remained police commissioner, a position to be eliminated once the mayoralty results had survived legal challenge. King’s lieutenant, Wyatt Walker, later explained: “We knew that when we came to Birmingham that if Bull Connor was still in control, he would do something to benefit our movement. We didn’t want to march after Bull was gone.” The strategy worked brilliantly. After some initially uncharacteristic
restraint, Connor unleashed police dogs and fire hoses against demonstrators, many of whom were children. Television and newspapers featured images of police dogs attacking unresisting demonstrators, including one that President Kennedy reported made him “sick.” Editorials condemned the violence as “a national disgrace.” Citizens voiced their “sense of unutterable outrage and shame” and demanded that politicians take “action to immediately put to an end the barbarism and savagery in Birmingham.” Within 10 weeks, spin-off demonstrations spread to over 100 cities.

Televised brutality against peaceful civil rights demonstrators in Birmingham dramatically altered northern opinion on race and enabled passage of the 1964 Civil Rights Act. Opinion polls revealed that the percentage of Americans deeming civil rights the nation’s most urgent issue rose from 4% before Birmingham to 52% after. Substantial majorities now favored expansive civil rights legislation. Congressmen, denouncing the Birmingham violence, introduced measures to end federal aid to segregated schools. Kennedy overhauled earlier civil rights proposals to include broader voting rights protections, desegregation of public accommodations, Attorney General authority to bring school desegregation suits, and termination of federal funding to programs engaged in race discrimination. Only after the police dogs and fire hoses of Birmingham did Kennedy announce on national television that civil rights was a “moral issue as old as the scriptures and as clear as the American Constitution.”

Alabama’s governor, George Wallace, had played a minor role in suppressing the Birmingham demonstrations and would play a more substantial role in the violence that lay ahead. Perhaps more than any other individual, Wallace personified the post-\textit{Brown} racial fanaticism of southern politics. Early in his political career, in the late 1940s and early 1950s, Wallace had been criticized as “soft” on segregation. Unlike Connor, he was in the half of the Alabama delegation that did not walk out of the 1948 Democratic national convention over the civil rights plank, and he had been Folsom’s campaign manager for southern Alabama in 1954. By the mid-1950s, though, Wallace felt the changing political winds, broke with Folsom, and cultivated conflict with federal authorities over race issues in his position as Barbour County circuit judge. In 1958, Wallace’s principal opponent in the Alabama governor’s race was Attorney General John Patterson, who bragged of shutting down
NAACP operations in the state. The KKK endorsed Patterson, whom Wallace criticized for not repudiating the endorsement. Patterson was so extreme that Wallace unwittingly became the candidate of moderation and won heavy black support. Patterson easily won the runoff primary, leaving Wallace to ruminate that “they out-niggered me that time, but they will never do it again.” Wallace made good on that promise in 1962, winning on a campaign promise of defying federal integration orders, “even to the point of standing at the school house door in person.” He declared in his inaugural address: “In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny and I say segregation now, segregation tomorrow, segregation forever.” Like most southern politicians, Wallace publicly condemned violence. Yet his actions from 1963 to 1965 directly and indirectly encouraged brutality that helped transform national racial opinion.

During the Birmingham demonstrations, Wallace dispatched several hundred state troopers, who supplemented Bull Connor’s brutality with some of their own. He also publicly praised Connor for forcefully suppressing demonstrations. That summer, Wallace fulfilled his pledge to stand in the schoolhouse door at Tuscaloosa, physically blocking the university’s entrance before, in a carefully planned charade, stepping aside in face of superior federal force. Learning from the debacle at Ole Miss the preceding fall, Wallace had warned he would not “tolerate mob action,” and massive security measures kept Tuscaloosa “peaceful and serene.”

Yet Wallace had grown overconfident in his ability to spout defiant rhetoric without provoking violence. After Tuscaloosa, he continued to promise a “forceful stand” against grade school desegregation, which federal courts had ordered in Alabama for the fall. In September Wallace used state troops to block desegregation in Birmingham, Mobile, and Tuskegee. In Birmingham, white mobs demonstrated outside the schools scheduled to desegregate, and a minor race riot erupted, in which police killed a black man, and 16 others were injured. Wallace had encouraged extremist groups to wage “a boisterous campaign” against desegregation, and now he defended the rioters, whom he insisted are “not thugs—they are good working people who get mad when they see something like this happen.” Threatened with contempt citations by all five Alabama district judges, Wallace
relented. The schools desegregated, but within a week tragedy had struck. Birmingham Klansmen, possibly inspired by the governor’s protestations that “I can’t fight federal bayonets with my bare hands,” dynamited the Sixteenth Street Baptist Church, killing four black schoolgirls. Within hours of the bombing, two other black teenagers were killed, one by white hoodlums and the other by police. It was the largest death toll of the civil rights era, and Wallace received much of the blame. King publicly blamed Wallace for “creat[ing] the climate that made it possible for someone to plant that bomb.” Alabama Attorney General Flowers linked the carnage to Wallace’s defiance: “The individuals who bombed the Sixteenth Avenue Church in their way were standing in the schoolhouse door.” President Kennedy, noting “a deep sense of outrage and grief,” thought it “regrettable that public disparagement of law and order has encouraged violence which has fallen on the innocent.” Wallace may not have sought the violence, but his provocative rhetoric probably contributed to it, and he certainly took no measures to prevent it.

Most of the nation was appalled by the murder of innocent schoolchildren. One week after the bombing, tens of thousands across America participated in memorial services and marches. Northern whites wrote to the NAACP to join, condemn, and apologize. One white woman asked the Association to “[p]lease enlist me in an army of protest or help me to find a way to express my feelings.” A white lawyer from Los Angeles wrote that “[t]oday I am joining the NAACP; partly, I think, as a kind of apology for being caucasian, and for not being in Birmingham to lend my physical support.” Another northern white woman condemned those Birmingham whites who were involved in the bombing or condoned it as “the worst barbarians,” and said she was “ashamed to think that I bear their color skin.” She declared that the bombing had “certainly changed my attitude,” which previously had been “somewhat lukewarm” on civil rights. A white man from New Rochelle wrote: “How shall I start? Perhaps to say that I am white, sorry, ashamed, and guilty. . . . Those who have said that all whites who, through hatred, intolerance, or just inaction are guilty are right.” The NAACP urged members to “flood Congress with letters in support of necessary civil rights legislation to curb such outrages,” and Wilkins demanded that the federal government “cut off every nickel” going
to Alabama. Northern congressmen, reflecting constituents’ outrage, introduced amendments to strengthen the administration’s pending civil rights bill.

Wallace’s critics in Alabama attacked his schoolhouse-door routine at Tuscaloosa as “the greatest production since Cleopatra” and accused him of making Alabama “a mockery before the nation.” But voters apparently disagreed. Wallace remained enormously popular, and in January 1964 won a resounding victory when the state Democratic executive committee instructed the Alabama delegation to the 1964 convention to support Wallace as a favorite-son candidate for president. Meanwhile, Wallace continued to rail against “shocking” pronouncements of federal “judicial tyrant[s]” and to urge local authorities to resist desegregation, though he refrained from any more schoolhouse-door stands. But the linkage between Wallace and violence had not ended, with Selma still in the future.

Early in 1965, the SCLC brought its voter registration campaign to Selma, in search of another Birmingham-style victory. King and his colleagues refined the already successful Birmingham tactics in Selma, a site they chose partly because of the presence of a law enforcement officer of Bull Connor-like proclivities. Dallas County Sheriff Jim Clark had a temper which “could be counted on to provide vivid proof of the violent sentiments that formed white supremacy’s core.” The result was another resounding success. Clark, after initial restraint which “disappoint[ed]” SCLC workers, finally brutalized nonresisting demonstrators. The violence culminated in Bloody Sunday, March 7, 1965, when county and state law enforcement officers viciously assaulted marchers as they crossed the Edmund Pettus Bridge on the way to Montgomery. Governor Wallace had promised that the march would be broken up by “whatever measures are necessary,” and Colonel Al Lingo, Wallace’s chief law enforcement lieutenant, insisted that the governor himself had given the order to attack. That evening, ABC television interrupted its broadcast of Judgment at Nuremberg for a lengthy film report of peaceful demonstrators being assailed by stampeding horses, flailing clubs, and tear gas. Most of the nation was repulsed. Two white northern volunteers were killed in the events surrounding Selma, a Unitarian minister from Boston and a mother of five from Detroit.

Over the following week, sympathy demonstrations took place across the nation. Citizens
demanded remedial action from congressmen, scores of whom condemned the violence and endorsed voting rights legislation. On March 15, 1965, President Johnson proposed such legislation before a joint session of Congress, as seventy million Americans watched on television. Prior to Selma, the administration had not contemplated such legislation in the near term, but national revulsion at brutalization of peaceful protestors prompted a change in plans.

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Brutalization of peaceful black demonstrators by southern white law enforcement officers repulsed national opinion and led directly to passage of landmark civil rights legislation. Brown was less directly responsible than is commonly supposed for putting those demonstrators on the street, but more directly responsible for the violent reception they encountered. The post-Brown fanaticism of southern politics created a situation ripe for violence. Some of the ensuing violence was purely private, but much of it was encouraged, directly or indirectly, by extremist politicians, whom voters rewarded for irresponsible rhetoric that fomented brutality. Before the violent outbreaks of the 1960s, most white northerners had agreed with Brown in the abstract, but were disinclined to push for enforcement, many agreeing with President Eisenhower that the NAACP should rein in demands for immediate desegregation. Televised scenes of officially sanctioned brutality against peaceful black demonstrators transformed northern opinion. By helping to lay bare the violence at the core of white supremacy, Brown accelerated its demise. Eisenhower, Justice Black, and many southern moderates foresaw that Brown, in the short term, would retard southern racial progress and destroy southern political liberalism. Though they rightly anticipated Brown’s backlash, they failed to foresee the ensuing counterbacklash, as northern revulsion against southern white violence paved the way for landmark civil rights legislation.

Would the same violence have confronted civil rights demonstrators absent Brown? One
cannot know for certain. But without *Brown*, school desegregation probably would not have been a pressing issue in the 1950s. Southern blacks generally had other priorities—ending police brutality, securing voting rights, gaining access to decent jobs, and equalizing public funding of black schools. Moreover, prior to *Brown*, southern whites had proved willing to make small concessions on racial issues less important to them than school segregation. Absent *Brown*, negotiation might have continued to produce gradual change without inciting white violence. How whites in this counterfactual universe would have responded if and when black street demonstrations erupted is impossible to tell. But, in the absence of post-*Brown* political fanaticism, one can imagine Freedom Riders arriving in Birmingham and Montgomery without police commissioners inviting Klansmen to beat them and blacks demonstrating for voting rights in Selma without law enforcement officers brutalizing them. By the early 1960s, most southern whites probably could have tolerated desegregated transportation and black suffrage, had *Brown* not converted all racial challenges, in their minds, into fundamental assaults on Jim Crow. Whether and how southern schools would have desegregated in this counterfactual scenario is anybody’s guess, but it almost certainly would not have happened as quickly as it did under the 1964 Civil Rights Act. Only the violence resulting from *Brown*’s radicalization of southern politics enabled transformative change to occur as rapidly as it did.