

HEINONLINE

Citation: 41 Stan. L. Rev. 61 1988-1989

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Thu Jul 14 14:45:09 2011

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0038-9765](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0038-9765)

Desegregation as a Cold War Imperative

Mary L. Dudziak*

It is in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination must be viewed.

— Brief for the United States as Amicus Curiae, *Brown v. Board of Education*¹

I. INTRODUCTION

At the height of the McCarthy era, when Congressional committees were exposing “communist infiltration” in many areas of American life,² the Supreme Court was upholding loyalty oath requirements,³

* Associate Professor, University of Iowa College of Law. A.B., 1978, University of California, Berkeley; J.D., 1984, Yale; M.A., M.Phil., 1986, Yale.

For their helpful comments and other important support for my work, I am grateful to Brooks Ammerman, Ian Ayres, David Baldus, Derrick Bell, Steve Burton, Richard Buxbaum, Michael Green, Jack Greenberg, Herb Hovenkamp, Carolyn Jones, Laura Kalman, Rick Matasar, and Ellen Schrecker. I would also like to thank those who attended my faculty seminars at the University of Iowa College of Law and Tulane Law School, and my presentation at the 1987 American Society for Legal History Conference. Their questions and ideas contributed to this article. Sally Marks at the National Archives and Carol Briley at the Truman Library provided valuable assistance with archival research. Funding for research was provided by the American Historical Association in the form of a Littleton-Griswold Research Grant, The University of Iowa, and the Iowa Law foundation. I am eternally grateful to University House at the University of Iowa and to the History Department at the University of California, Santa Barbara for providing me with quiet places to write. I would like to thank my research assistants, Leanne Lay, Peter Parry, Bill Hoekstra, and Penny Arnold, my secretary, Rita Jansen, and the Iowa Law Library staff, for the parts they have played in this effort.

1. Brief for the United States as Amicus Curiae at 6, *Brown v. Board of Education*, 347 U.S. 483 (1954).

2. See V. NAVASKY, *NAMING NAMES* (1980); *INTERNAL SECURITY MANUAL*, S. DOC. NO. 47, 83rd Cong., 1st Sess. 221-26 (1953) (lists dozens of hearings on communists and subversives concerning infiltration of minority groups, infiltration of labor unions, communist activities in Cincinnati, communist espionage, subversion of the telegraph industry, communist infiltration of veterans groups, communist underground printing facilities, and other matters).

3. See *Gerende v. Board of Supervisors*, 341 U.S. 56 (1951) (unanimously upheld Maryland statute that required candidates for public office to swear out affidavits that they were not engaged in seeking the violent overthrow of the government, and were not knowing members of an organization with such goals); *Garner v. Board of Public Works*, 341 U.S. 716 (1951) (sustained Los Angeles ordinance that required city employees to swear they had not belonged to an organization advocating the overthrow of the government within the last five years); *Adler v. Board of Education*, 342 U.S. 485 (1952) (upheld New York statute that barred from employment in the public schools anyone belonging to an organization listed by the state board of regents as advocating the violent overthrow of the government).

Notwithstanding its willingness to uphold many “loyalty” programs, the court did impose some constitutional limits. See *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951) (divided Court overturned dismissal of Committee’s complaint concerning its inclusion on the Attorney General’s list of subversive organizations); *Wieman v. Updegraff*, 344

and the executive branch was ferreting out alleged communists in government,⁴ the U.S. Attorney General filed a pro-civil rights brief in what would become one of the most celebrated civil rights cases in American history: *Brown v. Board of Education*.⁵ Although seemingly at odds with the restrictive approach to individual rights in other contexts,⁶ the U.S. government's participation in the desegregation cases during the McCarthy era was no anomaly.

In the years following World War II, racial discrimination in the United States received increasing attention from other countries. Newspapers throughout the world carried stories about discrimination against non-white visiting foreign dignitaries, as well as against American blacks. At a time when the U.S. hoped to reshape the postwar world in its own image, the international attention given to racial segregation was troublesome and embarrassing. The focus of American foreign policy at this point was to promote democracy and to "contain" communism. However, the international focus on U.S. racial problems meant that the image of American democracy was tarnished. The apparent contradictions between American political ideology and practice led to particular foreign policy difficulties with countries in Asia, Africa and Latin America. U.S. government officials realized that their ability

U.S. 183 (1952) (Oklahoma statute requiring state employees to swear they had not belonged in the last five years to an organization listed by the Attorney General as a "communist front" or "subversive" violated Due Process Clause of the Fourteenth Amendment, since as construed by the Oklahoma Supreme Court it punished membership by those unaware of organization's activities).

4. On March 22, 1947, President Harry S Truman signed Exec. Order No. 9835, 12 Fed. Reg. 1935, which required loyalty investigations for all persons entering employment in Executive Branch departments and agencies. Subsequently, on June 23, 1947, ten Department of State officials were summarily dismissed because of their alleged involvement with an unnamed foreign power. R. FREELAND, *THE TRUMAN DOCTRINE AND THE ORIGINS OF MCCARTHYISM* 203-04 (1972). In December 1947, the Attorney General issued a list of "fascist, Communist, or subversive" organizations that was used by government and private employers to measure loyalty. *Id.* at 207-16. On April 28, 1951, Truman issued Exec. Order No. 10241, 16 Fed. Reg. 3690, tightening standards for reviewing loyalty from "reasonable grounds . . . for the belief that the person is disloyal to the government" to "reasonable doubt as to the loyalty of the individual involved to the Government." The result was that 565 employees cleared under the earlier standard were again investigated. E. BONTECOU, *THE FEDERAL LOYALTY-SECURITY PROGRAM* 26-30, 68-72 (1953).

5. 347 U.S. 483 (1954). The Justice Department's brief was filed in December 1952, in the final weeks of the Truman Administration. See Elman, *The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History*, 100 HARV. L. REV. 817, 826-27 (1987). At that time, Senator Joseph R. McCarthy was preparing to take over the Committee on Government Operations, as well as its Permanent Subcommittee on Investigations, which was quickly dubbed the "McCarthy Subcommittee." McCarthy used the Committee as a vehicle to continue his investigations of alleged subversives. See T. REEVES, *THE LIFE AND TIMES OF JOE MCCARTHY: A BIOGRAPHY* 459-62 (1982); R. ROVERE, *SENATOR JOE MCCARTHY 185-91* (1959). By the time *Brown* was decided on May 17, 1954, McCarthy's influence was on the decline. On that very day, President Eisenhower called a halt to the Army-McCarthy hearings. See N.Y. Times, May 18, 1954, at 1, col. 1. It was McCarthy's widely televised behavior during the hearings that initiated his fall from grace. See T. REEVES, *supra*, at 595-637; R. ROVERE, *supra*, at 215-31.

6. See T. EMERSON & D. HABER, *POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES* at vii (1st ed. 1952).

to sell democracy to the Third World was seriously hampered by continuing racial injustice at home. Accordingly, efforts to promote civil rights within the United States were consistent with, and important to, the more central U.S. mission of fighting world communism.

The literature on desegregation during the 1940s and 1950s has failed to consider the subject within the context of other important aspects of American cultural history during the postwar era. Most scholars seem to assume that little outside the subject of race relations is relevant to the topic.⁷ As a result, historians of *Brown* seem to write

7. As Gerald Horne has noted, "the fact that the *Brown* ruling came in the midst of a concerted governmental campaign against international and domestic communism is one of the most overlooked aspects of the decision." G. HORNE, *BLACK AND RED: W.E.B. DU BOIS AND THE AFRO-AMERICAN RESPONSE TO THE COLD WAR, 1944-1963*, at 227 (1986).

The literature on school desegregation is very rich in many other respects. Scholars have studied desegregation in a variety of different settings. See T. FREYER, *THE LITTLE ROCK CRISIS: A CONSTITUTIONAL INTERPRETATION* (1984) (Little Rock, Ark.); D. KIRP, *JUST SCHOOLS: THE IDEA OF RACIAL EQUALITY IN AMERICAN EDUCATION* (1982) (San Francisco Bay Area, Calif.); J. LUKAS, *COMMON GROUND* (1985) (Boston, Mass.); B. SMITH, *THEY CLOSED THEIR SCHOOLS: PRINCE EDWARD COUNTY, VIRGINIA, 1951-1964* (1965). They have focused on different kinds of participants in desegregation efforts: courts and judges, see J. BASS, *UNLIKELY HEROES* (1981); J. PELTASON, *FIFTY-EIGHT LONELY MEN* (1961); the NAACP and its lawyers, see R. KLUGER, *SIMPLE JUSTICE* (1975); M. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987), organized opponents to desegregation, see F. WILHOIT, *THE POLITICS OF MASSIVE RESISTANCE* (1973), federal government officials, see Mayer, *With Much Deliberation and Some Speed: Eisenhower and the Brown Decision*, 52 J. SOUTHERN HIST. 43 (1986), and school board members, see Dudziak, *The Limits of Good Faith: Desegregation in Topeka, Kansas, 1950-56*, 5 LAW & HIST. REV. 351 (1987).

Some commentators have followed the development of Supreme Court case law. See B. SCHWARTZ, *SWANN'S WAY: THE SCHOOL BUSING CASE AND THE SUPREME COURT* (1986); J. WILKINSON, *FROM BROWN TO BAKKE: THE SUPREME COURT AND SCHOOL INTEGRATION, 1954-1978* (1979); S. WASBY, A. D'AMATO & R. METRAILER, *DESEGREGATION FROM BROWN TO ALEXANDER: AN EXPLORATION OF SUPREME COURT STRATEGIES* (1977). Others have viewed desegregation from the perspective of community-level decisionmaking. See J. LUKAS, *supra*; see also J. HOCHSCHILD, *THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION* (1984).

Approaching desegregation from a variety of different empirical and political perspectives, scholars have drawn different kinds of lessons. Some have seen *Brown* as the Supreme Court's highest moment, see, e.g., R. KLUGER, *supra*, while others have viewed it as troublesome. See, e.g., R. WOLTERS, *THE BURDEN OF BROWN: THIRTY YEARS OF SCHOOL DESEGREGATION* (1984).

Despite the richness and variety within this body of literature, it stands apart from other studies of postwar American culture. Little or no mention is made of the anticommunist ideology which so powerfully pervaded political discourse following World War II, see R. PELLIS, *THE LIBERAL MIND IN A CONSERVATIVE AGE* (1985), even though anticommunist rhetoric appears consistently in primary historical documents relating to desegregation. See, e.g., Brief for the United States as Amicus Curiae, *Brown v. Board of Education*, 347 U.S. 483 (1954); N.Y. Times, May 18, 1954, at 1, col. 7; H. TALMADGE, *YOU AND SEGREGATION* (1955). The failure to discuss initial desegregation efforts within the broader historical context in which they occurred has meant that scholars have been unable to fully examine the question of how *Brown* happened when it did. Since this widely heralded advance in the area of civil rights occurred during a period regarded as a time when civil rights were generally repressed, the issue of causality and timing is a very provocative historical question.

There are, of course, great differences of opinion within the literature on school desegregation. The debates tend to center on the proper role for courts in the process of social change. Compare J. PELTASON, *supra* (celebrating judicial activism) with R. WOLTERS, *supra* (criticizing judicial activism).

about a different world than do those who consider other aspects of postwar American culture. The failure to contextualize *Brown* reinforces the sense that the movement against segregation somehow happened in spite of everything else that was going on. During a period when civil liberties and social change were repressed in other contexts, somehow, some way, *Brown* managed to happen.

This study represents an effort to begin to examine the desegregation cases within the context of the cultural and political period in which they occurred. The wealth of primary historical documents on civil rights during the Cold War that explicitly draw connections between civil rights and anticommunism suggests that an effort to examine desegregation within the context of Cold War American culture may be more than an interesting addition to a basically well told tale. It may ultimately cause us to recast our interpretations of the factors motivating the critical legal and cultural transformation that *Brown* has come to represent.

In one important deviation from the dominant trend in scholarship on desegregation, Derrick Bell has suggested that the consensus against school segregation in the 1950s was the result of a convergence of interests on the part of whites and blacks, and that white interests in abandoning segregation were in part a response to foreign policy concerns and an effort to suppress the potential of black radicalism at home. According to Bell, without a convergence of white and black interests in this manner, *Brown* would never have occurred.⁸ While Bell's work is important and suggestive, neither Bell nor other scholars have developed this approach historically.⁹

One need not look far to find vintage '50s Cold War ideology in

8. Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980), reprinted in D. BELL, *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* (1980) [hereinafter Bell, *Convergence Dilemma*]; see also Bell, *Racial Remediation: An Historical Perspective on Current Conditions*, 52 NOTRE DAME L. REV. 5, 12 (1976) [hereinafter Bell, *Racial Remediation*].

9. There have been occasional, brief references to the relevance of Cold War foreign affairs to *Brown*. For example, after noting the foreign policy-related arguments in the *Brown* briefs, Albert Blaustein and Clarence Ferguson suggest that "[i]t is inconceivable that the international discord between East and West had no effect on the nine men who were to determine a national discord between North and South." A. BLAUSTEIN AND C. FERGUSON, JR., *DESEGREGATION AND THE LAW: THE MEANING AND EFFECT OF THE SCHOOL SEGREGATION CASES* 11-12 (1957). See also G. HORNE, *supra* note 7 at 227, 277; W.E.B. DU BOIS, *THE AUTOBIOGRAPHY OF W.E.B. DU BOIS* 333 (1968); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 130-32 (3d. rev. ed. 1974). In addition, historians of the Truman Administration have occasionally noted the relevance of foreign affairs to other Truman-era civil rights efforts. See W. BERMAN, *THE POLITICS OF CIVIL RIGHTS IN THE TRUMAN ADMINISTRATION* 66, 77-78 (1970); Bernstein, *The Ambiguous Legacy: The Truman Administration and Civil Rights*, in *POLITICS AND POLICIES OF THE TRUMAN ADMINISTRATION* 269, 275, 279-80 (B. Bernstein ed. 1970.); see also Kellogg, *Civil Rights Consciousness in the 1940s*, 42 THE HISTORIAN 18, 31-36 (1979); Solomon, *Black Critics of Colonialism and the Cold War*, in T. PATERSON, *COLD WAR CRITICS: ALTERNATIVES TO AMERICAN FOREIGN POLICY IN THE TRUMAN YEARS* 205-39 (1971). These references have generally relied on Cold War rhetoric in the desegregation briefs, and/or statements in the media. They have not examined State Department records documenting the Truman administration's concern about the effect of race discrimination on U.S. foreign policy.

primary historical documents relating to *Brown*. For example, the amicus brief filed in *Brown* by the U.S. Justice Department argued that desegregation was in the national interest in part due to foreign policy concerns. According to the Department, the case was important because “[t]he United States is trying to prove to the people of the world, of every nationality, race and color, that a free democracy is the most civilized and most secure form of government yet devised by man.”¹⁰ Following the decision, newspapers in the United States and throughout the world celebrated *Brown* as a “blow to communism”¹¹ and as a vindication of American democratic principles.¹² As was true in so many other contexts during the Cold War era, anticommunist ideology was so pervasive that it set the terms of the debate on all sides of the civil rights issue.¹³

In addition to its important consequences for U.S. race relations, *Brown* served U.S. foreign policy interests. The value of a clear Supreme Court statement that segregation was unconstitutional was recognized by the State Department. Federal government policy on civil rights issues during the Truman Administration was framed with the international implications of U.S. racial problems in mind. And through a series of amicus briefs detailing the effect of racial segregation on U.S. foreign policy interests, the Administration impressed upon the Supreme Court the necessity for world peace and national security of upholding black civil rights at home.

As has been thoroughly documented by other historians, the federal government’s efforts in the late 1940s and early 1950s to achieve some level of racial equality had much to do with the personal commitment on the part of some in government to racial justice, and with the consequences of civil rights policies for domestic electoral politics.¹⁴ In addi-

10. Brief for the United States as Amicus Curiae at 6, *Brown v. Board of Education*, 347 U.S. 483 (1954).

11. See N.Y. Times, May 18, 1954, at 19, col. 4.

12. See text accompanying notes 308-319 *infra*.

13. See text accompanying notes 73-79, 308-328 *infra*.

14. The Truman administration’s record on civil rights has been the subject of much scholarly debate. Historians have differed in the degree to which they have viewed efforts to further black civil rights to be motivated by political considerations, rather than a moral commitment to equality. See generally Sitkoff, *Years of the Locust: Interpretations of the Truman Presidency Since 1965*, in *THE TRUMAN PERIOD AS A RESEARCH FIELD: A REAPPRAISAL*, 1972, at 75 (R. Kirkendall ed. 1974) [hereinafter *THE TRUMAN PERIOD AS A RESEARCH FIELD*]. Some scholars have celebrated Truman’s accomplishments. See R. DALFUME, *DESEGREGATION OF THE U.S. ARMED FORCES: FIGHTING ON TWO FRONTS, 1939-1953* (1969); D. MCCOY & R. RUETTEN, *QUEST AND RESPONSE: MINORITY RIGHTS AND THE TRUMAN ADMINISTRATION* (1973). Others have focused on the limits to Truman-era civil rights reform, and the political considerations motivating Truman’s actions. See W. BERMAN, *supra* note 9 at 239. Alonzo Hamby put it this way:

No historian can precisely define Truman’s motivation on so complex and emotional an issue; it was probably not entirely clear even to Truman. It seems fair to say that he really believed in the principles of equal rights and equal opportunity. But it is also just to observe that he was well aware of the importance of the black vote. It is reasonable to assume that he acted in part out of a sense of self-interest but more

tion to these motivating factors, the effect of U.S. race discrimination on international relations during the postwar years was a critical motivating factor in the development of federal government policy. Without attention to the degree to which desegregation served important foreign policy interests, the federal government's posture on civil rights issues in the postwar years cannot be fully understood.

This article begins with a discussion of the idea that racism was "un-American," a notion that informed scholarship, political discourse, and popular culture during World War II and after. I then contrast this ideology with the reality of race discrimination during this period. The article briefly considers postwar anticommunism in foreign and domestic policy and the Truman Administration's stance on civil rights, to set the stage on which the intersection between foreign policy, civil rights, and anticommunism played itself out. I then consider the international attention given to U.S. race discrimination, demonstrating: 1) that other countries were attentive to the issue and concerned about it, 2) that the Soviet Union took advantage of this American weakness, and 3) that the State Department considered the issue to be a serious foreign policy problem.

Next, I address the Truman Administration's responses to the problem, particularly the Justice Department's arguments in civil rights *amicus* briefs that racial segregation harmed U.S. foreign policy interests, and that Court decisions upholding segregation would have negative consequences for world peace. I then discuss the positive effect the *Brown* decision had on international relations. Finally, I conclude by suggesting that this article demonstrates Derrick Bell's interest-convergence thesis: The consensus against racial segregation in the 1950s resulted from a convergence of interests on the part of whites and persons of color. And at least as far as the Truman Administration was concerned, the Cold War imperative was an important impetus for civil rights reform.¹⁵

II. RACISM AND AMERICAN DEMOCRACY

A. *An American Dilemma*

During World War II, many believed that racism was fundamentally at odds with the principles of American democracy.¹⁶ Because racism

important that he interpreted his self interest in a fashion both astute and morally enlightened.

A. HAMBY, *LIBERALISM AND ITS CHALLENGERS: FDR TO REAGAN* 66-67 (1985).

15. In arguing that foreign policy imperatives motivated Truman administration civil rights efforts, I do not intend to suggest that moral considerations and political pressure from blacks were unimportant. Rather, Cold War foreign policy was one critical factor, among others.

16. See Kellogg, *supra* note 9, at 18. In one example of public attitudes, a July 1944 national survey of college students asked respondents their opinion on the following statement: "Our postwar policy should be to end discrimination against the Negro in schools,

was considered to be inconsistent with all that the United States stood for, racially discriminatory practices posed particular problems for the nation. Swedish sociologist Gunnar Myrdal explored this theme in his important 1944 study, *An American Dilemma*.¹⁷ For Myrdal, American racism was a dilemma not only in absolute moral terms. Race discrimination posed a particular problem for Americans because it was at odds with the "American creed" and the tenets of American democracy. According to Myrdal, all Americans shared a belief in a creed consisting of "ideals of the essential dignity of the individual human being, of the fundamental equality of all men, and of certain inalienable rights to freedom, justice, and a fair opportunity . . ."¹⁸

Myrdal believed that the American dilemma had, in recent years, "acquired tremendous international implications. . . . The situation is actually such that any and all concessions to Negro rights in this phase of the history of the world will repay the nation many times, while any and all injustices inflicted upon them will be extremely costly."¹⁹ Addressing the "color angle to this War," Myrdal noted that "America, for its international prestige, power, and future security, needs to demonstrate to the world that American Negroes can be satisfactorily integrated into its democracy."²⁰

An anti-racist posture would have strategic consequences, for "[i]t is commonly observed that the mistrust of, or open hostility against, the white man by colored people everywhere in the world has greatly increased the difficulties for the United Nations²¹ to win this War." As Pearl S. Buck had written, "Japan . . . is declaring in the Philippines, in China, in India, Malaya, and even Russia that there is no basis for hope that colored peoples can expect any justice from the people who rule in the United States. . . . Every lynching, every race riot, gives joy to Japan. . . . 'Look at America,' Japan is saying to millions of listening ears. 'Will White Americans give you equality?'"²² Accordingly, Buck argued, "[w]e cannot . . . win this war without convincing our colored allies—who are most of our allies—that we are not fighting for ourselves as continuing superior over colored peoples."²³ Similarly, Myrdal noted that "[t]he German radio often mentions America's harsh treatment of Negroes in its propaganda broadcasts to European

colleges and universities." 68% approved of the statement, 18% disapproved, and 14% were uncertain. H. CANTRIL, PUBLIC OPINION 1935-46 509 (1951).

17. G. MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944); see generally D. SOUTHERN, GUNNAR MYRDAL AND BLACK-WHITE RELATIONS: THE USE AND ABUSE OF *An American Dilemma*, 1944-1969 (1987).

18. G. MYRDAL, *supra* note 17, at 4.

19. *Id.* at 1015.

20. *Id.* at 1016.

21. Myrdal's use of the term "United Nations" refers to the Allies in World War II. See S. FENICHELL, THE UNITED NATIONS: DESIGN FOR PEACE 2 (1960).

22. Quoted in G. MYRDAL, *supra* note 17, at 1016.

23. Quoted in *id.* at 1017.

peoples."²⁴

Notwithstanding the weightiness of the problem, Myrdal was cautiously optimistic about the future.

When in this crucial time the international leadership passes to America, the great reason for hope is that this country has a national experience of uniting racial and cultural diversities and a national theory, if not a consistent practice, of freedom and equality for all. What America is constantly reaching for is democracy at home and abroad. The main trend in its history is the gradual realization of the American Creed.²⁵

Myrdal believed that "the Negro problem is not only America's greatest failure but also America's incomparably great opportunity for the future."²⁶ By bringing about racial equality, the U.S. would enhance its posture at home and abroad. In so doing, "[t]he century-old dream of American patriots, that America should give to the entire world its own freedoms and its own faith, would come true. America can demonstrate that justice, equality and cooperation are possible between white and colored people."²⁷

B. *World War II as a War Against Racism*

In 1944, democracy was, to many Americans, much more than an abstract idea. It was a principle Americans were dying for. And although U.S. soldiers fought and died in Jim Crow trenches in a segregated army,²⁸ part of the meaning of the democracy they fought for was its incompatibility with Nazi racism and anti-Semitism.²⁹

Frank Sinatra brought this idea—the antipathy of prejudice to

24. *Id.* at 1016 note a. Even after the war, Myrdal believed that the international implications of domestic racism would remain significant. Declining white birthrates coupled with population growth in the "colored nations" meant that "whites will, therefore, from now on become a progressively smaller portion of the total world population." *Id.* at 1017. Perhaps because he felt that "Russia cannot be reckoned on to adhere to white supremacy," *id.* at 1018, Myrdal noted that "[i]f we except the Russian peoples, who are still rapidly increasing, the rapid change in proportion [of population] stands out still more dramatically." *Id.* at 1017. In addition, the industrialization of Japan, Russia and China suggested that "the 'backward' countries, where most colored people live, are going to become somewhat industrialized." *Id.* Industrialization would lead to an enhanced capacity for producing war materials and for warfare. Consequently,

within a short period the shrinking minority of white people in our Western lands will either have to succumb or to find ways of living on peaceful terms with colored people. If white people, for their own preservation, attempt to reach a state in which they will be tolerated by their colored neighbors, equality will be the most they will be strong enough to demand.

Id. at 1018.

25. *Id.* at 1021.

26. *Id.*

27. *Id.*

28. See A. BUCHANAN, *BLACK AMERICANS IN WORLD WAR II*, at 84-88, 98-99 (1977); N. WYNN, *THE AFRO-AMERICAN AND THE SECOND WORLD WAR* 24 (1975).

29. See Kellogg, *supra* note 9, at 30-33. Notwithstanding the abstract commitment to equality, racism was important to the way World War II was fought. See generally J. DOWER, *WAR WITHOUT MERCY: RACE AND POWER IN THE PACIFIC WAR* (1986).

American democracy—to the silver screen in the World War II era short film “The House I Live In.”³⁰ In the film, Sinatra, playing himself doing a recording session, took a break between two songs. He stepped out into an alley where he saw a group of ten little boys chasing a Jewish boy. Sinatra broke up the scuffle, asking “What’s going on here? Why the gang war?” Referring to the object of the group’s fury, one boy said, “We don’t like his religion.” “His religion?” Sinatra replied. “You must be a bunch of those Nazi werewolves I’ve been reading about.” “Mister, are you screwy?” “Not me, I’m an American.” “What do you think we are?” “Nazis.”

Sinatra then attempted to explain to the boys that prejudice was un-American. He discussed anti-Semitism in the context of the war effort. At one point he described the bombing of a “Jap battleship” by an American plane with Presbyterian and Jewish crew members. After the ship sank, “every American threw his head back and felt much better. . . . You think maybe they should have called the bombing off because they had different religions? Think about that, fellas. Use your good American heads.” Sinatra then explicitly tied his vision of America to racial harmony, singing “all races and religions, that’s America to me.”³¹ Predictably, the film ended with at least some of the little boys having learned their lesson.³²

The theme that prejudice was un-American was prominent in war-

30. *The House I Live In* (RKO 1945) (transcript on file with the *Stanford Law Review*). I will always be grateful to Steve Wizner for telling me about this film.

Sinatra’s involvement in the film stemmed from a number of sources. Sinatra personally identified with the problem of prejudice due to anti-Italian sentiments directed at him when he was growing up. In addition, though not much of a reader, Sinatra became interested in books in the early 1940s, and read Myrdal’s *American Dilemma*, see note 17 *supra*, and other books on prejudice. K. KELLEY, *HIS WAY: THE UNAUTHORIZED BIOGRAPHY OF FRANK SINATRA* 115-16 (pap. ed. 1987); see also D. SOUTHERN, *supra* note 17, at 108. According to a biographer, this reading “made a powerful impression on Frank, who embraced their teachings on the evils of racial prejudice and promised to dedicate himself to righting social wrongs. ‘I’m in it for life,’ he said. ‘After all, I’m only coming out for the basic American ideal, and who can object to that?’ ” K. KELLEY, *supra*, at 116. There was also a box-office motive. Sinatra’s reputation was occasionally in need of attention. Accordingly, his agents encouraged his “newly developed social conscience, for we could see that along this road, except in the Deep South, it would certainly set Frank aside as a ‘citizen of the community’ as well as being a star. We convinced him to make . . . *The House I Live In*, which caused a lot of people to sit up and take notice,” *Id.* at 116 (quoting Jack Keller). Sinatra received a special Academy Award for the film. *Id.*

31. *The House I Live In*, *supra* note 30. In his discussion with the boys, Sinatra also referred directly to prejudice against persons with immigrant backgrounds. “My dad came from Italy, but I’m an American. But should I hate your father because he came from Ireland or France or Russia? Wouldn’t I be a first class fathead?” The contradictions in the film are quite apparent. Although intolerance of Italians was discouraged, the same was not true of Japanese, although both nations fought against the United States in the war. Sinatra used the word “Jap” every time he referred to them. *Id.*

32. At the end of the film the boys waved goodbye to Sinatra and, as they left, one boy picked up the Jewish boy’s fallen books. Walking together, the two followed the group off-stage. The film closed with the music from the final bars of “America the Beautiful.” The words that would accompany the score are: “And crown thy good with brotherhood from sea to shining sea.” *Id.*

time popular culture.³³ For example, on May 31, 1945, a New York radio commentator read Chaplain Roland B. Gittelsohn's Iwo Jima memorial address on the air.³⁴ "Here lie men who loved America[,] he said.

Here lie officers and men, Negroes and whites, rich and poor, together. Here are Protestants, Catholics and Jews, together. Here no man prefers another because of his faith, or despises him because of his color. . . . Among these men there is no discrimination, no prejudice, no hatred. Theirs is the highest and purest democracy.³⁵

These deaths in the name of democracy left the living with a duty. "Whoever of us lifts his hand in hate against a brother, or thinks himself superior to those who happen to be in the minority, makes of this ceremony, and of the bloody sacrifice it commemorates, an empty, hollow mockery."³⁶ The living, Gittelsohn continued, "now dedicate ourselves, to the right of Protestants, Catholics and Jews, of white men and Negroes alike, to enjoy the democracy for which all of them have paid the price."³⁷

C. *World War II Era Racism*

Notwithstanding the attention given to the "un-American" nature of prejudice, in the 1940s race discrimination was a characteristic experience for persons of color in the U.S.³⁸ Pervasive discrimination in

33. See Kellogg, *supra* note 16 at 30-33. Although the abstract concept that prejudice was unAmerican was an important war-time theme, blacks continued to be cast in stereotyped roles in war-time movies, and films explicitly dealing with racial themes were thought to be too controversial. See Koppes & Black, *Blacks, Loyalty, and Motion-Picture Propaganda in World War II*, 73 J. AM. HIST. 383, 391-406 (1986).

34. *Rabbi on Iwo* (pamphlet), President's Committee on Civil Rights Pamphlets File, Box 28, Papers of the President's Committee on Civil Rights, Harry S Truman Library (on file with the *Stanford Law Review*).

35. *Id.* at 4.

36. *Id.* at 4-5.

37. *Id.* at 5.

38. Japanese-Americans and resident aliens were a special focus of war-time racism, particularly following Pearl Harbor. Whereas immigrants from Germany and Italy remained at liberty during the war, American citizens as well as resident aliens of Japanese descent living on the West Coast were excluded from this area and interned in camps in remote areas of the West. The U.S. government claimed that some or even all persons of Japanese descent held a primary loyalty to Japan, even if they were U.S. citizens who had never lived outside the United States. The imputed loyalty was race-based. See U.S. DEPARTMENT OF WAR, FINAL REPORT: JAPANESE EVACUATION FROM THE WEST COAST, 1942, at 34 (1943 & photo. reprint 1978); REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 4-5 (1982); see also P. IRONS, JUSTICE AT WAR (1983).

Moreover, many government officials argued that even if most Japanese residents posed no threat to national security, lack of time and Japanese racial characteristics made separating the loyal from the disloyal impossible in the wake of Pearl Harbor. See *Preliminary Report of Select Committee Investigating National Defense Migration on Evacuation of Military Area*, H.R. REP. NO. 1911, 77th Cong., 2d Sess. 14 (1942). This argument appears to have heavily influenced the Supreme Court in its decisions upholding the curfew and exclusion aspects of the internment program. See *Hirabayashi v. United States*, 320 U.S. 81, 99 (1943); *Korematsu v. United States*, 323 U.S. 214, 218-19 (1944).

The convictions of *Hirabayashi* and *Korematsu* have recently been overturned in *coram*

employment had created a segregated labor market.³⁹ In 1940, 62.2 percent of black men were farmers, farm laborers and other laborers, while only 28.5 percent of white men held such jobs. Approximately 30 percent of white men held jobs in professional, semiprofessional, proprietary, managerial, and clerical or sales categories, while approximately 5 percent of black men held such jobs. In addition, 15.6 percent of white men and 4.4 percent of black men were skilled craft workers.⁴⁰ Among women who worked outside the home in 1940, 56.7 percent of black women in the northern United States held jobs in domestic service, while only 12.9 percent of white women held such jobs; 51.7 percent of white women held jobs in professional, managerial, sales, or clerical occupations, while only 9.6 percent of black women were employed in such jobs.⁴¹

Racial minorities made significant gains during World War II when increased production in war industries led to a labor shortage.⁴² Nevertheless, segregation and discrimination continued to be central characteristics of the labor market. For example, while white women were encouraged to enter the factory, black women were encouraged to take up the laundry, cafeteria, and domestic service work whites had abandoned.⁴³ In late 1942, defense plants in the Detroit area had a female work force of ninety-six thousand. Of that number, only one hundred female production employees were black.⁴⁴ In private and public employment, racial minorities were concentrated in war-related jobs. Consequently, there was a concern that postwar reconversion would affect minorities disproportionately.⁴⁵

nobis actions, based on recently discovered documents showing that government officials withheld evidence from the Supreme Court indicating that the claims of military necessity for the internment program were questionable or based on racial prejudice. *See Hirabayashi v. United States*, 627 F. Supp. 1445 (W.D. Wash. 1986); *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984).

39. In addition, within job categories, blacks earned less than whites. In July 1942, the average hourly wage for unskilled laborers was 47.4 cents for blacks and 65.3 cents for whites. Following the war, an American Federation of Labor study of twenty-six primarily Southern communities found that the average weekly income of white veterans was 30 to 78% above the average weekly income of black veterans. PRESIDENT'S COMMITTEE ON CIVIL RIGHTS, *TO SECURE THESE RIGHTS* 57 (1947) [hereinafter PRESIDENT'S COMMITTEE].

40. *Id.*

41. E. McDONAGH & E. RICHARDS, *ETHNIC RELATIONS IN THE UNITED STATES* 144 (1953).

42. For example, employment of blacks in the federal government jumped from a pre-war level of 40,000 to 300,000 in 1944. In 1938, 90% of blacks in federal employment held custodial jobs. As of 1944, 60% held clerical and professional positions. *Id.* at 39.

43. J. JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK AND THE FAMILY FROM SLAVERY TO THE PRESENT* 237 (1985); *see also* P. GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 235-38 (1984).

44. J. JONES, *supra* note 43, at 239.

45. PRESIDENT'S COMMITTEE, *supra* note 39, at 59, 61. In addition, once the war ended in 1945, war-era restrictions on discrimination by government contractors went the way of war-related contracts. According to the Fair Employment Practices Committee, "the wartime gains of Negro, Mexican American, and Jewish workers are being lost through an unchecked revival of discriminatory practices." *Id.* at 59. Between July 1945 and April 1946, unemployment rose twice as much for nonwhite workers as for whites: white unemployment rose ap-

A particularly egregious area of discrimination by the federal government was in the military. Black men who wished to serve were often excluded by caps on black enlistment, and those who did enlist were segregated into particular job categories.⁴⁶ For example, blacks in the Marine Corps could only serve in the steward's branch.⁴⁷ In the Navy, almost 80 percent of blacks were cooks, stewards, and steward's mates, as compared with less than 2 percent of whites in such positions.⁴⁸ In the Army, there was one white officer for every seven white enlisted men, and one black officer for every seventy black enlisted men.⁴⁹ Blacks and other racial minorities were often excluded from combat duty, and when they did see combat, they fought in segregated units.⁵⁰

Black women also volunteered for military service, and encountered similar barriers. Approximately four thousand black women served in the Women's Army Corps, 10 percent of all WACs. However, in the WACs and the Army Nurse Corps, black women were assigned to segregated units and were rarely sent overseas. Black women were barred from the Women's Reserves of the Navy until October 1944.⁵¹ As with male military personnel, tasks were often assigned along racial lines. Protest against such different treatment was greeted harshly. When six black WACs refused to do kitchen and custodial work while white WACs did motor pool and other non-custodial work, they were court-martialed.⁵²

Segregation and discrimination affected many other areas of life in the 1940s, from voting, where poll taxes and white primaries disenfranchised most Southern blacks,⁵³ to housing, where racially restrictive covenants were widespread, affecting, for example, approximately 80 percent of the land in the city of Chicago.⁵⁴

Even though the war tended to mute domestic criticism of problems in the U.S., black protest against race discrimination continued. Black Americans called for a "double V"—victory abroad against fascism, and victory at home against racism.⁵⁵ However, the government's wartime posture toward racial protest was that such dissension impeded the war effort. A justification for postponing action was that it was more impor-

proximately one and one-half times, while nonwhite unemployment more than tripled. *Id.* at 61.

46. *Id.* at 41.

47. *Id.*

48. *Id.* at 45.

49. *Id.* at 44.

50. See A. BUCHANAN, *supra* note 28, at 98-99; N. WYNN, *supra* note 28, at 24.

51. J. JONES, *supra* note 43, at 253.

52. *Id.*

53. See PRESIDENT'S COMMITTEE, *supra* note 39, at 35-40.

54. *Id.* at 68.

55. J. BLUM, *V WAS FOR VICTORY* 208 (1976); A. BUCHANAN, *supra* note 28, at 113. See generally Finkle, *The Conservative Aims of Militant Rhetoric: Black Protest During World War II*, 60 J. AM. HIST. 692 (1973); Sitkoff, *Racial Militancy and Interracial Violence in the Second World War*, 58 J. AM. HIST. 661 (1971).

tant to present a united front against the greater evils of Nazism and totalitarianism.⁵⁶ Following the war, however, American blacks expected that the principles of democracy they fought for would at last be extended to them at home. Accordingly, the postwar period brought renewed black activism.⁵⁷ Along with it came concern that the postwar years would bring the same racial tensions and race riots that had occurred following World War I.⁵⁸

III. POSTWAR POLITICS

A. *Containment, Foreign and Domestic*

As World War II came to a close, American international concerns shifted from a focus on defeating Nazism and fascism to an anti-Soviet, anticommunist stance.⁵⁹ By early 1946, the Soviet Union, a recent ally, was seen as the primary threat to world peace. The anti-Soviet focus of American foreign policy crystallized in early 1947 over the instability of the anticommunist Greek government.⁶⁰ The State Department argued that U.S. funding of Greece was necessary or, as Under Secretary of State Dean Acheson put it, "[l]ike apples in a barrel infected by the corruption of one rotten one, the corruption of Greece would infect Iran and all to the East, . . . Africa . . . Italy, and France."⁶¹

To sell foreign aid to Congress and the American people, President Truman cast the issue in stark terms. In a March 12, 1947 address to a joint session of Congress, he emphasized that "[a]t the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one."⁶² The choices were between a way of life "distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression," and a way of life that "relies upon terror and oppression, a controlled press and radio, fixed elections, and the suppression of personal freedoms."⁶³ The gravity of the situation made this a "fateful hour."⁶⁴

56. J. BLUM, *supra* note 55, at 207.

57. See S. LAWSON, *BLACK BALLOTS: VOTING RIGHTS IN THE SOUTH, 1944-1969*, at 102-03 (1976).

58. See Kellogg, *supra* note 9, at 26-27. See also W. TUTTLE, *RACE RIOT: CHICAGO IN THE RED SUMMER OF 1919* (1970).

59. See B. WEISBERGER, *COLD WAR, COLD PEACE: THE UNITED STATES AND RUSSIA SINCE 1945*, at 59 (1984); see generally Adler & Paterson, *Red Fascism: The Merger of Nazi Germany and Soviet Russia in the American Image of Totalitarianism, 1930s-1950s*, 75 *AM. HIST. REV.* 1046 (1970).

60. See B. WEISBERGER, *supra* note 59, at 55-60; D. ACHESON, *PRESENT AT THE CREATION: MY YEARS IN THE STATE DEPARTMENT 217-19* (1969).

61. B. WEISBERGER, *supra* note 59, at 60-61; see also D. ACHESON, *supra* note 60, at 219.

62. Truman, *Special Message to the Congress on Greece and Turkey: The Truman Doctrine*, March 12, 1947, in *PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES*, HARRY S. TRUMAN, 1947, at 176, 178 (1963).

63. *Id.*

64. *Id.* at 179.

"The free peoples of the world look to us for support in maintaining their freedoms. If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of this Nation."⁶⁵

Truman's speech was "greeted with rapture" by members of Congress.⁶⁶ This approach to international relations, what would be called the Truman Doctrine, informed U.S. foreign policy throughout the Truman Administration and beyond.⁶⁷ Anticommunism would not be limited to foreign affairs. With the communist threat now perceived in global, apocalyptic terms, scrutiny of how domestic policies might interface with the struggle against world communism became a priority. The most direct way in which this manifested itself was the concern about communist "infiltration" in American government.⁶⁸

In this atmosphere, many government policies were evaluated in terms of whether they served or undercut the more central U.S. mission of fighting communism. For example, in June 1947, Congress passed the Taft-Hartley Act over Truman's veto. The Act required officers of labor unions to sign affidavits indicating that the officer

is not a member of the Communist Party nor affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional

65. *Id.* at 180.

66. D. CAUTE, *THE GREAT FEAR: THE ANTI-COMMUNIST PURGE UNDER TRUMAN AND EISENHOWER* 30 (1978).

67. See B. WEISBERGER, *supra* note 59, at 64-103, 126-152.

68. On March 21, 1947, only nine days after his Truman Doctrine speech, the President signed an executive order creating a loyalty program for federal employees. Exec. Order No. 9835, 12 Fed. Reg. 1935 (1947). According to the order, "complete and unswerving loyalty" on the part of federal employees was of "vital importance." In addition, the employment of "any disloyal or subversive person constitutes a threat to our democratic processes." *Id.* Consequently, the program made employment in executive branch departments or agencies conditioned upon a favorable determination in a loyalty investigation.

Matters to be considered in loyalty investigations included "[m]embership in, affiliation with or sympathetic association with" any organization the Attorney General designated as "subversive" or "as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means." *Id.* at 1938. In addition, employment could be denied due to "[i]ntentional, unauthorized disclosure to any person, under circumstances which may indicate disloyalty to the United States, of documents or information of a confidential or non-public character obtained by the person making the disclosure as a result of his employment by the Government of the United States;" or if an employee acted "so as to serve the interests of another government in preference to the interests of the United States." *Id.*

Historians have engaged in a fierce debate over the question of the degree to which Truman was responsible for McCarthyism. Compare A. HAMBY, *supra* note 14, at 86-91 (arguing that McCarthyism as a social phenomenon was due to factors external to Truman Administration politics, and that Truman was a strong, although ineffective, denouncer of McCarthyism), with R. FREELAND, *supra* note 4, at 5 (arguing that McCarthyism was "the result of a deliberate and highly organized effort by the Truman Administration in 1947-48 to mobilize support for the program of economic assistance to Europe"). See also THE TRUMAN PERIOD AS A RESEARCH FIELD, *supra* note 14, at 105-08, 129-36, 182-87.

methods.⁶⁹

Motivated by the fear that communist infiltration in the public schools would lead to the poisoning of fragile young minds, many states adopted loyalty oath requirements for public school teachers.⁷⁰ A New York State loyalty oath statute⁷¹ was upheld by the Supreme Court in 1952 in *Adler v. Board of Education*.⁷² According to the Court, the statute was premised on findings that Communists "have been infiltrating into public employment in the public schools of the State. . . . As a result, propaganda can be disseminated among the children by those who teach them and to whom they look for guidance, authority, and leadership."⁷³

In the area of race relations, anticommunism figured prominently on both sides of the debate. Segregationists argued that efforts to abandon racial segregation were communist-inspired, and would undermine the fabric of American society.⁷⁴

Whether for strategic or ideological reasons,⁷⁵ anticommunism in-

69. Labor Management Relations (Taft-Hartley) Act, § 9(h), Pub. L. 80-101, 61 Stat. 136, 146 (1947). See D. CAUTE, *supra* note 66, at 355. A union whose officers refused to sign such an affidavit could not be a certified bargaining agent with the National Labor Relations Board, could not place a union-shop clause in any collective bargaining agreement and could not bring unfair labor practices complaints against employers before the NLRB. Labor Management Relations (Taft-Hartley) Act, § 9(h), 61 Stat. at 146. The justification for these provisions was that Communists had supposedly infiltrated the labor movement with the subversive goal of disrupting commerce in mind. See D. CAUTE, *supra* note 66, at 356. The Supreme Court held this section of the Act constitutional in 1950. *American Communications Ass'n v. Douds*, 339 U.S. 382 (1950); *Osman v. Douds*, 339 U.S. 846 (1950).

70. D. RAVITCH, *THE TROUBLED CRUSADE: AMERICAN EDUCATION, 1945-1980*, at 82 (1983). Public colleges and universities were also a particular focus of anticommunist concern. See E. SCHRECKER, *NO IVORY TOWER: MCCARTHYISM AND THE UNIVERSITIES* (1987).

71. 1939 N.Y. Laws § 1318, as amended 1940 N.Y. Laws § 1499; 1949 N.Y. Laws § 1024.

72. 342 U.S. 485 (1952).

73. *Id.* at 489. In holding the statute constitutional, the Court observed that: "A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools." *Id.* at 493. As far as the associational rights of school teachers were concerned, "[o]ne's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps." *Id.*

In *Adler*, the New York courts had interpreted the statute as only permitting dismissal of an employee due to membership in a subversive organization if the employee had knowledge of the organization's subversive purpose. *Id.* at 494 n.8. In *Wieman v. Updegraff*, 344 U.S. 183 (1952), the Court overturned an Oklahoma loyalty oath statute that had no scienter requirement. *Id.* at 189-91.

74. See W. Clark, *An Analysis of the Relationship Between Anti-Communism and Segregationist Thought in the Deep South, 1946-1964*, at 30, 34 (1976) (Ph.D. diss., Univ. of North Carolina). According to Wayne Addison Clark: "Realizing the vulnerability of racial segregation as a social system, southerners most intent on pressing white supremacy consistently promoted the notion that only alien forces bent on social upheaval would challenge the racial status quo. Large segments of the population in the Deep South, including educated whites, accepted this explanation as the primary force behind resistance to white supremacy." *Id.* at 12.

75. There were important differences between the NAACP and the Communist Party (CPUSA) on the issue of race. The key to racial reform for the Party was "self determination

formed the rhetoric of the NAACP as well. At the Forty-First Annual Convention of the NAACP in June 1950, the organization passed a resolution instructing its Board of Directors to "take the necessary action to eradicate [communist] infiltration, and if necessary to suspend and reorganize, or lift the charter and expel any unit, which . . . comes under Communist or other political control and action."⁷⁶ In reaffirming the resolution the following year, the organization stated that "the cardinal principle of those who follow the Communist line is to support whatever happens to be at the moment the foreign policy of Russia, a totalitarian dictatorship, while the cardinal principle of the NAACP is to support and strengthen American democracy by winning complete equal rights for all people regardless of race"⁷⁷

While efforts to change American society during the Cold War were usually viewed as "un-American," the NAACP cast its efforts at racial reform as part of the struggle against communism. According to NAACP Executive Director Roy Wilkins, "the survival of the American democratic system in the present global conflict of ideologies depends upon the strength it can muster from the minds, hearts, and spiritual convictions of all its people."⁷⁸ He argued that "[t]he Negro wants change in order that he may be brought in line with the *American* standard . . . [which] must be done not only to preserve and strengthen that standard here at home, but to guarantee its potency in the world struggle against dictatorship."⁷⁹

for the Negro in the Black Belt" in the South. See D. WYNN, *THE NAACP VERSUS NEGRO REVOLUTIONARY PROTEST: A COMPARATIVE STUDY OF THE EFFECTIVENESS OF EACH MOVEMENT* 27 (1955). The separatism this strategy suggested was at odds with the NAACP's integrationist philosophy.

Conflicts also arose over the issue of presenting a united front during World War II. After the Soviet Union entered the war, the Communist Party called for "unity against the fascist aggressor." Because all other matters were to be subordinated to the need for unity, the CPUSA refused to support efforts for racial reform in the military or on the home front and denounced the NAACP as "fascist sympathizers" because of its wartime protest. Following the war, however, wartime Party strategy was termed a "political mistake," and the Party again focused on issues of race equality. See W. RECORD, *RACE AND RADICALISM: THE NAACP AND THE COMMUNIST PARTY IN CONFLICT* 132-41 (1964).

76. Current, *The 41st: A Convention of Great Decision*, 57 *THE CRISIS* 512, 523 (1950).

77. *Resolutions Adopted by the Forty-Second Annual Convention of the NAACP at Atlanta, Ga., June 30, 1951*, 58 *THE CRISIS* 475, 476 (1951).

A need to publicly distance the organization from the Communist party may have been considered to be politically necessary in light of the fact that many prominent blacks, including some NAACP members, joined the Party or espoused ideas associated with the Party during the 1930s. See W. RECORD, *supra* note 75; see also M. NAISON, *COMMUNISTS IN HARLEM DURING THE DEPRESSION* (1983). Accordingly, during the anticommunist fifties, public recantations were the order of the day. See, e.g., *Langston Hughes Speaks*, 60 *THE CRISIS* 279 (1953) (Hughes' Senate testimony repudiating communist influences in his poetry); Wright, untitled essay denouncing the Communist Party, in *THE GOD THAT FAILED* 115 (R. Crossman ed. 1949).

78. Wilkins, *Undergirding the Democratic Ideal*, 58 *THE CRISIS* 647, 650 (1951).

79. *Id.* (emphasis in original).

B. *President Truman and Civil Rights Politics*

When Harry S Truman assumed the Presidency after Roosevelt's death in April 1945, people on both sides of the civil rights issue saw reason for encouragement. As a border-state senator, Truman's nomination as Vice-President had been supported by the South. When he became President, Southerners assumed he would be sensitive to Southern-style race relations.⁸⁰ Nevertheless, Truman's record on civil rights in the Senate was considered good enough by the NAACP that an editorial in the *Crisis* remarked that he was "entitled to a chance to add to that record as President."⁸¹

In the years following World War II, race was an issue the federal government was unable to ignore. A wave of violence swept the South as black veterans returned home. Lynchings and beatings of blacks, sometimes involving local law enforcement officials, were covered in the media in this country and abroad. The violence spawned protests and demands that the federal government take steps to alleviate that brutality and other forms of racial injustice.

In one incident during the summer of 1946, Sergeant Issac Woodard was beaten with a nightstick and blinded in both eyes by the Chief of Police in Aiken, South Carolina. Woodard had been on his way home after three years of military service.⁸² The police chief was indicted for the incident, but was then acquitted "to the cheers of a

80. R. DONOVAN, *CONFLICT AND CRISIS: THE PRESIDENCY OF HARRY S TRUMAN, 1945-1948*, at 33 (1977).

81. *Id.* at 32. As far as the NAACP was concerned, Truman did well in an early test. The burning issue in domestic civil rights politics in 1945 was the establishment of a permanent Fair Employment Practices Commission which would protect racial and religious minorities from discrimination by government agencies and government contractors. *Id.* at 32-33, 114. Roosevelt had established an FEPC by executive order in 1941 in response to A. Philip Randolph's call for blacks to march on Washington. *Id.* at 32. See Randolph, *Call to the March*, in *BLACK PROTEST THOUGHT IN THE TWENTIETH CENTURY 220-24* (Meier, Rudwick & Broderick 2d ed. 1971) [hereinafter *BLACK PROTEST THOUGHT*]. Legislation to establish a permanent FEPC had been introduced in Congress, but Roosevelt had not pushed the matter. In contrast, upon the urging of NAACP Executive Secretary Walter White, Truman intervened with the House Rules Committee where the bill was mired, urging that it was "unthinkable" to abandon the principle the FEPC was based on. And when Truman found Congress uncooperative on the issue, he continued to keep the FEPC alive through issuing executive orders. R. DONOVAN, *supra* note 80, at 32. The FEPC's effectiveness was seriously hampered, however, because without authorizing legislation, it had no enforcement powers, and because Congress refused to grant more than token funding. *Id.* at 32; D. MCCOY & R. RUETTEN, *supra* note 14, at 32-33.

While some historians have viewed Truman's support for FEPC legislation as evidence of the President's commitment to civil rights, others have considered it to be an example of his ineffectiveness. According to Louis Ruchames, Truman supported permanent FEPC legislation, which he knew wouldn't get through Congress, and at the same time refused to push for an appropriation for the existing temporary FEPC, which might have been aided by his active support. L. RUCHAMES, *RACE, JOBS AND POLITICS 126* (1953); accord W. BERMAN, *supra* note 9, at 26-29.

82. D. MCCOY & R. RUETTEN, *supra* note 14, at 47-48.

crowded courtroom.”⁸³ Also that summer, Macio Snipes, the only black in his district in Georgia to vote in a state election, was killed at his home by four whites.⁸⁴ In Monroe, Georgia, on July 25, 1946, Roger Malcolm, who was black, was jailed after fighting with a white man. Malcolm was released later that day. Malcolm, his wife, and two friends, all of whom were black, were then driven by his employer down a back road to a waiting mob. All four were killed.⁸⁵

These incidents and others like them fueled black protest. Demonstrations were held and thousands of letters of protest were sent to President Truman and the Attorney General demanding federal action. In one protest action, close to four hundred members of the National Association of Colored Women marched on the White House. They maintained a picket line for over a week.⁸⁶

In response to the lynchings, civil rights, religious, labor, and other groups formed the National Emergency Committee Against Mob Violence. The Committee met with President Truman on September 19, 1946 to call for federal government action to ensure that lynchers were prosecuted. During the meeting, Walter White described acts of violence to Truman, including the blinding of Isaac Woodard. Truman “sat with clenched hands through the recounting,”⁸⁷ and expressed his shock at how bad things were. Following the meeting, he set up a presidential committee to study the problem of racial violence and discrimination, and to make recommendations for federal policy.⁸⁸

The President’s Committee on Civil Rights issued its report, *To Secure These Rights*, in 1947. The report documented the effects of race discrimination, and called for federal government reform efforts.⁸⁹ Truman could not comfortably ignore the recommendations of his committee. Neither could he ignore black activists like A. Philip Randolph who, in 1948, called upon blacks to engage in civil disobedience to protest racial segregation in the military.⁹⁰ The pressure on Truman to address race discrimination coincided with an impending presidential campaign.

In the eyes of Clark Clifford, a close Truman advisor, the black vote

83. W. WHITE, *A MAN CALLED WHITE: THE AUTOBIOGRAPHY OF WALTER WHITE* 327 (1948).

84. D. MCCOY & R. RUETTEN, *supra* note 14, at 45.

85. *Id.*; W. WHITE, *supra* note 83, at 322-23.

86. D. MCCOY & R. RUETTEN, *supra* note 14, at 45.

87. *Id.* at 47.

88. *Id.* at 48. While Truman appeared to be acting spontaneously upon Walter White’s suggestion that he set up a committee on civil rights, William Berman has written that Truman and his advisors had previously decided to set up such a committee, and used the meeting with the National Emergency Committee Against Mob Violence as the vehicle to announce the decision. W. BERMAN, *supra* note 9, at 51.

89. See PRESIDENT’S COMMITTEE, *supra* note 39.

90. Randolph, *A. Philip Randolph Urges Civil Disobedience Against a Jim Crow Army*, in *BLACK PROTEST THOUGHT*, *supra* note 81, at 274-80.

would be important in the 1948 election.⁹¹ In order to court black voters away from Progressive Party candidate Henry A. Wallace and Republican Thomas E. Dewey, Clifford recommended that Truman should "go as far as he feels he possibly could go in recommending measures to protect the rights of minority groups."⁹² Otherwise, Clifford warned, the black vote might go Republican.⁹³ Clifford predicted that a pro-civil rights posture would not jeopardize Truman's Southern support. "As always, the South can be considered safely Democratic. And in formulating national policy, it can be safely ignored."⁹⁴

Clifford was right on two counts: the black vote was of great importance in the '48 election, and it could not be earned without a strong pro-civil rights position.⁹⁵ He miscalculated on the South, however. In keeping with Clifford's recommendations, Truman called for civil rights legislation that had no chance of passage.⁹⁶ Southern politicians reacted by threatening to break with the Democratic Party if the Convention nominated Truman and adopted a pro-civil rights plank.⁹⁷ When both occurred, Southerners formed the States' Rights Party and nominated South Carolina segregationist Strom Thurmond as their presidential candidate. The party's platform denounced "totalitarian government" and advocated racial segregation.⁹⁸ While Thurmond had no chance of winning the election, the States' Rights Party hoped to deprive Truman of enough votes to throw the election into the House of Representatives.

Southern protest meant that the political consequences of a pro-civil rights posture were not all positive. Accordingly, Truman downplayed the issue, depending on his audience. The black vote, however, remained a priority. Consequently, although he appeared at a segre-

91. The same view was held by others. In 1948, Henry Lee Moon published a book arguing that the black vote could play a critical role in the 1948 election, and that the black vote was "in the vest pocket of no party," but would have to be earned. H. MOON, *BALANCE OF POWER: THE NEGRO VOTE* 11-12, 213-14 (1948).

92. Confidential Memorandum from Clark M. Clifford to President Truman, November 19, 1947, at 40, Political File—Confidential Memo to President, Box 21, Clark Clifford Papers, Harry S Truman Library; see also Sitkoff, *Harry Truman and the Election of 1948: The Coming of Age of Civil Rights in American Politics*, 37 J. SOUTHERN HIST. 597, 597 (1971). For Clifford, Truman's position on civil rights need only involve election-year posturing, not tangible results. The strategy assumed that the Administration "will get no major part of its own program approved." Clifford Memorandum, *supra*, at 19. Consequently, its tactics would be "entirely different than if there were any real point to bargaining and compromise. Its recommendations . . . must be tailored for the voter, not the Congressman; they must display a label which reads 'no compromises.'" *Id.*

93. See Clifford Memorandum, *supra* note 92, at 12-13.

94. *Id.* at 3.

95. See D. MCCOY & R. RUETTEN, *supra* note 14, at 145-46.

96. *Id.* at 131-34. In addition, he issued executive orders desegregating the military and establishing a Fair Employment Board in the Civil Service Commission to review complaints of race discrimination in employment in the executive branch. *Id.* at 129.

97. *Id.* at 127.

98. *Id.*

gated white college,⁹⁹ Truman also became the first President to speak in Harlem. Before the Harlem audience he promised to work for the achievement of equal rights "with every ounce of strength and determination that I have."¹⁰⁰

During the 1948 campaign, Truman took a significant step to promote racial equality, issuing an executive order calling for desegregation of the armed forces.¹⁰¹ According to Harvard Sitkoff, desegregation of the military was Truman's "most concrete" civil rights success.¹⁰² An important reason that real progress was possible in that area was that Truman's authority over the armed forces meant that he did not have to depend on Congress to approve his efforts. Truman failed to achieve other objectives—such as establishment of a permanent Fair Employment Practices Commission and enhancement of federal government authority to prosecute lynchers—because Congress would not cooperate.¹⁰³

Though the polls predicted otherwise, Truman defeated Dewey by a surprising margin in the electoral college. The popular vote in key states was sufficiently close, however, that some have argued that blacks, particularly in urban areas in the North, provided the President with the margin of victory.¹⁰⁴

IV. AMERICAN RACISM IN THE EYES OF THE WORLD

A. *International Press Coverage*

Apart from pressure from civil rights activists and electoral politics at home, the Truman Administration had another reason to address domestic racism: other countries were paying attention to the problem. Newspapers in many corners of the world covered stories of racial discrimination against visiting non-white foreign dignitaries and Americans. And as tension between the United States and the Soviet Union increased in the years after the war, the Soviets made effective use of

99. Sitkoff, *supra* note 92, at 610.

100. D. MCCOY & R. RUETTEN, *supra* note 14, at 143.

101. Exec. Order No. 9981, 13 Fed. Reg. 4313 (1948). See generally R. DALFUME, *supra* note 14.

102. Sitkoff, *supra* note 14, at 101 n.33.

103. See A. HAMBY, *supra* note 14, at 65; Bernstein, *supra* note 9, at 296. See generally S. HARTMANN, *TRUMAN AND THE 80TH CONGRESS* (1971).

Barton J. Bernstein has argued that Truman could have accomplished much more than he did, notwithstanding the fact that he could not get civil rights legislation through Congress. Truman's strategy "seemed to be one of reasonably bold requests in the legislative arena, where they could not succeed, and more cautious proposals in the executive arena, where the President had greater power." Bernstein, *supra* note 9, at 284; accord W. BERMAN, *supra* note 9, at 26-28.

104. See Sitkoff, *supra* note 92, at 613-14; see also D. MCCOY & R. RUETTEN, *supra* note 14, at 143-44, 145-47. In many areas, including Harlem, Truman received a greater proportion of the black vote than Roosevelt had in 1944. *Id.* at 143. Barton J. Bernstein has suggested that "[t]he election revealed that the urban Negro vote, in a close election, could be more important than Southern solidarity . . ." Bernstein, *supra* note 9, at 292.

U.S. failings in this area in anti-American propaganda. Concern about the effect of U.S. race discrimination on cold war American foreign policy led the Truman Administration to consider a pro-civil rights posture as part of its international agenda to promote democracy and contain communism.

In one example of foreign press coverage, in December 1946 the *Fiji Times & Herald* published an article entitled "Persecution of Negroes Still Strong in America."¹⁰⁵ According to the Fiji paper, "the United States has within its own borders, one of the most oppressed and persecuted minorities in the world today."¹⁰⁶ In the Southern states, "hundreds of thousands of negroes exist today in an economic condition worse than the out-and-out slavery of a century ago." Treatment of blacks was not merely a question of race discrimination; "it is frequently a question of the most terrible forms of racial persecution."¹⁰⁷

The article described the 1946 lynching of four blacks in Georgia.¹⁰⁸ "This outrage," the article continued, followed Supreme Court action invalidating Georgia voting restrictions.¹⁰⁹ "The decision gave

105. Dispatch No. 96, from American Consulate General, Suva, Fiji Islands, to Secretary of State (Dec. 27, 1946), National Archives and Records Service Doc. No. 811.4016/12-2746. (Hereinafter records from the National Archives are cited as "NARS Doc. No." National Archives documents cited in this article are State Department records. The document numbers refer to the State Department Central Decimal File. Researchers can locate the documents at the National Archives by referring to the Decimal File Number. Copies of all National Archives and Truman Library documents cited in the article are also on file at the *Stanford Law Review*.) The article was motivated by a *Chicago Tribune* article criticizing Britain for its handling of the Palestine crisis in 1946. The *Fiji Times & Herald* article began by claiming that "[m]any people in the United States seem to enjoy crusading as long as they avoid entanglements and can direct criticism across the Atlantic." *Id.*

The idea that the U.S. had unclean hands and accordingly, no standing to criticize Britain on the issue of Palestine was suggested in the British media as well. A cartoon in the June 8, 1947 *London Sunday Express* showed two white men reading a newspaper entitled "Southern Press," and standing in front of a whites-only hotel that was draped with an American flag. Behind them a dead black man lay beneath a tree beside a rope. One of the whites remarked to the other: "Shameful the way the British are handling this Palestine business." Dispatch No. 436, from American Consul General, Hamburg, Germany, to Secretary of State, June 10, 1947, NARS Doc. No. 811.4016/6-1047.

106. Dispatch No. 96, *supra* note 105.

107. *Id.*

108. See text accompanying note 85 *supra*.

109. The reference is to the denial of certiorari in a case in which lower federal courts had found Georgia voting laws to be unconstitutional. *King v. Chapman*, 62 F. Supp. 639 (M.D. Ga. 1945), *aff'd*, 154 F.2d 460 (5th Cir. 1946), *cert. denied*, 327 U.S. 800 (1946). In this case Primus E. King sued the Democratic Executive Committee of Muscogee County, Georgia, claiming that he had been denied the right to vote in the July 1944 Democratic primary solely on the grounds of his race. Following *Smith v. Allwright*, 321 U.S. 649 (1944) (abolishing Texas white primary), the district court ruled that the Georgia Democratic primary was an integral part of the state electoral process, and therefore the refusal of Democratic officials to allow King to vote was impermissible state action, violating the Fourteenth, Fifteenth, and Seventeenth Amendments. 62 F. Supp. at 649-50.

This victory was short-lived, however. In February 1947 the Georgia legislature repealed all state primary laws. See S. LAWSON, *BLACK BALLOTS: VOTING RIGHTS IN THE SOUTH, 1944-1969*, at 49 (1976).

the negro the legal right to vote but [Georgia Governor] Talmadge challenged him to exercise it. He also flung a defiance to the Court itself and asked the voters of his State to back him up, which they did."¹¹⁰ According to the paper, "[v]ery few negroes dared to vote, even though the country's highest tribunal had found them entitled to. Most of those who did, or tried to, were badly mauled by white ruffians."¹¹¹ The article noted that federal antilynching legislation had been proposed in the past, and "further attempts are certain in the next Congress."¹¹²

The *Fiji Times & Herald* was not entirely critical. Reporting that a recent dinner honoring black journalists had brought together blacks and white Southerners,¹¹³ the paper concluded that "[t]he point is that the best culture of the south, in America, is opposed to the Bilbo-Talmadge anti-negro oppression and seems today more than ever inclined to join with the north in fighting it."¹¹⁴ Efforts against racial intolerance had particular consequences in the U.S., for "there cannot be, on the basic tenants [sic] of Americanism, such a thing as second class citizenship."¹¹⁵ The issue also had broader implications, however. "The recognition and acceptance of the concept of a common humanity should, and must, shatter the longstanding bulwarks of intolerance, racial or otherwise, before anything entitled to call itself true civilisation can be established in America or any other country."¹¹⁶

The American Consul in Fiji was unhappy with the *Times & Herald* article, which it saw as "an indication of certain of the anti-American and/or misinformation or propoganda now carried" in the paper.¹¹⁷ A response to the article seemed appropriate and necessary. "If and when a favorable opportunity occurs, the matter of the reasonableness or justification in the publication of such biased and unfounded material, obviously prejudicial to American prestige throughout this area, will be tactfully broached to the Editor and appropriate government

110. Dispatch No. 96, *supra* note 105.

111. *Id.*

112. *Id.* The article also discussed other instances of discrimination, such as the Daughters of the American Revolution's refusal to allow opera singer Marian Anderson to perform in Constitution Hall. *Id.* Instances of racism on the part of the DAR received widespread, critical attention in the foreign press. For example, when the DAR refused to permit black pianist Hazel Scott to perform in Constitution Hall, the American Consul General in Bombay, India stated that news of the incident "was fully reported in practically all of the local press." The *Bombay Morning Standard* called it a "shameful manifestation of racial intolerance." See Dispatch No. 2397, from American Consulate General, Bombay, India, to Secretary of State (Oct. 17, 1948), NARS Doc. No. 811.4016/10-1745.

113. The dinner was funded by an endowment left by Wendell Wilkie, the 1940 Republican presidential candidate, who the *Fiji Times & Herald* described as "a notable fighter against the persecution of negroes." Dispatch No. 96, *supra* note 105.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

officials."¹¹⁸

In Ceylon, American Embassy officials were concerned about what they considered to be "Asian preoccupation with racial discrimination in the United States."¹¹⁹ Ceylon newspapers ran stories on U.S. racial problems picked up from Reuters wire service.¹²⁰ In addition, a Ceylon *Observer* columnist focused on the issue, particularly the seeming contradiction of segregation in the capital of American democracy. In his article, Lakshman Seneviratne quoted *Time* magazine as saying, "[i]n Washington, the seated figure of Abraham Lincoln broods over the capital of the U.S. where Jim Crow is the rule." According to Seneviratne, in Washington "the colour bar is the greatest propaganda gift any country could give the Kremlin in its persistent bid for the affections of the coloured races of the world, who, if industrialized, and technically mobilized, can well dominate, if domination is the obsession, the human race."¹²¹

The effect of U.S. race discrimination on the country's leadership in postwar world politics was discussed in the Chinese Press. The Shanghai *Ta Kung Pao* covered the May 2, 1948 arrest of U.S. Senator Glen Taylor for violating Alabama segregation laws.¹²² Criticizing Taylor's arrest, the paper noted that "[t]he Negro problem is a problem of U.S. internal politics, and naturally, it is unnecessary for anybody else to meddle with it."¹²³ However, the issue had international ramifications.

[W]e cannot help having some impressions of the United States which actually already leads half of the world and which would like to con-

118. *Id.*

119. See Dispatch no. 297, from American Embassy, Colombo, Ceylon [Sri Lanka], to Secretary of State (Dec. 22, 1948), NARS Doc. No. 811.4016/12-2248; Dispatch No. 311, from American Embassy, Colombo, Ceylon [Sri Lanka], to Secretary of State (Dec. 31, 1948), NARS Doc. No. 811.4016/12-3148; Dispatch No. 466, from American Embassy, Colombo, Ceylon [Sri Lanka], to Secretary of State (May 25, 1949), NARS Doc. No. 811.4016/5-2549.

120. Dispatch No. 297 and Dispatch No. 311, *supra* note 119. According to a U.S. Embassy official in Colombo, Reuters, a British wire service, had a practice of "accentuating the unfavorable side of news from the United States for foreign readers." Dispatch No. 297, *supra* note 119.

121. Dispatch No. 466, *supra* note 119.

In response to coverage given to U.S. racial problems, American Embassy officials planned to put together a brief description of "the 'caste system' as it exists in Ceylon today." Dispatch No. 297, *supra* note 119.

122. At the time, Taylor was the vice-presidential running mate of third party candidate Henry A. Wallace. On May 2, 1948, Taylor, who was white, attempted to use the "colored entrance" to a Birmingham, Alabama church where he was scheduled to speak to a meeting of the Southern Negro Youth Congress. *N.Y. Times*, May 3, 1948, at 1, col. 2. A police officer stationed at the door informed Taylor that "this was the colored entrance." Taylor responded that "it did not make any difference to me and started in." *Id.* at 12, col. 6. Five officers then arrested Taylor, who sustained minor injuries in the process. "[They] treated me very rough—anything but gentlemanly," he later said. "God help the ordinary man." *Id.* Although Taylor violated the Birmingham segregation law, he was only charged with disorderly conduct, circumventing a challenge to the city law. *Id.* at 1, col. 2.

123. Chinese Press Review No. 635, American Consulate General, Shanghai, China (May 6, 1948), Enclosure No. 1 to Dispatch No. 452, from American Consulate General, Shanghai, China, to Secretary of State (May 10, 1948), NARS Doc. No. 811.4016/5-1048 (quoting Shanghai *Ta Kung Pao*).

tinue to lead it. If the United States merely wants to "dominate" the world, the atomic bomb and the U.S. dollar will be sufficient to achieve this purpose. However, the world cannot be "dominated" for a long period of time. If the United States wants to "lead" the world, it must have a kind of moral superiority in addition to military superiority.¹²⁴

According to the paper, "the United States prides itself on its 'liberal traditions,' and it is in the United States itself that these traditions can best be demonstrated."¹²⁵

The American Consul General in Shanghai believed that the Ta Kung Pao editorial "discusses the Negro problem in the U.S. in a manner quite close to the Communist Party line."¹²⁶ The Consul General preferred an editorial in the China Daily Tribune which cast American race discrimination as a problem generated by a small minority who were acting against the grain. According to that paper, "Prejudice against people of color seems to die hard in some parts of the United States despite all that President Truman and the more enlightened leaders of the nation are doing to ensure that race equality shall become an established fact."¹²⁷

Attention to problems of U.S. race discrimination sometimes focused on matters in the courts.¹²⁸ State or federal court decisions that overturned discriminatory practices had favorable consequences for foreign relations. For example, when the California Supreme Court overturned that state's anti-miscegenation statute in 1948,¹²⁹ the Manila Chronicle called the action "[a]n answer to the prayer of Filipinos now residing in San Francisco, California."¹³⁰ In commenting on the story, the Charge d'Affaires in the American Embassy in Manila noted that

"color" feeling, stimulated by hearsay and/or fact of discrimination in the United States, is an ever-present catalyst among Filipinos. Therefore, it may be readily understood that the action of the Supreme Court of California, seemingly being evidence of concrete progress in eliminating racial discrimination, is important in dispelling or mitigating "color barrier" psychology and its concomitant, the tendency to forma-

124. *Id.*

125. *Id.*

126. Dispatch No. 452, *supra* note 123.

127. Chinese Press Review No. 635, *supra* note 123 (quoting *China Daily Tribune*).

128. *See, e.g.*, Dispatch No. 112, from American Consulate General, Madras, India, to Secretary of State (May 6, 1948), NARS Doc. No. 811-4016/5-648 (concerning editorial on *Shelley v. Kraemer*, 344 U.S. 1 (1948)).

129. *Perez v. Sharp*, 32 Cal. 2d 711, 198 P.2d 17 (1948). In *Perez*, a black man and a white woman had been denied a marriage license by the Los Angeles County Clerk. The California Supreme Court held that the statute forbidding interracial marriage was void on equal protection grounds. *Id.* at 731-32, 198 P.2d at 29.

130. Dispatch No. 995, from American Embassy, Manila, the Philippines, to Secretary of State (Oct. 5, 1948), NARS Doc. No. 811.4016/10-548. According to the Manila paper, there were "not enough women among the Filipinos there. So the laborers have been forced to seek life partners from among the whites." *Id.*

tion of "color", racial or "Asia for the Asiatics" groupings.¹³¹

Indian newspapers were particularly attuned to the issue of race discrimination in the U.S. According to the American Consul General in Bombay, "[t]he color question is of intense interest in India."¹³² Numerous articles with titles like "Negro Baiting in America,"¹³³ "Treatment of Negroes a Blot on U.S."¹³⁴ and "Untouchability Banished in India: Worshipped in America,"¹³⁵ appeared in the Indian press. Regarding the latter article, the American Consul General commented that it was "somewhat typical of the irresponsible and malicious type of story on the American Negro which appears not too infrequently in segments of the Indian press . . ."¹³⁶ The article was written by Canadian George T. Prud'homme, who the Consul General described as a "communist writer."¹³⁷ It concerned a trip through the South, and included a photograph of a chain gang.¹³⁸ According to Prud'homme, "[t]he farther South one travels, the less human the Negro status becomes, until in Georgia and Florida it degenerates to the level of the beast in the field."¹³⁹

Prud'homme described an incident following his attempt to speak to blacks seated behind him on a segregated bus. He was later warned "not to talk to 'those damned niggers.'"

"We don't even talk to niggers down here," said [a] blond young man.

"You better not either . . . unless you want to get beaten up."

I replied I didn't think the Negroes would attempt to beat me up with the bus half-filled with whites.

"*It isn't the niggers that will beat you up, it's the whites you have to look out for,*" confided the driver. "*This ain't the North. Everything is different down here.*"¹⁴⁰

The article discussed segregation, the history of the Ku Klux Klan,

131. *Id.* The Charge d'Affaires commented that the *Manila Chronicle* story was "fairly representative of Philippine opinion on this matter." *Id.*

132. Dispatch No. 76, from John J. Macdonald, American Consul General, Bombay, India, to Secretary of State (Mar. 28, 1947), NARS Doc. No. 811.4016/3-2847.

133. *Id.* (quoting *Bombay Chronicle*, Mar. 22, 1947).

134. Dispatch No. 2169, from Howard Donovan, American Consul General, Bombay, India, to Secretary of State (July 11, 1945), NARS Doc. No. 311.4016/7-1145 (quoting *Sunday Standard (Bombay)*, July 8, 1945).

135. Dispatch No. 214, from Clare H. Timberlake, American Consul General, Bombay, India, to Secretary of State (May 4, 1949), NARS Doc. No. 811.4016/5-449 (quoting *Blitz*, Apr. 23, 1949).

136. *Id.*

137. *Id.*

138. Another photograph of a black man lying on bedding on the ground had the caption "Waiting for Death: 'When the time comes to die, it don't make much difference if you are poor; you just have a feeling you're sorry to be leaving.' In these pathetic words, this Negro youth, worn out by hard labour and tortured by man's [in]humanity to man, summed up his little philosophy of life as he lay in his bed, waiting for death!" *Id.*

139. *Id.*

140. *Id.* (emphasis in original).

and the denial of voting rights through poll taxes and discriminatory voter registration tests. The writer believed that American treatment of blacks "strangely resembles the story of India under British domination." The "only bright spot in this picture" was provided by individuals such as a white Baptist pastor who was committed to racial equality. But the minister told Prud'homme, "If one of us fights for true democracy and progress, he is labelled a Communist. . . . That is an effective way of shutting him up."¹⁴¹

U.S. officials in India felt that Indian criticism of U.S. racial practices was somewhat ironic in light of the continuing caste system in India.¹⁴² According to the American Consul in Madras, India, "[a]n oft-repeated answer by the recent Consul General at this post to questions about the 'color problem' in the United States was 'Yes, it's almost as bad as it is in India.' This often caused such embarrassed confusion that the subject was immediately dropped."¹⁴³

Criticism came even from the nation's closest allies. The British press covered postwar racial tension in the South and Ku Klux Klan activity.¹⁴⁴ Particular attention was given to scheduled executions of blacks. For example, in 1946, Charles Trudell and James Lewis, Jr., both fourteen years old, were sentenced to death in Jackson, Mississippi, for murdering their white employer.¹⁴⁵ By January 16, 1947, the U.S. Embassy in London had received three hundred and two communications protesting the death sentences. Forty-eight of those were petitions with several hundred signatures.¹⁴⁶ In addition, three members of the House of Commons sent a telegram to President Truman, urging him to "protect basic human rights by intervening" to stop the execu-

141. *Id.*

142. The caste system in India was based on the ancient Hindu belief that society was divided into four divinely ordained and hierarchical classes which were fixed at birth and thus became immutable throughout life. The highest caste was the Brahmins, which encompassed priests and other spiritual or intellectual leaders. Then came the Kshatriyas, or warrior class. Next were the Vaishyas, or trader class, and finally the Sudras, or servant class. Below that were the so-called "backward castes," also known as "the untouchables." G. VERMA, *CASTE RESERVATION IN INDIA—LAW AND THE CONSTITUTION* 112-16 (1980). The caste system sharply delineated the social, economic, and political privileges available to caste members, although the Indian constitution attempted to break down the rigidity of the caste system by reserving certain government jobs for members of the "backward castes." *See generally id.*

143. Dispatch No. 112, *supra* note 128.

144. *See, e.g.*, Dispatch No. 825, from American Embassy, London, England, to Secretary of State (June 25, 1946), NARS Doc. No. 811.4016/6-2546 (concerning *Manchester Guardian* editorial on Ku Klux Klan); Dispatch No. 1709, from American Embassy, London, England, to Secretary of State (Sept. 12, 1946), NARS Doc. No. 811.4016/9-1246 (concerning *Manchester Guardian* article "Race Friction in the South: The War and the Negro"); *see also London Sunday Express* cartoon, in Dispatch No. 436, *supra* note 105.

145. *See Lewis v. State*, 201 Miss. 48, 28 So. 2d 122 (1946); *Trudell v. State*, 28 So. 2d 124 (Miss. 1946); *see also* Telegram No. 195, from London, via War Department, to Secretary of State (Jan. 10, 1947, 6:00 p.m.), NARS Doc. No. 811.4016/1-1047 (discussing attention given to case in London press and Parliament).

146. Telegram No. 338, from London, via War Dep't, to Secretary of State (Jan. 16, 1947, 7:00 p.m.), NARS Doc. No. 811.4016/1-1647.

tions.¹⁴⁷ The convictions and sentences were affirmed by the Mississippi Supreme Court,¹⁴⁸ and the U.S. Supreme Court denied certiorari in the cases.¹⁴⁹ Notwithstanding the attention given to the cases, Mississippi Governor Fielding Wright denied clemency.¹⁵⁰

Reports by American Embassy staff on foreign press coverage of racial problems in the U.S. usually contained information on the political leanings of the publication, particularly whether they tended to be "anti-American" and/or "leftist."¹⁵¹ When criticism came from sources perceived as leftist, the motive of the writers was often called into question. For example, a dispatch from the American Embassy in Oslo regarding Norwegian press coverage of the treatment of blacks in the U.S. noted that "although certain writers discuss the matter with some understanding, the tone generally employed by the Leftist press is critical and unfriendly to the United States."¹⁵²

On the other hand, when U.S. Embassy officials found critical coverage of U.S. race discrimination in politically conservative publications, they were less likely to assume that the writer was biased. In one example, Helen Vlachos, a writer in a prominent "conservative" Greek newspaper, noted, "America has its Achilles heel and . . . the heel is quite black!"¹⁵³ Following a trip to the American South, the writer felt that she understood "the bitter answer of a small Negro boy who, when asked by his teacher what punishment he would impose upon Adolph Hitler, said: 'I would paint his face black and send him to America im-

147. Petitions were also sent to the British Secretary of State for Foreign Affairs, requesting his intervention, and the matter was discussed in the House of Commons. The Secretary declined to become involved because the death sentences were "a matter of United States domestic policy in which it would not be proper for His Majesty's Government to intervene" and because the case was pending in the U.S. Supreme Court. See Dispatch No. 3662, from American Embassy, London, England, to Secretary of State (Feb. 6, 1947), NARS Doc. No. 811.4016/2-647.

148. *Lewis*, 201 Miss. at 61, 28 So. 2d at 124; *Trudell*, 28 So. 2d at 125.

149. *Trudell v. Mississippi*, 331 U.S. 785 (1947).

150. *N.Y. Times*, Jan. 5, 1947, at 42, col. 4. Publicity from such protests was important in generating outside scrutiny of the criminal justice system in the South. Such protests were often unsuccessful in changing the outcome in a particular case, however. The impact of Cold War anticommunism on local politics helped to undercut the effectiveness of mass protest. For example, in the Martinsville Seven case, in which seven black men were sentenced to death in Virginia for the rape of a white woman, domestic and international protest was in part orchestrated by the Communist Party, and by the left-wing Civil Rights Congress. See E. Rise, *Race, Rape, and Radicalism: The Martinsville Seven and Cold War Criminal Justice, 1949-1951*, at 105-11 (M.A. Thesis, University of Florida, 1987). Eric Rise has written that Virginia Governor John Stewart Battle's refusal to grant clemency to at least some of the defendants was influenced by his desire to "avoid the appearance that radical protest had swayed him." *Id.* at 112.

151. See, e.g., Dispatch No. 452, *supra* note 124; Dispatch No. 214, *supra* note 135; Dispatch No. 2062, *infra* note 187.

152. See Dispatch No. 1261, from American Embassy, Oslo, Norway, to Dep't of State (Aug. 5, 1947), NARS Doc. No. 811.4016/8-547 (discussing press coverage).

153. See Dispatch No. 775, from K.L. Rankin, American Embassy, Athens, Greece, to Secretary of State (July 22, 1938), NARS Doc. No. 811.4016/7-2248. According to the Embassy memorandum, the Athens daily newspaper, *Kathimerini*, was a "conservative" paper and had the highest circulation of all Athens daily papers. *Id.*

mediately!’”¹⁵⁴ According to K.L. Rankin, the Charge d’Affaires at the American Embassy in Athens, Vlachos’ writing on the U.S. had generally been “well disposed with respect to the American people and their institutions and in harmony with the basically friendly attitude the author has always shown toward the United States.”¹⁵⁵ Accordingly, “[h]er comments . . . should therefore be regarded, not as stemming from any anti-American bias, but as the author’s frank reaction to what she regards as a deplorable situation.”¹⁵⁶ Rankin noted that Vlachos’ views were “being widely read and discussed by educated Athenians, the overwhelming majority of whom share her feelings in the matter.”¹⁵⁷

Of particular concern to the State Department was coverage of U.S. racism in the Soviet media. The U.S. Embassy in Moscow believed that a number of articles in 1946 “may portend stronger emphasis on this theme as [a] Soviet propaganda weapon.”¹⁵⁸ In August 1946, the U.S. Embassy in Moscow sent the State Department a translation of an editorial from the periodical *Trud* which was “representative of the frequent Soviet press comment on the question of Negro discrimination in the United States.”¹⁵⁹ The *Trud* article was based on information the Soviets had gathered from the “progressive American press,”¹⁶⁰ and it concerned lynching and black labor in the South.

According to *Trud*, American periodicals had reported “the increasing frequency of terroristic acts against negroes,” including “the bestial mobbing of four negroes by a band of 20 to 25 whites” in July 1946 in Monroe, Georgia.¹⁶¹ In another incident near Linden, Louisiana, “a crowd of white men tortured a negro war veteran, John Jones, tore his arms out and set fire to his body. The papers stress the fact that the murderers, even though they are identified, remain unpunished.”¹⁶²

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Telegram No. 4180, from Moscow to Secretary of State (Nov. 20, 1946), NARS Doc. No. 811.4016/11-2046.

159. Dispatch No. 355, from American Embassy, Moscow, U.S.S.R., to Dep’t of State (Aug. 26, 1946), NARS Doc. No. 811.4016/8-2646.

160. *Id.*

161. See text accompanying note 85 *supra* (discussing Monroe lynching).

162. Dispatch No. 355, *supra* note 159. The *New York Times* reported that John Jones’s body was discovered on Dorcheat Bayou in Louisiana by a group of fishermen. He had apparently been beaten to death. Jones and a companion, who was also black, had been arrested after allegedly trying to break into a white woman’s home. No charges were filed, and the two were released. Soon after their release, the men were picked up by a group of unidentified persons, and placed in separate cars. Jones’s companion was beaten and survived. Jones was later found dead. *N.Y. Times*, Aug. 16, 1946, at 36, col. 2.

The Linden, Louisiana Police Chief, B. Geary Gantt, two Deputy Sheriffs, and three others were later indicted by a federal grand jury for depriving Jones and his companion of their constitutional rights by “causing them to be released and handed over to a mob which then inflicted a beating upon both.” *N.Y. Times*, Oct. 19, 1946, at 22, col. 6. Five of the defendants were tried and acquitted by a Shreveport, Louisiana jury. *N.Y. Times*, March 2,

U.S. census figures indicated that three quarters of American blacks lived in the South. In the Southern "Black Belt," "the negroes are overwhelmingly engaged in agriculture, as small tenant-farmers, share-croppers and hired hands. Semi-slave forms of oppression and exploitation are the rule . . ." ¹⁶³ Blacks were denied economic rights due to the way the legal system protected the interests of the landowners upon whose property share-croppers and tenant farmers labored. ¹⁶⁴ In addition, "[t]he absence of economic rights is accompanied by the absence of social rights. The poll tax, in effect in the Southern States, deprives the overwhelming majority of negroes of the right to vote." ¹⁶⁵ *Trud* observed that "[t]he movement for full economic, political and social equality is spreading among the negro population," but that "[t]his movement has evoked exceptional fury and resistance." ¹⁶⁶ According to the paper, "[t]he progressive public opinion of the USA is indignant at the baiting of negroes, and rightly sees in this one of the means by which reaction is taking the offensive against the working people." ¹⁶⁷

By 1949, according to the U.S. Embassy in Moscow, "the 'Negro question' [was] [o]ne of the principal Soviet propaganda themes regarding the United States." ¹⁶⁸ "[T]he Soviet press hammers away unceasingly on such things as 'lynch law,' segregation, racial discrimination, deprivation of political rights, etc., seeking to build up a

1947, at 63, col. 5. The *Times* did not report the disposition of the charges against Police Chief Gantt. See *id.*

163. Dispatch No. 355, *supra* note 159.

164. See *id.* The paper continued,

The unjust position of the negro population of the South is expressed in a slave system of economic relationships and in the laws. For example, there are laws which give the landowners, who are almost exclusively white, the right to seize the tenants' harvest in that manner actually bind the negro farmers to the land. The negroes depend on the mercy of the landowners and usurers who pitilessly exploit them. On the basis of the law which permits seizure of the harvest, the negro may be sentenced to hard labor for non-payment of a debt.

Id. State laws which continued to allow the system of peonage described in the *Trud* article were overturned by the Supreme Court in the 1940s. See *Taylor v. Georgia*, 315 U.S. 25 (1942); *Pollock v. Williams*, 322 U.S. 4 (1949); see also P. DANIEL, *THE SHADOW OF SLAVERY: PEONAGE IN THE SOUTH, 1901-1969*, at 175-92 (1972). See generally Cohen, *Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J. SOUTHERN HIST. 31 (1976), reprinted in *AMERICAN LAW AND THE CONSTITUTIONAL ORDER* 317 (L. Friedman & H. Scheiber eds. 1978).

165. Dispatch No. 355, *supra* note 159.

166. "[P]articularly great efforts" had been made by "the reaction" during recent primary elections in the South.

The purpose of the unbridled terror directed against the negroes was to keep the negro masses from participating in the elections in such states as Virginia, South Carolina, Georgia and Tennessee, and to crush the liberation movement among the negroes at its root. The terror proves the intention of finance capital to smash the campaign begun by the CIO to bring more than 2,000,000 unorganized negro and white workers in industrial enterprises of the South into the unions.

Id.

167. *Id.*

168. Airgram A-677, from Moscow, U.S.S.R., to Secretary of State (July 27, 1949), NARS Doc. No. 811.4016/6-2749.

picture of an America in which the Negroes are brutally downtrodden with no hope of improving their status under the existing form of government." 169 An Embassy official believed that "this attention to the Negro problem serves political ends desired by the Soviet Union and has nothing whatsoever to do with any desire to better the Negro's position" 170 The "Soviet press seizes upon anything showing the position of the US Negro in a derogatory light while ignoring entirely the genuine progress being made in America in improving the situation." 171

Race discrimination in the U.S. was not only directed at U.S. citizens. When non-white foreign dignitaries visited the country, they were often subjected to similar treatment, and incidents of discrimination against visiting foreign officials would generate a highly critical reaction against U.S. racism in the official's country.

In one such incident, Francois Georges, Haitian Secretary of Agriculture, travelled to Biloxi, Mississippi in November 1947 to attend a conference he had been invited to by the National Association of Commissioners, Secretaries and Directors of Agriculture. 172 Unaware that Georges was black, the Biloxi Buena Vista Hotel had confirmed a reservation for the Minister. 173 Upon Georges' arrival, he was informed that for "reasons of color" he would not be able to stay in the hotel with others attending the conference, 174 but would have to stay in separate accommodations. He was informed that his meals during the conference would be served in his rooms, rather than in the hotel restaurant with other guests. 175 Georges left without attending the conference. He later indignantly told a U.S. Embassy official in Haiti, "You can see

169. *Id.*

170. *Id.*

171. *Id.* The writer felt that his point was "graphically revealed" by the way Ralph Bunche, a United States representative in the United Nations, was treated in the Soviet media. Although Bunche's name was mentioned frequently in conjunction with his role in the UN, in that context his race was not mentioned. He was identified as a black, however, when Bunche announced that "Jim Crow" practices in Washington had been one of the contributing factors in his decision to decline the offer of an appointment as an Assistant Secretary of State." In addition, "[t]he Moscow newspapers passed over in silence Dr. Bunche's speech at Fisk University in May when he asserted that the democratic framework of society in the United States offers the greatest hope to the American Negro." *Id.*

172. Memorandum of Conversation, Dep't of State, Subject: Alleged Discrimination Against Haitian Agriculture Minister (Nov. 14, 1947), NARS Doc. No. FW 811.4016/11-1247; Letter from H.K. Thatcher, Executive Secretary of the National Association of Commissioners, Secretaries, and Directors of Agriculture, to Norman Armour, Assistant Secretary of State (Dec. 1, 1947), NARS Doc. No. 811.4016/12-147.

173. Letter from Jimmie Love, General Manager, The Buena Vista, to Robert F. Woodward, Dept. of State (Nov. 25, 1947), NARS Doc. No. 811.4016/11-2547.

174. Dispatch No. 785, from American Embassy, Port-au-Prince, Haiti, to Secretary of State (Nov. 18, 1947), NARS Doc. No. 811.4016/11.1847.

175. Letter from Love to Woodward, *supra* note 173. There was some dispute regarding the nature of the separate accommodations. According to one source, they were "servants' quarters which had not been prepared to receive guests." Memorandum of Conversation, Nov. 14, 1947, *supra* note 172. According to the Manager of the Buena Vista, the accommodations consisted of "one of our attractive guest cottages which are very much in demand with

how I would not wish to visit your country soon again."¹⁷⁶

The Haitian Ambassador to the United States lodged a complaint with the Secretary of State regarding the incident. According to the Ambassador, Georges had accepted the invitation to attend the conference in the belief that "it would afford one more occasion for setting forth how much his country is determined to furnish its co-operation in all circumstances for strengthening the solidarity among the democratic nations anxious to see the establishment in the world of a just and lasting peace based on the principles of justice and equality."¹⁷⁷ The Ambassador found the treatment of Georges to be out of step with such principles. He concluded that, "[c]onsidering the unfavorable repercussion produced on opinion by incidents of this kind, the Haitian Government would be disposed to decline all invitations to congresses and conferences which are to take place in States where its delegates would be exposed to slights not to be endured by the representatives of a sovereign and friendly country."¹⁷⁸

Although some Haitian newspapers initially "thought [it] better not to mention" the Biloxi incident, on November 17, *La Phalange* reprinted a *Miami Herald* article reporting the Haitian Ambassador's protest over the discrimination against Georges.¹⁷⁹ Other papers followed with editorials the next day. According to a U.S. Embassy airgram, "Popular Socialist *La Nation* begins its attack on United States with reference to recent accusations made by its readers to effect this newspaper was too pro-Soviet and anti-United States."¹⁸⁰ According to the paper,

the ardent defenders of American democracy now have before their eyes the brutal fact of what this democracy is Can a civilized people call the treatment of which our minister has been a victim other than barbaric; can serious people still speak of American democracy? Can the Americans themselves speak of Pan-American solidarity when among themselves they make a fierce discrimination between the peoples of the Americas?¹⁸¹

The editorial concluded with the "assertion that the Negro of Haiti understands that the word democracy in the United States has no meaning."¹⁸²

our regular guests located immediately adjacent to the hotel." Letter from Love to Woodward, *supra* note 173.

176. Dispatch No. 785, *supra* note 174.

177. Letter from Ambassador of Haiti to Secretary of State (Nov. 12, 1947), TC No. 46760, Dept. of State translation, NARS Doc. No. 811.4016/11.1247.

178. *Id.*

179. Airgram 3151, from Port-au-Prince, Haiti, to Secretary of State (Nov. 20, 1947), NARS Doc. No. 811.4016/11-2047.

180. *Id.*

181. *Id.* (quoting *La Nation*). Representatives from other countries and territories in North and Central America were in attendance and were not segregated. See Dispatch No. 785, *supra* note 174.

182. Airgram 3151, *supra* note 179.

In contrast to *La Nation's* indictment of American democracy, *Le Nouvelliste* "place[d] [the] onus on ignorance and backwardness in [the] Southern states."¹⁸³ That paper noted that other states, such as New York, prohibited race discrimination. Nevertheless, Southern racism was a "hideous disgusting fact that constitutes shame for any country as civilized as [the] United States."¹⁸⁴ The Biloxi incident "reenforces [sic] the unhappy opinion which is held throughout the world of the stupid color prejudice which is rotting certain Southern states of the United States."¹⁸⁵

The U.S. Embassy's response to this incident was to apologize and to advise the Haitians that they should contact the State Department before accepting invitations from non-government organizations in the future.¹⁸⁶ Meanwhile, the international implications of the event were not lost on a New York import-export company. Vice President Robert P. Holt of Gillespie & Company wrote to Secretary of State George C. Marshall that

[a]t a time when the vast problems of international relationship not only presuppose but require the utmost tact, it is to be deplored that an incident of this nature should have occurred, but even more so that those on the ground apparently should have been unable to mitigate the effect if not the circumstances.¹⁸⁷

U.S. Embassy officials were concerned about the effect of domestic race discrimination, and of propaganda on U.S. racial problems, on the anti-American or procommunist leanings of other nations. In a confi-

183. *Id.*

184. *Id.* (quoting *Le Nouvelliste*).

185. *Id.* (quoting *Le Nouvelliste*).

186. Memorandum of Conversation, *supra* note 172.

187. Letter from Holt to Secretary of State (Nov. 28, 1947), NARS Doc. No. 811.4016/11-2847.

In another example of discrimination against a foreign national, Pan American Airways refused to allow a black Jamaican journalist to eat in its Miami airport public restaurant. Dispatch No. 2062 from John H. Lord, American Consul, Kingston, Jamaica, to Secretary of State (Sept. 12, 1945), NARS Doc. No. 811.4016/9-1245. The incident was reported in the Kingston paper, *The Daily Gleaner*, on September 11 and 12, 1945. According to the September 11 article, the matter was discussed in the Jamaican Council, where Councillor Wills O. Isaacs stated that "any nation which indulges in racial discrimination . . . is a nation that is devoid of any real culture and any real decency." He continued, "if these people cannot respect the people of this country and place them on an equal footing with the people of America, then as far as I am concerned I would not allow one Pan American plane to fly over this country at all." *Id.*

While Deputy Mayor Alderman Gunter wished to disassociate himself from Isaacs' denunciation of the U.S., Councillor E. H. Fagan agreed with Isaacs. "If we are to get anywhere as a coloured people," he argued, "let us get it in our cranium that Jamaicans as a whole are coloured people, and in common with the big majority of coloured people all over the world it is time for us to talk out loud whenever acts of discrimination are practised against us. We find that the Americans do not care anything about us." *Id.*

In reporting on the incident to the Secretary of State, the American Consul in Kingston noted that Isaacs "has definite leftist tendencies." *Id.* Identifying a critic as "leftist" was the State Department's way of discounting the sincerity or validity of some criticism. See text accompanying notes 151-152 *supra*.

dential memorandum to the State Department regarding "Dutch Attitudes Toward American Racism," Robert Coe of the American Embassy in The Hague, reported on a "casual conversation" between an unnamed Embassy officer and a Dutch Foreign Ministry official. According to Coe, the Dutch official had

remarked that the Netherlands is very unreceptive to anti-American propaganda, whether it emanates from Communist sources or from right-wing colonial die-hards. However, he added that the opponents of American policies possess one propaganda theme which is extremely effective throughout Europe and even more effective in Asia—criticism of American racial attitudes.¹⁸⁸

According to the memorandum, the Dutch official was "well-informed about American politics and the American culture generally," but nevertheless, "he himself had never been able to understand the American point of view toward negroes and other minority groups, and that the point of view was extremely difficult for friends of America to explain, let alone defend."¹⁸⁹ The Dutch official's "knowledge of America" had

convinced him that America has made real progress in eliminating the worst aspects of racism, and he agreed that the nature and extent of American racial feeling has been grossly exaggerated by the Communists. However, he said that, in his opinion, the actual situation is sufficiently bad to provide a very solid foundation for the fabulous structure of lies which the Communists have built up.¹⁹⁰

There was a solution to this problem, however. The Dutch official suggested that the "United States information program should devote a major portion of its facilities and energies to a campaign aimed at counteracting the impression which so many people have of American racial suppression."¹⁹¹

B. *The United Nations as a Forum for Black Grievances*

After World War II, the Allies sought to create a new institution dedicated to world peace. The United Nations was envisioned as an international forum in which nations could peacefully resolve their differences. The hope of the founding countries was that the United Nations would "save succeeding generations from the scourge of war, . . . reaffirm faith in fundamental human rights, . . . establish conditions under which justice and respect for . . . international law can be maintained, and . . . promote social progress and better standards of life in

188. Memorandum from Robert Coe, U.S. Embassy, The Hague, the Netherlands, to Dep't of State (Feb. 13, 1950), NARS Doc. No. 811.411/2-1350.

189. *Id.*

190. *Id.*

191. *Id.*

larger freedom"¹⁹² The United States was a driving force behind the formation of the United Nations.¹⁹³ As much as the U.S. supported the organization, however, its formation gave rise to particular domestic and foreign relations difficulties. United Nations concern with human rights made the organization a perfect forum for American blacks to air their grievances before the world. In addition, it provided an environment in which critics of the U.S. would have an opportunity to focus attention on the country's weaknesses.

In February 1946, the UN Commission on Human Rights was established. The Commission was charged with preparing "proposals, recommendations and reports concerning: a) an international bill of rights; b) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; c) the protection of minorities; d) the prevention of discrimination on the grounds of race, sex, language or religion."¹⁹⁴ The work of the Subcommittee on the Prevention of Discrimination and Protection of Minorities would create the greatest difficulty for the United States. State Department officials recognized this prior to the Subcommittee's first meeting. Dean Rusk wrote in a November 4, 1947 memorandum that the

first session of the Subcommittee is a very important one to the United States, principally because it deals with a very difficult problem affecting the internal affairs of the United States. United States problems concerning relationships with minority groups have been fully treated in the press of other countries. This Subcommittee was established on the initiative of the U.S.S.R., and there is every indication that that country and others will raise questions concerning our domestic problems in this regard.¹⁹⁵

Rusk was right. However, the most powerful critique of U.S. racism presented before the United Nations came from American blacks. On October 23, 1947, the NAACP filed a petition in the United Nations protesting the treatment of blacks in the U.S. called *An Appeal to the World*.¹⁹⁶ The petition denounced U.S. race discrimination as "not only

192. U.N. CHARTER, Preamble, reprinted in U.N. DEPT. OF PUBLIC INFORMATION, BASIC FACTS ABOUT THE UNITED NATIONS 1-2 (1987).

193. The initial impetus toward a multinational peacekeeping organization came in the Atlantic Charter signed by Roosevelt and Churchill in August 1941. The organization took its name from the wartime coalition of "United Nations" allied against the Axis. The plan for such an organization was expanded and clarified at the Dumbarton Oaks and Yalta conferences and reached fruition with the signing of the United Nations Charter by fifty nations at San Francisco in 1945. S. FENICHELL, THE UNITED NATIONS: DESIGN FOR PEACE 3-5 (1960).

194. V. PRATT, THE INFLUENCE OF DOMESTIC CONTROVERSY ON AMERICAN PARTICIPATION IN THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS, 1946-1953, at 37 (1986).

195. Memo from Rusk to Hulten (Nov. 4, 1947), NARS Doc. No. 501.B.D Human Rights/11-447.

196. D. MCCOY & R. RUETTEN, *supra* note 14, at 67; see W. BERMAN, *supra* note 9, at 65-66; see N.Y. Times, Oct. 12, 1947, at 52, col. 3. The first such petition was filed by the National Negro Congress in June 1946. That petition sought "relief from oppression" for American blacks. In presenting it, the Congress expressed "profound regret that we, a sec-

indefensible but barbaric."¹⁹⁷ It claimed that racism harmed the nation as a whole. "It is not Russia that threatens the United States so much as Mississippi; not Stalin and Molotov but Bilbo and Rankin; internal injustice done to one's brothers is far more dangerous than the aggression of strangers from abroad."¹⁹⁸ The consequences of American failings were potentially global. "[T]he disfranchisement of the American Negro makes the functioning of all democracy in the nation difficult; and as democracy fails to function in the leading democracy in the world, it fails the world."¹⁹⁹ According to W.E.B. Du Bois, the principal author of the petition, the purpose behind the appeal was to enable the UN "to prepare this nation to be just to its own people."²⁰⁰

The NAACP petition "created an international sensation."²⁰¹ It received extensive coverage in the American and foreign media.²⁰² Meanwhile, U.S. Attorney General Tom Clark remarked, "I was humiliated . . . to realize that in our America there could be the slightest foundation for such a petition."²⁰³ Although she was a member of the Board of Directors of the NAACP,²⁰⁴ Eleanor Roosevelt, who was also a member of the American UN delegation, refused to introduce the NAACP petition in the United Nations out of concern that it would harm the international reputation of the United States.²⁰⁵ The Soviet

tion of the Negro people, having failed to find relief from oppression through constitutional appeal, find ourselves forced to bring this vital issue, which we have sought, for almost a century since emancipation, to solve within the boundary of our country to the attention of this historic body" N.Y. Times, June 2, 1946, at 33, col. 6. See *The First Petition to the United Nations from the Afro-American People*, in H. APTHEKER, *AFRO-AMERICAN HISTORY: THE MODERN ERA 301-11* (1971); Berry, *Rough, Tough and Angry*, *NEW MASSES*, June 18, 1946, at 17-19. The group sent a copy of the petition to President Truman. N.Y. Times, June 2, 1946, at 33, col. 6.

197. Petition, reprinted in Du Bois, *Three Centuries of Discrimination*, 54 *THE CRISIS* 362, 380 (1947).

198. *Id.*

199. *Id.*

200. N.Y. Times, Oct. 24, 1947, at 9, col. 5.

201. W. WHITE, *supra* note 83, at 358; see also D. MCCOY & R. RUETTEN, *supra* note 14, at 67 (footnote omitted); G. HORNE, *supra* note 7, at 78. According to Walter White, the NAACP was

flooded with requests for copies of the document, particularly from nations which were critical of the United States, including Russia, Great Britain, and the Union of South Africa. It was manifest that they were pleased to have documentary proof that the United States did not practice what it preached about freedom and democracy. But it was equally apparent that Russia, Great Britain, and the Union of South Africa were morally afraid that acceptance of the appeal on behalf of American Negroes and action on the document would establish a precedent giving the United Nations authority in those countries.

W. WHITE, *supra* note 83, at 358-59.

202. W. BERMAN, *supra* note 9, at 66.

203. D. MCCOY & R. RUETTEN, *supra* note 14, at 67. Clark should not have been so surprised. "[I]t is apparent that he was using the petition to support the federal government's quest for solutions to civil-rights problems, [as] when he announced that he was going to enlarge and strengthen the Justice Department's Civil Rights Section," *Id.*

204. Zangrando & Zangrando, *ER and Black Civil Rights*, in *WITHOUT PRECEDENT: THE LIFE AND CAREER OF ELEANOR ROOSEVELT* 88, 101 (1984).

205. *Id.* at 102. According to W.E.B. Du Bois, the American delegation had "refused to

Union, however, proposed that the NAACP's charges be investigated. On December 4, 1947, the UN Commission on Human Rights rejected that proposal, and the UN took no action on the petition.²⁰⁶ Nevertheless, the *Des Moines Register* remarked that the petition had "accomplished its purpose of arousing interest in discrimination."²⁰⁷ Although the domestic press reaction was generally favorable, the West Virginia *Morgantown Post* criticized the NAACP for "furnishing Soviet Russia with new ammunition to use against us."²⁰⁸

In December 1948, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide.²⁰⁹ The Genocide Convention provided the vehicle for another major UN petition from American blacks. Under the Convention, genocide was defined as the attempt to destroy a national, ethnic, racial, or religious group. Genocidal actions included killing persons or causing serious bodily harm to persons because they were members of a particular group.²¹⁰ Ratifying states agreed to punish any of their citizens who committed genocide, "including public officials responsible for genocidal policies."²¹¹

In 1951, the Civil Rights Congress filed a petition in the United Nations charging that the U.S. government had committed genocide against American blacks in violation of the Genocide Convention.²¹² The bulk of the Civil Rights Congress's lengthy petition consisted of documentation of 153 killings, 344 other crimes of violence against blacks, and other human rights abuses committed in the United States

bring the curtailment of our civil rights to the attention of the General Assembly [and] refused willingly to allow any other nation to bring this matter up; if any should, Mr. [sic] Roosevelt has declared that she would probably resign from the United Nations delegation." *Id.* (quoting memo from Du Bois to NAACP Board of Directors, Sept. 1948).

206. W. BERMAN, *supra* note 9, at 66; W. WHITE, *supra* note 83, at 359.

207. G. HORNE, *supra* note 7, at 79 (quoting *Des Moines Register*).

208. *See id.* (quoting *Morgantown Post*). Du Bois responded to similar criticism from Southern journalist Jonathan Daniels, a member of the UN Subcommittee on Discrimination and Protection of Minorities, by stating that "[t]he NAACP is not 'defending Russia' or anybody else; it is trying to get men like Mr. Daniels to stand up and be counted for the decent treatment of Negroes in America." *Id.* at 79-80.

209. D. COYLE, *THE UNITED NATIONS AND HOW IT WORKS* 84-85 (rev. ed. 1969); CIVIL RIGHTS CONGRESS, *WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE* 3 (2d ed. 1970).

210. Other genocidal actions included: "(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." CIVIL RIGHTS CONGRESS, *supra* note 209, at 32 (quoting Article II of the Genocide Convention).

211. D. COYLE, *supra* note 209, at 84-85.

212. CIVIL RIGHTS CONGRESS, *supra* note 209, at vii, xiv-xvi; N.Y. Times, Dec. 18, 1951, at 13, col. 3. Ninety-four individuals signed the petition. Among them was W.E.B. Du Bois, the person behind the 1947 NAACP petition. *See* CIVIL RIGHTS CONGRESS, *supra* note 209, at xvii-xviii.

I am grateful to Professor David Baldus for calling my attention to the Petition.

from 1945 to 1951.²¹³ The Congress claimed:

Out of the inhuman black ghettos of American cities, out of the cotton plantations of the South, comes this record of mass slayings on the basis of race, of lives deliberately warped and distorted by the willful creation of conditions making for premature death, poverty and disease. It is a record that calls aloud for condemnation, for an end to these terrible injustices that constitute a daily and ever-increasing violation of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.²¹⁴

According to the Civil Rights Congress, American blacks "suffer from genocide as the result of the consistent, conscious, unified policies of every branch of government."²¹⁵ The petition was filed with an international body because "[h]istory has shown that the racist theory of government of the U.S.A. is not the private affair of Americans, but the concern of mankind everywhere."²¹⁶

The Civil Rights Congress called upon the United Nations "to act and to call the Government of the United States to account."²¹⁷ The consequences for the U.S. related not only to internal human rights matters, but to its posture in international politics.

We believe that the test of the basic goals of a foreign policy is inherent in the manner in which a government treats its own nationals and is not to be found in the lofty platitudes that pervade so many treaties or constitutions. The essence lies not in the form, but rather, in the substance.²¹⁸

According to the petition, American genocide had important consequences for world peace.

This genocide of which your petitioners complain serves now, as it has in previous forms in the past, specific political and economic aims. Once its goal was the subjugation of American Negroes for the profits of chattel slavery. Now its aim is the splitting and emasculation of mass movements for peace and democracy, so that reaction may perpetuate its control and continue receiving the highest profits in the entire history of man. That purpose menaces the peace of the world as well as the life and welfare of the Negro people²¹⁹

213. CIVIL RIGHTS CONGRESS, *supra* note 209, at 58-187.

214. *Id.* at xiv.

215. *Id.*

216. *Id.* at xv. The petition continued:

It is our hope, and we fervently believe that it was the hope and aspiration of every black American whose voice was silenced forever through premature death at the hands of racist-minded hooligans or Klan terrorists, that the truth recorded here will be made known to the world; that it will speak with a tongue of fire loosing an unquenchable moral crusade, the universal response to which will sound the death knell of all racist theories.

Id.

217. *Id.* at xvi.

218. *Id.*

219. *Id.* at 27.

Ending genocide against American blacks "will mean returning this country to its people. It will mean a new growth of popular democracy and the forces of peace."²²⁰

As with the NAACP petition, the petition of the Civil Rights Congress focused international attention on American racism.²²¹ The State Department did not look favorably upon the Civil Rights Congress's efforts, however. After William Patterson, the organization's Executive Secretary, submitted the petition in Paris, the U.S. Embassy in Paris asked him to surrender his U.S. passport.²²² Patterson refused, but his passport was seized when he returned to the United States. The *New York Times* reported that "the State Department said that further travel by Mr. Patterson would not be in the 'best interest of the United States.'" ²²³ As with the NAACP petition, the United Nations took no action on the Civil Rights Congress petition.²²⁴

V. INTERNATIONAL IMPRESSION-MANAGEMENT

A. State Department Responses

Criticism from these many corners called for a response. American Embassies did their part by cooperating with the State Department in an effort to present what they considered to be a more balanced perspective on the race issue in the U.S. In 1947, Public Affairs Officer Frederick C. Jochem wrote an article for a Rangoon, Burma newspaper, with the approval of the U.S. Consul General in Rangoon.²²⁵ The article, entitled "Negro Problem," politely suggested that the Burmese did not have all the facts on the issue of race in the U.S. It began:

A Burmese friend was astonished the other day when I told him that a Negro had just been appointed to a professorship in my university back home. We were discussing the "Negro problem" in America, and it turned out that a number of facts and viewpoints that I take for granted are surprising news in Burma.²²⁶

220. *Id.* at 28.

221. See G. HORNE, COMMUNIST FRONT?: THE CIVIL RIGHTS CONGRESS, 1946-1956, at 173-74 (1988); W. PATTERSON, THE MAN WHO CRIED GENOCIDE: AN AUTOBIOGRAPHY 193-95, 205-06 (1971).

222. N.Y. Times, Dec. 25, 1951, at 15, col. 6; see W. PATTERSON, *supra* note 221, at 198-201; see also N.Y. Times, Jan. 1, 1952, at 10, col. 7; N.Y. Times, Dec. 27, 1951, at 11, col. 4.

223. N.Y. Times, Jan. 24, 1952, at 8, col. 5; see G. HORNE, *supra* note 221, at 174; W. PATTERSON, *supra* note 221, at 209-10.

The strongly negative domestic reaction to the Civil Rights Congress petition had much to do with the fact that the organization was considered to be left-wing, and was on the Attorney General's list of subversive organizations. Consequently, its motives were thought to be suspect. See N.Y. Times, Dec. 18, 1951, at 13, col. 3. See generally G. HORNE, *supra* note 221. The Civil Rights Congress was under constant pressure from anticommunists in the federal government, so that, according to Gerald Horne, it "seemed . . . to be in business in order to defend itself." *Id.* at 156.

224. CIVIL RIGHTS CONGRESS, *supra* note 209, at vii.

225. Dispatch No. 30, from American Embassy, Rangoon, Burma, to Secretary of State (Oct. 7, 1947), NARS Doc. No. 811.4016/10-747.

226. *Id.*

Among the facts unknown to the Burmese was the statistic that "more than fifty Negroes now hold major teaching posts in prominent American universities." Jochem noted that the students and nearly all faculty at the institutions were "black as the proverbial ace of spades," seeing that as evidence of the availability of higher education to blacks. He did not comment on the issue of segregation. Jochem recognized that "there is still a 'Negro problem' in the United States," particularly in the South. However, he presented race prejudice as an understandable phenomenon in light of the legacy of slave society. "Of course there is prejudice against Negroes, because for the first few generations of their life in America nothing was done to educate or train them, and the heritage of ignorance, and all that goes with it, persists." Nevertheless, he concluded,

[s]ome of the best people in the North and South are working constantly to improve the position of the Negro everywhere in the United States The goal now is to realize, to the letter, and in every one of the 48 states, the provisions of the fourteenth and fifteenth amendments which abolish all legal distinctions between individuals.²²⁷

State Department and American Embassy officials recognized that American blacks themselves would be most effective in countering negative international press. Consequently, the State Department sponsored trips by American blacks to speak on the "Negro Problem" in the United States.²²⁸ When Max Yergan, a black activist concerned with anticolonialism in Africa,²²⁹ traveled to Africa on such a trip, the American Consul in Lagos, Nigeria made sure he received ample exposure.²³⁰ An advance story on Yergan's visit was sent by the U.S. Information Service to the Lagos press and radio, where it received "substantial play."²³¹ Notice of a scheduled speaking engagement was carried in all local newspapers, as requested by an American Information Officer. Following Yergan's July 17, 1952 speech, the U.S. Information Service sent out a special press release with the title: "Yergan

227. *Id.*

228. See G. HORNE, *supra* note 7, at 280-81.

229. Yergan was a founder and Executive Secretary of the Council on African Affairs, an organization that attempted to gain American support for anti-colonial movements in Africa. The CAA, co-founded by Paul Robeson, operated from the 1930s to 1955, when, according to Mark Solomon, it "was finally dissolved . . . under ferocious McCarthyite attacks." Solomon, *supra* note 9, at 207-08, 233-34 & n.9.

230. Yergan had previously been associated with the Communist Party, W. RECORD, THE NEGRO AND THE COMMUNIST PARTY 197 (1951), although he claimed, after his break with the Party, that he had never been a member. See *id.* at 197 n.*; N.Y. Times, May 14, 1952, at 12, col. 2. On May 13, 1952, he testified before the Senate Internal Security Committee that the Party had "used him for ten years to spread Red propaganda among American Negroes." He claimed that "the Reds were 'interested in exploiting undesirable conditions and in preventing a solution of racial problems.'" N.Y. Times, May 14, 1952, at 12, col. 2. Yergan's recantation before Senator McCarthy's committee is consistent with the genre of anticommunist confessionals during the McCarthy era. See generally THE GOD THAT FAILED, *supra* note 77.

231. Dispatch No. 27, from American Consul, Lagos, Nigeria, to Dep't of State (July 30, 1952), NARS Doc. No. 811.411/7-3052.

Says Trend In U.S. Race Relations Is Toward Full Civil Rights For Negroes.”²³²

Yergan’s value as a State Department-sponsored speaker was not merely that he could speak from personal experience and claim that his family enjoyed “ever-expanding rights and privileges which his grandfather, a Negro slave, could only dream of.”²³³ He also spoke against communism. In Yergan’s view,

[a] testimony to the progressive direction of American race relations . . . was that Negroes in the United States have as a group rejected communism as a “sinister force” interested in exploiting their position in America for the designs of a foreign power. “Every communist is a potential traitor to his country, . . . and my people in America have chosen to cast their lot with democracy, because they believe it offers them the opportunity to achieve full equality.”²³⁴

According to the American Vice Consul in Lagos, the reaction to Yergan’s visit was generally favorable. Nevertheless, Yergan was criticized in editorials in two local papers. According to the *West African Pilot*,

Any honest inquirer after truth pondering over the motivations (sic) of Dr. Max Yergan urging the African to shun the vices of “Communism and its agents as one shuns poison” will only surmise: “We have heard this before.” For, in the grim days of the battle against the forces of Nazism and Fascism, Africans were warned too to shun Nazism and Fascism as one shuns poison all because at the time we were—all lovers of freedom—engaged in a battle to guarantee freedom in order that free men may continue to learn freedom.²³⁵

The paper concluded that “[f]or the African, no less [than for] the Negro in the United States of America, two world wars have brought no dramatic changes in status Daily we grapple with the forces of imperialism, projected by the democracies who condemn Communism ever so much.”²³⁶

American embassies scattered throughout the world tried to do their part to salvage the tarnished image of American democracy. They used the tools available to them: speakers and news stories that would

232. *Id.*

233. *Id.* (as paraphrased in press release).

234. *Id.* (as paraphrased and quoted in press release). Two members of the audience challenged Yergan’s characterization of communism, asking “1) if the Communists were not the leading fighters for full civil rights for Negroes? and 2) if the Communists had made promises to the American Negro and broken them, had not the American Constitution done the same thing?” *Id.* In response, “Dr. Yergan called upon his own bitter experience with Communists to answer the questions negatively.” *Id.*

235. *Id.*

236. *Id.* The American Vice Consul believed that the author of the *Pilot* editorial had a “personal axe to grind” because of an argument he and Yergan had “over the merits of Africans taking sides in the Cold War.” In the Vice Consul’s view, the paper attempted to smear Yergan by publishing a photograph of him with former officials of the Council on African Affairs. With Yergan in the photograph were “convicted Communist Dr. Hunton and the controversial Dr. W.E.B. Du Bois.” *Id.*

cast American difficulties in the best light possible. Meanwhile, in Washington, State Department officials could take more affirmative, less reactive steps. They sought change in the domestic policies and practices that fueled international outrage.

Among President Truman's Secretaries of State,²³⁷ Dean Acheson played an important role in State Department efforts to advance domestic civil rights. As Acting Secretary in 1946, Acheson wrote a letter to the Chair of the Fair Employment Practices Committee detailing the foreign policy implications of U.S. race discrimination. Others in the administration considered the letter sufficiently important that they used it in the report of the President's Committee on Civil Rights²³⁸ and the amicus brief filed by the Justice Department in *Shelley v. Kraemer*.²³⁹ Acheson wrote:

The existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries. We are reminded over and over by some foreign newspapers and spokesmen, that our treatment of various minorities leaves much to be desired Frequently we find it next to impossible to formulate a satisfactory answer to our critics in other countries. . . .

An atmosphere of suspicion and resentment in a country over the way a minority is being treated in the United States is a formidable obstacle to the development of mutual understanding and trust between the two countries. We will have better international relations when these reasons for suspicion and resentment have been removed.²⁴⁰

Because he felt it was "quite obvious" that race discrimination interfered with foreign relations, Acheson wrote that the State Department had "good reason to hope for the continued and increased effectiveness of public and private efforts to do away with these discriminations."²⁴¹

Federal concern over international attention to U.S. race discrimination, and its impact on U.S. foreign policy interests, extended beyond the State Department. The President's Committee on Civil Rights was sufficiently convinced of the international implications of U.S. racial problems that it focused on the issue in its final report. The Committee argued that there were three reasons why civil rights abuses in the U.S.

237. When Truman became President in 1945, Edward Stettinius was Secretary of State. Later that year, Truman replaced Stettinius with James F. Byrnes. Byrnes served until 1947. Truman then appointed General George C. Marshall, who held the post until 1949. Dean Acheson became Secretary in 1949 and held the position throughout the rest of the Truman Administration. See R. DONOVAN, *supra* note 80, at 17, 193, 266; see also M. TRUMAN, HARRY S. TRUMAN 404 (1972).

238. PRESIDENT'S COMMITTEE, *supra* note 39, at 146-47.

239. Brief for the United States as Amicus Curiae at 19-20, *Shelley v. Kraemer*, 334 U.S. 1 (1948).

240. *Id.*

241. *Id.* at 20.

should be redressed: a moral reason,²⁴² an economic reason,²⁴³ and an international reason. With regard to the latter, the Committee stated:

Our foreign policy is designed to make the United States an enormous, positive influence for peace and progress throughout the world. We have tried to let nothing, not even extreme political differences between ourselves and foreign nations, stand in the way of this goal. But our domestic civil rights shortcomings are a serious obstacle.²⁴⁴

The Committee stressed that "[w]e cannot escape the fact that our civil rights record has been an issue in world politics. The world's press and radio are full of it."²⁴⁵ Countries with "competing philosophies" had stressed and distorted American problems. "They have tried to prove our democracy an empty fraud, and our nation a consistent oppressor of underprivileged people."²⁴⁶ However, the Committee indicated that

[t]he international reason for acting to secure our civil rights now is not to win the approval of our totalitarian critics . . . [for whom] our civil rights record is only a convenient weapon with which to attack us[,] [but rather because] . . . we are more concerned with the good opinion of the peoples of the world. Our achievements in building and maintaining a state dedicated to the fundamentals of freedom have already served as a guide for those seeking the best road from chaos to liberty and prosperity. But it is not indelibly written that democracy will encompass the world. We are convinced that our way of life—the free way of life—holds a promise of hope for all people. We have what is perhaps the greatest responsibility ever placed upon a people to keep this promise alive. Only still greater achievements will do it.²⁴⁷

The Committee concluded its report to the President by emphasizing that "[t]he United States is not so strong, the final triumph of the democratic ideal is not so inevitable that we can ignore what the world thinks of us or our record."²⁴⁸

242. According to the Committee, "[t]he pervasive gap between our aims and what we actually do is creating a kind of moral dry rot which eats away at the emotional and rational bases of democratic beliefs." PRESIDENT'S COMMITTEE, *supra* note 39, at 139. U.S. failures in the area of civil rights bred "cynicism about democratic values" that was harmful to all. *Id.* at 141.

243. The Committee believed that "[o]ne of the principal economic problems facing us and the rest of the world is achieving maximum production and continued prosperity." *Id.* Discrimination interfered with economic growth because it led to "[t]he loss of a huge, potential market for goods." *Id.* Discrimination in the marketplace gave rise to interrelated losses in market and human terms. *Id.* at 146.

244. *Id.* at 146. To support this point, the Committee quoted from the letter from Dean Acheson to the FEPC. *Id.* at 146-47; see text accompanying notes 240-241 *supra*.

245. PRESIDENT'S COMMITTEE, *supra* note 39, at 147.

246. *Id.* at 148.

247. *Id.*

248. *Id.* (emphasis removed).

One way of affecting "what the world thinks of us" was organized U.S. government efforts to disseminate favorable information about the U.S. to other countries. During World War II, the Roosevelt Administration increasingly recognized the value of print and broadcast media in U.S. government efforts to influence international opinion. J. TYSON, U.S. INTERNATIONAL BROADCASTING AND NATIONAL SECURITY 4-5 (1983). By 1948, the Cold War increased the perceived importance of such efforts. In some government circles fears were expressed

B. *Amicus Briefs and Foreign Affairs*

Truman's pro-civil rights speeches and platforms would help him achieve the political mileage he needed in the area of civil rights. Yet, given the posture of Congress toward his civil rights initiatives, Truman's legislative proposals were not likely to dampen international criticism. The image of a well-meaning President struggling against a recalcitrant Congress might help Truman at the polls in the United States, but not in the United Nations. Some actual change in American racial policies was needed to silence foreign critics. In the late 1940s and early 1950s, that change would not come from Congress. It might, however, come from the courts. Through filing amicus curiae briefs in civil rights cases, the Truman Administration stressed to the Supreme Court the international implications of U.S. race discrimination, and at times focused on the negative impact on American foreign policy that a pro-segregation decision might have.²⁴⁹ In terms of its consequences

that America was losing an unequal war of propaganda in which the Soviet Union and its satellites routinely misrepresented and distorted American ideals and actions. The federal government needed to respond by disseminating the "truth" to counteract such communist propaganda. See 93 CONG. REC. 6560-61 (1947) (remarks of Rep. Everett Dirksen); S. REP. NO. 811, 80th Cong., 2d Sess., reprinted in 1948 U.S. CODE CONG. & ADMIN. NEWS 1011, 1013, 1023; *Expanded International Information and Education Program by the United States: Hearings Before a Subcommittee of the Senate Committee on Foreign Relations on S. Res. 243*, 81st Cong., 2d Sess. 39-40 (1950) (statement of Secretary of State Dean Acheson).

While the U.S. hoped that, with the help of its information program, other countries would rally behind the flag of democracy and would perceive communism as the most important threat to world peace, many Third World countries did not view the conflict between the superpowers as their primary concern. According to a 1952 report on the status of U.S. propaganda efforts, "In South and Southeast Asia, anti-colonialism and associated racial resentments have been far more important elements in the psychological situation than anti-communism . . ." Psychological Strategy Board, Status Report on the National Psychological Effort and First Progress Report of the Psychological Strategy Board, Aug. 1, 1952, at 3, File 391.1, Box 22, Papers of the Psychological Strategy Board, Harry S Truman Library (on file with the *Stanford Law Review*). The U.S. attempted to shape its propaganda accordingly, finding that approaches which focused on matters of local concern were "particularly relevant" in "underdeveloped" nations "where the memory or actuality of domination by the white man is a far greater psychological reality than the Soviet menace." *Id.* at 3-4. Nevertheless, the report concluded that, as of 1952, "efforts to counteract communist exploitation of the race relations problem in the United States have not been fully successful." *Id.* at 4.

249. The amicus briefs were also helpful for domestic political purposes. Truman referred to them in his 1948 campaign speeches before black audiences. See D. MCCOY & R. RUETTEN, *supra* note 14, at 134-35.

While other scholars have counted the civil rights amicus briefs as important Truman Administration action to further black civil rights, see A. HAMBY, *BEYOND THE NEW DEAL: HARRY S. TRUMAN AND AMERICAN LIBERALISM 189-90* (1973); D. MCCOY & R. RUETTEN, *supra* note 9, at 211-12, 218-21; J. ELLIFF, *THE UNITED STATES DEPARTMENT OF JUSTICE AND INDIVIDUAL RIGHTS, 1937-1962*, at 254-59 (1987) (reprint of Ph.D. dissertation, Harvard University, 1967), Barton J. Bernstein has argued that the briefs were filed due to the efforts of members of the Solicitor General's staff, and that the administration simply acquiesced in them. Bernstein, *supra* note 9, at 296-97, 303; Bernstein, *Commentary*, in *THE TRUMAN PERIOD AS A RESEARCH FIELD*, *supra* note 14, at 161, 187 [hereinafter Bernstein, *Commentary*]; see also Bernstein, *The Truman Administration and Minority Rights: A Review Essay*, J. ETHNIC STUDIES, Fall 1973 at 66, 70-71 [hereinafter Bernstein, *Minority Rights*]. Bernstein's analysis of the amicus briefs is in keeping with his view that Truman was a "reluctant liberal" who left an "ambiguous . . . legacy" in the area of civil rights. Bernstein, *supra* note 9, at 303. Bernstein's primary source

for the American dilemma, a Court decision rendering segregation unconstitutional was potentially of the greatest symbolic value. Change emanating from a Court interpretation of the Constitution would show that the principle of racial equality had always been there in the governing document of American democracy. This would show that, as

for this interpretation appears to have been a 1966 interview with Philip Elman, a former attorney in the Solicitor General's office who was involved in writing the amicus briefs. See Bernstein, *supra* note 9, at 312 n.49 & 314 n.60.

A later Elman interview published in the *Harvard Law Review* undercuts Bernstein's argument. See Elman, *supra* note 5 (interview conducted by Norman Silber). While Elman views his role as pivotal, see Elman, *supra* note 5, at 818-19, 826-30, he also provides enough information to show that the amicus briefs were not simply the effort of an isolated and committed group of lawyers in the Solicitor General's office, but can appropriately be described as Truman Administration actions. See also Kennedy, *A Reply to Philip Elman*, 100 HARV. L. REV. 1938 (1987) (questioning the importance of Elman's role).

The first amicus brief, filed in *Shelley v. Kraemer*, was signed by Attorney General Tom C. Clark, as well as Solicitor General Perlman. As Elman noted, it was unusual for the Attorney General to sign Supreme Court briefs. Clark's name was placed on the brief so that it would be "as authoritative a statement of the position of the United States as possible." Elman, *supra* note 5, at 819. Although Elman does not say whether Clark personally approved having his name on the brief, it is unlikely that such a departure from Justice Department policy involving the use of his name, in such a high-profile case, would have happened without his knowledge. The fact that the very filing of the brief was an innovation in Department policy reinforces the likelihood that Clark knew about and approved the fact that his name was being placed on the brief. See note 250 *infra*. Further, Clark and Perlman were so pleased with the *Shelley* brief that they published it as a book. Elman, *supra* note 5, at 820. See T. CLARK & P. PERLMAN, PREJUDICE AND PROPERTY: AN HISTORIC BRIEF AGAINST RACIAL COVENANTS (1948). Truman identified the government's participation in *Shelley* as one of his administration's civil rights accomplishments in a 1948 campaign speech in Harlem. PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN, 1948, at 923, 924 (1964); see W. BERMAN, *supra* note 9, at 127.

According to Elman, pressure from within the administration to file a brief in *Shelley* first came from Phineas Indritz, an attorney in the Department of the Interior, and Oscar Chapman, the Secretary of the Interior. Elman, *supra* note 5, at 818. The State Department assisted Elman's efforts on the brief by sending a letter to the Attorney General regarding the effect of race discrimination on foreign policy. Elman, *supra* note 5, at 818. Although Elman did not know who finally approved the filing of a brief, his best guess was that "[p]robably Tom Clark made the decision after checking with Truman." Elman, *supra* note 5, at 818.

Attorney General J. Howard McGrath, in a departure from Justice Department practices, participated in oral argument in *Henderson v. United States*. See 339 U.S. 816, 817 (1950); see also Bernstein, *Minority Rights*, *supra*, at 71. Attorney General James P. McGranery unsuccessfully petitioned the Court for permission to present an oral argument in *Brown*. D. BERMAN, IT IS SO ORDERED: THE SUPREME COURT RULES ON SCHOOL SEGREGATION 61 (1966). Notwithstanding his argument that Truman was disinterested and uninvolved in the amicus briefs, Bernstein has written that Truman "specifically approved the filing of a brief in *Brown*." Bernstein, *Minority Rights*, *supra*, at 71 (apparently relying on an interview with Elman). But see Berman, *supra* note 9, at 232 (*Brown* brief filed on Justice Department's own initiative).

In my view, this record of high-level participation in the desegregation cases makes it appropriate to characterize the amicus briefs as consciously adopted Truman Administration policy. Cabinet-level advisors were involved in the cases. Even if, as is likely, Truman did not personally approve all of the briefs, high-level members of his administration charged with furthering his interests and desires participated in the cases. Truman's advisors were so attuned to the political consequences of civil rights efforts, see A. HAMBY, *supra* note 14, at 66-67; Sitkoff, *supra* note 14, at 101; see generally Bernstein, *supra* note 9, that it is hard to imagine government participation in such well-publicized civil rights cases as being anything other than a deliberate policy decision made at the highest levels of the Truman Administration. Accord Berman, *supra* note 9, at 239-40.

Myrdal had suggested, it was a principle waiting to be realized as Americans perfected their practice of democracy.

The Truman Justice Department first participated as *amicus curiae* in civil rights cases involving restrictive covenants.²⁵⁰ In previous civil rights cases, the Solicitor General participated when the litigation involved a federal agency,²⁵¹ and when the question in the case concerned the supremacy of federal law.²⁵² A different sort of federal interest was involved in the restrictive covenant cases. According to Solicitor General Phillip Perlman, racially restrictive covenants hampered the federal government "in doing its duty in the fields of public health, housing, home finance, and in the conduct of foreign affairs."²⁵³ The Brief for the United States in *Shelley v. Kraemer*²⁵⁴ relied on the State Department's view that "the United States has been embarrassed in the conduct of foreign relations by acts of discrimination taking place in this country."²⁵⁵ To support this argument, the brief quoted at length from the letter Acting Secretary of State Acheson had written to the FEPC in 1946.²⁵⁶

Although not addressing the international implications of the case, the Supreme Court agreed with the result sought by the Justice Department. The Court ruled that enforcement of racially restrictive covenants in state courts constituted state action which violated the rights of the blacks to equal protection of the laws.²⁵⁷

The Solicitor General's office continued its efforts in civil rights cases in 1949.²⁵⁸ In *Henderson v. United States*,²⁵⁹ the Department of Jus-

250. J. ELLIFF, *supra* note 249, at 254-59. See *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Hurd v. Hodge*, 334 U.S. 24 (1948). According to Solicitor General Perlman, the brief filed in the restrictive covenant cases was "the first instance in which the Government had intervened in a case to which it was not a party and in which its sole purpose was the vindication of rights guaranteed by the Fifth and Fourteenth Amendments." J. ELLIFF, *supra* note 249, at 258 (quoting Address by Perlman to the National Civil Liberties Clearing House (Feb. 23, 1950)).

Because my purpose is to examine the Truman Administration's participation in these cases, this article does not dwell on the crucial role in the cases played by the NAACP. For excellent treatments of the NAACP's litigation efforts, see M. TUSHNET, *supra* note 7; R. KLUGER, *supra* note 7.

251. See *Mitchell v. United States*, 313 U.S. 80 (1941).

252. See *Taylor v. Georgia*, 315 U.S. 25 (1942).

253. Oral argument of Solicitor General Perlman, 16 U.S.L.W. 3219 (Jan. 20, 1948) (paraphrased account of argument); see also C. VOSE, *CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES* 200 (1959).

254. 334 U.S. 1 (1948). In *Shelley*, whites sold residential property to blacks in violation of a covenant among landowners prohibiting sales to nonwhites. State Supreme Courts in Missouri and Michigan had ruled that the covenants were enforceable. *Id.* at 6-7. The question in *Shelley* was whether judicial enforcement of the covenants constituted state action violating the fourteenth amendment rights of the blacks who purchased the property. The Supreme Court ruled that it did. *Id.* at 20.

255. Brief for the United States as *Amicus Curiae* at 19, *Shelley v. Kraemer*, 334 U.S. 1 (1948) (quoting letter from Ernest A. Gross, Legal Adviser to the Secretary of State, to the Attorney General (Nov. 4, 1947)).

256. See text accompanying notes 240-241 *supra*.

257. 334 U.S. at 20.

258. See generally J. ELLIFF, *supra* note 249, at 323-29.

259. 339 U.S. 816 (1950).

tice took a position contrary to the Interstate Commerce Commission on the question of the validity of railroad dining car segregation under the Interstate Commerce Act.²⁶⁰ As in *Shelley*, an important motivation behind the government's anti-segregation position was the international implications of segregation.²⁶¹ The *Henderson* brief elaborated more fully on the problem. One area in which international criticism of the U.S. manifested itself was the United Nations. The brief quoted from recent statements made by representatives of other governments in a UN subcommittee meeting which "typify the manner in which racial discrimination in this country is turned against us in the international field."²⁶² For example, a representative of the Soviet Union had commented: "Guided by the principles of the United Nations Charter, the General Assembly must condemn the policy and practice of racial discrimination in the United States and any other countries of the American continent where such a policy was being exercised."²⁶³ Similarly, the representative from Poland "did not . . . believe that the United States Government had the least intention to conform to the recommendations which would be made by the United Nations with regard to the improvement of living conditions of the coloured population of that country."²⁶⁴

As it had in *Shelley*, the Justice Department made reference to foreign press coverage of U.S. race discrimination, noting that "[t]he references to this subject in the unfriendly foreign press are frequent and caustic."²⁶⁵ This time the brief bolstered this claim with examples from Soviet publications. *The Bolshevik*, for example, carried an article which claimed that

[t]he theory and practice of racial discrimination against the negroes in America is known to the whole world. The poison of racial hatred has become so strong in post-war America that matters go to unbelievable

260. The Interstate Commerce Act provided that "[i]t shall be unlawful for any common carrier . . . to make, give, or cause any undue or unreasonable preference or advantage to any particular person . . . in any respect whatsoever; or to subject any particular person . . . to any undue or unreasonable prejudice or disadvantage in any respect whatsoever . . ." Interstate Commerce Act, ch. 722, § 5(a), 54 Stat. 898, 902, 49 U.S.C. § 3(1) (1946) (codified as amended at 49 U.S.C. § 1074(b) (1982)). The Interstate Commerce Commission ruled that the Southern Railway Company's practice of providing separate seating behind a curtain in dining cars for black passengers did not violate the Act. See *Henderson v. United States*, 339 U.S. 816, 820-22 (1950). On appeal, the ICC defended its interpretation of the Act, and the Justice Department filed a brief on behalf of the United States arguing that 1) dining car segregation violated the Act, and 2) segregation violated the equal protection clause. See Brief for the United States at 9-11, *Henderson v. United States*, 339 U.S. 816 (1950).

261. The brief quoted from the same letter from Dean Acheson that the Department had relied on in *Shelley*. See Brief for the United States at 60-61, *Henderson v. United States*, 339 U.S. 816 (1950).

262. *Id.* at 61.

263. *Id.* (quoting United Nations, General Assembly, *Ad Hoc* Political Committee, Third Session, Part II, Summary Record of the Fifty-Third Meeting (May 11, 1949), at 12).

264. *Id.* (quoting United Nations, General Assembly, *Ad Hoc* Political Committee, Third Session, Part II, Summary Record of Fifty-Fourth Meeting (May 13, 1949), at 6).

265. *Id.*

lengths; for example a Negress injured in a road accident could not be taken to a neighbouring hospital since this hospital was only for "whites."²⁶⁶

Through its reliance on UN statements and the Soviet Press, the *Henderson* brief powerfully made the point that racial segregation hampered the U.S. government's fight against world communism.

There was other turf upon which the battle for democracy was waged: the home front. The *Henderson* brief raised the spectre of black radicalism in the U.S. "[T]he apparent hypocrisy of a society professing equality but practicing segregation and other forms of racial discrimination furnishes justification and reason for the latent urge to rebel, and frequently leads to lasting bitterness or total rejection of the American creed and system of government."²⁶⁷ However, the brief argued that black protest in the U.S. was not tied to the Communist Party. The brief drew from the testimony of baseball player Jackie Robinson,²⁶⁸ who had appeared before the House Committee on Un-American Activities. According to Robinson,

Just because Communists kick up a big fuss over racial discrimination

266. *Id.* at 61 n.73 (quoting Frantsov, *Nationalism—The Tool of Imperialist Reaction*, THE BOLSHEVIK (U.S.S.R.), No. 15 (1948)).

In another example, a story in the Soviet *Literary Gazette* titled "The Tragedy of Coloured America," stated:

It is a country within a country. Coloured America is not allowed to mix with the other white America, it exists within it like the yolk in the white of an egg. Or, to be more exact, like a gigantic ghetto. The walls of this ghetto are invisible but they are nonetheless indestructible. They are placed within cities where the Negroes live in special quarters, in buses where the Negroes are assigned only the back seats, in hairdressers where they have special chairs.

Id. (quoting Berezko, *The Tragedy of Coloured America*, THE LITERARY GAZETTE (U.S.S.R.), No. 51 (1948)).

267. *Id.* at 59.

268. Robinson was the first black player to join a major league baseball team. His widely publicized breaking of the color barrier in baseball in 1947 was heralded as a sign of diminishing race prejudice in the nation. See generally J. TYGIEL, *BASEBALL'S GREATEST EXPERIMENT: JACKIE ROBINSON AND HIS LEGACY* (1983).

On July 18, 1949, Robinson was called as a witness before the House Committee on Un-American Activities during the Committee's hearings on "Communist infiltration of minority groups." Robinson testified that segregation, like Communism, "kills off democracy." *Hearings Regarding Communist Infiltration of Minority Groups—Part I before the House Comm. on Un-American Activities*, 81st Cong., 1st Sess. 481 (1949). Robinson criticized Paul Robeson's pro-Soviet views as "silly." *Id.* However, he stressed that his criticism of Robeson "doesn't mean that we're going to stop fighting race discrimination in this country until we've got it licked. . . . We can win our fight without the Communists and we don't want their help." *Id.* at 482.

Denouncing Robeson was a sure way blacks could demonstrate their loyalty to HUAC. See V. NAVASKY, *supra* note 2, at 187. In a speech at the Partisans of Peace World Peace Congress in Paris in 1949, Robeson denounced American racism as "similar to that of Hitler and Goebbels," and said that it was "unthinkable . . . that American Negroes would go to war on behalf of those who have oppressed us for generations . . . against a country (the Soviet Union) which in one generation has raised our people to full human dignity of mankind." D. GILLIAM, *PAUL ROBESON: ALL AMERICAN* 137 (1976). Although he apparently never joined the Communist party, *id.* at 142, Robeson was blacklisted as a communist during the McCarthy era. See *id.* at 159.

when it suits their purposes, a lot of people try to pretend that the whole issue is a creation of Communist imagination.

But they are not fooling anyone with this kind of pretense, and talk about "Communists stirring up Negroes to protest," only makes present misunderstanding worse than ever. Negroes were stirred up long before there was a Communist Party, and they'll stay stirred up long after the party has disappeared—unless Jim Crow has disappeared by then as well.²⁶⁹

The clear implication was that, while black protest was not directly tied to communism, racial injustice added to discontent among American blacks which, if not remedied, could lead blacks to reject American democracy. Accordingly, racial segregation threatened the ability of the U.S. government to maintain its role as a leader of the free world, and to govern peacefully at home.

The Supreme Court ruled in favor of the Justice Department's position on statutory grounds, without reaching the question of the constitutionality of segregation in interstate travel.²⁷⁰

Also in 1949, the Justice Department participated for the first time in cases challenging school segregation. As with *Henderson*, the Department argued that *McLaurin v. Oklahoma State Regents for Higher Education*²⁷¹ and *Sweatt v. Painter*²⁷² were of "great importance" to the nation because "they test the vitality and strength of the democratic ideals to which the United States is dedicated."²⁷³ Referring again to the notion that U.S. race discrimination was "the greatest unsolved task for American democracy,"²⁷⁴ the brief considered the foreign policy repercussions the Supreme Court opinions in *Sweatt* and *McLaurin* might have:

The Court is here asked to place the seal of constitutional approval upon an undisguised species of racial discrimination. If the imprimatur of constitutionality should be put on such a denial of equality, one would expect the foes of democracy to exploit such an action for their own purposes. The ideals embodied in our Bill of Rights would be

269. Brief for the United States at 59-60, *Henderson*, 339 U.S. 816 (1950) (quoting *Hearings Regarding Communist Infiltration of Minority Groups—Part I*, *supra* note 268, at 479).

270. 339 U.S. at 825-26.

271. 339 U.S. 637 (1950). In *McLaurin*, the black plaintiff was admitted to the graduate program in education at the University of Oklahoma following a challenge to Oklahoma's segregation statutes in federal district court. *Id.* at 638-39. However, the plaintiff was segregated within the University. He was assigned to a separate table in the library, a separate row in the classroom, and a separate table in the cafeteria. *Id.* at 640. The NAACP argued that this different treatment on the basis of race violated the equal protection clause of the fourteenth amendment. *Id.* at 638.

272. 339 U.S. 629 (1950). *Sweatt* involved a challenge to racial segregation at the University of Texas Law School. The plaintiff was denied admission to the law school because he was black. When a state trial court found that the University's action violated the fourteenth amendment, the State responded by opening a separate black law school. *Id.* at 631-32. The question in the Supreme Court was whether the legal education provided at the black school was equal to that provided by the University of Texas. *Id.* at 632-34.

273. Memorandum for the United States as Amicus Curiae at 1-2, *McLaurin v. Oklahoma*, 339 U.S. 637 (1950), and *Sweatt v. Painter*, 339 U.S. 629 (1950).

274. *Id.* at 11.

ridiculed as empty words, devoid of any real substance.²⁷⁵

The consequences of such a ruling would be stark, extending far beyond the cases, and affecting the American way of life.

It is in the context of a world in which freedom and equality must become living realities, if the democratic way of life is to survive, that the issues in these cases should be viewed. In these times, when even the foundations of our free institutions are not altogether secure, it is especially important that it again be unequivocally affirmed that the Constitution of the United States, like the Declaration of Independence and the other great state papers in American history, places no limitation, express or implied, on the principle of the equality of all men before the law.²⁷⁶

In *Sweatt and McLaurin*, the Supreme Court again sided with the Justice Department. It found that segregation at the University of Texas Law School and the University of Oklahoma School of Education denied the black plaintiffs equal treatment. However, the Court declined to reconsider the constitutionality of segregation in general.²⁷⁷

While racial discrimination in Southern states and throughout the nation had been the subject of foreign criticism, segregation in the District of Columbia was particularly embarrassing, and was often a special focus of international attention.²⁷⁸ If segregation only existed in particular areas of the country, it would have been easier for the federal government to characterize it as a regional phenomenon, as something at odds with generally accepted American practices. As long as the seat of the federal government was segregated, however, any claims that segregation was not a widespread national practice seemed hollow. The District of Columbia was "the window through which the world looks into our house."²⁷⁹ If the U.S. were to clean up its international image, Washington was the place it would need to begin.

The question of segregation in the District of Columbia was at issue in *Bolling v. Sharpe*,²⁸⁰ a companion case to *Brown v. Board of Educa-*

275. *Id.* at 12.

276. *Id.* at 13. The brief referred to the specific foreign policy implications of U.S. race discrimination outlined in the *Henderson* brief. *Id.* at 12 n.4. See text accompanying notes 258-270 *supra*.

In 1949, the Solicitor General's office also filed a brief in *Graham v. Brotherhood of Locomotive Firemen*, 338 U.S. 232 (1949), a case involving non-compliance by a railroad and a union with a previous Supreme Court decision, *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192 (1944), forbidding discriminatory collective bargaining agreements. See generally J. ELLIFF, *supra* note 249, at 323.

277. *Sweatt*, 339 U.S. at 636; *McLaurin*, 339 U.S. at 638, 642.

278. See text accompanying note 121 *supra*. American blacks focused on the contradictions of segregation in the capital as well. See generally NATIONAL COMMITTEE ON SEGREGATION IN THE NATION'S CAPITAL, *SEGREGATION IN WASHINGTON* (1948).

279. Brief for the United States as Amicus Curiae at 4, *Brown v. Board of Education*, 347 U.S. 483 (1954).

280. 347 U.S. 497 (1954). In *Bolling*, the plaintiffs argued that racial segregation in public schools in the District of Columbia violated the due process clause of the fifth amendment. *Id.* at 498.

tion.²⁸¹ Consequently, in its amicus brief in the consolidated school desegregation cases, the Justice Department emphasized the embarrassment of race discrimination in the nation's capital. According to the brief, "[f]oreign officials and visitors naturally judge this country and our people by their experiences and observations in the nation's capital; and the treatment of colored persons here is taken as the measure of our attitude toward minorities generally."²⁸² As President Truman had stated, "[t]he District of Columbia should be a true symbol of American freedom and democracy for our own people, and for the people of the world."²⁸³ However, the brief continued, the President's Committee on Civil Rights had found that the District of Columbia was "a graphic illustration of a failure of democracy."²⁸⁴

More generally, the Department's brief argued that the allegations of unconstitutional discrimination in public school systems raised "questions of the first importance in our society. For racial discriminations imposed by law, or having the sanction or support of government, inevitably tend to undermine the foundations of a society dedicated to freedom, justice, and equality."²⁸⁵ Under the "rule of law" embodied in the U.S. Constitution, every arm of government "must treat each of our people as an *American*, and not as a member of a particular group classified on the basis of race or some other constitutional irrelevancy."²⁸⁶

Racial segregation interfered with the Cold War imperative of winning the world over to democracy, for

[t]he existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries.

281. 347 U.S. 483 (1954). In *Brown*, the Supreme Court considered the constitutionality of racial segregation in public schools in cases from the states of Kansas, South Carolina, Virginia, and Delaware. *Id.* at 486; see *Briggs v. Elliott*, 103 F. Supp. 920 (E.D.S.C. 1952), *rev'd*, *Brown v. Board of Educ.*, 349 U.S. 294 (1955) (*Brown I*); *Davis v. County School Board*, 103 F. Supp. 337 (E.D. Va. 1952), *rev'd*, *Brown v. Board of Educ.*, 349 U.S. 294 (1955) (*Brown I*); *Brown v. Board of Educ.*, 98 F. Supp. 797 (D. Kan. 1951), *rev'd*, *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown II*); *Belton v. Gebhart*, 32 Del. Ch. 343, 87 A.2d 862, *aff'd*, *Gebhart v. Belton*, 33 Del. Ch. 144, 91 A.2d 137 (Del. 1952), *aff'd*, *Brown v. Board of Educ.*, 349 U.S. 294 (1955) (*Brown II*).

282. Brief for the United States as Amicus Curiae at 4, *Brown*, 347 U.S. 483.

283. *Id.* (quoting Truman, Message to the Congress (Feb. 2, 1948), H.R. Doc. No. 516, 80th Cong., 2d Sess. 2 (1948)).

284. *Id.* (quoting PRESIDENT'S COMMITTEE, *supra* note 39, at 89). The brief quoted at length from the Committee's report describing the segregation of American blacks in the nation's capital. *Id.* at 4-6. In addition, the Committee's Report, quoted in the brief, emphasized that

[t]he shameful and absurdity of Washington's treatment of Negro Americans is highlighted by the presence of many dark-skinned foreign visitors. Capital custom not only humiliates colored citizens, but is a source of considerable embarrassment to these visitors. . . . Foreign officials are often mistaken for American Negroes and refused food, lodging and entertainment. However, once it is established that they are not Americans, they are accommodated.

Id. at 5-6 (quoting PRESIDENT'S COMMITTEE, *supra* note 39, at 95).

285. *Id.* at 3.

286. *Id.* (emphasis in original).

Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith.²⁸⁷

To document this claim, the Department devoted nearly two pages of the brief to a lengthy quotation from Secretary of State Acheson. According to Acheson,

[d]uring the past six years, the damage to our foreign relations attributable to [race discrimination] has become progressively greater. The United States is under constant attack in the foreign press, over the foreign radio, and in such international bodies as the United Nations because of various practices of discrimination against minority groups in this country. As might be expected, Soviet spokesmen regularly exploit this situation in propaganda against the United States, both within the United Nations and through radio broadcasts and the press, which reaches all corners of the world. Some of these attacks against us are based on falsehood or distortion; but the undeniable existence of racial discrimination gives unfriendly governments the most effective kind of ammunition for their propaganda warfare.²⁸⁸

World attention to U.S. discrimination was of increasing concern to the State Department, because

[t]he hostile reaction among normally friendly peoples, many of whom are particularly sensitive in regard to the status of non-European races, is growing in alarming proportions. In such countries the view is expressed more and more vocally that the United States is hypocritical in claiming to be the champion of democracy while permitting practices of racial discrimination here in this country.²⁸⁹

School segregation, in particular, had been “singled out for hostile foreign comment in the United Nations and elsewhere. Other peoples cannot understand how such a practice can exist in a country which professes to be a staunch supporter of freedom, justice, and democracy.”²⁹⁰ The Secretary of State concluded that “racial discrimination in the United States remains a source of constant embarrassment to this Government in the day-to-day conduct of its foreign relations; and it

287. *Id.* at 6. The NAACP made the same point, although briefly, when the case was reargued. They stressed that the “[s]urvival of our country in the present international situation is inevitably tied to resolution of this domestic issue.” Brief for Appellants on Reargument at 194, *Brown v. Board of Educ.*, 347 U.S. 483 (1954). The NAACP’s jurisdictional statement in *Brown* also alluded to Cold War tensions:

The issues are of vital importance especially at this time because the preservation of strong democratic institutions necessarily depends upon the intelligence and enlightenment of our citizenry. When the educational and mental development of a portion of our population is retarded by state practices which violate the Constitution, it becomes impossible to fully muster the capabilities and energies of the country to meet whatever crises lie ahead.

Statement as to Jurisdiction at 5, *Brown v. Board of Education*, 347 U.S. 483 (1954).

288. Brief for the United States as Amicus Curiae at 7, *Brown*, 347 U.S. 483 (quoting letter from the Attorney General (Dec. 2, 1952)).

289. *Id.*

290. *Id.* at 8.

jeopardizes the effective maintenance of our moral leadership of the free and democratic nations of the world."²⁹¹

With this clear statement of the national security implications of the cases before the Court, the Justice Department brought its discussion of the interest of the United States to a close. The centrality of the Cold War imperative to the government's posture on segregation was then reemphasized in the brief's conclusion. The Department concluded by reiterating the notion that race discrimination "presents an unsolved problem for American democracy, an inescapable challenge to the sincerity of our espousal of the democratic faith."²⁹² An affirmation of constitutional principles "[i]n these days, when the free world must conserve and fortify the moral as well as the material sources of its strength, . . . is especially important."²⁹³ In the final paragraph, the brief quoted from President Truman:

If we wish to inspire the people of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy.

We know the way. We need only the will.²⁹⁴

The significance of the pending *Brown* litigation was not lost on foreign critics of American racism. In December 1952, a prominent Amsterdam newspaper pointed to the pending cases as a "dynamic development of the handling of the negro problem in the United States."²⁹⁵ Referring to Gunnar Myrdal's definition of the "American Dilemma" as "the divergence between the American credo and American practice," the paper believed that "[t]he fact that the Washington Court deals with this problem, indicates that the bridge between credo and reality is nearing its completion."²⁹⁶

In *Brown* and *Bolling*, the Court ruled in favor of the plaintiffs, this time adopting the position the Justice Department had been urging since *Henderson*: segregation as such violated the Constitution.²⁹⁷ The Court emphasized the "importance of education to our democratic society." Education was "required in the performance of our most basic public responsibilities, even service in the armed forces." It was "the very foundation of good citizenship." Because, "[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if

291. *Id.*

292. *Id.* at 31.

293. *Id.*

294. *Id.* at 32 (quoting Truman, Message to the Congress, *supra* note 283, at 7).

295. Dispatch No. 766, from The Hague, the Netherlands, to Dept. of State (Dec. 30, 1952), NARS Doc. No. 811.411/12-3052 LWC.

296. *Id.*

297. In *Brown*, the Court ruled that public school segregation by states violated the equal protection clause of the fourteenth amendment. 347 U.S. at 495. In *Bolling*, the Court found that such segregation in the District of Columbia violated the due process clause of the fifth amendment. 347 U.S. at 500.

he is denied the opportunity of an education," where a state provided public education, it was "a right which must be made available to all on equal terms."²⁹⁸ Relying partly on social science data regarding the harmful effects of segregation on school children, the Court concluded that "[s]eparate educational facilities are inherently unequal."²⁹⁹

VI. THE IMPACT OF *BROWN* ON AMERICAN FOREIGN POLICY INTERESTS

When *Brown v. Board of Education* was decided, the opinion gave the State Department the counter to Soviet propaganda it had been looking for, and the State Department wasted no time in making use of it. Within an hour after the decision was handed down, the Voice of America broadcast the news to Eastern Europe.³⁰⁰ An analysis accompanying the "straight news broadcasts" emphasized that "the issue was settled by law under democratic processes rather than by mob rule or dictatorial fiat."³⁰¹ The *Brown* broadcast received "top priority on the Voice's programs," and was to be "beamed possibly for several days, particularly to Russian satellites and Communist China." The *New York Times* quoted a Voice of America official as commenting that "[i]n these countries . . . the people would know nothing about the decision except what would be told them by the Communist press and radio, which you

298. *Brown*, 347 U.S. at 493.

299. *Id.* at 494-95. The *Brown* opinion itself differs from so many of the historical sources concerning the case in that it does not contain explicit Cold War rhetoric. It would have been, of course, somewhat impolitic of the Court to suggest that the decision was motivated not by a dispassionate reading of the Constitution, but rather by a concern about how others viewed the morality of the American form of government.

I am not, at this point, making an argument about the Supreme Court: I am not arguing that the Cold War imperative determined the way members of the Court cast their votes in *Brown*. It is very possible that, as with the executive branch, archival research on Supreme Court Justices might disclose specific ways in which members of the Court were influenced by Cold War ideology. While I don't make strong claims about the Court in this article, the connections between Cold War ideology and civil rights nonetheless remain important in considering the Court's actions. The Supreme Court, in any given historical period, is necessarily influenced by the intellectual history of its times. The ideas available to Supreme Court justices that are regarded as reasonable ways to think about the world are the same ideas available to others, or at least to others in their social class. Cf. K. MANNHEIM, *IDEOLOGY AND UTOPIA: AN INTRODUCTION TO THE SOCIOLOGY OF KNOWLEDGE* 2-4 (L. Worth & E. Shils trans. 1936) (discussing the contextuality of thought). Accordingly, a starting point for any analysis of Supreme Court actions in history must be an understanding of the broader cultural milieu within which members of the Court lived, thought, and acted. During the late 1940s and early 1950s, a period of substantial progress in the area of minority rights by the Court, Cold War ideology informed the broader discourse on civil rights in important and powerful ways. It is unlikely that these ideas did not inform the Court in a manner similar to that in which they informed executive branch actions during this period.

300. N.Y. Times, May 18, 1954, at 1, col. 7. The Voice of America's ability to effectively use the decision was enhanced by the fact that the opinion was short and easily understandable by lay persons. Chief Justice Earl Warren intended to write "a short opinion so that any layman interested in the problem could read the entire opinion [instead of getting just] a little piece here and a little piece there. . . . I think most of the newspapers printed the entire decision." See J. WILKINSON, *supra* note 7, at 30 (quoting H. ABRAHAM, *FREEDOM AND THE COURT* 372 n.90 (3d ed. 1977)).

301. N.Y. Times, May 18, 1954, at 1, col. 7.

may be sure would be twisted and perverted. They have been told that the Negro in the United States is still practically a slave and a declassed citizen."³⁰²

The *Brown* decision had the kind of effect on international opinion that the U.S. government had hoped for. Favorable reaction to the opinion spanned the globe. On May 21, 1954, for example, the President of the Municipal Council of Santos, Sao Paulo, Brazil sent a letter to the U.S. Embassy in Rio de Janeiro celebrating the *Brown* decision. The Municipal Council had passed a motion recording "a vote of satisfaction" with the ruling. They viewed *Brown* as "establishing the just equality of the races, essential to universal harmony and peace." The Council desired that "the Consul of that great and friendly nation be officially notified of our desire to partake in the rejoicing with which the said decision was received in all corners of the civilized world."³⁰³

Newspapers in Africa gave extensive coverage to the decision. According to a dispatch from the American Consul in Dakar, *Brown* was "greeted with enthusiasm in French West Africa although the press has expressed some slight skepticism over its implementation."³⁰⁴ *Afrique Nouvelle*, a weekly paper that was a "highly vocal opponent of all racial discrimination," carried an article under the headline "At last! Whites and Blacks in the United States on the same school benches." The dispatch noted that the writer was concerned that there would be

"desperate struggles" in some states against the decision but expresses the hope that the representatives of the negroes and the "spiritual forces" of the United States will apply themselves to giving it force and life. The article concludes by saying that "all the peoples of the world can salute with joy this measure of progress."³⁰⁵

The American Consul concluded the dispatch by observing that

[w]hile it is, of course too soon to speculate on the long range effects of the decision in this area, it is well to remember that school segregation more than any other single factor has lowered the prestige of the United States among Africans here and the over-all results, therefore, can hardly fail to be beneficial.³⁰⁶

302. *Id.*

303. Dispatch No. 1498, from U.S. Embassy, Rio de Janeiro, to Dep't of State (June 2, 1954) (Embassy translation), NARS Doc. No. 811.411/6-254.

304. Dispatch No. 248, from U.S. Consul, Dakar, French West Africa, to Dep't of State (May 26, 1954), NARS Doc. No. 811.411/5-2654.

305. *Id.* According to the dispatch, "Other editorial comment has been similar and the news has been prominently featured in all papers received by the Consulate General since the decision was made." *Id.*

306. *Id.* Not all reaction to *Brown* was enthusiastic. In South Africa, the decision "elicited general public interest, but little articulate reaction." According to a dispatch from the U.S. Embassy in Cape Town, "[m]ost South African Whites are segregationists and, though they may see some similarity in America's color problem, regard their own racial situation as having no true parallel elsewhere. Their interest in the decisions, then, would be very academic." Dispatch No. 224 (Cape Town Series), from U.S. Embassy, Cape Town, South Africa, to Dep't of State (June 9, 1954), NARS Doc. No. 811.411/6-954.

Although the initial decision to participate in *Brown* had been made by the Truman Administration, the Republican National Committee (RNC) was happy to take credit for it. On May 21, 1954, the RNC issued a statement which claimed that the decision "falls appropriately within the Eisenhower Administration's many-frontal attack on global Communism. Human equality at home is a weapon of freedom. . . . [I]t helps guarantee the Free World's cause."³⁰⁷

Newspapers in many parts of the United States celebrated *Brown* as affirming democratic principles. According to the *New York Herald Tribune*, the decision "squared the country's basic law with its conscience and its deepest convictions."³⁰⁸ Others considered the decision's foreign policy benefits to be of central importance. The *San Francisco Chronicle* believed that "[g]reat as the impact of the antisegregation ruling will be upon the states of the South in their struggle to make the physical and intellectual adjustment which it requires, still greater, we believe, will be its impact on South America, Africa and Asia, to this country's lasting honor and benefit."³⁰⁹ As the *Pittsburgh Courier*, a black newspaper, saw it, "[t]his clarion announcement will . . . stun and silence America's Communist traducers behind the Iron Curtain. It will effectively impress upon millions of colored people in Asia and Africa the fact that idealism and social morality can and do prevail in the United States, regardless of race, creed or color."³¹⁰

Throughout the South, many newspapers called for calm.³¹¹ In North Carolina, the *Charlotte News* urged that "[s]omehow, the South must keep the sweep of human history in proper perspective, must apply its intelligence coolly and dispassionately, and must find the resources for giving all its children equality of education."³¹² The *St. Petersburg Times* in Florida declared: "A major blow for man's freedom has been struck. Americans can take pride in the patience and common

307. Republican National Committee, News Release, May 21, 1954, at 3, White House Files—Civil Rights—Republican National Committee 1954, Box 37, Philleo Nash Papers, Harry S Truman Library (on file with the *Stanford Law Review*).

President Eisenhower himself was less enthusiastic. He repeatedly refused to publicly endorse *Brown*. See R. BURK, *THE EISENHOWER ADMINISTRATION AND BLACK CIVIL RIGHTS* 144, 162, 165-66 (1984). See generally Mayer, *With Much Deliberation and Some Speed: Eisenhower and the Brown Decision*, 52 J. SOUTHERN HIST. 43 (1986). Eisenhower criticized "foolish extremists on both sides" of the school desegregation controversy, R. BURK, *supra*, at 163, and, in an effort to distance his administration from the Supreme Court's ruling, he "rebuked Vice President Nixon for referring to Earl Warren as the 'Republican Chief Justice' . . ." *Id.* at 162. Chief Justice Warren was angered by Eisenhower's stance. He believed that if Eisenhower had fully supported *Brown*, "we would have been relieved . . . of many of the racial problems that have continued to plague us." E. WARREN, *THE MEMOIRS OF EARL WARREN* 291 (1977); see J. WILKINSON, *supra* note 7, at 24.

308. N.Y. Times, May 18, 1954, at 19, col. 2 (quoting *New York Herald Tribune*).

309. *Id.* at col. 3 (quoting *San Francisco Chronicle*).

310. *Id.* at col. 5 (quoting *Pittsburgh Courier*).

311. News coverage of *Brown* was itself a news story, as many papers reported on the reaction to the decision by other papers. See, e.g., N.Y. Times, May 18, 1954, at 19, col. 1; Birmingham Post-Herald, May 18, 1954, at 5, col. 1.

312. Birmingham Post-Herald, May 18, 1954, at 5, col. 4 (quoting *Charlotte (N.C.) News*).

sense of its white and black citizens that this major change is being made through our courts rather than brawls and violence."³¹³

Many Southern politicians were less magnanimous. Governor Herman Talmadge of Georgia, who had promised that "there will never be mixed schools while I am governor," claimed that the decision "has reduced our Constitution to a mere scrap of paper."³¹⁴ Georgia Lieutenant Governor Marvin Griffin, a candidate to succeed Talmadge, said "the races will not be mixed, come hell or high water."³¹⁵ South Carolina Governor James F. Byrnes was "shocked" at the decision, but called for whites and blacks to "exercise restraint and preserve order."³¹⁶ Although most Alabama public officials "met news of the high court's ruling with a calm wait and see attitude," one state legislator claimed that "[w]e are going to keep every brick in our segregation wall intact."³¹⁷

Some southerners, however, welcomed the decision. According to the *Atlanta Daily World*, "[l]ocal leaders and educators" in Atlanta viewed *Brown* "as a giant step forward for democracy at home and abroad."³¹⁸ A member of the Atlanta Board of Education proclaimed that "[i]n this decision we have not only lived up to the high moral principles which are at the foundation upon which this country has been built. But we have also given an effective and a resounding reply to the Communist criticism of our treatment of our minority group."³¹⁹

Anticommunism also informed the segregationists' response. Robert Patterson, a founder of the first white Citizens Council,³²⁰ protested the "dark cloud of integration."³²¹ He believed "[a] lot of people are resigning themselves to seeing their children crammed into schools and churches with children of other races and being taught the Communist theme of all races and mongrelization." He urged that, if southerners worked together, "we will defeat this communistic disease that is being thrust upon us."³²²

Governor Talmadge responded directly to the claim that segregation had to be abandoned because of its use in Soviet propaganda. In

313. *Id.* at 5, col. 5 (quoting *St. Petersburg Fla. Times*). The *Charlotte News* counseled that "[i]f the South as a region, and North Carolina as a state, are able to do these things, they will find that the problem is far more manageable than it appears at the moment." *Id.* at col. 4 (quoting *Charlotte (N.C.) News*).

314. *N.Y. Times*, May 18, 1954, at 1, col. 5.

315. *Id.* at 20, col. 6.

316. *Id.* at 1, col. 5.

317. *Id.* at 20, col. 4.

318. *Atlanta Daily World*, May 18, 1954, at 1, col. 3.

319. *Id.* Another Atlanta educator remarked, presciently, that the decision would have "very little immediate effect" because of existing residential segregation, which will tend to hold Negro students in schools in their communities and whites in theirs." *Id.*

320. J. MARTIN, *THE DEEP SOUTH SAYS NEVER*, 1-4 (1957). Citizens Councils throughout the South played a key role in Massive Resistance efforts. See F. WILHOIT, *THE POLITICS OF MASSIVE RESISTANCE* 49-50 (1973).

321. J. MARTIN, *supra* note 320, at 24.

322. *Id.* at 1-2 (quoting Patterson).

his book *You and Segregation*,³²³ Talmadge claimed that “[f]or over a decade now, the American people have been undergoing . . . vicious and dangerous ‘brain-washing’ ”³²⁴ directed by international Communists. “Stop and think for a moment,” he urged.

How many times have you read in your newspapers and magazines or heard over the airwaves this question: “What will Russia say if our government does this?” How many times have you read or heard this: “What will the Reds say if we don’t do this?” or “What will the Communist newspaper *Pravda* print about the United States because we do this or that?” In some instances we have shaped our national policy by trying to please the Communists.³²⁵

Talmadge believed that “[t]oo many things are being done in our country and by our country because we keep looking back over our shoulders at the Communists. Who cares what the Reds say? Who cares what *Pravda* prints?”³²⁶ He continued, “[t]hese are the answers I give when asked, ‘What will the Communists say about the stand you Southerners take on racial segregation?’ or ‘Wouldn’t the end of segregation stop Moscow and *Pravda* from slandering the United States?’ Who cares what the Communists say! Who cares what *Pravda* prints!”³²⁷ Talmadge claimed that “only one group stands to gain” from the “attacks on the Bill of Rights” that *Brown* represented. “That group is the Communist party and its fellow-travelers.”³²⁸

VII. CONCLUSION

As Talmadge’s segregationist polemic suggested, U.S. actions taken to dismantle racial segregation were motivated, in part, by what *Pravda* printed. Concerns on the part of the State Department and others about how Soviet propaganda on American racism affected U.S. foreign policy interests informed the Truman Administration’s pro-civil rights posture. The foreign policy problem was considered to be sufficiently important that the Justice Department sought out documentation from the State Department to use in its civil rights amicus briefs. The Justice Department devoted a considerable amount of space to these arguments, and stressed to the Supreme Court that a decision upholding segregation would have demonstrable, negative effects on international relations.

The desegregation cases came before the Court at a time when the sanctity of American democracy had tremendous implications for U.S.

323. H. TALMADGE, *supra* note 7. Talmadge’s book was popular. The first printing of 10,000 copies sold out in one week, and a second printing of 50,000 copies was ordered. *TIME*, Nov. 14, 1955, at 31.

324. H. TALMADGE, *supra* note 7, at vi.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* at 1.

foreign policy interests. The U.S. hoped to save the world for democracy, and promoted its ideology and form of government as providing for greater personal freedom. In the U.S., the Voice of America proclaimed, the Bill of Rights and the Constitution protected American citizens from state tyranny. Yet as news story after news story of voting rights abuses, state-enforced segregation, and lynchings appeared in the world media, many questioned whether American constitutional rights and democratic principles had any meaning. In many African and Asian countries, where issues of race, nationalism and anti-colonialism were of much greater import than Cold War tensions between the superpowers, the reality of U.S. racism was particularly problematic. America could not save the Third World for democracy if democracy meant white supremacy. The Soviet Union's efforts to take advantage of this American dilemma reinforced its Cold War implications.

In responding to foreign critics, State Department officials attempted to characterize American racism as a regional, rather than a national, problem, and as something that was on its way out. They argued that democracy was working, and that it would eventually overcome the anachronistic practices of a marginal few. The desegregation cases posed a threat to this characterization. If the Supreme Court had ruled in favor of the defendants in *Shelley*, *Henderson*, *Sweatt*, *McLaurin*, and *Brown*, the Court would have reaffirmed the idea that the American Constitution accommodated the racist practices challenged in those cases. American Embassy officials in Nigeria would have found it difficult to counter arguments that the Communist Party was more committed to the interests of people of color, if the Court had interpreted the document embodying the principles of democracy and individual rights to be consistent with racial segregation.

The Truman Administration recognized and responded to this threat, marshalling evidence in its amicus briefs on the foreign policy implications of the desegregation cases. The Eisenhower Administration took advantage of the denouement, prominently using *Brown* in its propaganda efforts. Although American racism would continue to pose foreign policy difficulties from time to time, and the Soviet Union would continue to use it as a propaganda theme,³²⁹ *Brown* helped to undercut the more powerful anti-American arguments. *Brown* lauded the principles of democracy in the eyes of the world. The decision announced that racial segregation and American constitutional rights were inconsistent with each other. After *Brown*, the State Department could blame racism on the Klan and the crazies. They could argue that the American Constitution provided for effective social change. And, most importantly, they could point to the *Brown* decision as evidence that racism was at odds with the principles of American

329. See A. BLAKELY, *RUSSIA AND THE NEGRO: BLACKS IN RUSSIAN HISTORY AND THOUGHT* 116-18 (1986).

democracy. This foreign policy angle, this Cold War imperative, was one of the critical factors driving the federal government's postwar civil rights efforts.³³⁰

As Derrick Bell has argued, efforts to achieve social change on matters of race in American history cannot be understood solely in terms of the benefits people of color have derived from them.³³¹ Whites who have participated in such efforts have acted out of self-interested as well as beneficent motives. Recognizing this principle, which Bell has called the interest-convergence dilemma,³³² is particularly critical to unpacking the relative commitment of different groups in a coalition to the full realization of the changes they seek. A group's commitment to social change is informed by the nature of the group's interest in social change.³³³ Accordingly, to the extent that the Cold War imperative motivated U.S. government efforts to achieve racial equality, the degree of commitment to continued action may have been diminished by the degree to which Cold War motives were satisfied.³³⁴ As the focus of

330. I am not arguing that the *only* reason the Truman Administration acted was the foreign policy implications of segregation. Concern about racial injustice and political motivations also played a part. See text accompanying notes 80-101 *supra*. Nevertheless, the Cold War imperative was sufficiently important that federal government actions in the area of civil rights cannot be fully understood without examining it.

Some might argue that Cold War arguments were simply a useful rhetorical device employed by people who were actually motivated by moral considerations. Under this interpretation, government officials got involved in pro-civil rights efforts simply because it was "the right thing to do." Having made such a policy decision on moral grounds, they then employed whatever arguments might be effective, including foreign policy-related ones. In other words, Cold War arguments were purely instrumental; they were not part of the policy-making process. They were used because they might be effective, not because they were believed to be important in and of themselves.

I do not argue that moral considerations were unimportant. Cf. A. HAMBY, *supra* note 14, at 66-67 (noting the moral concerns which motivated Truman). However, in my view, the wealth of material in the State Department archives documenting the government's attention to, and concern about, the effect of domestic race discrimination on international relations, demonstrates that the Truman Administration took this problem very seriously. They considered the negative effect of race discrimination on foreign policy to be a grave problem, not simply a convenient argument used to serve an independent purpose.

Further, the President's Committee on Civil Rights argued that foreign relations was one of the three key reasons why the federal government had to do something about race discrimination. See PRESIDENT'S COMMITTEE, *supra* note 39, at 146-48. Others agreed that racism hampered foreign relations, and had to be dealt with if the United States were to be a true leader in world politics. See G. MYRDAL, *supra* note 17, at 1015-21; T. HAREVAN, ELEANOR ROOSEVELT: AN AMERICAN CONSCIENCE 204 (1968).

In light of this evidence, the foreign policy-related arguments in the desegregation cases cannot be dismissed merely as strategic rhetoric devoid of independent substance.

331. Bell, *Convergence Dilemma*, *supra* note 8, at 524-25; Bell, *Racial Remediation*, *supra* note 8, at 6-13.

332. Bell, *Convergence Dilemma*, *supra* note 8, at 518.

333. According to Bell, "[i]f . . . rights for blacks require for survival a climate permeated by white self-interest, those rights can be expected to wither in the far more hostile atmosphere that exists when the interests and priorities of whites change." Bell, *Racial Remediation*, *supra* note 8, at 21.

334. For example, to the degree that symbolic change, not actual desegregation, was what was needed to rehabilitate America's international image, *Brown II*, 349 U.S. 294 (1955), which delayed enforcement of *Brown I*, would not be inconsistent with foreign policy needs.

this article is on federal government actions leading up to *Brown*, it does not explore the way in which this analysis might affect interpretations of post-*Brown* civil rights efforts. This remains an area where further scholarship is needed. In examining later civil rights policy, the role of foreign policy imperatives in domestic civil rights may help us to understand not only what motivated the federal government to act. It may also enable us to understand more fully the limits of the majority's commitment to racial equality.

Action on the part of the executive branch and the Court would only be necessary when, due to overt resistance, the symbol of *Brown* itself was threatened. See *Cooper v. Aaron*, 358 U.S. 1 (1958). See generally T. FREYER, *supra* note 7.